HCS106

National Assembly for Wales

Communities, Equality and Local Government Committee

Holiday Caravan Sites (Wales) Bill

Response from: Vale of Glamorgan Council

Consultation Response- Evidence Submission

Holiday Caravan Sites (Wales) Bill

23th May 2014

In response to the recent call for evidence issued in respect of the Holiday Caravan Sites (Wales) Bill, we offer the following comments as officers of the Vale of Glamorgan Council responsible for enforcement of existing caravan site licenses. The comments are broadly based on those prepared by the Welsh Heads of Environmental Health Group, but additional relevant comments have been included

General

a) The proposal to introduce legislation to improve regulation of holiday caravan parks is broadly welcomed.

b) The Vale of Glamorgan Council licences six such holiday type site that in total have 1200 caravans. The are also five site for touring caravans two of which also have seasonal pitches. The Council carries out inspections either annually or once every two years to ensure compliance with site license conditions and updates condition as necessary. Enforcement action has be taken in the past under Planning and the Caravans and Control of Development Act

c) While the drive behind the Bill is understood there are concerns that the implications of the Bill have not been fully considered with regard to the impact on homelessness and housing need for low cost housing options. While it is acknowledged that there are service and financial impacts on the local authority and health authorities from a population of residents not considered in service and financial planning, the implementation of any measures to prevent occupation of holiday homes as the main residency must be reasonable to mitigate the impact on the local authority and housing market.

d) At the moment these holiday homes are meeting a housing need for low cost housing option. Removing this option from the housing market needs to be well planned to ensure the households made homeless are effectively managed and does not generate a problem for local authority homelessness service.

e) Council tax and housing benefit information clearly indicates that occupiers are living in their caravans as permanent homes, at the moment the full extent of the problem within holiday parks is unknown. Time needs to be given to enable research to be carried out on the number of households this bill would impact and for the local authority to start providing advice to those households to help them relocate before the legislation on residency is enforced. The need for this time will also be important to allow local authorities to meet the proposed duties under the WG Housing Bill with regard to formulating a homelessness strategy. This unknown need requires primary research to ensure the proposed homelessness strategy is fit for purpose.

f) There are fundamental differences between residential home and holiday home sites and the vast majority of occupiers of these types of sites. The application of "housing" controls to the holiday industry may not be proportionate or necessary to regulate the issue of mismanagement of a small part of the holiday site industry. In addition, there are practical limitations to the enforcement of some of the powers to require information in respect of holiday sites that differ from residential sites and therefore will require more clear guidance and possibly more robust investigative powers to be included.

g) In general terms, the power to control the use of holiday sites as residential sites exists within planning legislation and this should remain the primary legislation for controlling site use. Additional measures should not be required, rather additional guidance for local planning authorities in respect of residency tests etc should be considered.

h) A realistic timescale for the introduction of any new legislation in this area will be required in order to allow the local authority and park owners' time to implement the legislation alongside other priorities.

i) It is noted that there is a provision within the Bill to "passport" existing holiday sites licensed under the Caravan Sites and Control of Development Act 1960 into the new regime without need for application or fee payment to the local authority (Section 9). Effectively, this will place significant burden on local authorities to undertake checks on managers, review licences and inspect sites with no up front income albeit there is scope to charge an annual fee. On this basis, and independent work undertaken by some local authorities on the implementation costs of this legislation, the Regulatory Impact Assessment on the burden on local authorities should be challenged.

Specific Comments

1. Part 1 - Introduction

Section 2 –Meaning of "holiday caravan"

a) Section 2(1) It is unclear from the definition whether the legislation aims to include touring caravans in the definition as the wording would appear to include these types of units. Under the existing legislation the Council applies the Model standards for touring caravan site where touring caravan do not remain on the site for longer than 28 days and also seasonal touring site

where touring caravans are permitted to remain on the site for extended period of time (6 to 9 months). There are no known problem with the use of such site being used as permanent residential accommodation as they can and have been regulated under the existing site licence control.

b) Section 2 (2) - This section excludes the larger mobile home units that are bolted together on site. While this type of unit is typically used on mobile home parks they are also used on some holidays sites within the Vale of Glamorgan area.

c) Section 3 - As in relation to Section 2(1) above does this definition intend to include both touring and static holiday sites. Note that within the Vale of Glamorgan there are sites that have static holiday caravans, seasonal touring pitches and normal touring pitches.

2. Part 2: Licensing

2.2. Continuation of 1960 Act Licences (Section 9)

a) It is noted that there is a provision within the Bill to "passport" existing holiday sites licensed under the Caravan Sites and Control of Development Act 1960 into the new regime without need for application or fee payment to the local authority (Section 9).

b) If sites have permitted residency over the years, it is feasible that they will be able to demonstrate this to planning authorities and obtain a certificate of lawful use, permitting individual vans to be occupied as residential units while the surrounding vans remain restricted for holiday use. As we understand matters this would mean that individual vans would need to be regulated under the Mobile Homes (Wales) Act 2013 and others under the proposed holiday parks provisions. This would need to be considered in any final proposals.

c) This requirement places a significant burden on local authorities to undertake checks on managers within 12 months of the Act coming into force with no income with which to offset the additional costs. Thereafter the costs of reviewing licences, checking residence tests and responding to failure reports and the inspection of sites will need to be met by local authorities that are already stretched.

d) The Regulatory Impact Assessment states that the costs the local authority will be diminished as a result of this "passporting" provision however the assumptions used should be challenged.

2.3. Duration of site licences (Section 11) & Power to Attach conditions (Section 12)

a) It would be beneficial to have a fixed time period for the duration of a site licence as in Section 8(2) of the Mobile Homes (Wales) Act 2013, namely 5 year maximum duration. This would enable local authorities to have a regular income from the licensing of holiday caravan sites, therefore enabling this income to fund additional officers necessary to enforce the new legislation.

We are unable to see any reason for this difference to exist between the two types of licence.

b) In seeking to modernise the primary legislation for the licensing of holiday sites we consider it essential that the model conditions are similarly revised, at the same time, to bring them up to date, to account for the impact of other regulatory changes (in particular the Fire Safety Regulatory Reform Order) and to ensure that they are clear and enforceable. This would in our view be preferable to merely tagging on new conditions relating to residency, preparing for flood risks and the need for public liability insurance, with the 'possibility' of reviewing and updating new conditions at a later date. This would avoid the need for a further round of licence revisions at a later date, which would have implications from a resource and cost perspective. In addition, retaining existing conditions that are out of date, no longer relevant and/or ambiguous would not facilitate effective enforcement, which is one of the objectives of the Bill in introducing a range of new enforcement tools.

c) There is also some contradiction in respect of Section 12 – power to attach conditions.

i. Section 12(2) (b) may include conditions for controlling types of holiday caravans which are stationed on the land and Section 12 (3) says no condition may be imposed controlling the types of holiday which are stationed on the land by reference to materials used in their construction.

ii. Section 12(2) (c) may include conditions for appropriate measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained. While section 12(4) states where RRO applies no condition may be imposed in the site licence. The fact that the sites are licensed means the RRO will apply to all communal areas . As on holiday sites there are no private garden or specific pitch boundary's etc , RRO would apply to all areas including the separation space between the caravans and only the actual caravans themselves are not covered. Previous advice from the Fire Service has been that they would refer to the fire risk assessment that the site owner should have had carried out. If the risk assessment says no fire fighting equipment or alarms are required this could not be impose in the licence conditions .

2.4. Site Inspections and Reviews (Section 16)

a) The revised proposal to inspect sites gives greater flexibility to local authorities to determine the frequency of visits however there is concern that the requirement to inspect holiday caravan sites is burdensome on local authorities as there are insufficient officers to carry out the additional functions required by the new legislation. At present, a significant number of sites are considered very low risk and, in line with the de-regulation agenda and alternative enforcement approaches required by Government, they are not currently subject to routine inspection. A risk based approach to inspection is recommended to take account of the overall condition of the site, confidence in management, previous history of compliance and number of caravans on

the site. This should include provision for “non inspectable” risk sites, and the annual fee for these could reflect reduced intervention costs.

b) The renewal rather than review of the site licence and conditions could generate an income for local authorities in Wales and ensure consistent application of caravan and mobile home legislation to all parks across Wales. All licences should be renewed every 5 years as with residential sites. Unless the model standards are to be reviewed every 5 years, it is unclear what the benefit of this formal review stage would be given the need for regular inspection and enforcement of standards. As stated in the Regulatory Impact Assessment, the power to review, revoke and amend existing licences exists under the 1960 Act so the purpose of this additional requirement on local authorities is unclear.

2.5. Breach of Conditions (Section 20-30) and Powers of Entry (Section 37)

a) The ability of local authorities to use compliance notices to secure improvements on sites is welcomed as these they are a more appropriate enforcement tools than prosecution alone as in the 1960 Act. Officers have reservations about whether fixed penalty notices are appropriate for dealing with a breach the conditions and would prefer to use compliance notice. It has been suggest that Fixed Penalty Notices would be served for things like long grass or refuse/litter on site, if so the level 2 which is currently £500, seems excessive.

b) The ability for local authorities to recover the cost of issuing legal documents and taking enforcement action is also welcomed.

c) There is a contradiction between the Power of Entry provisions in Section 37 and the enforcement options available to local authorities in emergency situations. Unlike the Mobile Homes Act where the site is the sole residence of dwellers and therefore their home, the need to provide 24 hours notice to site owners of holiday parks is unnecessary. Local authorities already have extensive powers of immediate access to deal with health and safety laws and food hygiene laws on these sites and the onerous power of entry requirements set out in the Bill are disproportionate. The Power of Entry to sites should be available at all reasonable times to authorised officers.

2.6. Decision whether person is Fit and proper (Section 34)

a) Subsection 3 (d) relating to contraventions of Trading Standards Law is not included in the Mobile Homes (Wales) Act 2013. It is unclear why it is specifically included for this type of site and how this requirement will be defined to ensure consistent application across Wales.

2.7. Interim Managers (Sections 35-36)

a) Unlike Residential caravan sites that local authorities and social landlords may have relevant experience of managing, there is no precedent for the appointment of interim managers for holiday sites therefore further information and guidance on the practical use of such powers would be required for local authorities.

2.8. Annual Fees (section 39)

a) The power of local authorities to charge an annual fee is welcomed. The concerns expressed in paragraph 2.2 above however in relation to income from existing sites remain as an annual fee that is set in accordance with Bill will not cover all local authority costs. Clear guidance on the fee calculation and fee setting policy to be adopted would be required.

3. Part 3 Residence Test

3.1. In general terms, the power to control the use of holiday sites as residential sites exists within planning legislation and this should remain the primary legislation for controlling site use. Additional measures should not be required, rather additional guidance for local planning authorities in respect of residency tests etc should be considered. Local authorities would wish that this issue be clarified before the Bill progresses further.

3.2. The remedy for unauthorised residential occupation of holiday sites may exists through the prevention of local housing allowance claims, bus pass applications and GP registrations for persons with a holiday park address rather than the measures contained in this Bill. These and other potential measures should be fully explored as alternatives to the tests proposed in this Bill.

3.3. The requirement for site owners to undertake the residence test annually is an onerous requirement and will be challenging for local authorities to regulate. In the absence of the detailed guidance on the residence test proposed, it is difficult to comment on this aspect of the Bill. In general terms, it is accepted that owners of sites should be aware of and accountable for the occupiers of their site, however local authorities already have examples of situations where this type of test will be very difficult for an owner to apply. For example:

- Many caravan owners sub let their caravans to other persons on varying types of agreement/ arrangement. On whom should the site owner therefore apply the test especially in the absence of any requirement for such caravan owners to declare sub tenancies?

- The definition of “occupier” in the Bill will encompass caravan owners who use their caravan throughout the summer but would reasonably be regarded as “holiday” users e.g. families during school holidays. This is unlikely to be the intention of the Bill.

- A caravan owner could let their caravan for holiday purposes e.g. a week or a fortnight or in some instances for a longer period, for example throughout the season where the tenant could use the caravan as their only or main residence without prior knowledge of the caravan owner.

3.4. Where confidence in the management of sites is high, with robust systems in place for monitoring for potential residential use (e.g. using the methods advocated by the BHHPA and evidence listed in Schedule 2 to the Bill) we would question the necessity for the proposed requirement for an annual inspection of the evidence of residency checks. We consider that these

checks could reasonably be made as part of the routine risk-based inspections, reducing the projected costs to the Authority and in turn to the industry.

3.5. Details of how the residence test should be applied are required as there are opportunities for abuse of this requirement depending on when in the year site owners undertake the test. Given that many caravan owners have agreements over many years to remain on site, the requirement for an annual test may be burdensome. What evidence will be required by the residence test? Will a residence test be robust enough to ensure that an 'occupier' has a home address elsewhere? There are flaws with requiring an 'occupier' to provide documentation detailing a permanent home address, as they could use relatives or a friend's address. The extent of expectations on local authorities when making enquiries in such matters will need to be clarified by the proposed guidance. It would be burdensome on both a site owner and a local authority to prove that the information provided is false. If owners make reasonable enquiries with regard to the residence test but it is held that there is a breach, is it reasonable that they are penalised for abuses of the legislation by third parties? What steps should be taken and against whom where a residency test is applied by the site owner and upon completion of the pitch agreement, the caravan owner subsequently sells their permanent home?

3.6. If an occupier fails the residence test, the owner must notify the local authority of the failure as soon as possible. It is unclear how a local authority would regulate this requirement and it is unlikely that a caravan site owner would notify the local authority of a failure of a residence test especially as this could result in a compliance notice being served on them.

3.7. The restriction on occupation of a holiday caravan on the site in excess of 6 weeks should be amended to include "**any** holiday caravan on the same site" to control for moves between caravans within the same site/ ownership e.g. by migrant workers. Some holiday sites comprise of a number of older and smaller caravan sites that have amalgamated over the years, which may still have separate licences and be called different names. An 'occupier' could potentially stay in a holiday caravan on one section of the site, with a different licence, then move to another caravan on a different section of the site etc.

3.7. A local authority must give a compliance notice if there appears to be a breach of the condition prohibiting occupation of a holiday caravan as a person's only or main residence. It is also noted that this power already exists in Planning Legislation enforcement and has been used by some local authorities to remove occupiers of caravans with holiday use planning condition. Is this additional power necessary therefore or should local planning authorities be provided with strengthened guidance on the use of existing powers?

3.8. Caravan occupiers that are held to be using the caravan as their main residence should be afforded the same protection in terms of minimum notice periods as occupiers of residential sites. Vulnerable occupiers in particular may enter into agreements with third parties to hold a shorthold tenancy of a

caravan only to find that the agreement is invalid. Local authorities as Statutory Housing Authorities wish to ensure that appropriate protection is afforded to all such individuals to enable them to make alternative housing provision when facing eviction. In addition, where the local authority require the eviction of such occupiers, it has been held that the persons are not intentionally homeless therefore presenting a potential homelessness duty. This needs to be appropriately managed by local authorities and a minimum notice period will enable housing advice services to work with affected individuals in a timely manner.

4. Part 4- Holiday Caravan Agreements

4.1. The proposal for holiday caravan agreements is broadly welcomed.

5. Part 5- Protection from Harrassment

5.1. As stated, there are fundamental differences between residential home and holiday home sites and the vast majority of occupiers of these types of sites. The application of “housing” controls to the holiday industry may not be proportionate or necessary to regulate the issue of mismanagement of a small part of the holiday site industry. In local authorities experience, it is unclear if there is evidence for the controls outlined in Part 5.

6. Additional comment:

Mobile Homes (Wales) Act 2013 Section 7(5) refers to local authorities not issuing a site licence to a person who has held a site licence which has been revoked less that 3 years before that time. To ensure this condition can be met, it may be necessary to establish a central register of person(s) who have had a licence revoked.

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