

Y TRIBIWNLYS EIDDO

RESIDENTIAL PROPERTY TRIBUNAL

REFERENCE: RPT/0027/02/21

RE: 90 LIGHTHOUSE PARK, ST BRIDES, WENTLOOGE, NEWPORT, NP10 8SL

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

APPLICANT: THE BERKLEY LEISURE GROUP LIMITED

RESPONDENT: MR DENNIS GRIFFITH

**TRIBUNAL: TREFOR LLOYD - LEGAL CHAIR
ROGER BAYNHAM FRICS SURVEYOR MEMBER
CAROLE CALVIN THOMAS - LAY MEMBER**

VENUE: KINLY PLATFORM

DATE OF INSPECTION: 13TH JULY 2021

DATE OF HEARING: 16TH JULY 2021

DECISION

The Tribunal for the reasons as set out below Declares that the Respondent has erected a fence in breach of the Park Rules and;

ORDERS that the Respondent within 56 days of the date of this decision reduces the height of the fence in question to 1 metre in height.

1. The Applicant, in an Application dated the 19th of February 2021 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 90 "Whether the Respondent is in breach of their (sic) agreement.
2. Under the heading "The Orders you are Asking the Tribunal to Make" the Applicant sets out the following:
An order that:
 - (i) the Respondent is in breach of their (sic) agreement specifically Clause 3(g) of the express terms contained in part iv of the Agreement and park rule 2; and
 - (ii) The Respondent be required to remedy their breach by reducing the fence to the maximum permitted height of 1 metre within a reasonable period of time, namely, 28 days
3. Thereafter under the heading "Why you Believe the Tribunal should make a Determination(s) and the Order(s) Requested" we are referred to a witness statement in support dated the 12 March 2021 by Mr Curson on behalf of the Applicant.

Background

4. Lighthouse Park (“the Site”) is owned by the Applicant and consists of according to Mr Curson at the inspection ‘around 140’ pitches but we note from the earlier Tribunal decision (Ref RPT/0013/11/16) that there were said to be 155 pitches. In relation to our consideration of the matters at issue nothing turns upon this aspect of the evidence.
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 homeowners and occupiers on the site, and the site owner are regulated by the Mobile Homes Act.
6. The current site licence had expired, and we were told that renewal had been delayed due to the Pandemic.
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. Due to the Pandemic only the Surveyor member visit the Site. That visit took place on the 13th of July in the presence of Mr Curson for the Applicant and the Respondent.
10. The weather was dry and bright.
11. The Surveyor member inspected the fence at issue and the general park area with specific reference to the fencing and pitch boundary features. The Respondent’s property abuts the main arterial road that provides access to the Site. From that road there are number of cul de sacs with pitches to each side.

12. There are a variety of different pitch boundary features. The majority of the pitch boundaries abutting the main access road in the vicinity of No.90 are wooden fences many consisting of concrete posts with wooden panel in between being 1.8 metres in height.
13. The Respondent's fence has a similar height of 1.8 metres to the adjacent property fences on this road and is constructed of composite materials and wooden panels. The Respondent indicated his intention to paint the fence in a colour similar to the existing fences.

Documentary Evidence Before the Tribunal

14. In addition to the Application Notice the Applicant provided:
 - (i) a three-page Statement signed by Mr Curson (p 10-13 bundle);
 - (ii) a copy of the application for permission to carry out refurbishment work completed by the Respondent (p13-19) bundle;
 - (iii) letter dated the 27th of May 2020 refusing consent (p 20 bundle);
 - (iv) letter from the Applicant to the Respondent requesting the fence height be reduced during the period 12th June 2020 to the 2nd of November 2020 (p20-25 bundle);
 - (v) Notice of breach letter dated 18th January 2021 (p 26-38 bundle);
 - (vi) Further inter parties correspondence;
 - (vii) Photograph of the fence erected (p 37 bundle) plus the Respondent's Agreement (p38-56 bundle), the Park Rules (p 57-61 bundle) and Written Statement under the Act (p62-84 bundle).
15. The Respondent provided:
 - (i) A Statement of Case together with supporting documentation including a letter dated the 25th of January 2021 setting out the Respondent's association with the site and agreements reach with the Applicant's predecessors in title (p 85-103 bundle);
 - (ii) Various photographs of fences on the Site (p 100- 103 bundle).

The Hearing

16. The hearing was convened remotely on the Kinly platform on the 16th of July 2021 commencing at 10.30am. We heard evidence from Mr Curson for the Applicant and Mr Griffiths in person. Present with Mr Curson was Mr David Curson Managing Director of the Applicant Company.
17. Following a summary of the issues set out by the Tribunal Chairman Mr Curson for the Applicant opened his case with reference to the documents in the bundle.
18. We were referred to Mr Curson's Witness Statement in support dated the 12th of March 2021 (p 10-13 bundle).
19. In summary the statement confirms the Applicant is seeking a determination as to whether or not the Respondent is in breach of the agreement and an order to remedy the breach. The matter complained of is that the Respondent has erected a fence that is higher than the permitted 1 metre maximum height as set out in Park Rule 2. The rule is set out in the following manner: -
 2. ***You must not erect fences or other means of enclosure unless you have obtained our approval (which will not be unreasonably withheld or delayed). You must position the fences and any other means of enclosure so as to comply with the park's site licence conditions and fire safety requirements and to a maximum of 1 metre in height. Park boundary hedges and/or fences must not be interfered with and no authorised entrances to the park are permitted.***

20. The Applicant also alleges that the Respondent has carried out work in contravention of part iv of paragraph 3(g) the express terms within the agreement, which is set out as follows:
3(g) Not without written consent of the owner to carry out any building works or erect any porches, sheds, garages, outbuildings, fences or other structures on the pitch.
21. In addition, it is alleged the Respondent has breached Park Rule 2 and express term 3(j) which is set out as follows:
3(j) To comply with the park rules from time to time and enforce a copy of the current park rules being annexed hereto.
22. Although the Applicant is seeking to obtain an order for the Respondent to reduce the height of the fence by way of paragraph 3 of the Witness Statement attention is brought to paragraph 5 of Schedule 2, chapter 1 of “the Act” (being the Mobile Homes (Wales) Act 2013 which sets out the following: -
5. The owner is entitled to terminate the agreement immediately if, on the application of the owner, the appropriate judicial body
(a) is satisfied that the occupier has breached the term of the agreement and, after service of a notice to remedy the breach, has not complied with the notice within a reasonable time; and
(b) considers it reasonable for the agreement to be terminated.
23. In this latter regard the Applicant relies upon letters sent and also a notice dated 18th January 2021 (p 26-28 bundle).
24. In the Witness Statement at paragraph 4 (p 11 bundle) Mr Curson explains that the park rules were amended on the 2nd of February 2016 following the introduction the Mobile Homes Act 2013 and that the Respondent is relying upon the fact that there are other fences in excess of 1 metre on the site but that these relate to fences erected that pre-date the change in the rules.
25. The Respondent’s Statement of Case can be found at pages 85-86 in the bundle. In summary the Respondent asserts that the Applicant is being unreasonable in refusing the request and that the Respondent should be permitted to retain the 1.8 metre fence on the outer boundary of his mobile home.
26. The Respondent in his Statement of Case relies upon a letter dated the 25th of January 2021 to Mr Curson setting out the background as to how some 40 years ago he ended up purchasing a park home on plot number 90, a boundary fence was at that stage promised together with a concrete garden shed at an extra price of £250. The perimeter fence never materialised and as a consequence, he never signed what he refers to as a “contract” between himself and the then owners of Lighthouse Park. He recounts in the letter that there are numerous, what he refers to as 6 ft fences along the park separating park homes and suggests that he is being treated differently from the others.
27. A reply to that letter can be found at page 98 where Mr Curson says in relation to the fence opposite the Applicant’s property that it had always been approximately 2 metres in height, and it was replaced like for like “to maintain homeowners’ privacy and preserve the neatness of the park”. Mr Griffiths in the Applicant’s eyes has simply put up a new fence that exceeds the allowed limit.
28. In oral evidence Mr Curson said that the Tribunal Judge’s summary had covered most points at issue. He referred to the site visit and the Surveyor Member having had raised the issue about number 99 having a higher fence and made the point that it had been erected prior to

the 2016 rules coming into place. This was as a result of the Applicant company recognising that fences in excess of 1 metre in place prior to 2016 could remain and any replacements could also echo the same height as the rules were not retrospective.

29. Mr Curson further submitted that if the Tribunal decided there was not a breach it would set a precedent for other people to erect greater than 1-metre-high fences which would affect the visual amenity of the park.
30. We were told that the replacement fences to 108 and 109 were retrospective.
31. Another owner a Mr Lawrence previously had a fence that was greater than 1 metre but it pre-dated the new rules. The Park rules had been the subject of scrutiny by a Tribunal and were determined fair. In this regard we were referred specifically to decision reference RPT001/06/15 and paragraph 31 of that decision.
32. Mr Curson also submitted that in the past the Applicant been criticized for not enforcing the rules firmly enough referring to a Tribunal decision reference RPT013/11/16 and specifically paragraph 34(k) at page 15.
33. The Applicant had refused others consent for > 1-metre-high fences but they had all been dealt with in-house and due to GDPR he could not give the details. When asked latterly by the Chairman how many, he said there were 3 in number and 1 was by the roadside.
34. At the end of his evidence Mr Curson confirmed that the Applicant was not seeking to take the property from the Respondent but if he refused to review the height of the fence following a Tribunal decision in the Applicant's favour that would be the Applicant's only remedy.
35. In cross examination Mr Griffiths posed the question why there was never a fence there in all the 40 years he had owned the pitch. Mr Curson said that they were matters before the Applicant owned the property. If there were promises of fences it was nothing to do with the Applicant and could not be enforced against the Applicant as it was not party to the contract at the time of sale.
36. Mr Griffiths made the point he expected a fence from the previous owner and that every new property had a fence around it. Mr Curson agreed but submitted that the fences would accord with the rules then in place.
37. Mr Griffiths questioned Mr Curson with reference the letter dated 2nd November 2020 (p 25 bundle). Mr Curson answered by explaining the Applicant did not have a discretion, the site rules had to be applied and this was supported by previous Tribunal decisions.
38. Mr Griffiths put it to Mr Curson that Park Rule 2 could be interperated as providing the Applicant with discretion to which Mr Curson disagreed.
39. Mr Baynham asked Mr Curson about the site licence having expired on the 30th of March 2020 to which he answered "probably". He then qualified himself by saying the local authority were unable to renew due to the pandemic, but maters were in hand. He confirmed once again that there were 3 in number who had been refused fences one at the main entrance and that the Applicant did not have a discretion, the rules were absolute.
40. Mrs Calvin Thomas asked how many pitches abut the main road with no fences or only 1-metre-high fences or fences more than 1.8m. Mr Curson was hesitant in his answer but confirming that there were approximately 140 pitches on site and again made the point that

unless the fence that breached the 2016 rules pre-dated those rules the consent would be refused, and they would be 1-metre-high fences.

41. Mr Griffiths then gave his evidence saying he had always been promised a fence. He sent in an application on the 18th of May 2020 hoping to start the work on the 27th of May 2020. He said that as he had not heard anything by the 27th of May 2020, he thought it was not an issue and he had consent and accordingly started carrying out the work. On the 1st of June 2020 he received a hand delivered letter refusing consent.
42. Mr Griffiths also stated that since the fence was in place, there was reduction in dust to his property, also traffic noise and an improvement to his privacy as people could not see him and his wife sitting in the garden. He also stated that the speed bumps either side of his property compounded the issue as regards privacy as cars were travelling even slower.
43. Mrs Calvin Thomas asked if he could halve the fence to which he said it was possible, but it would have no benefit in terms of privacy.
44. Mr Griffiths then summed up saying he had nothing else to say, we had heard all his evidence.
45. Mr Curson in his summing up touched on the point Mr Griffiths had made about the absence of any contact after he had made his application and referred us to page 106 in the bundle which is a letter dated the 18th of May from a Gary Hirst referring to works undertaken by Mr Griffiths and requiring him to complete a park home refurbishment form and to cease carrying out any further work until the application had been made. Although not explored in cross examination that letter seemed to suggest that Mr Griffiths had commenced works prior to the 18th of May 2020 the date which he in evidence said he made the application.
46. In terms of privacy Mr Curson said that there were a number of other properties without fences. When asked about maintaining the visual amenity of the park in terms of Mr Griffiths' fence being the only lower fence in that vicinity, he said it was more of a flood gates argument, others would seek to follow if consent was forthcoming.
47. Mr Griffiths then interjected and said he was semi-retired and in the afternoons he and his wife would sit in the sun which was on that side of the property. Without the fence they would not be able to do so. Mr Curson also in evidence said that unless the licence conditions were adhered to, referring to the local authority licence the local authority would take issue.

Decisions on the Questions before the Tribunal

48. Is the Fence as Erected by the Respondent in breach of the Agreement and specifically Clause 3(g) of the express terms contained in part iv of the Agreement and park rule 2.
49. There is no difficulty with interpretation of various clauses in the agreement and Park rule 2. Clause 3(g) of the agreement clearly (inter alia) precludes the erection of a fence without prior written consent. Similarly, clause 3(j) required compliance with Park Rules.
50. In terms of Park Rule 2 this as in the case of the other rules was the subject to scrutiny by an earlier Tribunal and was found to be fair. The Respondent could have objected to the fence height restriction at that stage but chose not for whatever reason to do so. In the circumstances save as for the replacement of post 2016 rule replacement of fences the 1 metre height restriction applies.

51. In the circumstances we unanimously find as a fact that the Respondent's fence is in breach of the above provisions.
52. Having come to the above conclusion as to the question of breach we now need to consider if the order sought by the Applicant, a variation of the same or no order at all should be made.
53. Whilst we are not bound by earlier Tribunal decisions in this instance, we concur with the decision reached on the 29th of March 2017 (Ref RPT/0013/11/16) and also conclude that Park Rules should be adhered to in order to provide fairness to all.
54. Upon the introduction of new rules there is always an opportunity for any interested party to refer any amendments to the Tribunal to consider. That is what Mr Thomas should have done in this instance if he had an issue with the 1 metre height restriction. We do not accept the Respondent's submission that Park Rule 2 can be interpreted as providing the Applicant the ability to exercise its discretion to allow new fences to be erected at a height in excess of 1 metre. The only discretion relates to whether or not to consent at all in circumstances such as for example open access would be required at all times for safety or visibility reasons.
55. Whilst we have a great deal of sympathy for the Respondent's case especially given the fact that all fences on the opposite side of the road to his pitch are greater than 1 metre in height they remain as those fences or precursors to them were in situ when the new rules were affirmed by an earlier Tribunal.
56. In the circumstances we **Order** that the Respondent reduces the height of the fence abutting the park road and running along the boundary with Pitch Number 90. In relation to a reasonable time to do so given we are still suffering the effects of the Pandemic and the difficulties that has imposed upon obtaining labour and materials in general we determine that 56 days from the date of this decision being handed down to the parties is a more reasonable time frame for the aforementioned works to be undertaken and order accordingly.

Dated this 29th day of July 2021

Trefor Lloyd
Chairman