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Our Ref:

DEC/JML

Your Ref:

4th December 2012

Ms Helen Finlayson
Clerk
Legislation Office
National Assembly for Wales
Cardiff Bay
Cardiff CF99 1NA

Dear Ms Finlayson

Re: Consultation on the Regulated Mobile Home Sites (Wales) Bill

We are writing in response to the letter dated the 5th November 2012 from Ann Jones AC/AM in response to the Regulated Mobile Homes Sites (Wales) Bill.

We are pleased to attach our comments on the draft Bill for your consideration which we will also forward by email.

Yours sincerely

DAVID CURSON
OPERATIONS DIRECTOR

Cc: PAT
File



CONSULTATION ON THE REGULATED MOBILE HOME SITES (WALES) BILL

The Berkeley Leisure Group Ltd., operate four parks in Wales with a total pitch number of 473 (not all occupied). The parks in Wales are part of a 45 park group in the UK., the majority of which are retirement parks for persons over the age of 50. As a multiple park operator we are more centrally administered from our Head Office in Yeovil. We have over 55 years experience in the Mobile Home Park Industry

Q1 - Is there a need for a Bill to amend the arrangements for Licensing and make provision for the Management and operation of regulated mobile Home sites Wales?

Yes, there is a need for a Bill to review the current arrangements with the Mobile Home park Licensing that exist. We can see the negative effect that rogue operators have on the business in terms of sales and interest in Park Homes. People are aware of rogue operators and some are aware that a park could be sold and fall in to the hands of such rogues.

There is clearly a need to ensure that Parks are operated and managed in a professional way and, unscrupulous operators discouraged from continuing in this business.

Q2 – Do you think the Bill as Drafted delivers the stated objectives as set out in the explanatory Memorandum:

While we agree that Legislation needs to be reviewed in respect of Mobile Home Parks we do have concerns as to the means by which it is done. We would agree with comments made by Welsh Assembly Members that it is a small minority that ruin and tarnish the industry for the majority.

We have raised objections to Legislative change and 'new' licensing arrangements in previous consultation because in our opinion, if a park operator follows the current Licence arrangements and the law, there should not be a problem. We are not sure if the Bill delivers the objectives as there is insufficient assurance that Rogue operators will be deterred by the measures proposed in the Bill.

We maintain that one of the problems is enforcement of the law, and no amount of re-writing of licensing process is going to change that unless a local authority has the powers to prosecute the rogues. We are aware of the minority of unscrupulous park operators and their behaviour. They have no respect for authority and Kirsty Williams mentioned the 'vile behaviour' she herself has witnessed ((National Assembly for Wales Record of Proceedings Wednesday 7th November 2012 p.54).

We do not think the Bill adequately makes provision to protect Buyer as well as seller. There is a significant amount of information to pass on from seller to buyer in the absence of the Park operator's involvement, and we are not sure how an elderly person in their eighties or an Executor is going to pass on the relevant information. Will the elderly buyer have sufficient protection when committing what might be their life savings towards what is likely to be their last house move? And, if that sale and purchase is not conducted properly, who then has the task of unravelling the errors and pursuing the potential debt?

The Bill does not make provision for the nature of construction of a Park Home and the potential pitfalls with regard to its condition, and so the buyer may be at risk under the new licensing regime.

Q3 –In your view, will the licensing and enforcement regime established by the Bill be suitable? If not how does the Bill need to change?

The Bill will only be suitable if it is used primarily to target the rogues first and foremost, and send a clear message that they will not be left alone as they have in the past. If Local authorities go for the soft targets first and exhaust their funds and resources on them then we do not think the Licensing and enforcement regime will be suitable.

We believe that it should be made clear in the Bill that Local Authorities should implement the new system on a risk based agenda, and target the poor performing parks first to test the system.

We have concerns with the provision in the Bill (para 7. (5) regarding Licence numbers as this is covered by reference to Model Standards, and 'some other maximum number decided by the authority' seems a bit arbitrary.

We have concerns with a 5 yearly cycle for the Licence. This creates unnecessary uncertainty for the future of a park. A prospective purchaser may be deterred from proceeding if they or their legal representative raises concerns about the unknown duration of a Licence and so the seller of a park home may be affected.

We would also need to be assured that the new legislation will not create an unwieldy mass of Legislation that conflicts with and confuses existing such as the 1960 Act and the 1983 Act, and also Model Standards.

Q4 – Are the Bills proposals in relation to fit and proper person test for site owners and operators appropriate, and what will the implications be?

While we support the concept of Fit and Proper person, any assessment of an individual must be fair and reasonable. We can see situations arising where you have a park operator who falls foul of a law unintentionally being branded unfit to run a park when they are more than likely able to learn from the experience and go on to be a better park operator from the experience. Would someone who had been caught and prosecuted for smoking a joint in his university days (for example) be barred from holding a licence?

We also have concerns with existing park staff. As a large company operating 45 Parks around the country, we have over 160 employees. We have not carried out the likes of CRB checks in the past, but may need to implement in the future. But what will be the process in the interim, if we have an existing employee who fails the fit & proper person criteria.

Q5 Are the Amendments to the contractual relationship between mobile home owners and site owners which would result from the Bill (be) appropriate. If not how does the Bill need to change?

At present when a buyer of a 'new ' or 'previously owned' home move on to the park, a formal Agreement is entered into by the respective parties. This Bill effectively removes any right of the Park operator from fully knowing the facts of the Agreement they may be entering.

We agree that the Park Operator should not have such sweeping powers or such right of veto as it could be misused. Contractually we might not necessarily 'Agree' to that person and so it could hardly be called an Agreement.

While we can see the benefit of the principle of buyer selling direct to buyer and only a requirement to notify the park operator when all has been agreed, we do have concerns with the passing on of information to the buyer.

There is the potential situation where a purchaser may be ill advised, and it might be both time consuming and costly to contact the seller to put things right. We also feel it would be unfair to pursue an innocent, ill informed buyer over a breach that they were totally unaware of? As far as we can see the Bill does not make clear who or how these situations are to be dealt with and whether costs would be recoverable.

Our primary concern is that if the buyer is wittingly or unwittingly poorly informed it would be the Park operator's responsibility to put matters right or seek any debts (pitch fee or commission) this seems unfair as we have not been involved in the process beforehand.

Effectively, if the Park operator is restricted in knowing fully all the details of the contract between buyer seller and park operator, then there needs to be a shift in contractual responsibility to one of the other parties.

There needs to be a mechanism in place that identifies infringements of the Site Licence (some of which are currently addressed at time of Assignment in accordance with the 'Site Licence' (e.g. Timber sheds often removed on or before next Assignment). This needs to be an obligation for the seller to attend to or possibly pass on a timescale for compliance to the buyer. Moreover as the park operator would be unable to address these at Assignment it should be for the Local Authority to address with the occupier rather than the park operator.

We fully understand the need for legislation to stop the alleged abuses. However a park operator now has great difficulty in resolving Licence infringements and breaches of the park rules. The correct process would be to:

1. Conduct a site inspection, having given 14 days clear notice in writing.
2. Write to individual residents giving them a time scale for compliance
3. Re-inspect (after giving 14 days notice)
4. If infringement not resolved consider RPTS application.

This procedure is formal and likely to worry elderly residents and also be very costly and time consuming. We would need to introduce frequent site inspections to find the infringements, not all of which are easily visible. We are sure it can be appreciated that residents on the park would not welcome this intrusion, and we would no doubt be branded as operating a police state. However a Local authority is likely to be unsympathetic, and with their new powers to impose fines we would have little choice.

Q6 – In your view, how will the Bill change the requirements on the site owners/ operators, and what impact will such changes have, if any?

As a park operator we can foresee a number of changes to our administrative workload and processes.

We will need to Administer Licensing arrangement for our 4 Parks in Wales from our HO in England and ensure they are current, and timely applications made.

We will need to provide greater detail for fit and proper person criteria, and review and change our recruitment process, thus increasing the administrative burden.

We may need to keep a watch on new residents to ensure they are aware of the various park rules and site licence requirements, and introduce regular and formal site inspections.

We may need to take more expedient action through the RPTs in the event of a Resident breaching Site Licence conditions or park rules rather than addressing these matters at Assignment (addressing infringements and park rule issues at time of Assignment means we don't have to 'harass' our residents whilst on the park. Sadly to do this means we will cause bad feeling amongst our existing residents.

We may need to issue new Agreements to residents with accurate plan of pitch in accordance with more recent legislation, and subject to buyer's consent, which will have significant administration, time resource and cost implications

There is likely to be a greater administrative burden as we foresee an increase in correspondence with Solicitors seeking clarification (which we may not be able to give).

Greater costs borne by the park operator. For example:

Licence Fee

Legal and administration expenses for licence applications.

Greater use of RPT system for resolving licence and park rule issues and seeking recovery of debt if buyer ill advised of outgoings and commission.

Admin costs for new agreements and accurate plans.

Loss of income year on year from change to the CPI. Park operating costs and expenditure has little relevance to Consumer Prices.

Q – 7 Do you agree that the RPT should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions? Please give your reasons

Yes, provided that it has the powers to ensure there is a remedy. It will not work if either the Park owner/ operator or the resident then has to go to the courts to enforce the decisions of the RPT.

Q8 – What are the potential barriers to implementing the provisions of the Bill (if any) and does the Bill take account of them?

Local Authority Resources to carry it through. – We are not convinced the Bill takes in to account the staffing required at Local Authorities to actively deal with unscrupulous park operators or to staff the maintenance and management of poorly performing parks.

Police intervention to prosecute the 'vile' crimes of the unscrupulous that are really damaging our industry. To really get to the heart of the problems any legislation needs to address the criminal activities of the rogues. We fear that they will find other ways to prevent sales and intimidate residents in order to secure a pitch.

Q9 – What are your views on powers in the Bill for Welsh ministers to make subordinate legislation.

No comment.

Q10 Financial implications – In your view what are the financial implications of the Bill? Please consider the scale and distribution of the financial implications. In answering this question you may wish to consider Pt. 2 of the Explanatory Memorandum (the regulatory Impact assessment), which includes an estimate of the costs and benefits of implementation of the Bill.

As discussed above we foresee a significant increase in our operating costs for the park, which in turn may impact on the level of investment on the park. Additional costs will include:

Licence Fees

RPTS costs

Legal costs

Administration costs

Reduction in income from change to CPI. While we may only be talking of 1% difference over the years this will be multiplied in effect.

Potentially increase in wage costs if we need to attract better trained or able people.

It is difficult to fully assess the overall impact until it is implemented and we see how it works. But there is going to be a reduction of income to the park as a result of these measures which we consider to be unreasonable for a law abiding operator.

Q11 – Are there any other comments you wish to make about specific sections of the Bill?

We are concerned that the proposals and administration of QRA information has been underestimated. As an example we were provided with a list on one of our parks that had just over 50% membership but of those there were 30 errors which would mean they would not qualify. Will the Local authority be able to monitor and check names of membership if they are to hold and support that information?

Irrespective of whether there is a QRA (and of our 45 parks there are 7 QRA), every resident is able to raise a concern or an objection and we will endeavour to respond.

Maintaining an up to date list will require some work by both the QRA and the Local Authority as it will change regularly with Assignment Sales and sadly through the death of residents which is a unhappy occurrence on a park that is for retired people.

The administration of the QRA is likely to be part of the licensing process and if so (bearing in mind that this legislation will not allow the park operator to pass on costs) it suggests that the Park Operator is funding an organisation some of which can be unnecessarily militant that is directly opposed to the park operator .

SUMMARY

As one of the largest park operators we welcome any change that is going to improve the industry and drive out the rogues. We want to see a flourishing industry and provide an alternative form of housing that is attractive to all and in particular the retirement sector who are looking for a peaceful uninterrupted lifestyle. We believe that we are able to achieve that with existing legislation. We would accept we are not perfect and need to learn and move with the times. We have witnessed significant changes in recent years, mainly for the better and we are constantly having to adapt to them. It would be welcome to have some stability in our industry but at the same time see the rogues dealt with by applying the rules that exist.

Of course what we do not welcome is a further financial burden for very little benefit or effect and unless Local Authorities can address the rogue element that is sadly what will happen.