

Y TRIBIWNLYS EIDDO
RESIDENTIAL PROPERTY TRIBUNAL

REFERENCE: RPT/0004/05/17

RE: 7 PANTMAWR RESIDENTIAL PARK, HARLECH, GWYNEDD, LL48 2SX

in the matter of an Application under Section 54(1) of the Mobile Homes (Wales) Act 2013.

APPLICANT: MR NEIL COLLIS

RESPONDENTS: (1) MR PETER SMART
(2) MR JENNIFER SMART

TRIBUNAL: TREFOR LLOYD - LEGAL CHAIR
DAVID JONES - SURVEYOR MEMBER
EIFION JONES - LAY MEMBER

VENUE: HARLECH MEMORIAL HALL

DATE OF HEARING
AND INSPECTION: 27TH JULY 2017

DECISION

The Tribunal for the reasons as set out below **DIRECTS** that the Respondents carry out the works and thereafter manage the garden to the rear of their property in accordance with the details set out in paragraph 60 (1)-(3) inclusive.

1. The Applicant, in an Application dated the 11th May 2017 seeks a determination from the Tribunal by way of the questions under the heading on the Application Form "The Question(s) You Would Like to Have Determined" that in relation to Pitch Number 7 Mr & Mrs Smart:

- (1) Remove the rubbish;
- (2) Tidy their back garden;
- (3) Clear the garden of dog excrement;
- (4) Also confirm that the Park Owner is not responsible for their garden becoming muddy in periods of wet weather especially as they have two pet Greyhound dogs churning up the ground.

2. Under the heading "The Orders you are Asking the Tribunal to Make" the Applicant sets out the following:

"Under the implied terms of their Agreement 21(d) maintain:

- (i) *the outside of the mobile home;*
- (ii) *the pitch, including all fences outbuildings belonging to or enjoyed with, and the mobile home, in a clean and tidy condition".*

- (iii) *Also confirm occupier is responsible for looking after grounds around home*
3. Thereafter under the heading “Why you Believe the Tribunal should make a Determination(s) and the Order(s) Requested” the following is set out:
- (1) *“Mrs & Mrs Smart have not only disregarded any request, but have also stopped paying the monthly Park fee for utilities. I have also had complaints from neighbours about the health hazard of excessive amounts of dog excrement in the garden. Neighbours also have concerns on their property values”.*

Background

4. Pantmawr Residential Park (“the Site”) is owned by the Applicant Mr Neil Collis and consists of 30 pitches.
5. The Site is a protected site under the provisions of the Mobile Homes (Wales) Act 2013 (“the Mobile Homes Act”). As a consequence the rights and obligations of mobile home owners and occupiers on the site, and the site owner are regulated by the Mobile Homes Act.
6. A Site Licence was issued with conditions to the owner by Gwynedd County Council on the 14th May 2015.
7. In accordance with Section 54(1) of the Mobile Homes Act, the Tribunal has jurisdiction to determine any question arising (inter alia) under any Agreement to which the Section applies. In addition the Tribunal has powers by virtue of the Housing Act 2004 as amended and specifically Section 230(5A), which is set out as follows:

Section 230[5A] - Where exercising jurisdiction under the Mobile Homes Act 1983 [or Part 4 of the Mobile Homes (Wales) Act 2013], the directions which may be given by a Tribunal under its general power include (where appropriate):

- (a) *directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise;*
- (b) *directions requiring the arrears of pitch fees or the recovery of overpayments of pitch fees to be paid in such manner and by such date as may be specified in the directions;*
- (c) *directions requiring cleaning, repairs, restoration, repositioning or other works to be carried out in connection with a mobile home, pitch or the protected site in such manner as may be specified in the directions;*
- (d) *directions requiring the establishment, provisions or maintenance of any service or amenity in connection with a mobile home, pitch or protected site in such manner as may be specified in the directions.*
8. Having considered the questions raised by the Applicant and the Orders sought (as fully set out at paragraph 2 of this Decision) the Tribunal considers by virtue of Section 54(1) of the Mobile Homes Act it has, and accordingly accepts jurisdiction to determine the questions raised by the Applicant as aforesaid.

Site Inspection

9. The Tribunal met at the site on the morning of the 27th July 2017, accompanied by the Applicant. The Second Respondent initially came to the door of number 7 and thereafter the First Respondent allowed the Tribunal and the Applicant access to the rear of the Property, but then decided to return indoors.
10. The ground was wet and the weather was dry and bright.
11. The Tribunal members carried out an extensive inspection of the pitch of number 7 both to the front and rear and consideration was given to all matters which had been raised within the appeal documentation and the reply from the Respondents. Despite the Respondents being given the opportunity to remain on site to point out any features in respect of which they would seek to give evidence at the hearing they chose not to do so. The Applicant pointed out various matters which the Tribunal was able to view on site (see further below) in relation to the Site visit.
12. At the Site the Tribunal saw 30 properties together with it appears another two if not three pitches in construction towards the far end of the Site. The Tribunal noticed that the Site was well maintained with the gardens of the other homes (insofar as the Tribunal could see the same from the access roadway) to be well maintained with tidy gardens and all homes appearing to be of a similar age and condition.
13. At the Site visit the following was observed in relation to Pitch Number 7:
 - (1) Part of the rear stone wall to the pitch which forms part of number 7 had fallen down;
 - (2) Other than usual residential paraphernalia being a refuse bin and brushes etc there was nothing else to the rear of the pitch other than a garden shed.
 - (2) There was one localised area of exposed earth in the rear garden immediately adjacent to the back door to the property which showed signs of ponding and was holding some water.
 - (3) The driveway to the side consisting of block pavers had weeds growing through it.
 - (4) The front garden to the pitch was tidily mown and contrasted from the rear garden where the sward was far higher, unkempt but was not completely overgrown.

Directions

14. Directions were made by the Procedural Chairman on the 22nd May 2017 requiring the Applicant by the 2nd June 2017 to file a copy of the Site Licence, Copy Site Rules and Witness Statement verified by a Statement of Truth in

relation to the Applicant's evidence and by 12 noon on the 16th June for the Respondents to serve and file a Witness Statement in response.

15. The Applicant prior to the direction had already filed and served his Witness Statement together with the Site Licence and Site Rules and also letters from the occupiers of properties adjacent to Number 7.
16. The Respondents by way of an email dated the 14th May 2017, which again pre-dated the directions set out their case. Although that email did not contain a Statement of Truth it was the only document the Respondents had forwarded to the Tribunal Office.

Documentary Evidence before the Tribunal

17. In addition to the Application Notice the Applicant provided a two-page Statement, colour photographs of the rear and driveway of the Respondents' property number 7 and also sought to rely upon:
 - (i) a letter dated 27th May 2017 from Rowlands Groundworks Limited and;
 - (ii) evidence from the occupiers of numbers 6 and 8 Pantmawr Residential Park, being the Respondents' closest neighbours, who provided two letters dated the 26th May 2017 from Mr Geoffrey Eric Rattey in respect of his home number 6 and Mrs Irene May Brady in respect of her home number 8.
18. As aforesaid the only document filed by the Respondents was an e mail dated 14th May 2017. It became clear (see below) during the course of the hearing that the Applicant had not seen this document and as such he was given an opportunity to read the content of the same before embarking upon his cross-examination of the Respondents.

The Hearing

19. At the hearing the Tribunal heard from the Applicant in person, Mr Geoffrey Eric Rattey (occupier of number 6 Pantmawr Residential Park), Mrs Irene May Brady (occupier of number 8 Pantmawr Residential Park) and the First and Second Respondents.
20. The Applicant opened his case with reference to the photographs in the bundle stating that there had been an accumulation of rubbish at the back and side of the pitch to Number 7 and that there was a large area where the grass had worn away to create a mud patch. He went on to elaborate that in his view there was a continuous mud problem, the whole rear area looked unsightly, and was in clear view of people using the public footpath designated as a nature trail along the rear.
21. In addition he maintained that there was a considerable amount of dog excrement to the rear pitch of number 7 which was not being cleared by the Respondents. Conversely he suggested that the front was maintained by a neighbour and was not part of the issue.

22. The Applicant also referred to the photograph and on site the proliferation of weeds growing through the driveway making it appear overgrown and also referred to the oil patch on the block pavers as can be seen in the photograph. The Tribunal did not view whether or not this was still present on site as it was blocked by a Peugeot motorcar at the time of the site visit.
23. The Applicant went on to open his case stating that the Respondents were un-cooperative, they had initially started parking in front of the house in the garden, had stopped paying the monthly pitch fee and utility bill payments. In respect of these two latter matters he confirmed that they were the subject of ongoing or impending County Court proceedings as the Respondents were some 12 months in arrears in relation to their pitch fee and some £600 in arrears in relation to the utilities. When questioned by the Tribunal, the Applicant confirmed that the issue of unpaid Park fees and utility bills were not part of any Application to the Tribunal despite it being referred to in the Application Notice.
24. The Applicant went on to further open his case stating that for the first eight or nine years or so there was no problem with the Respondents and it is only after they obtained two Greyhound dogs that there had been problems, including the grass being killed off by urine and excrement. Prior to this the Park had won a prize for the best kept park in 2013.
25. Initially the grass to the front and rear of number 7 was cut by a professional gardener. When the gardener moved away the Applicant himself cut the rear for some time until it became impossible to do so due to the extent of dog excrement and the hazard of onward contamination as he was using the same lawnmower to cut other pitches.
26. The Applicant also commented that since he submitted his Application, the bank above the stone wall had been cleared and part of the wall was damaged (as referred above in relation to the Site Visit findings).
27. When questioned by the Tribunal the Applicant confirmed that :
 - (i) His photographs had been taken a few days before the 11th May 2017 Application was made and also;
 - (ii) Since he made this Application all the rubbish as shown in the photographs had been removed and;
 - (iii) Therefore for the time being at least there was no issue with rubbish and;
 - (iv) Similarly, the area of exposed soil was now less than it was in the photograph, therefore there had been some improvement there.
28. In the circumstances the Applicant at the Hearing confirmed that he sought directions from the Tribunal as to the following:
 - (1) The repair of the rear stone wall;
 - (2) The re-seeding of the exposed soil areas of the rear garden and thereafter maintenance of the same including keeping the pet dogs away from the area until it had been reinstated.

- (3) Eradication of the weeds to the block paver, driveway and also clearing of the oil patch and clearing of mud splatters to rear of elevation of the property.

Evidence of the Applicant

29. The Applicant then gave his evidence which essentially repeated the opening. He accepted there had been some improvement and the question of the rubbish had been resolved and there was partial improvement to the garden, also in the main the dog excrement had been cleared.
30. In relation to the rear wall, when asked by the Tribunal he confirmed that he had not raised the issue with the Respondents until the day of the hearing although he was aware of it, but as it had occurred post-Application he did not make further contact with the Respondents.
31. Both the Applicant and Respondents having been told at the outset of the hearing that cross-examination had to be relevant to the points in issue, not simply submissions the Respondents were given an opportunity to cross-examine.
32. In relation to the Applicant's evidence, the Second Respondent posed the question as to why the Applicant had not helped them to remove the rubbish sacks as they were both registered disabled. The Applicant's reply that he was not obliged to do so.
33. In relation to the ponding earth at the rear the Second Respondent asked the Applicant why in November 2008 he had not attended to the flooding. The Applicant's response was that there was no issue then and when the pitch was created ground works were undertaken first, thereafter the slab was laid in the middle of the pitch, top soil to the front and rear, and thereafter the area was turfed.
34. The Respondents again asked why their complaints had not been addressed, to which the Applicant replied that there was no problem until the Greyhounds appeared and reiterated his earlier evidence that he initially cut the grass at the rear. When he complained about the extent of dog excrement was told by the Respondents to stop cutting the grass.

Evidence of Mr Geoffery Eric Rattey

35. The Tribunal then heard from Mr Geoffrey Eric Rattey, the occupier of number 6. Mr Rattey told the Tribunal that he used to cut the hedge and was given permission to go onto the Respondents' pitch to do so, but gave up two years ago due to having to "tiptoe around the dog muck". He still cuts the front hedge and as per his letter to the Tribunal asserted the concern as to the effect the condition of the Respondents' pitch would have on other properties including his own.

36. When asked by the Tribunal if he had any evidence to point towards any reduction in value, he said he had nothing other than his own impression.
37. Mr Rattey was cross examined by the Second Respondent as to why he had not informed her of the reason he had given for giving up cutting the hedge, being the dog excrement adding that if it had been a problem she would have addressed it. Mr Rattey answered that he had no need to tell her that she could see the position for herself.
38. In answer to a question from the Tribunal Mr Rattey confirmed that his rear garden to pitch number 6 was at a lower elevation. He had no issues with drainage or any issues with the rear stone wall.

Evidence of Mrs Brady

39. The Tribunal then heard from Mrs Brady the occupier of number 8. She initially said that she could not go and sit outside in the hot weather due to the smell of dog excrement, and also gave similar evidence in respect of her concern that the condition of the rear of the Respondents' property would have an adverse effect upon any attempt to sell.
40. When asked by the Tribunal as to the last time she had experienced the foul smell, she said "*Last year*" meaning the summer of 2016.
41. The Second Respondent again raised the same question of Mrs Brady in cross examination being why she had not notified the Respondents of the problem, to which Mrs Brady replied that she had been threatened with legal action by the Respondents.

Respondents' Evidence

42. At the beginning of the Respondents' evidence the Tribunal made reference to the email dated the 14th May 2017 at which time the Applicant confirmed he had not been forwarded a copy of the same from the Tribunal Office. As such the Applicant was provided with a copy. The Tribunal adjourned the proceedings for 15 minutes so that the Applicant could read the one and a half pages of comments advanced by the Respondents. Upon returning to the hearing the Applicant confirmed he was content to proceed having read the aforesaid email. The Tribunal confirmed that a hard copy would be forwarded to him in due course.
43. The Respondents were then given an opportunity to give evidence. The First Respondent for the first time said that he had not heard all of the proceedings. The Tribunal asked him if he wanted anything repeating, and he stated that that was fine as in essence the Second Respondent was dealing with the hearing. Therefore, the hearing continued with evidence in the main from the Second Respondent who stated that:
 - (1) They accepted they were responsible for maintenance of the home and the pitch. They had tried to re-seed the rear garden last year on several occasions and it was a waste of money due to the drainage issues.

- (2) When asked by the Tribunal what steps they had taken, ie the mechanism of re-seeding, they were hesitant in an answer. The First Respondent said that he had used something akin to a "*Fison's Prep*". When asked further questions by the Tribunal the Second Respondent confirmed that they had probably raked the area before trying to re-seed.
 - (3) When asked a question directly by the Tribunal in relation to what appears in their email evidence being that there was no problem when they had a single Sheltie dog, the Second Respondent confirmed that was the case, and that some ten days after the Sheltie died they started to keep Greyhounds and the problem started at that stage.
 - (4) Despite the above evidence the Second Respondent still maintained that it was a flooding problem dating back to 2008 that caused all the problems.
 - (5) In relation to the rear wall, the Respondents' evidence was that they had to take it down as in part it was unsafe. They were getting rid of roots and trees and would rebuild the wall.
 - (6) When asked by the Tribunal who would carry out the work they stated it would be the First Respondent, although in relation to their written evidence to the Tribunal it appeared neither First or Second Respondents due to their health conditions were able to carry out such work. Despite this the Respondents maintained that they had taken some six loads of stone from behind the wall to the local tip and that they would replace, and repair the wall as soon as possible. When asked for timeframe they said the work would be complete by the end of October 2017.
 - (7) In relation to the oil patch and the weeds to the driveway, the Respondent maintained the oil patch came from an old Nissan motor vehicle that they previously owned and that they were trying to find a solution to deal with the patch as it was unsightly.
 - (8) At this stage the Second Respondent again made the point that the First Respondent was disabled, he was a diabetic. They had found it difficult getting rid of the weeds themselves, but a neighbour would do it, and that such works would be carried out within the next month or so.
 - (9) In relation to the exposed earth patch at the rear, the Respondents asserted that they had tried to level it up in the past to stop it from flooding. Their desire was to cover the rear with artificial grass.
 - (10) When asked by the Tribunal how this would work in relation to the issue of any dog excrement and drainage the Second Respondent said that she would simply collect the excrement and put it in the bin.
 - (11) In relation to the mud splatters to the rear, when asked about the photograph the Second Respondent maintained that was during a period of heavy rainfall and that it has been cleared.
 - (12) When the Tribunal asked her a question in relation to the Site Visit, ie that there was still mud splats on the rear door as of the date of the visit, she stated that it had just happened, and would again be cleaned.
44. The Respondents were then cross-examined by the Applicant in relation to the number of dogs they had. The Second Respondent said they initially had one Greyhound and thereafter that dog had a companion. When the older dog died they acquired another companion for the remaining Greyhound, therefore at any one stage they had not had more than two dogs.

45. When questioned by the Applicant in relation to their written evidence as to being told by the Local Authority not to clear the rubbish, the Second Respondent's answer was that they had been advised that the drainage to the garden should be done.
46. When cross-examined in relation to the content of their written evidence in the email that the 2008 Agreement was null and void, the answer given was that it was superseded by the 2013 Act. When put to the Respondents by the Applicant that the 2008 Agreement was the only Agreement in place between them and it was for their protection, they would not accept the point.
47. The Applicant then cross examined the Respondents in relation to part of his earlier evidence as to how the pitch had been prepared, and at the outset the pitch both front and rear drained in the same manner, and initially the grassed areas were laid to turf, the reply was that that work had been done before they arrived on site.
48. When asked by the Tribunal whether the grass had been established or that the turfs were still visible at the time they purchased, the Second Respondent confirmed that it was an established sward by the time they completed the purchase.
49. In answer to a further question from the Applicant the Second Respondent agreed that there was no drainage issues to the front of the pitch and when questioned further on this point by virtue of the averment that the drainage to the front and back was the same, the answer given by the Second Respondent was that they had removed a large boulder from the front to create a flower bed and that was why that area was free draining.
50. In relation to questions relating to the dogs causing damage to the rear garden, the Second Respondent's answer was that her dogs do not cause any problems, but when it rains the water washes the soil from underneath the grass. Accordingly, what was needed was to sort out the drainage, thereafter place artificial grass on the area.

Respondents Closing Submissions

51. The Respondents were invited to close their case having been told that the Tribunal had taken a careful note of all the evidence and each and every point need not be repeated.
52. In response the Second Respondent said that all they wanted was "*a garden to be proud of and look stunning, we have never had a chance in the last nine years to make the garden stunning*".

Applicant's Closing Submissions

53. The Applicant closed his case by making submissions that the Tribunal had viewed the Site, and can come to its own conclusion in relation to the Orders sought. It was clear in his view that the Respondents would not listen to anything, they were disregarding and/or misguided in their stance on the law as regards status of the 2008 Agreement between the parties.

54. In relation to the artificial turf, the Applicant said that in principle he would not have an issue save as they would need to ensure there was sufficient drainage so as not to cause any problem to any of the lower pitches, as the Site was essentially terraced.
55. Upon being questioned by the Tribunal the Applicant went on to confirm that there were only two very small areas of existing artificial turf on the Site and it was questionable whether grass would have grown on these areas in any event.
56. The hearing concluded at approximately 1 pm.

Decisions on the Questions before the Tribunal

57. The Applicant having confirmed that the disposal of refuse was no longer an issue and furthermore the concession by the Respondents that they recognised being responsible for their pitch and home in terms of repairs and maintenance, although in this latter regard they still did not accept the 2008 signed Agreement was binding the Tribunal concludes that the concessions are sufficient so as not to have to deal with these aspects of the case. Accordingly, the following live issues remain to be determined:
 - (1) Whether or not the Tribunal should direct that the Respondents:
 - (i) repair the stone wall to the rear;
 - (ii) re-seed, reinstate the bare earth patches at the rear garden to plot number 7.
 - (iii) thereafter maintain the grass and lawn at the rear of the premises to an appropriate standard;
 - (v) clear the weeds and oil patch to the block pavers, and thereafter maintain the same.
58. Having considered all matters including the letter from R Owen Groundworks dated the 27th May 2017 and also the concession from the Second Respondent in her evidence that when they had the Sheltie dog there was not a problem with the grassed area at the rear, the Tribunal finds upon the balance of probabilities that:
 - (1) There were no drainage or other issues in relation to the rear pitch of the Respondents' property until they started keeping Greyhounds at the property;
 - (2) The exposed earth areas absent grass are more likely than not to have been caused by the presence of the Greyhounds at the rear and are not as a result of a pre-existing drainage defect in the area.
59. As referred to above in coming to above conclusion the Tribunal is mindful of the content of the letter from R Owen Groundworks. Although Mr Owen did not attend for cross-examination and therefore less weight can be placed upon the content of his letter, the Respondents did not seek to adduce their own evidence or make any submissions in that regard. Further, the Second Respondent's own admission that there was no issue at the rear until they started keeping Greyhounds and furthermore and of significance in the

Tribunal's view there is no evidence of any drainage issues elsewhere (as confirmed by the Applicant, Mr Rattey the owner of the lower lying property number 6), Mrs Brady and also the Respondents' confirmation that there are no drainage issues to the front of the pitch.

60. Further, in the light of the acceptance by the Respondents of being responsible for the maintenance of their pitch and specifically the repair to the rear stone wall which they confirmed would be undertaken by the 31st October 2017; the acceptance of responsibility for the block pavers and the willingness to deal with the weeds and oil patch, the Tribunal makes the following directions:

- (1) The Respondents shall by 4pm on the 6th October 2017 carry out all necessary repairs to the rear stone wall which forms the boundary between plots number 7 and the adjoining land in the ownership of the Community Council;
- (2) The Respondents shall by 4pm on the 6th October 2017 eradicate the weeds growing through the block pavers, and also dealt with the oil staining to the pavers and will thereafter maintain the driveway so as to prevent the further growth of weeds;
- (3) The Respondents shall by 4pm on the 5th October 2017 re-seed the existing bare earth patch of ground at the rear of their property, cordon off the area until the sward has been reinstated, and thereafter:
 - (i) manage the entire rear garden by way of keeping the grass height to a level so as the rear garden is kept in a neat and tidy condition and also:
 - (ii) ensure that they manage the use of the rear garden by their Greyhound dogs in such a manner so as to ensure the grassed areas are not damaged and/or become areas of exposed soil once more.

Dated this 8th day of September 2017



Trefor Lloyd
Chairman