



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference: CHI/OOHE/PHI/2018/0232

Premises: 14 Valley View Park, Valley View
Caravan Site, Dunmere, Bodmin,
Cornwall PL31 2RA

Applicant: Wyldecrest Parks (Management) Ltd

Representative: Mr D Sunderland

Respondent: Mr W RJ Dudley
Ms MA Fletcher

Type of Application: Part 6 of The Tribunal Procedure (First
Tier Tribunal) (Property Chamber)
Rules 2013 – Rules 52 and 55-
application for permission to appeal

Tribunal Member: Judge A Cresswell (Chairman)
Mr W H Gater FRICS ACI Arb

Date of Decision: 20 March 2019

DECISION

Application by the Respondent for Permission to Appeal

By application of 11 February 2019, the Respondents have sought permission to appeal, under Part 6 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (“the Rules”), against the Decision of this Tribunal of 11 January 2019 (“the Decision”).

The Tribunal does not give permission to the Respondents to appeal. The reasons for refusing permission follow:

1. The Tribunal has a duty to give effect to the overriding objective within the Rules when exercising any power under the Rules. The Tribunal is required to deal with a case fairly and justly, which includes seeking flexibility and dealing with cases in a way which is proportionate to the anticipated costs and resources of the parties and of the Tribunal.

2. The Tribunal first considered, under Rule 55 of the Rules, whether to review its decision. It determined not to review its decision because it was not satisfied that any of the grounds of appeal was likely to be successful for the reasons detailed within the Decision.

3. The Respondents raised issues in their application.

4. The application makes further reference to the issue of the site licence. An email from Gregory Martin, Cornwall Council’s Environmental Protection and Licensing Compliance Manager, of 30 January 2019, provides further detail. Even further detail is attached to the Respondents’ submissions to the Tribunal in response to the Applicant’s application for costs. From the email and subsequent documentation, it appears that (the Tribunal here using the terms from the Decision) the correct licence was transferred to the Applicant on 9 January 2015. That licence was later, after the pitch fee review notice of 13 July 2018, on 10 August 2018, transferred to Wyldecrest Parks (West) Ltd. A new, and separate, licence was “grant”ed to Wyldecrest Parks (West) Ltd on 11 October 2018, such that there were, apparently, then two licences held by Wyldecrest Parks (West) Ltd for the site. The latter licence comes with its own set of conditions, but Mr Martin’s email makes clear that the conditions have yet to be determined and also states that “*Once issued there will be 2 licences in force for the site*” (as does a further email from Mr Martin of 12 February 2019), which causes some doubt as to whether the second licence has been granted or is yet to be granted and what its conditions might be if and when it is granted. The Tribunal remains satisfied, given the above, that it has correctly determined the available evidence relating to the site licence.

5. The "park licence issue" had been apparent from the Hearing Bundle. It was detailed in the bundle of documents submitted for the hearing. The Respondents point to new evidence on the issue, but it is evidence that would have been available to the Respondents prior to the hearing and could have been obtained with reasonable diligence by the Respondents for use at the hearing. The Tribunal reminds itself of the tests recommended by the Court

of Appeal in **Ladd v Marshall** [1954] 1 WLR 1489. The Tribunal has not taken this additional evidence into account when determining this application, but sets out its thoughts above so that a reader of this Decision can have a clearer view of the issue and the impact of the **Ladd v Marshall** principles.

Ladd v Marshall [1954] 1 WLR 1489, [1954] 3 All ER 745, Denning LJ held that there were three principles to be applied to an application to adduce fresh evidence on appeal:

- it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial;
- that the evidence would probably have an important influence on the result of the case; and
- the evidence must be credible, though it need not be incontrovertible.

6. Much of what the Respondents say in their application is simply a recitation of why they disagree with the Tribunal's Decision. The Tribunal can only make a Decision on the basis of the evidence placed before it by the parties.

7. The Respondents raise two issues of procedure.

8. The Respondents say that their understanding is that when a site visit is carried out, the Applicant and Respondent are not allowed to accompany the Tribunal members around the site. "*Mr D Sunderland was with them the hole of there visit but I was not allowed due to the weather condition and they wanted to get it over and done with*".

9. In the experience of this Tribunal, inspections are, on the vast majority of occasions, conducted in the presence of the parties.

10. The Tribunal members arrived separately at the park and only Mr Sunderland was found at the entrance at the top of the park. He told the Tribunal that he had been on to the park and had not seen the Respondents. This was the first time that the Tribunal had met Mr Sunderland or visited the park. The Tribunal walked down towards the Respondents' house, directed there by Mr Sunderland, and looked at relevant features on the way down. The Tribunal specifically told Mr Sunderland that it would not be taking evidence from him until the hearing. The Tribunal took a number of photographs as an aide memoire.

11. The Tribunal members got to the home of the Respondents, who wished to remain inside with Mr Hassall. The Tribunal was not at all surprised that Mr Dudley remained within his home, given the very serious medical conditions he suffers from (see the next paragraph). They told the occupants of the home what they had seen and asked did they want the Tribunal to look at anything else. Mr Dudley told the Tribunal that he wanted it to look at the wall where the fire extinguishers had been sited and at the light at the

boundary; it was only at the hearing that he raised the issue of damaged steps. The Tribunal at no time said or suggested that it was in a hurry to leave.

12. The application also says: *“I feel that the Tribunal seemed to rush through this hearing and there were issues that were not fully looked at.”* The Tribunal noted that the Respondents were represented by Mr Stephen Hassall of IPHAS (Independent Park Home Advisory Service) at the hearing (but that they themselves have apparently produced the appeal application). A medical report in the hearing bundle by Dr Emma Langstaff and dated 17 October 2018 detailed numerous serious health issues for Mr Dudley and reported that he felt unable to represent himself. The Tribunal was, naturally, anxious not to place Mr Dudley in a position of further stress and told him that he could have a break at any time he wished.

13. The Tribunal was careful to examine all of the issues raised by the Respondents in some detail, even those which the Respondents subsequently conceded were not relevant to the issues to be decided by the Tribunal, and notwithstanding submissions by Mr Sunderland of lack of relevance when the issues were raised initially.

14. At the conclusion of the hearing, the Tribunal specifically checked with both Mr Sunderland and Mr Hassall that they had been able to say all that they wished. Both agreed that they had been able to say all that they wished to say. That was recorded in the Tribunal’s Decision.

15. The issues raised by the Respondents, whilst clearly of personal importance, are not of general public importance such as to justify the cost of an appeal hearing where there is no realistic prospect of the appeal being successful.

16. The Tribunal does not accept that there is a reasonable prospect that the Upper Tribunal will find that the Tribunal has wrongly interpreted or applied the relevant law (**Fairhold Mercury Limited v HQ (Block 1) Action Management Company Limited** (2013) UKUT 0487 (LC)) or that the Decision is fairly open to challenge.

16. The Tribunal concluded that the Respondents ought not to be given permission to appeal to the Upper Tribunal.

17. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and Rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010 the Applicant/Respondent may make a further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission.

A Cresswell (Judge)