Y TRIBIWNLYS EIDDO PRESWYL

THE RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0003/04/24

In the matter of: 46 Westover Park, West Street, Whitland, Carmarthenshire, SA34 0AH, and

In the matter of: An application for pitch reviews under the Mobile Homes (Wales) Act 2013

APPLICANT: Wyldecrest Parks (Management) Ltd

RESPONDENT: Robert Turner and Sylvia Turner

TRIBUNAL: Mr Michael Draper (Chairperson)
Mr Andrew Lewis (Valuer Member)
Dr Angie Ash (Lay Member)

HEARING: Microsoft Teams Virtual Platform on 14th August 2024

APPEARANCE FOR APPLICANT: Mr David Sunderland (the Respondent's Estates Director)

DECISION

Background Facts

1. The mobile home park known as Westover Park, West Street, Whitland, Carmarthenshire, SA34 OAH ('the Park') is a protected site within the meaning of the Mobile Homes (Wales) Act 2013 ('the Act'). The Applicant became Owner of the site in late 2020. It was previously owned by a company linked to the Applicant. The Respondent entered into agreement for occupation of the mobile home on 11th December 2020 with a pitch fee of £ 165:56 per month.

2. This application is for pitch fee review under the Mobile Homes (Wales) Act 2013. The existing pitch fee is £193.97 per month. The pitch fee does not include payment of water, sewerage, gas electricity or other services. The agreement for occupation specifies a review date of the pitch fee on the 1st day of March and it was last reviewed on 1st March 2023.

3. The Applicant served a notice of the proposed new pitch fee on the Respondent which was received by the Respondent on 26th January 2024. The notice was served on the basis that it is an implied term of the Mobile (Wales) Act 2013 that the pitch fee be reviewed annually and be increased by no more than the Consumer Prices Index having regard to the latest index. The Applicant claims this was December 2023 showing a rate of 4.0%. and calculates the proposed new pitch fee at £201.73 per month to take effect on 1st March 2024 (the effective date). An increase of £7.76 per month.

4. The Applicant made an application to the Tribunal dated 2nd April 2024 ('the Application') for determination of the new pitch fee.

5. The Applicant claims that since the date of the last review the site owner has not spent money on improvements that there has been no deterioration in the condition of the site and/or decrease in the amenity of the site or any adjoining land which is occupied or controlled by the owner since 1st October 2014 that there has not been a reduction

in the services that the owner supplies and that there has not been any direct effect on the costs payable by the site owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.

6. **Questions for Determination**

6.1 Under paragraph 20 of Chapter 2 of Part 1 of Schedule 2 of the Mobile Homes (Wales) Act 2013 there is a presumption that the pitch fee is to increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer prices index calculated by reference only to (a) the latest index and (b) the index published for the month which was 12 months before that to which the latest index relates. The latest index is defined in sub-paragraph (2) of paragraph 20.

6.2 The presumption referred to above does not apply if it would be unreasonable having regard to the matters stated in paragraph 18(1) of Chapter 2 of Part 1 of Schedule 2 of the Mobile Homes (Wales) Act 2013 and specifically in this case that (b) that there has been a deterioration in the condition of the site and/or decrease in the amenity of the site or any adjoining land which is occupied or controlled by the owner since 1st October 2014 that and (c) that there has been a reduction in the services that the owner supplies.

6.3 The Respondents Statement of Truth (undated and at page 107-109 of the hearing bundle) acknowledges receipt of the new pitch fee review on the 26th January 2024 and sets out the basis of challenge that:

6.3.1 there has been no regular maintenance or increase in services to the whole Park and a severe decline in Park conditions

6.3.2 there has been no consultation regarding issues raised with the Park manager over:

6.3.2.1 failure to comply with the Mobile Homes Act 2013 site licence conditions relating to site boundaries, roads and gateway, lighting, maintenance, electrical installations, water supply, drainage and sanitation, refuse storage, recreation, notice information and compliance with fire safety

6.3.2.2 the right not to pay as per page 3 section 5 of the review form

6.3.2.3 non-compliance with a site inspection carried out by Carmarthen Council

6.3.2.4 failure to rectify road flooding issues due to no surface drainage or soakaways resulting in sewerage flooding due to surface water flooding the drains

6.3.2.5 non-compliance with a compliance order issued by Carmarthen County Council relating to posting of notices

6.3.2.6 failure to clean food waste bins and install a secure fenced area for refuse collection to deter vermin infestation

6.3.2.7 failure to upgrade and install a legal electrical supply to the homes

7. **Inspection of the Property**

7.1 The Tribunal has the benefit of photographs and descriptions supplied by the Respondent in evidence and the Surveyor Member of the Tribunal carried out a physical inspection of the Park on Monday 12th August 2024.

7.2 At the inspection Mr Adrian Haines Senior Area Sales Manager for the Applicant was present along with the Respondent and Mr Robert Turner of 46 Westover Park. During the inspection a tour was made of the site, including the water course forming the boundary with the adjoining livestock market, and the adjoining estate where the water meters for the Park are located within the pavement.

7.3 It was noted that the sole amenity area for the Park was immediately visible upon entering the site, which comprised a small grassed area and a pond (the Pond). The Pond was practically empty with only a small amount of green water remaining with a dead goldfish on the surface, and with holes visible in the pond liner, and an unserviceable foundation resting on its side close to the water's edge.

7.4 Close to the boundary with the livestock market the refuse food bins were located.

8. The Law

8.1 Paragraph 20 of Chapter 2 to Part 1 of Schedule 2 to the Mobile Homes Wales Act 2013 (as amended) provides at 20(1) "Unless it would be unreasonable having regard to paragraph 18(1), there is a is a presumption that the pitch fee is to increase or decrease by a percentage which is no more than any percentage increase or decrease in the consumer prices index calculated by reference only to (a) the latest index and (b) the index published for the month which was 12 months before that to which the latest index relates. The latest index is defined in sub-paragraph (2) of paragraph 20.

8.2 October 2023 is the most recent index available when the notices were served 25 days before the Review Date.

8.3 The statutory presumption in paragraph 20 can be displaced having regard to paragraph 18 of Chapter 2 to Part 1 of Schedule 2 to the Mobile Homes Wales Act 2013 which states that when determining the amount of the new pitch fee particular regard is to be had to (inter alia):

"(b) any deterioration in the condition, and any decrease in the amenity, of the site or any adjoining land which is occupied or controlled by the owner since the date on which this sub-paragraph came into force (in so far as regard has not previously been had to that deterioration or decrease for the purposes of this sub-paragraph)

(c) any reduction in service that the owner supplies to the site, pitch or mobile home, and any deterioration in the quality of those services, since the date on which this sub-paragraph came into force (in so far as regard has not previously been had to that reduction or deterioration for the purposes of this sub-paragraph)"

8.4 The approach taken in Vyse v Wyldecrest Parks (Management) Ltd [2017] UKUT 0024 (LC) applies. In that case the Upper Tribunal found that there are four key provisions to be considered. First para 17 (1)(b) of Chapter 2 to Part 1 of Schedule 2 states that the pitch fee can only be changed in accordance with the relevant paragraph if a tribunal, on the application of the owner or the occupier, considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee. Second para 18(1) specifies a number of matters to which particular regard shall be had when determining the amount of the new pitch fee. Third there are matters in paragraph 18(2) to which no regard shall be had. Fourth unless this would be unreasonable having regard to para 18(1) there is a presumption in paragraph 20(1) that the pitch fee shall increase or decrease by a percentage which is no more than that specified in the relevant CPI as identified in sub-paragraph (1) and (2).

8.5 When considering any change in the pitch fee a tribunal is not bound to apply CPI because the presumption does not apply if this would be unreasonable having regard to paragraph 18. However, the factors which may displace the presumption are not limited to those set out in para 18 but may include other factors.

8.6 The starting point therefore is that there is a presumption of change in line with CPI unless this would be unreasonable having regard to paragraph 18. If having regard to a factor to which paragraph 18 applies it would be unreasonable to apply the presumption then the presumption does not arise.

8.7 If the presumption is displaced it is not open to the tribunal simply to decide what it considers to be a reasonable pitch fee in all the circumstances. Reasonableness has to be determined in the context of the other statutory provisions.

8.8 If there is no matter to which any of paragraph 18 applies then the presumption arises and it is necessary to consider whether any factor displaces it. According to Vyse v Wyldecrest Parks (Management) Ltd [2017] UKUT 0024 (LC) on the face of it there does not appear to be any justification for limiting the nature or type of other factor to which regard may be had and this approach accords with the literal construction of the words of the statute. Further it is one which would avoid potentially unfair or anomalous consequences.

8.9 In these circumstances this must be a factor to which considerable weight attaches. If it were a consideration of equal weight to CPI then applying the presumption the scales would tip the balance in favour of CPI. The 'other factor' must have sufficient weight to outweigh the presumption in the context of the statutory scheme as a whole.

8.10 These issues were further discussed and elaborated upon in Wyldecrest Parks (Management) Ltd v Whitely and others and Alves and others [2024] UKUT 55(LC).

8.11 At paragraph 28 of that case the upper tribunal noted "…..Where one of the factors in paragraph 18(1) is present, or where some other sufficiently weighty factor applies, the presumption does not operate or is displaced. Then the task of the tribunal is more difficult, because of the absence of any clear instruction on how the pitch fee is to be adjusted to take account of all relevant factors. The only standard

which is mentioned in the implied terms, and which may be used as a guide by tribunals when they determine a new pitch fee, is what they consider to be reasonable. Paragraph 16 provides that, if the parties cannot agree, the pitch fee may only be changed by the FTT if it "considers it reasonable for the pitch fee to be changed and makes an order determining the amount of the new pitch fee." The obvious inference from paragraph 16 is that the new pitch fee is to be the fee which the tribunal considers to be reasonable."

8.12 The upper tribunal goes onto state at paragraph 70 of that case that "It is that it is for the tribunal which is tasked with determining the new pitch fee to decide what it considers to be a reasonable new figure. Parliament has chosen to adopt a relatively crude standard for pitch fee determinations and to give very little guidance on how that standard should be applied. It is not for this Tribunal to lay down a rule where Parliament had chosen not to do so."

8.13 Determining the meaning of amenity is an important element of the above approach. In Charles Simpson Organisation Ltd v Redshaw (2010) 2514 (CH) the court observed: "In my judgement, the word 'amenity' in the phrase 'amenity of the protected site'….simply means the quality of being agreeable or pleasant. The Court must therefore have particular regard to any decrease in the pleasantness of the site or those features of the site which are agreeable from the perspective of the particular occupier in issue"

8.14 In Wyldecrest Parks (Management) Ltd v Whitely and others and Alves and others [2024] UKUT 55(LC) it was observed that "An amenity is anything which is a desirable or useful feature or facility of a building or place". The upper tribunal went onto state at paragraph 36 of that case that "There is no express requirement that the amenity must be one to which the occupier has a contractual right, either through the terms of their pitch agreement or as a matter of licensing. Nor is there anything in the context which would justify reading such a requirement into the implied terms……An amenity can be enjoyed without any right to its preservation, and the decrease of such an amenity would be capable of making a park a less attractive place to live. It is therefore perfectly understandable that the implied terms specify such a decrease as a factor to which consideration should be given, whether or not the decrease is an infringement of a legal right or a contravention of

9. The Applicant's submissions

9.1 The Applicant submits that since the date of the last review the Applicant has not spent money on improvements that there has been no deterioration in the condition of the site and/or decrease in the amenity of the site or any adjoining land which is occupied or controlled by the owner since 1st October 2014 that there has not been a reduction in the services that the owner supplies and that there has not been any direct effect on the costs payable by the site owner in relation to the maintenance or management of the site of an enactment which has come into force since the last review date.

9.2 In making those submissions the Applicant also referred to their supplementary statement in response on page 110 of the hearing bundle. The Tribunal noted that the date of the statement appeared to be in error and the applicant confirmed

this should be 18th April 2024 rather than 18th April 2023. The Tribunal notes that this would still predate the Directions Order to which the supplementary statement is made. The Directions Order is dated the 7th day of May 2024. However, the Tribunal accepts that in the hearing the Applicants representative repeated the submissions made in the supplementary statement.

9.3 Additionally the Applicant referred the Tribunal to Wyldecrest Parks (Management) Ltd v Whitely and others and Alves and others [2024] UKUT 55(LC) and other decisions of the lower and upper tribunal in support of the submission that the statutory presumption in paragraph 20 of Chapter 2 to Part 1 of Schedule 2 to the Mobile Homes Wales Act 2013 (as amended) must apply as none of the factors in paragraph 18(1) are present in relation to the Park.

9.4 In particular the Applicant acknowledged that there are ongoing discussions with the residents of the Park and Carmarthen Council in relation to compliance with conditions on the Site Licence but emphasised that these issues are not factors to be considered as falling within paragraph 18. The issue with the rubbish bins and collection of refuse is a matter for the Council and the Applicant has not committed to providing a refuse service to the residents of the Park. The layout and size of the existing roads do not allow for the manoeuvrability of trucks around the Park and refuse must be collected from a single point. Flooding issues are the result of a combination of heavy rainfall natural topography and the existing construction and layout of roads and drainage systems. Surface water eventually dissipates through natural soak away following heavy rain and through the drainage system.

10. The Respondent's submissions

10.1 The Respondent confirmed to the Tribunal that they had moved into their mobile home on 11.12.20 and referred to their Statement of Truth at page 107 of the hearing bundle.

10.2 Following questioning by the Tribunal the Respondents confirmed that the flooding and other issues referred in their Statement of Truth to had remained a constant problem.

10.3 In relation to the Pond the Respondents confirmed that their mobile home site was not adjacent to the Pond and nor could they see it from their home. However before entering into their agreement for occupation an agent for the Applicant had sent photographs of the Pond to them and had orally advised that this amenity area would have benches added so the Pond could be enjoyed by them as a community amenity area (Covid-19 restrictions meant that physical inspection was not possible at the time). The Respondents also referred to an ongoing and longstanding issue with the levels of water in the Pond at the Park due to a leak and expressed concern about the unsightly nature of the Pond due to the leakage and the frequent refilling of the Pond is achieved by using water paid for by the residents through their water rates and meters. The Tribunal subsequently received a copy of letter from the Applicant immediately after a

linked hearing. The letter is dated 9th August 2024 and written by Stephen Edwards Chairperson of the Westover Park Residents Association (the Residents letter. The Residents letter states:

"Dear Mr Sunderland,
Workmen arrived today at Westover Park and informed residents that they were contracted by you to prepare the park for a site inspection on Monday.
We are aware that our site is due a planned inspection by Tribunal Judges, ahead an upcoming Hearing on Wednesday 14th concerning you and individual residents.
From the workmen, we understood that the work involved was cutting the grass, weeding and tidying of the site.
Alarmingly, a long hose was fitted to the water supply on the vacant plot (No 32), which was run across the road and into the pond. The water was then turned on to discharge water into it.
With the tap opened fully to pipe water into the pond, this was intended to be left on fully by your instruction.
The workmen told us that this was their instruction and they did so.
The residents were horrified. Rightly, some complained to you as quickly as they could. I'm sure you have their emails.
I also called you, as well as Adrian, the site Manager, who were both unavailable.
It can only be concluded that your actions have been only to falsely enhance the feature of the pond, which has not been maintained and is in a very poor dilapidated state, to deceive the Judge's inspection (photo's attached).
The pond is designated as a communal area that is specified for you to maintain under The Law,"owners' obligations".
Also in our Site License Conditions, Written Statements and Pitch Free Reviews (all of which have reiterated to you in previous correspondences, which you have chosen not to answer).
In addition, we have also reminded you of the requirement for any consultation for any changes in the site (again, you have chosen not to answer).
This is to inform you that we, the residents of Westover Park have turned the tap off.
This we have done because, we will not allow you to pour mains water into the pond that, (among so many other valid reasons):
1.You know the pond has major leaks
2.To pour more water into a leaking pond is pointless and unsustainable
3.You have not repaired or maintained the pond (repeatedly asked)
4.You have not consulted residents and QRA about pouring residents' water supply into the
pond, at financial cost to residents
5.It would appear that actions today have been only serve your own personal benefit / agenda, to look like the pond and the site looks better on inspection by the Judges on Monday. To do this at the expense of residents is wholly wrong and not representative of
the truth.
6 To do this would be to allow you to charge residents for your own usage, costing residents more money in water rates
7. You have not explained how you pay for your water usage (asked repeatedly).

8. You do not include your own water usage in any calculations
In summary, we will not accept you pouring immeasurable volumes of water into a communal pond that you will later charge us (residents) for in our water bills.
We will not accept being unfairly financially disadvantaged by your desired course of action
today.
This is not only in contravention of the above requirements and Water Resale Regulations, it also raises many serious wider concerns.
Please reply appropriately.
On behalf of Westover Park Residents.
Yours faithfully,
Stephen Edwards"

10.4 The Respondents also added that there had been a problem with collapsed drains at the Park about 8 months previously which had caused significant consequential sewage issues for the Respondent in the enjoyment of their home. Apparently, a report and video had been made by contractors appointed by the Applicant to address the issue. The Applicant responded that this matter was not referred to in the hearing bundle or the Respondents Statement of Truth and consequently the Applicant was not in a position to respond or provide rebuttal evidence. Subsequently the Tribunal issued a further Directions Order to the Applicant dated the 15th day of August 2024 requiring the Applicant to provide to the Tribunal a copy of any such drainage report and video, or such other report and video that maybe within the Applicant's control as to the surface or foul drainage at the Westover Park mobile home site.

10.5 On the 16th August 2024 the Applicant responded that his issue did not form part of the Respondents' reasons for not agreeing to the pitch fee Review for 1st March 2024 and did not appear either in their Statement of Case or evidence provided within the hearing bundle and it was something that the Applicant had not previously been made aware of as being a reason for withholding the statutory review.

10.6 The Applicant further stated that the circumstances described by the Respondent related to a sewerage blockage was reported to the Maintenance Team on 15th January 2024 by the Area Manager. Metro Rod attended the following day on 16th January 2024 and suggested a tanker to remove sewerage as the blockage was under no. 46. A tanker attended on 19th January and sucked out down to 80m from no. 46. No further issue was reported until 29th January 2024 when a further report of a blockage was made from the Park. Metro Rod attended the following day on 30th January and jetted as much as they could of the system. It transpired that the main sewer for the town of Whitland runs underground through the park and this is fed into at various points by the Park. All of the runs belonging to Westover Park had been cleared and the issue was a blockage further down the main sewer off site. There was no written report provided or video footage and this matter involved a sewerage blockage only and had nothing to do with the surface water drainage which it was suggested may have been the case. Since clearing the drains on 30th January 2024, no further issues have arisen.

10.7 The Applicant asserts that this issue which was quickly resolved and cannot reasonably be construed to have been a reduction in amenity of the Site and a reason for displacing the presumption of a statutory inflationary increase and it is in the view of the Applicant that this was raised to the Tribunal as a customer service complaint rather than grounds for refusal to agree the Review.

11. The Tribunal's Determination

11.1 The Tribunal accept that the issue in relation to the drains addressed above is not a valid reason for displacing the presumption of a statutory inflationary increase on the basis that there would appear to be no extant deterioration in condition or amenity. However, The Tribunal find in favour of the Respondent on other grounds and hold that the statutory presumption set out at Paragraph 20 of Chapter 2 to Part 1 of Schedule 2 to the Mobile Homes Wales Act 2013 (as amended) should be disapplied. It is unreasonable to accept that it applies due to the presence of one or more factors referred to in paragraph 18(1) of the relevant Chapter and Schedule.

11.2 Specifically the Tribunal accept and find that that there has been a deterioration in the condition of the Park and/or a decrease in the amenity of the Park or some part of it. It is noted that in paragraph 1(b) of Part 3 the Express terms of the agreement between the Applicant and the Respondent that "the Park' is defined to include each and every part of it. The Tribunal note that there is no express requirement that the amenity must be one to which the occupier has a contractual right, either through the terms of their pitch agreement or as a matter of licensing.

11.3 The Pond does not form part of the pitch of any particular pitch owner and is the sole community or common area on the park. The Tribunal note the definition of amenity set out above. We find that The Pond is a significant amenity for the Park. From the inspection carried out by the surveyor member of the Tribunal it is clear that the Pond is the only community amenity area on the Park and it is the first feature that you see when entering the Park and indeed the last feature you see when leaving the Park. Accordingly it is visible to all those entering and leaving the Park and in its current state the Park is in the Tribunals view a less attractive place to live. The Tribunal have the benefit of the inspection carried out and photographs submitted in evidence in making this determination. The Tribunal acknowledge that the Respondents and other residents of the Park have been deprived of a visibly appealing and the sole community amenity area which has significantly reduced the pleasantness of the site with a commensurate decrease in its amenity.

11.4 It is also clear from the evidence given to the Tribunal and from the inspection carried out that the Pond is no longer in a good state of repair and condition. The Tribunal are assisted in their finding in this respect by the contents of the Residents letter submitted to the Tribunal by the Applicant. The Tribunal therefore finds that there has been a deterioration in the condition of a significant part of the Park.

11.5 It is the view of the Tribunal that the above described reduction in the pleasantness of the Park with a commensurate decrease in its amenity and deterioration in the

repair and condition of the Pond would without more serve to disapply the statutory presumption.

11.6 The Tribunal must now determine a new pitch fee based on a consideration of what is reasonable in the context of the other statutory provisions. The purpose of disapplying the presumption of a CPI increase where there has been a loss of amenity is to set a new pitch fee which properly reflects the changed circumstances. Those changed circumstances include the reduction in amenity and condition but they will also include any change in inflation since the last review took place. The Tribunal acknowledge that for it to be appropriate for there to be no change in the pitch fee at all then it would be necessary for factors justifying a reduction to (at least approximately) cancel out inflation and any other factors justifying an increase.

11.7 Other than inflation the Tribunal find that there are no factors justifying an increase on the basis of the evidence submitted to the Tribunal by both the Applicant and the Respondent. The Tribunal note the Applicant in their submission state that no money has been spent on improvements to the Park: see Form MH15 completed by the Applicant "Changes since last review' at page 11 of the hearing bundle.

11.8 The Tribunal therefore find that the deterioration in the condition of the Park and/or decrease in the amenity of the Park is of such general significance and impact to all the residents of the Park that no change in the current pitch fee is justified. The Tribunal find that for the reasons stated above around the prominent visible position and desirability of the Pond as the sole community area that to that extent all pitches on the Park are affected by the deterioration of the only community area on the Park and this loss of amenity cancels out any increase in the pitch fee which might have been justified by inflation. Furthermore, the Tribunal find from the evidence given by the Respondents that the Pond has been refilled on more than one occasion using fresh potable water paid for by the residents of the Park and not the Applicant notwithstanding that maintenance of the Pond is the responsibility of the Applicant. The Residents letter referred to above and submitted to the Tribunal by the Applicant also refers by way of corroboration. The Tribunal finds that the weight of the evidence supports this conclusion.

11.9 Other relevant issues at this stage of consideration include the matters relating to compliance with the conditions of the Site licence in so far as they are outstanding and within the control of the Applicant. There is apparent longstanding frustration with the perceived lack of action relating to the concerns of residents of the Park concerning a number of issues related to the Site Licence referred to in correspondence at pages 113 to 131 of the hearing bundle. The Tribunal welcomes the constructive offer made by the representative of the Applicant to meet with residents and address concerns outside of the tribunal setting.

11.10 The Tribunal therefore finds that the pitch fee at its current rate is a reasonable pitch fee and is to be applied on this application for review. There should be no increase in the current pitch fee.

Dated this 3rd day of September 2024

M Draper
Tribunal Judge