

Y TRIBIWNLYS EIDDO PRESWYL
RESIDENTIAL PROPERTY TRIBUNAL

In the matter of an application under section 17 of the Mobile Homes (Wales) Act 2013 – appeal against a Local Authority Compliance Notice

Reference: RPT/0007/07/23

Applicant: Wyldecrest Parks (Management) Ltd

Respondent: Flintshire County Council

Site Willow Park, Colliery Lane, Gladstone Way, Mancot, Deeside, Flintshire, CH5 2TX

Tribunal: Tribunal Judge Trefor Lloyd
Tribunal Judge Siân Westby

Decision of the Residential Property Tribunal

The Tribunal considers that it does not have jurisdiction to make a determination in respect of the Compliance Notice issued to the Applicant on 16 June 2023 by the Respondent.

Consequently, the Tribunal is unable or, in the alternative, does not consider that it is appropriate, to make a determination in respect of the expenses claimed by the Respondent pursuant to section 19 of the Mobile Homes (Wales) Act 2013.

Reasons of the Residential Property Tribunal

Introduction

1. The Applicant is the owner of a regulated park home site known as Willow Park, Colliery Lane, Gladstone Way, Mancot, Deeside, Flintshire, CH5 2TX (“the Site”).
2. The Respondent is the local authority in whose area the Site is located.

The legislation

3. Section 15(1) of the Mobile Homes (Wales) Act 2013 (“the Act”), states that:
If it appears to a local authority which has issued a site licence that the owner of the land is failing or has failed to comply with a condition of the site licence, the local authority may give the owner-
 - (a) *A fixed penalty notice, or*
 - (b) *a compliance notice.*

4. Pursuant to section 17 of the Act:

- (1) *A compliance notice is a notice which-*
 - (a) *sets out the condition in question and the details of the failure to comply with it,*
 - (b) *requires the owner of the land to take such steps as the local authority considers appropriate and as are specified in the notice in order to ensure that the condition is complied with,*
 - (c) *specifies the period within which those steps must be taken, and*
 - (d) *explains the right of appeal conferred by subsection (2).*
- (2) *An owner of land who has been served with a compliance notice may appeal to a residential property tribunal against that notice (see section 23)*
- (3) *A local authority may-*
 - (a) *revoke a compliance notice, or*
 - (b) *vary a compliance notice by extending the period specified in the notice by subsection (1)(c).*
- (4) *The power to revoke or vary a compliance notice is exercisable by the local authority-*
 - (a) *on an application made by the owner of land on whom the notice was served, or*
 - (b) *on the local authority's own initiative.*
- (5) *Where a local authority revokes or varies a compliance notice, it must notify the owner of the land to which the notice relates of the decision as soon as is reasonably practicable.*
- (6) *Where a compliance notice is revoked, the revocation comes into force at the time when it is made.*
- (7) *Where a compliance notice is varied-*
 - (a) *if the notice has not become operative when the variation is made, the variation comes into force at such time (if any) as the notice becomes operative in accordance with section 24, and*
 - (b) *if the notice has become operative when the variation is made, the variation comes into force at the time when it is made.*

5. Pursuant to section 19 of the Act, a local authority has the power to demand expenses from the site owner when serving a compliance notice. Section 19 states that:

- (1) *When serving a compliance notice on an owner of land, a local authority may impose a charge on the owner as a means of recovering expenses incurred by the local authority –*
 - (a) *In deciding whether to serve the notice, and*
 - (b) *In preparing and serving the notice or a demand under subsection (3).*
- (2) *The expenses referred to in subsection (1) include (but are not limited to) the costs of obtaining expert advice (including legal advice).*
- (3) *The power under subsection (1) is exercisable by serving the compliance notice together with a demand which sets out-*
 - (a) *the total expenses the local authority seeks to recover under subsection (1) (“relevant expenses”),*
 - (b) *a detailed breakdown of the relevant expenses, and*

- (c) *where the local authority propose to charge interest under section 25, the rate at which the relevant expenses carry interest.*
 - (4) *Where a tribunal allows an appeal under section 17 against the compliance notice with which a demand was served, the tribunal may make such order as it considers appropriate-*
 - (a) *Confirming, reducing or quashing any charge under this section made in respect of the notice, and*
 - (b) *Varying the demand as appropriate in consequence.*
6. Section 23 of the Act reads as follows:
- (1) *An appeal under section 17, 21 or 22 must be made before the end of the period of 21 days beginning with the day on which the relevant document was served (referred to in this section and section 24 as “the appeal period”).*
 - (2) *In subsection (1) “relevant document means-*
 - (a) *in the case of an appeal under section 17, the compliance notice,*
 - (b) *in the case of an appeal under section 21, the notice under subsection (8) of that section, and*
 - (c) *in the case of an appeal under section 22, the demand under that section.*
 - (3) *A residential property tribunal may allow an appeal under section 17, 21 or 22 to be made to it after the end of the appeal period if it is satisfied that there is good reason for the failure to appeal before the end of that period (and for any delay since then in applying for permission to appeal out of time).*
 - (4) *An appeal under section 17, 21 or 22-*
 - (a) *Is to be by way of a rehearing, but*
 - (b) *May be determined having regard to matters of which the local authority which made the decision was unaware.*
 - (5) *The tribunal may by order-*
 - (a) *on an appeal under section 17, confirm, vary or quash the compliance notice,*
 - (b) *on an appeal under section 21, confirm, vary or reverse the decision of the local authority, or*
 - (c) *on an appeal under section 22, confirm, vary or quash the demand.*

Background

- 7. The Respondent issued a compliance notice to the Applicant on 16 June 2023 (“the Compliance Notice”) pursuant to section 15(1)(b) of the Act. The Compliance Notice alleged a breach of various conditions imposed on a caravan site licence issued for the Site and required the Applicant to undertake certain works at the Site by no later than 23 July 2023.
- 8. On 17 July 2023, the tribunal received an application from the Applicant, dated 23 June 2023, appealing the Compliance notice pursuant to section 17(2) of the Act. This application had the effect of suspending the Compliance Notice, pending the Tribunal’s decision.

9. On 26 July 2023 the caravan site licence issued for the Site (the “Site Licence”) expired.
10. The Applicant had previously made an application for a new site licence on 26 May 2023, which the Respondent had rejected by way of a notice dated 16 June 2023. This rejection of the site licence is subject to a separate challenge brought by the Applicant to the tribunal, the facts of which are not relevant to the matter at hand.
11. Given that the Compliance Notice complained of breaches of a Site Licence which had since expired, the Applicant queried the ongoing validity of the Compliance Notice with the tribunal.
12. The tribunal decided to deal with the validity of the Compliance Notice as a preliminary issue and set directions for both parties to file submissions in this regard.

The Applicant’s submissions

13. The Applicant argues that after the Site Licence expired on 26 July 2023, the Applicant is no longer a licence holder and, accordingly, is no longer required to comply with any condition attached to the expired Site Licence.
14. The Applicant avers that from 27 July 2023, the Respondent would be unable to serve a valid compliance notice on the Applicant, as such a notice can only be served on a party which holds a valid site licence. Accordingly, says the Applicant, it is no longer required to comply with any conditions of the Site Licence and *‘therefore the [Compliance Notice] is of no effect and has been revoked by the operation of the law’*. Alternatively, the Applicant argues that, for the same reasons, the Tribunal should determine that the Compliance Notice is revoked.

The Respondent’s submissions

15. The Respondent argues that the Compliance Notice was lawfully issued on 16 June 2023 and that the Compliance Notice was valid and remained so during the period of validity of the Site Licence. It claims that it lawfully seeks to recover the expenses incurred in issuing the Compliance Notice, pursuant to section 19 of the Act, that sum being £2,500.
16. The Respondent in its submissions accepted that upon expiry of the Site Licence, the conditions of the Site Licence ceased to have effect. However, it argues that both the Site Licence and the conditions contained therein had binding effect prior to the expiry of the Site Licence and had binding effect between the issue of the Compliance Notice on 16 June 2023 and the expiry of the Site Licence on 26 July 2023.
17. The Respondent notes that it has not revoked the Compliance Notice, despite having explicit powers in the Act to do so, and argues that there is no need to revoke the notice as it was validly issued. The Respondent states that the Compliance Notice *‘merely ceases to have effect from 27 July 2023, effectively becoming void’*.

18. Moreover, the Respondent refers to the express powers of the tribunal at section 23(5) of the Act and states that the tribunal does not have the power to treat a validly issued notice as being revoked, nor order that such a notice is revoked.
19. The Respondent submits that the tribunal can determine that a notice is void 'or no longer effective' and invites the tribunal *'to make a ruling that the [Compliance Notice] became void as at 27 July 2023, on the basis that after that date it was no longer possible to secure compliance with the [Compliance Notice]'*.

The Applicant's statement in response

20. In response to the Respondent's submissions, the Applicant confirms that *'they agree that the [Compliance Notice] is now "void"'* but disagrees with the Respondent's assertion that that tribunal can determine that a notice is void. It argues that the Tribunal *'must put themselves in the position of the Council and determine the issue of the [Compliance Notice] de novo'*.
21. The Applicant repeats its request that the tribunal determine that the Compliance Notice is revoked and asserts that the Tribunal can do this by virtue of section 17(3)(a) of the Act.
22. The Applicant disputes that it is liable for any of the Respondent's expenses and seeks an order from the Tribunal for the reimbursement of the application fee it paid in the sum of £155.

Tribunal's decision with reasons

23. It is clear from the submissions of both parties that they are in agreement that the Compliance Notice is now 'void', it becoming obsolete upon the expiry of the Site Licence.
24. The tribunal agrees with the Respondent's analysis of the Act; it cannot issue a revocation of the Compliance Notice or determine it to be revoked. These are powers expressly afforded to the local authority pursuant to section 17(3)(a) of the Act and not to the Tribunal.
25. Conversely, the tribunal agrees with the Applicant in that there is also no power granted to the Tribunal to determine that a compliance notice is void.
26. The powers of the tribunal, on an appeal under section 17, are clearly set out in section 23(5) of the Act and confirm that the tribunal may *'confirm, vary or quash the compliance notice'*.
27. Both parties have agreed that the Compliance Notice is void after 26 July 2023. The tribunal is unable to confirm, vary or quash a void compliance notice. Accordingly, the tribunal does not consider it has jurisdiction to make a determination in respect of the Compliance Notice.

28. On the question of the Respondent's expenses, section 19(4) of the Act confirms that, where a tribunal '*allows an appeal under section 17*', a tribunal may make an order confirming, reducing or quashing any charge and may vary the demand in consequence.
29. Since the tribunal does not have jurisdiction to make a determination in respect of the Compliance Notice, the tribunal has not '*allowed*' an appeal under section 17 and is, therefore, unable to confirm, reduce or quash the charge.
30. In the event that the Tribunal is wrong and is deemed to have '*allowed*' an appeal by virtue of accepting the Applicant's application to the Tribunal, the wording of section 19(4) is such that the Tribunal is afforded a discretion in that it '*may make such order as it considers appropriate*'. In the circumstances here, where the tribunal does not have jurisdiction to make a determination in respect of the Compliance Notice, the tribunal does not consider that it is appropriate to make any order in respect of the Respondent's expenses.

Dated this 2nd day of October 2023.

Siân Westby
Tribunal Judge