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RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0008/07/23
RPT/0009/07/23

In the matter of:

1) Willow Park Residential Caravan Park, Colliery Lane, Gladstone Way, Mancot, Flintshire, CH5 2TX [RPT/0008/07/23]
2) Willow Brook Park, Station Road, Sandycroft, Deeside, Flintshire, CH5 2PT [RPT/0009/07/23]

In the matter of an Application under Section 7(4)(b) of the Mobile Homes (Wales) Act 2013

Applicant: Wyldecrest Parks (Management) Ltd
Representation: Mr D Sunderland (Estates Director)

Respondent: Flintshire County Council
Representation: Mr M Rudd (Counsel)

COMMITTEE: Mr T Rakhim (Tribunal Judge)
Mr H Lewis FRICS (Surveyor Member)
Mr B Brereton (Lay Member)

DECISION

Summary of Decision

1. **The Tribunal dismissed the applications in respect of both sites (Willow Park Residential Caravan Park and Willow Brook Park).**

Background

2. The background is agreed between the parties within their skeleton arguments.

3. Wyldecrest Parks (Management) Ltd ("**the Applicant**") make two applications both dated 22 June 2023, in respect of decisions made by Flintshire County Council ("**the Respondent**") refusing to issue caravan site licences for two existing residential caravan sites operated by the Applicant. As the relevant issues raised in both refusals are, largely the same, these applications are being dealt with together.

4. The Applicant is the operator of existing mobile home parks at Willow Park Residential Caravan Park, Colliery Lane, Gladstone Way, Mancot, Flintshire, CH5 2TX ("**Willow Park**") and Willow Brook Park, Station Road, Sandycroft, Deeside, Flintshire, CH5 2PT ("**Willow Brook Park**"). The Respondent is the local licensing authority in whose administrative area both sites are located.

5. The Applicant operated Willow Park under a caravan site licence Ref: CLS018, and operated Willow Brook Park under a caravan site licence Ref: CLS019, both previously issued by the Respondent purportedly pursuant to section 7 of the Mobile Homes (Wales) Act 2013 ("**MHA 2013**"). Under s.8 MHA 2013, a caravan site licence issued pursuant to the MHA 2013 can only have effect for a maximum of 5 years. Both caravan site licences (for Willow Park and Willow Brooks) are dated 26 July 2018 and expired on 26 July 2023.

6. The Applicant made an application for a new caravan site licence for each of the two sites, both dated 26 May 2023, which were both rejected by way of decisions set out in two letters dated 16 June 2023. The Respondent had stated that both applications were defective, which is disputed by the Applicant.

7. The Applicant has appealed on 22 June 2023 against both rejections on the following basis (section 7 of the application form):

> *"1. The Applicant [sic] has been correctly made under the correct legislation being the Mobile Homes (Wales) Act 2013, the correct statutory information required provided and the correct fee paid*
> *2. The form used is correct – there is no statutory requirement to complete a statutory or specific form*
> *3. The correct statutory supporting documents have been provided as requested by the legislation – the Applicant may subsequently give the Respondent such information as the Respondent may specify however no such request has been made and the application has been rejected"*

The hearing

8. The hearing took place by CVP on 17 October 2023. Both parties were represented; Mr D Sunderland for the Applicant and Mr M Rudd for the Respondent. Additionally, for the Respondent, there was the witness in attendance, Ms Miller, and a team leader Ms K Bembridge.

9. No site inspection was required as the dispute related to site licences.

10. The parties agreed that there were no preliminary issues. The procedure was agreed with the advocates and Mr Sunderland stated he would happily go first. The parties agreed that it was mainly a matter of submissions.

11. The Tribunal had access to separate bundles for each of the two matters being considered. The Tribunal had pp.176 bundle for Willow Park and pp.155 bundle for

Willow Brook. The Respondent had filed and served a revised skeleton argument dated 9 October 2023. The Applicant had filed and served its skeleton argument in response, dated 10 October 2023. The parties agreed there were no further documents.

12. The parties agreed to refer to the Willow Park bundle. This included, amongst other documents, the application to the Tribunal, the site licence application, the site licence itself and the refusal decision. There was also the Applicant's signed statement of case (31 July 2023) and the Respondent's statement of case (30 August 2023). The bundle also included the witness statement of Samantha Jayne Miller, the Environmental Health Officer for the Respondent. The Applicant also sought to rely on a Wrexham application as part of the case. The Willow Brook bundle was almost identical, save for the documents relating to that site. Although referring to the Willow Park Bundle during the hearing, the Tribunal did review both bundles in detail.

13. There was a dispute in relation to planning permission, but prior to the hearing this was confirmed as no longer being raised as an issue by the Respondent. Accordingly, the Tribunal were not required to consider this.

14. The only witness was Ms Miller, for the Respondent, and she adopted her signed statements dated 25 August 2023 within each bundle. These were in identical terms, save for the site name. She was cross examined for an hour by Mr Sunderland, after which Mr Rudd had a few re-examination questions and the panel had a few brief points of clarification.

15. Mr Sunderland and Mr Rudd provided their oral submissions, with Mr Sunderland going first. After Mr Rudd's submissions, Mr Sunderland provided some additional submissions.

16. Both Mr Sunderland and Mr Rudd also provided submissions in relation to costs. The submissions were made on the basis that if the Tribunal considered costs were due then the Tribunal had the relevant information to decide on costs liability. There was no cost schedule provided, but the parties agreed that if costs were to be ordered in principle, then the Tribunal can direct the filing of cost schedules and written submissions, which was to be limited to the issue of quantum of the costs, in order to prevent the parties having to return to a hearing.

17. At the conclusion of the hearing, both Mr Sunderland and Mr Rudd confirmed in turn that they each felt that they had received a fair hearing, they had nothing more to add and everything had been covered.

The Law

18. Within the Skeleton Argument, the parties had agreed the relevant law, and this was not disputed.

19. The MHA 2013 provides at s.2 for the definition of a 'regulated site', and the distinction between a 'regulated site' and a 'holiday site', the licensing provisions for which are provided for by the Caravan Sites and Control of Development Act 1960 ("**CSCDA 1960**"):

> ***2.— Mobile home sites subject to Act***
> *(1) In this Act "regulated site" means any land in Wales on which a mobile home is stationed for the purposes of human habitation (including any land in Wales used in conjunction with that land), other than—*
> *(a) a site which Schedule 1 provides is not to be a regulated site, or*
> *(b) a holiday site.*
> *(2) In this Act "protected site" means land which is—*
> *(a) a regulated site, or*
> *(b) a site that would be a regulated site but for paragraph 11 of Schedule 1.*
> *(3) In subsection (1) "holiday site" means a site in respect of which the relevant planning permission or the site licence for the site under the Caravan Sites and Control of Development Act 1960—*
> *(a) is expressed to be granted for holiday use only, or*
> *(b) requires that there are times of the year when no mobile home may be stationed on the site for human habitation.*

20. The MHA 2013 provides at s.5 for a prohibition on the use of land as a regulated site (residential caravan site) without a caravan site licence:

> ***5.— Prohibition on use of land as regulated site without site licence***
> *(1) The owner of a regulated site must not cause or permit the site to be used as a regulated site unless the owner holds a licence under this Part in relation to the land Page 5 of 14 (a "site licence").*
> *(2) A person who contravenes subsection (1) commits an offence.*
> *(3) A person who is guilty of an offence under subsection (2) is liable on summary conviction to a fine.*

21. The relevant provisions relating to an application for a caravan site licence are provided at s.6 MHA 2013:

> ***6.— Application for site licence***
> *(1) An application for the issue of a site licence in respect of any land is to be made by the owner of the land to the local authority in whose area the land is situated.*
> *(2) An application under this section—*
> *(a) must specify the land in respect of which the application is made,*
> *(b) must identify the applicant,*
> *(c) if the applicant is not to be the manager of the site, must identify the person who is to be the manager of the site, and*
> *(d) must comply with such other requirements as the local authority may specify.*

(3) An applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the local authority may reasonably require.

(4) The application must be accompanied by a declaration by the applicant that—

(a) in a case in which the applicant is not to be the manager of the site, the person identified in accordance with subsection (2)(c), or

(b) in any other case, the applicant,

is a fit and proper person to manage the site.

(5) A local authority may require an application for a site licence to be accompanied by a fee fixed by the local authority (on which see section 36). [emphasis added].

22. The MHA 2013 at s.7 provides the local licensing authority with the power to issue a caravan site licence, providing in so far as is material:

7.—Issue of site licence

(1) A local authority may issue a site licence in respect of land if the applicant is, when the site licence is issued, entitled to the benefit of planning permission for the use of the land as a mobile home site otherwise than by a development order.

(2) If, on the date when the applicant gives the information required by virtue of section 6, the applicant is entitled to the benefit of such planning permission, the local authority may issue a site licence in respect of the land within 2 months of that date or, if the applicant and the local authority agree in writing that the local authority is to be allowed a longer period within which to grant a site licence, within the period agreed.

(3) If the applicant becomes entitled to the benefit of planning permission at some time after giving the information required by virtue of section 6, the local authority may issue a site licence in respect of the land within 6 weeks of the date on which the applicant becomes entitled to the benefit of planning permission or, if the applicant and the local authority agree in writing that the local authority is to be allowed a longer period within which to grant a site licence, within the period agreed.

(4) Where a local authority decides not to issue a site licence under subsection (2) or (3)—

(a) the local authority must notify the applicant of the reasons for the decision and of the applicant's right of appeal under paragraph (b),

(b) the applicant may, within the period of 28 days beginning with the day on which the decision is made, appeal to a residential property tribunal against the decision, and

(c) no compensation may be claimed for loss suffered in consequence of the decision pending the outcome of the appeal.

(5) A local authority must not at any time issue a site licence to a person whom the local authority knows has held a site licence which has been revoked under section 18 or 28 less than 3 years before that time.

(6) Where a local authority fails to determine an application for a site licence within the period within which it is required to do so, no offence under section 5 is committed in respect of the land by the person by whom the application for the site licence was made at any time after the end of that period until the application is determined.

23. A caravan site licence issued pursuant to s.7 can only have effect for a maximum of 5 years, by virtue of s.8 of the MHA 2013. Further, a local licensing authority is provided with the power to attach conditions to a caravan site licence issued pursuant to s.7 of the MHA 2013, by virtue of s.9.

24. The MHA 2013 provides for express provision relating to the requirement for the manager of the applicant site to be a fit and proper person. That assessment, unlike under the English jurisdiction, is part of the caravan site licence application process in Wales. The MHA 2013 provides at s.28 and s.29:

28.— Requirement for manager of site to be fit and proper person

(1) The owner of land may not cause or permit any part of the land to be used as a regulated site unless (in addition to the owner holding a site licence) the local authority in whose area the land is situated—

(a) is satisfied that the owner is a fit and proper person to manage the site or (if the owner does not manage the site) that a person appointed to do so by the owner is a fit and proper person to do so, or

(b) has, with the owner's consent, itself appointed a person to manage the site.

(2) Where the owner of land who holds a site licence in respect of the land contravenes subsection (1), the local authority in whose area the land is situated may apply to a residential property tribunal for an order revoking the site licence.

(3) A person who contravenes the requirement imposed by subsection (1) commits an offence.

(4) A person who is guilty of an offence under subsection (3) is liable on summary conviction to a fine.

(5) Where the owner of land who holds a site licence in respect of land is convicted of an offence under subsection (3) in relation to the land and the person has been convicted of that offence in relation to the land on 2 or more previous occasions, the magistrates' court before which the owner is convicted may, on an application by the local authority in whose area the land is situated, make an order revoking the owner's site licence on the day specified in the order.

29.— Decision whether person is fit and proper

(1) In deciding whether a person is a fit and proper person to manage a regulated site a local authority must have regard to all such matters as it considers appropriate.

(2) Among the matters to which the local authority must have regard is any evidence within subsection (3) or (4).

(3) Evidence is within this subsection if it shows that the person has—

(a) committed any offence involving fraud or other dishonesty, violence, firearms or drugs or any offence listed in Schedule 3 to the Sexual Offences Act 2003 (offences attracting notification requirements),

(b) practised unlawful discrimination or harassment on the grounds of any characteristic which is a protected characteristic under section 4 of the Equality Act 2010, or victimised another person contrary to that Act, in or in connection with the carrying on of any business, or

(c) contravened any provision of the law relating to housing (including mobile homes) or landlord and tenant.

(4) Evidence is within this subsection if—

(a) it shows that any other person associated or formerly associated with the person (whether on a personal, work or other basis) has done any of the things set out in subsection (3), and

(b) it appears to the local authority that the evidence is relevant to the question whether the person is a fit and proper person to manage a regulated site.

(5) The Welsh Ministers may by regulations amend this section to vary the evidence to which a local authority must have regard in deciding whether a person is a fit and proper person to manage a regulated site.

(6) Where a local authority decides that a person is not a fit and proper person to manage a site—

(a) the local authority must notify the person of the reasons for the decision and of the person's right of appeal under paragraph (b), and

(b) the person may, within the period of 28 days beginning with the day on which the decision is made, appeal to a residential property tribunal against the decision.

Consideration

25. The parties agreed that both sites are caravan sites upon which people permanently reside in caravans and it was agreed that both sites fall to be considered as 'regulated sites', pursuant to s.2 MHA 2013. This is noted as agreed within the skeleton arguments by both parties.

Was a valid application made?

26. The Tribunal first considered whether a valid application is made, as otherwise no licence can be issued.

27. Both sites had a licence issued on 17 September 2018 and the licences state on the face of it that the duration of each licence is 5 years from the date of issue, which is the period specified in s.8 MHA 2013. The licences are valid from 26 July 2018 to 26 July 2023, with both dates clear on the face of each licence. The Applicant was thus required to apply for updated licences for both sites.

28. The statute does not specify any form to be completed, but the Tribunal considered it was open for the Respondent to specify requirements, as per s.6(2)(d) MHA 2013, which gives the Respondent broad powers. The Respondent had set a requirement, namely that the specific form needs completing. Accordingly, the requirement falls within s.6(2)(d) MHA 2013 and thus compliance with that becomes mandatory for anyone seeking to apply for a site licence.

29. It was not disputed between the parties that the Respondent had informed the Applicant of the need to make applications for new caravan site licences and provided the correct forms on 10 January 2023, 17 April 2023 and 15 May 2023. It is noted that the Applicant had failed to respond or engage with this. The Applicant was reminded of the need to apply promptly and the forms to be used, with no queries, issues or disputes raised in relation to this at the time.

30. Mr Sunderland, in his submissions acknowledged that a form had been created by the Respondent but submitted it was premature for the Respondent to have provided the form 6 months in advance, he is very busy, the Applicant has over 100 mobile home parks, if given the opportunity to complete forms online then he does as it easier, he made the application online in good time, he had ticked the 'residential' section on the form and there was nothing to indicate it was the wrong form.

31. The Tribunal considers the Applicant had been forewarned in advance and the Respondent's conduct could not be criticised, for not only providing the form but then sending it again to the Applicant on multiple occasions. It was for the Applicant to ensure the correct form was used and it could not be said that the Applicant was not aware given the correct form had been sent on three separate occasions by the Respondent. The Applicant incorrectly used the form applicable to a holiday caravan site and not for a "regulated site". The Tribunal were provided with a copy of the incorrect application form used by the Applicant, as well as a copy of the correct form that should have been used. The Applicant had repeatedly been told of the need to complete the form that the Respondent was providing.

32. The Tribunal did not consider the Applicant had made valid applications for site licences and the applications that were made on 26 May 2023 were defective. The Tribunal has no power to order a site licence to be issued.

Did the information provided meet the minimum statutory requirements?

33. The Tribunal found that the applications were defective. In the alternative, if the applications were found to be valid, then consideration has been given as to whether the information provided in the applications would meet the statutory requirements.

34. The Tribunal considers that the Applicant had fallen short of the statutory requirement, and if the Respondent was amenable to considering the information in another manner, then that is at their discretion. The Respondent's witness, Ms Miller, confirmed in response to the Tribunal's clarification question, that the Respondent would have been satisfied if the forms submitted by the Applicant had the information

required. This does not change the primary position that the Respondent is entitled to reject the defective applications.

35. However, even if the applications were deemed valid, the Applicant failed to provide the other information required, which related to specific information dealing with other statutory requirements. As these were not provided, then the Respondent can rightfully reject the applications.

36. The Respondent's supplied forms covered the relevant statutory information and the Applicant had failed to communicate this required information as the wrong forms had been used and this additional evidence was not supplied alongside the application. The Tribunal has been provided a copy of the form supplied to the Applicant by the Respondent as well as the actual application completed by the Applicant. The Tribunal accepted that the form supplied by the Respondent was more detailed and covered the relevant statutory information that applies to 'regulated sites'. Had the Applicant supplied the additional information required, then the Tribunal notes that Ms Miller had stated, that in her view, this would have satisfied the requirement.

37. The Respondent's skeleton arguments lists the details found in the correct application form, which were absent in the holiday site form submitted by the Applicant, and these details were as follows:

> *"i. Detailed information is required about the proposed site manager (c.f. Part 2 Regulated Site application form and Section 4 of the incorrect form);*
> *ii. Information as to other sites managed by the proposed manager;*
> *iii. Details of other persons and/or companies involved with the application site;*
> *iv. Section C, the fit and proper person test ("FPP") which requires a significant level of detail, pursuant to s.28 MHA 2013, and a statutory declaration in respect of the fit and proper person test, which contains a warning as to the provision of false and misleading information;*
> *v. The following further documentation and regulatory information is also particularised on the correct form and is required to be provided with the CSL application;*
>
> *a) Gas safety certificate; Page 12 of 14*
> *b) Electrical safety certificate;*
> *c) Fire risk assessment;*
> *d) Health and safety risk assessment;*
> *e) Site Rules.*
> *f) Details of whether the proposed site manager held a CSL which has been refused/revoked anytime in the last 3 years."*

38. The Tribunal did not find the above information or documents to have been provided. The majority of the above goes towards the safety of the residents at the sites and thus the Respondent's requirement for these details is reasonable.

39. The Tribunal notes that requirement 'iv' in the above list is a mandatory requirement pursuant to s.6(4) MHA 2013, which requires a mandatory declaration of the manager of the site being a 'fit and proper person' for purposes of managing the site.

40. The Applicant is not permitted, as per s.28 MHA 2013, to use the land as a regulated site until the Respondent is satisfied that the owner or appointed manager is a 'fit and proper person' to manage the site. This requirement is of vital importance as a failure to satisfy does permit the Respondent to apply for an order to revoke the licence. Additionally, non compliance of having a 'fit and proper person' to manage the site does constitute an offence under s.28(3) MHA 2013, with penalties of a summary conviction or a fine. In deciding whether a person is 'fit and proper', the Respondent have a mandatory duty to have regard to the factors set out in s.29(3) and s.29(4) MHA 2013. In addition, s.29(1) imposes a further mandatory duty for the Respondent to have regard to any other matter it considers appropriate.

41. On the form that was sent by the Respondent, Section C was dedicated to the 'fit and proper person' test, referencing s.28 MHA 2013, seeking specific details on offences, discrimination/harassment, contravening housing law and requesting a DBS certificate is enclosed with the application. There is also a declaration that reads:

    "Declaration
    I / We declare that the person identified as the manager of the site is a fit and proper person to manage the site and that the information contained in the application is correct to the best of my/our knowledge. I / we understand that it is committing an offence if I / we supply any information that is false or misleading and which I / we know is false and misleading and which may result in the site licence being revoked."

42. Mr Sunderland did submit, in relation to the declaration, that if the Respondent required a certain form of wording then what it should have done is put the relevant box in the application form. It was unclear if Mr Sunderland had reviewed the correct form that had been sent, as the wording is clearly provided in the box. The wording has been quoted above.

43. For the Willow Park site licence application dated 26 May 2023, in section 9 of the form, the Applicant has stated *"Declaration: The Manager of the Site is Mr Alfie Best, Chairman and Director, is fit and proper to manage the Site and has no convictions".* This is repeated on the application for Willow Brook, as seen within the Willow Park bundle. These declarations do not suffice as they do not have a statement of truth and fail to deal with the requirements under s.29(3) MHA 2013. The Tribunal does not agree that using the word 'Declaration' and omitting the form of words used in a statement of truth would suffice for what is required here, especially given that there is a penalty for not being truthful. This was a declaration required by statute, and was not provided by the Applicant, thus the Respondent could not have lawfully issued the licences, as to do so would be in breach of the statutory requirements.

Other matters

44. The Tribunal rejects Mr Sunderland's submission that the respondent had invited the appeal. The refusal letters for each site, both of which are dated 16 June 2013, provides the reasons for refusal and then provides information on the right of appeal as per s.7(4) MHA 2013. This does not constitute an invitation to appeal as the Respondent is simply providing the information required by statute.

45. Mr Sunderland relied upon the example of another local authority, Wrexham, where again incomplete information had been provided by him, but the local authority in Wrexham had sought more information. The Tribunal did not agree that there was any duty on the Respondent to revert to the Applicant and ask for further information. Under s.6(3) MHA 2013 "an *applicant must, either at the time of making the application or subsequently, give to the local authority such other information as the local authority may reasonably require*". There is no duty imposed on the Respondent to request more information. This section provides statutory power for the Respondent to utilise such a discretion to request information, and if it does, then there is a mandatory requirement for the Applicant to provide the information (if it is reasonably required).

46. It is a matter for the Respondent to request more information. The Respondent's conduct is deemed reasonable by providing the form on multiple occasions. It falls on those applying for a site licence to be sufficiently aware of the information that needs to be provided. In this particular case, the Applicant was saved from having to familiarise itself with the statutory requirements, as a form had been created, and emailed to them by the Respondent, which covered the necessary statutory requirements. It was the Applicant's choice to not use this.

47. Mr Sunderland submitted that a fee had been paid and the Respondent is not entitled to keep the fee given the applications were rejected. Indeed, he stated that the inference is that another fee is required and it was due to the fee position that he pursued the appeal. The Respondent is entitled to charge a fee for site licence applications under s.6(5) MHA 2013. No information is before the Tribunal as to what circumstances would trigger a refund of the fees. However, the Tribunal takes the view that fees are paid for the application to be considered, and its outcome is thus irrelevant. The Tribunal were not provided with anything of persuasion to cause them to think otherwise.

48. It was noted, that at the time of the hearing, Mr Sunderland acknowledged that information is sought by the Respondent and the Tribunal will also require information, so the Tribunal cannot conclude the application to be valid. Mr Sunderland insisted that the Respondent should seek further information from him in relation to the applications and suggested a stay for the Applicant to then provide this. It remains open for the Applicant to provide the information should it wish.

49. Costs applications were made by both parties (see details earlier). The Tribunal does not find in favour of the Applicant, thus the Applicant has no cost entitlement. However, litigation may well have been avoided if the Respondent had engaged in further correspondence to at least clarify the issue of fees. This was a matter that the

Respondent had failed to address before the Tribunal. Mr Sunderland had acknowledged that this was one of the main reasons for these appeals, namely to avoid the risk of having to pay further fees. Therefore the Tribunal is not minded to grant any cost order in favour of the Respondent.

Conclusion

50. The Tribunal does not find a valid application had been submitted. In the alternative, the Tribunal also finds that the statutory information had not been provided meaning the Respondent was entitled to reject the applications. This does not preclude the Applicant from applying again and/or providing the outstanding information to progress the site licence applications.

Dated this 11th day of December 2023

T Rakhim
Tribunal Judge