

Y TRIBIWNLYS EIDDO PRESWYL  
RESIDENTIAL PROPERTY TRIBUNAL (WALES)

DECISION AND REASONS OF RESIDENTIAL PROPERTY TRIBUNAL (WALES)  
S 54 (1) Mobile Homes (Wales) Act 2013

In the Matter of an Application under Section 54 (1) Mobile Homes (Wales) Act 2013 (the Act)

**Reference:** RPT/0004/05/19

**Premises:** 226, Willow Park, Gladstone Way, Mancot, Deeside, CH5 2TT

**Applicant:** Mrs. Margaret Nuttall

**Respondents:** Wyldecrest Parks Management Limited (WPML)

TRIBUNAL AVS Scott Chair  
Tom Daulby MRICS  
Eifion Jones

**ORDER**

**The responsibility for the costs of landscaping and other works to the pitch at 226 Willow Park are those of the occupier, not the site owner.**

**Dated this 13<sup>th</sup> day of January 2020**

**A Scott**

**CHAIR**

## REASONS

### BACKGROUND

1. This application concerns the application by an occupier of a mobile home for the determination of questions arising under Part 4 of the Act or any agreement to which it applies (s 54 (1) of the Act).
2. The Applicant, Mrs. Nuttall, made the application on 30 April 2019. She had entered into an agreement to purchase a mobile home from Shelfside Holdings Limited trading as Wyldecrest Parks for £105,500 on 13 September 2017.
3. The Written Statement required to be given under the Act was signed by Mrs. Nuttall on 26 June 2019 and by David Sunderland as a director of WPML, the site owner, on 5 July 2019.

### QUESTIONS FOR DETERMINATION

4. These are set out in Mrs. Nuttall's application as follows:
  - a. Who is responsible for the cost of replacing a defective fence on her pitch.
  - b. Who is responsible for the cost of rectifying an electrical installation safety issue.
  - c. Who is responsible for the cost of ensuring adequate drainage on Mrs. Nuttall's pitch by the removal of 40 tons of concrete infill.
  - d. Who is responsible for the cost of installing boundary fencing to the rear of the pitch.

### RESPONSIBILITIES OF SITE OWNER AND OCCUPIER

5. These are set out in the Agreement referred to above and include the obligation on the occupier to maintain the outside of the mobile home and the pitch, including all fences and outbuildings belonging to or enjoyed by it in a clean and tidy condition.
6. The site owner's obligations include the responsibility for repairing the base on which the mobile home is stationed and for maintaining any gas, electricity, water, sewerage or other services supplied by the owner to the pitch or to the mobile home:

### INSPECTION

7. The Tribunal inspected the site on which the mobile home is sited on 11 November 2019 at 10:30am. The inspection was attended by Mrs. Nuttall, her daughter and son in law and by Mr. David Sunderland. Willow Park is a large well established mobile home site with well over 200 mobile homes. No 226 is at the back of the site in a row of 5 homes sited on part of a former car park and looking over fields at the back. The front of the home overlooks the rest of the car park. Mrs. Nuttall had had the area round her mobile home paved with some raised flower beds. At the back of the site the ground has been levelled by the use of 3 gravel boards. The pitch has wooden fencing on three sides. There is a small gap beyond the back fence to the boundary of the site, marked with a barbed wire fence. Three electric cables run along the ground in this gap.

## APPLICANT'S SUBMISSIONS

8. In her Application, Mrs. Nuttall asserted the original fence was installed defectively by the site owner and had to be replaced. She also asserted that it had been discovered live cabling was running 50 mm under the surface, representing a severe health and safety risk. She said it had been represented to her by the site owner that she would be able to install paving slabs or grass but this was not possible as the pitch had not been prepared properly. She also sought the cost of installing boundary fencing to the rear of the pitch which had been required to prevent the bank falling into the neighbouring farmland and to ensure the health and safety of visitors (and Mrs. Nuttall). Mrs Nuttall asked for reimbursement of the costs of the above, £7,336.80.
9. In response to WPML's assertion that the repairs were her responsibility, she referred to section 21 (1) (d) of the Agreement. She said the level of work required went far beyond maintenance. The work involved concerns relating to the health and safety which was the site owner's responsibility.
10. In relation to the electrical cable, this issue had previously been raised in an email from Mrs. Nuttall's daughter to John Oxlade dated 13 November 2018. In the course of doing work on the site, her gardener had found a live main cable from the home sitting 1 inch below the soil, then running across the plot next door. She was worried the cable might be severed when someone moved into the plot and began digging. She had therefore asked her contractor to duct the cable and put it deeper in the soil to meet regulations.
11. It had also been discovered that soil on the plot had been placed directly onto tarmac so that there was no drainage. The gardener was therefore breaking the concrete up to put in a drainage system before starting the patio/landscaping.
12. In a letter described as a letter before action dated 16 January 2019 in relation to proceedings she intended to serve on WPML, Mrs. Nuttall asserted the fence on one side of the pitch had been insufficiently secured to the ground and had been simply placed on the tarmac car park with a small amount of cement and thus presented a hazard. She asked that if WPML was not the correct legal entity, she should be told which was the correct one.
13. A statement in support of the application was received from Mrs. Nuttall on 31 July 2019. In this, Mrs. Nuttall referred to having been advised by Kristina Blears of Wyldecrest Parks in 2017 that the pitch would be prepared to allow for the siting of the mobile home and would be developed to allow for paving slabs and/or a grass area like other pitches on the site. She said the defective fence was installed by the site owner. It was replaced by her contractor as, she said, the fences would not have withstood any degree of force and could have collapsed at any time. She accepted that under the agreement she had the responsibility to maintain the fences in a clean and tidy condition but this did not extend to replacing a negligently installed fence which could have caused damage to property or people.
14. She also described the discovery of a "live electrical cable" inches below the loose soil on the pitch. She arranged for her gardener to remove concrete and dig a trench for the cable. She asserted there was a risk of electrical shock from persons crossing the site and a significant risk of injury for someone digging on the pitch. She had also noticed electrical cables in the bank behind her boundary fence which has appeared after the siting of a new mobile home to the left of hers.
15. Mrs. Nuttall referred to the fact it had become apparent that Wyldecrest had simply placed a small layer of soil over the old car park tarmac so that it would be impossible to install paving slabs or grass as rainwater would not drain and she therefore had to agree to the removal of contaminated concrete infill to allow for the installation of paving slabs. She asserted her

responsibility was to maintain the pitch, not to undertake significant groundworks to allow her to use the pitch.

16. In relation to the bank at the rear of the pitch, Mrs. Nuttall had been concerned, on visiting the park in June 2018, that the rear was unsafe and the bank might collapse. She told Kristina Blears of Wyldecrest Parks of her concerns, and was told Wyldecrest would find a solution. She wrote to Wyldecrest later with a quote and asked them to rectify this issue. As there was no response, she arranged for levelling and a new fence to be installed. Again, she asserted that although she was responsible for maintaining the pitch in a clean and tidy condition, this duty did not extend to rectifying a collapsing bank to protect the stability of a mobile home near it.
17. Finally, Mrs. Nuttall referred to a meeting with Ann Wraywood of Wyldecrest Parks Management in November 2018 when Ann Wraywood agreed the standard of the works was substandard and, in respect of the collapsing bank and electrical work, shocking and dangerous. Ann Wraywood said she would report this to Management and suggested a 50% contribution though this was never put in writing.

## RESPONDENT'S SUBMISSIONS

18. These were contained in a statement received on 19 August 2019. In respect of the fencing, it was asserted it was the responsibility of the Applicant to maintain the fence. There was no contractual responsibility for the Respondent to have a fence on the pitch. In respect of the electrical cabling, this was also the responsibility of the occupier. The electricians, at the point of sale, were certified by an electrician. There was no evidence to support the assertion there was an electrical safety issue and all cabling would be armoured to meet electrical safety regulations. The maintenance of the pitch was the responsibility of the Applicant. The Respondent was only responsible for health and safety of the common parts. The submission also referred to the allegations of misrepresentation made in relation to the contract for the sale of the mobile home and pointed out that an entirely different case had been made to the Tribunal now. Further, it was asserted that the Tribunal had no jurisdiction to order reimbursement of the costs asked for. The allegations related to a sale contract which had been completed. The jurisdiction of the Tribunal was to determine any question arising under the Agreement which commenced on 26 June 2018 and does not deal with contractual matters relating to the purchase of the mobile home. Further, the mobile home was not purchased from the Respondent but from Shelfside (Holdings) Limited. The Respondent was not obliged to carry out improvements to what the occupier had purchased.
19. The Respondent submitted an exchange of correspondence with solicitors instructed by Mrs. Nuttall, Mercury Law, and who wrote to WPML on 30 January 2019 to demand repayment of the sums expended by Mrs. Nuttall for works related to her pitch. Mr. Sunderland responded on behalf of WPML on 17 February 2019 querying the legal basis for payment and referring to the fact that Mrs. Nuttall was entitled to keep her mobile home on plot 226 at Willow Park pursuant to an agreement under the Act, which Act gave the occupier the obligation to maintain the mobile home. The site owner had the responsibility for maintaining the communal parts of the site. Mercury Law responded on 21 February with details of Mrs. Nuttall's claims regarding the collapsing bank, defective fencing etc, and said that the occupier's responsibility for maintaining the site did not extend to rectifying multiple safety failures on the owner's site. It was asserted significant ground works had been undertaken which should have been completed by WPML prior to the handover of the pitch. It was said to be Mrs. Nuttall's case that WPML's employee or agent misrepresented the state of the pitch and that there had been a breach of contract in that WPML failed to rectify serious safety issues and had installed defective boundary fences on the pitch.

## THE HEARING

20. This took place immediately after the inspection. Mrs. Nuttall attended with her daughter and son in law, Sarah and Andrew Rate, who made representations on her behalf. WPML were represented by Mr. David Sunderland.
21. Mr. Rate confirmed that Mrs. Nuttall's complaint regarding the fence was not that it was defective, but in the manner of its installation. Mr. Sunderland responded that there was no requirement under the terms of the agreement that there had to be a fence installed at the pitch. This appeared to have been an improvement on the part of the occupier and the obligation to maintain the pitch was for the occupier. Even if WPML had installed the fence, it was not its obligation to maintain it. In any event, WPML did not install the fence. The development company was Shelfside (Holdings) Limited. Mr. Sunderland was not a director of that company. The claim by Mercury Law was that there had been a failure to prepare the site appropriately. That was not part of the sale of the mobile home under the Act or the written statement provided pursuant to the Act. Any such claim should be dealt with by the County Court.
22. In respect of the cabling, Mr. Sunderland repeated that the cabling was armoured and that there was no safety risk. Mrs. Nuttall (who denied this) should have been given the electrical certificates on completion of the sale of the home. Mr. Sunderland pointed out there was no surveyor's report and Mrs. Nuttall confirmed she had not obtained one. She did attend to inspect the site from time to time but was unable to access the site as it had been fenced off.
23. Mrs. Nuttall had had dealings with a number of people she believed to be representatives of WMPL, including John Oxlade, Kristina Blears, Anne Hayworth, and Paul Whitelock (who denied that anyone had authorised any of the work in the invoice sent to WMPL by Mrs. Nuttall and who pointed out such landscaping would be at her expense). Mr. Sunderland told the Tribunal that WMPL did not have any employees and the above people were employed by Shelfside (Holdings) Limited, save for Ann Wraywood who was not an employee of WPML but held an unpaid position as an "armchair" manager. Mrs. Nuttall had not appreciated this, as the uniforms worn had the names "Wyldecrest Parks" and Ms. Blears sent an email from Wyldecrest Parks. Mr Sunderland said this was a trading name for Shelfside (Holdings) Limited (as was made clear from the agreement for the purchase of the mobile home). He emphasized that, in respect of each of the claims made by Mrs. Nuttall, responsibility for maintenance of the site was for the occupier, not WPML. If what was provided was not what had been agreed, that was a tort claim, not a matter of a term of the Agreement under the Act.

## TRIBUNAL'S FINDINGS

24. The Tribunal considered the issue of its jurisdiction to hear the application. Section 54 (1) of the Act provides that the Tribunal has jurisdiction to determine any question which arises (inter alia) under any agreement to which the Act applies. In addition, the Tribunal has powers by virtue of the Housing Act 2004 as amended. Section 230 (5A) provides that where exercising jurisdiction under the Mobile Homes Act (or Part 4 of the Mobile Homes (Wales) Act 2013), the directions which may be given by a tribunal under its general powers include (where appropriate), directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise.
25. Mr. Sunderland put his case on the basis that the Tribunal had no jurisdiction as any claim by Mrs. Nuttall should be against the developer, which was not a party to the Agreement under the Act. The obligations of WPML only arose upon the signing of the Agreement on 26 June 2018. Under that agreement, the Occupier had the obligation to maintain the pitch including the fences. The site owner was only responsible for maintaining the base on which the mobile home was situated and for maintaining any electrical or other services supplied.

26. The Tribunal did not accept that it had no jurisdiction as Mrs. Nuttall had sought a determination for the responsibility of the costs of the work referred to in her application which was a question relating to the Agreement. However, the Tribunal found that such responsibility was that of Mrs. Nuttall. Mr. Sunderland was correct that the agreement signed by WPML related to WPML's obligations under the Act. These were restricted to responsibility for the base and for maintaining any services and the obligations only arose from the date the Agreement was signed.
27. WPML was not responsible for the costs of the works carried out on behalf of Mrs. Nuttall. The agreement for the purchase of the mobile home clearly states that the supplier of the home was Shelfside (Holdings) Limited trading as Wyldecrest Parks. Any claim in relation to the preparation of the site should be addressed to that company. The Tribunal did not have any jurisdiction in relation to the agreement between Mrs. Nuttall and Shelfside (Holdings) Limited.

Dated this 13<sup>th</sup> day of January 2020

**A Scott**

**CHAIR**