Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0011/06/15 and RPT/0012/06/15

In the Matter of 115, Lighthouse Park, Newport , NP10 8ST and 45 Lighthouse Park, Newport NP10 8ST.

In the matter of an Application under Section 52(9) and (10) of the Mobile Homes (Wales) Act 2013 and the Mobile Homes (Site Rules) (Wales) Regulations, ("the regulations') Regulation 10.

APPLICANTS (1) Mr Raymond Williams

(2) Mr N. J Lawrence

RESPONDENT Berkeley Leisure Group Limited

TRIBUNAL;
Richard Payne - Legal Chair.
Roger Baynham – Surveyor Member.
Dr Angie Ash – Lay Member.

DECISION

1. By applications dated 22nd and 25th June 2015 respectively, Mr Williams and Mr Lawrence object to proposed changes to the site rules governing Lighthouse Park, Newport, NP10 8ST where they both reside as occupiers of mobile homes. The tribunal determined that both applications should be heard together.

Background.

2. Lighthouse Park ("the site") is owned by the Respondent and is a protected site under the Mobile Homes (Wales) Act 2013 ('the Act'). The rights and obligations of the mobile home owners and occupiers and the site owner are regulated by the Act.

3. The Mobile Homes (Wales) Act 2013 came into force in Wales on 1st October 2014. It replaced the Mobile Homes Act 1983 in Wales. The 1983 Act remains in force in England as amended by the English Mobile Homes Act 2013. It is important to appreciate at the outset therefore that Wales has its own entirely separate jurisdiction on matters

pertaining to mobile homes sites, even if the Welsh legislative provisions are largely similar to the equivalent English ones.

4. The Act is a lengthy statute which is not easy to follow as it also contains a number of schedules and is complemented by a number of separate Welsh Statutory instruments that also contain relevant regulations. In this case the relevant ones are The Mobile Homes (Site Rules) (Wales) Regulations 2014, (2014 No.1764 (W.179). These regulations are referred to as "the SRW regulations" from now on in this decision.

Site rules – the legislative framework.

5. Part 4 of the Act deals with agreements relating to mobile homes and within that, section 52 relates to site rules. Each of the site rules is to be an express term of each agreement[1] relating to a pitch on the site. The "site rules" are defined[2] as those *"made by the owner, in accordance with such procedure as may be prescribed by regulations made by the Welsh Ministers, which relate to;*

    a. The management and conduct of the site, or

    b. Such other matters as may be prescribed by regulations made by the Welsh Ministers."

6. The SRW Regulations are the prescribed regulations that apply, and they prescribe the procedure for the making, variation and deletion of site rules. The 'other matters' prescribed by the regulations are as follows;

    "(2) A site rule must be necessary-
    (a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers: or
    (b) to promote and maintain community cohesion on the site."[3]

7. The SRW regulations set out a number of procedural steps that are to be followed[4]. The first step is that the site owner must consult with every occupier and any qualifying residents' association on any proposal that they make.[5]This is done by issuing a proposal notice to each consultee. The proposal notice itself must contain certain information. The notice must;[6]

    a. Clearly set out a proposal

[1] Section 52(1).

[2] Section 52(2)

[3] Mobile Homes (Site Rules) (Wales) Regulations 2014, ("SRW") regulation 4(2).

[4] SRW regulations 7-9.

[5] SRW regulation 7.

[6] SRW regulation 8 (2)(a)-(g)

b. Contain a statement of the owner's reasons for making a proposal;

c. Contain a statement that the consultation response document will be sent to each consultee.

d. Contain a list of matters that are prescribed by the Act and in respect of which, a site rule or rules will be of no effect.

e. Specify the date on which the notice will be deemed to be served on each consultee, which will be the first consultation day;

f. Specify the date ('the last consultation day') by which any representations must be received in response to the proposal. This date must be at least 28 days after the first consultation day.

g. The name of the owner and address to which any such representations should be sent.

h. The notice should be signed and dated by the owner and be in the appropriate form set out in Schedule 1 to the SRW regulations or in a form substantially to the same effect.

8. The next step is for the site owner, within 21 days of the last consultation day, to consider the responses received to the proposal notice and to decide, having taken into account any representations received, whether the proposal should be implemented either with or without any modification.[7] The site owner is then to send a "consultation response document" (referred to from now on in this decision as 'CRD') to each consultee, notifying them of their decision. The CRD itself is subject to a number of mandatory requirements. The CRD **must**[8]

a. Give details of the consultation carried out, including the first consultation day,

b. Give details of the representations received, the owner's response and such modifications if any, as were made to the proposal as a result of the consultation.

c. Contain a copy of the site rules in the form in which the owner proposes to deposit them with the local authority.

d. Where relevant, contain an explanation that the owner intends to deposit a deletion notice with the local authority and a list of the site rules to be deleted.

e. Contain a statement of the date that any site rules or deletions will come into force, provided that they have been deposited with the local authority in accordance with the regulations, namely no sooner than 28 days after service of the CRD but no later than 42 days after service of the CRD.

[7] SRW regulation 9(1)(a).

[8] SRW regulation 9(2) (a) – (g)

f. Explain the rights of appeal under regulation 10 SRW(see further below)

g. Be in the form set out in Schedule 2 to the SRW or in a form substantially to the same effect.

9. If a consultee wishes to appeal to the tribunal, then this must be done within 21 days of the receipt of the CRD, upon specified grounds. Where an appeal is made, then the consultee must notify the owner of the appeal in writing **and** provide the owner with a copy of the application made, also within 21 days of receipt of the CRD.[9]

10. The grounds upon which an appeal can be made to the tribunal[10] are that

a. a site rule makes provision in relation to a prescribed matter

b. that the owner has not complied with the procedural requirements imposed by the regulations

c. that the owner's decision was unreasonable, having regard, in particular to-

i. the proposal or the representations received in response to the consultation.

ii. The size, layout, character, services or amenities of the site; or the terms of any planning permission or conditions of the site licence.

11. By letter dated 28th April 2015 the Respondent's Operations Director David Curson wrote to all homeowners on the site enclosing a proposal notice detailing several proposed new park rules. This proposal notice was delivered by hand before 16.30 hours on Wednesday 29th April 2015. Two written and five verbal responses were received from home owners and a CRD was subsequently served by hand upon consultees before 16.30 hours on 11th June 2015.Mr Williams application dated 22nd June 2015 was received by the tribunal on 24th June 2015 and Mr Lawrence's application to the tribunal dated 25th June 2015 was received by the tribunal on the 26th June. The CRD and the applications had been served and made in accordance with the time scales set out in the regulations.

12. The tribunal gave directions to prepare the matter for hearing and were greatly assisted by all the parties in their response and particularly by the Respondent who provided a comprehensive hearing bundle.

[9] SRW regulation 10(1) and (3).

[10] SRW regulation 10 (2).

Site inspection

13. The panel inspected the site on 7th October 2015, accompanied by the Applicants, Mr Curson, Mrs Julie Lloyd, Operations Assistant of the Respondent and site manager Mrs Lynda Lovett. The weather was overcast but dry. The inspection was extensive, covering a large part of the site and specifically inspecting any parts of the site that either party wished us to view. We also noted the external boundary at the western part of the site and considered the parking spaces at various points on the site. We inspected Mr Williams' pitch at number 115 externally and we inspected Mr Lawrence's pitch at 45 externally, and at his invitation, the interior of his home. We externally inspected the Site Manager's pitch and area of decking/verandah at the rear of her pitch at number 88. Our attention was drawn to a number of other matters. These included but were not limited to; numbers 132/133 which had garages and designated parking spaces, number 79 which has its own parking space, a camper van parked at number 72, two sheds in the back garden of number 155 and the southwest development comprising numbers 116-134. Number 112 had both a garage and a corrugated iron shed, number 36, near the site office had a porch on the front, number 53 had a parking place directly outside the front door, occupied by a cone at the time of inspection (if occupied by a vehicle it would have made entry and exit to the home very difficult), number 50 had a Volkswagen campervan parked there. There was a trailer parked at number 20 and a covered golf buggy on a trailer at number 44.

14. Overall, the site was in a neat and tidy condition, and appeared to be well maintained and kept.

THE HEARING
Preliminary issues.

15. The Applicants represented themselves and Mrs K Lawrence joined her husband. The Respondent was represented by Mr Curson, assisted by Mrs Lloyd. There were two preliminary issues to deal with. Firstly, Mr Williams' application form had indicated by means of a tick box entry, that he contended that the owner had not complied with one of the prescribed procedural requirements imposed by regulations 7-9 of the SRW regulations. When questioned on this, Mr Williams confirmed that this was an error on his part and he did not maintain any such challenge to the procedural requirements.

16. Secondly, Mr Curson's statement of case drew the tribunal's attention to the fact that the Respondent did not receive any formal notification of the applications being made to the tribunal nor did they receive any copies of those applications, contrary to the rules. Regulations 10(1) and (3) require such notification and copies to be provided to

the Respondent (see paragraph 9 above). What effect does the Applicants' failure to comply with regulation 10(1) and (3) have? In Mr William's case, the tribunal sent a copy of the application and its enclosures to the Respondent by letter dated 24th June 2015, and in Mr Lawrence's case, the tribunal did likewise by letter dated 26th June 2015. Therefore in practice, the Respondent was in possession of the applications and their enclosures within 21 days of the date of the CRD. This was not in dispute.

17. Mr Curson, very fairly, made it clear at the hearing that he did not seek the dismissal of the applications on this technical point and that he wanted the hearing to proceed. Mr Lawrence pointed out that he had dropped his application in by hand to the tribunal and had been told by tribunal staff that he need not do anything else at this stage. Mr Williams said that he had heard from the tribunal that the tribunal had informed the Respondent of his application. Nevertheless the tribunal needs to be satisfied that it is not precluded from hearing the case by reason of this apparent failure to follow the rules.

18. The tribunal was so satisfied. In this case the appeal itself was submitted in time and the Respondent did have a copy of the application and all of the documents as required by Regulation 10(3) albeit provided by the tribunal. The tribunal had regard to the Upper Tribunal case of O'Kane and Charles Simpson Organisation Ltd [2015] UKUT 0355(LC) before His Honour Judge Nicholas Huskinson. In that case the appellant had appealed in time within the 21 day limit of the CRD but had not sent a copy of the application to the Respondent within the 21 day limit. The First-tier Tribunal had sent a copy of the application within that 21 day time limit.

19. Judge Huskinson decided that the appeal was validly made. It should be noted that the wording of the English Mobile Homes (Site Rules) (England) Regulations 2014 is mirrored by the Welsh Regulations that are under consideration. Judge Huskinson held that

> "*The provisions of Regulation 10(3) come into operation when a valid appeal to the F-tT has been made. In my view it would require clear language, which is not present in relation to Regulation 10(3), if the subsequent failure (after making a valid appeal) to comply with the notification requirements in Regulation 10(3) was to have the effect of rendering a previously valid appeal invalid. There could have been some express provision to this effect."*[11]

20. Judge Huskinson later pointed out

> *"..... theF-tT is not being asked to extend any time limits. It is merely being asked to conclude that, although the time limit in Regulation 10(3) has been missed, the consequences of this missing of the time limit are not to deprive the F-tT of the*

[11] At paragraph 41

jurisdiction to continue to entertain the appeal which had been validly brought within the relevant time limits. I do so conclude. The F-tT was in my judgement in error in declining so to conclude."[12]

21. Judge Huskinson had earlier held that the fact that all of the information had been supplied by the tribunal within the 21 day period meant that the appeal must be allowed. Therefore, following the Upper Tribunal case of O'Kane and Charles Simpson Organisation Ltd, we determine that the application was validly made and the documentation was served and received upon the Respondent within the time limit set out in the regulations.

22. We are also aware that the official guidance from the National Assembly likewise did not mention these obligations on the part of the applicant and neither did the form used to apply to the RPT in this case, although we understand that the form is now being amended to make those obligations clear in the future.

Substantive issues.

23. The hearing bundle contained the applications, statements, photos and all other documentary evidence on which the parties wished to rely. We confirm that we have read, considered and taken all of the documentary and oral evidence into account in coming to our decision. The CRD and the applications contained details of the rules that remained in dispute and we reminded ourselves of the legal test that we have to apply (see paragraph 10 above). At the hearing we took each rule that remained in dispute, and heard the evidence and the arguments on both sides. We adopt a similar methodology here and provide our decision on each rule individually.

The preface.

24. The preface to the new proposed site rules was objected to by Mr Lawrence where it stated that "*The Park Owner does not accept any liability whatsoever for loss or damage to any property of the Homeowner, including the park home, their family or any visitor to the park."* Although oral argument was heard on this matter from both parties, by letter of 8th October 2015 from Mrs Lloyd to the tribunal after the hearing, the Respondent proposed to remove the above italicised phrase in its entirety from the preface. By letter to the tribunal of 11th October 2015 Mr Lawrence indicated his agreement to this proposal and accordingly the tribunal notes the situation and need say no more on this point.

Rule 2 –"You must not erect fences or other means of enclosure unless you have obtained our approval (which will not be unreasonably withheld or delayed.)You must position the fences and any other means of enclosure so as to comply with the park's

[12] At paragraph 43

site licence conditions and fire safety requirements and to a maximum of 1m in height. Park boundary hedges must not be interfered with and no unauthorised entrances to the park are permitted."

25. Mr Lawrence was concerned about the part of this rule that fences and other means of enclosure were to be to a maximum of 1 metre. He provided photographic evidence of hedges and fences exceeding this height and indeed our attention was drawn to examples of the same upon our inspection. Mr Lawrence was concerned that if Newport City Council were to insist that this rule be enforced then this would cause a lack of privacy to the home owner and there would also be costs involved. He submitted that it should be for the Respondent to meet the costs of any such enforcement action as opposed to the home owner. He said "I'm not arguing about the 1 metre rule, but who pays for it."

26. Mr Williams drew our attention to a letter that he had received from Kimberley Rees of Newport City Council dated 7th November 2008[13] which had indicated that the Council would not be changing the site licence conditions in the foreseeable future, and that if that position were to change then they would be consulting with relevant parties including the residents as per the guidance in the 2008 Model Standards.[14] Mr Williams highlighted the part of the Introduction to the 2008 Model Standards that said "Where a current licence condition is adequate in serving its purpose, the authority should not normally apply the new standard."[15] Mr Williams made the point that there had not been consultation between the council and the residents. We understand that the previous rules did not have height restrictions.

27. Mr Curson had stressed that the proposed rules were not to be of retrospective effect and so Berkeley would not be seeking the removal or reduction in height of any existing fence or hedge, but that no further consent would be given to fences in excess of 1 metre in height where they formed the boundary between homes and any newly planted hedges would have to be maintained to a maximum of 1 metre. He said that historically hedges had been 6 feet high but timber fences they had tried to keep to 1 metre. Mr Curson said that it was an express term of the Agreement that if there are changes to the Site Licence, then the Occupier should pay for these. He said it would be unreasonable for the Park Operator to bear the cost and it would be unduly burdensome for the Operator to carry out maintenance on fences and hedges that the homeowners had erected or planted and where it was the homeowner's responsibility to maintain them. He also pointed out that if Berkeley failed to act on an infringement of

[13] Page 106 of the hearing bundle

[14] Model Standards 2008 for Caravan Sites in Wales, Caravan Sites and Control of Development Act 1960, Section 5.

[15] Page 107 of the hearing bundle.

the Site Licence then this could result in a possible Fixed Penalty Notice or a Compliance Notice being issued by the Local Authority.

28. With regard to Mr Lawrence's observation that the Rule had been ignored all over the Site and the photographs that Mr Lawrence had submitted to that effect, he said that under the current Rules there is no height restriction and the proposed new Rules are not in effect and not enforceable until such time as the consultation process has been completed and the new Rules are accepted and deposited with the Local Authority.

29. Mr Curson said in response to a question from the tribunal that he did not have an objection to fences and hedges on the boundary exceeding 1 metre in height, or them exceeding 1 metre if they were not between homes. He said that if somebody wanted a 6 foot fence on the boundary, then Berkeley probably would not object.

30. Mr Lawrence's point was that if the Local Authority wished to now enforce the Site Licence conditions, then Berkeley ought to pay for it as they had neglected to keep these standards in force until now. Mr Curson rejected the suggestion there had been neglect with regard to the height of the fences or hedges and pointed out that the 1 metre was a new requirement. He said that with regard to ongoing breaches of the Site Rules, then Berkeley would seek to deal with this by letters to the Owner in breach and then if this could not solve it, to refer the matter to the tribunal.

Decision on Rule 2

31. Was the Owner's decision in relation to this Rule, unreasonable having regard to the proposed oral representations received and response to the consultation, or having regard to the size, layout, character, services or amenities of the Site or the terms of any planning permission or conditions of the Site Licence? The Site Licence was granted on 31st March 2015 and will expire on 30th March 2020.[16] The Site Licence condition (iv)(e) states "Fences and hedges, where allowed and forming the boundary between neighbouring caravans, must be a maximum of 1 metre high"[17] **We are satisfied upon the evidence that the proposed Rule is reasonable.** Mr Lawrence did not object to the substance of the rule, but was concerned about financial implications of maintenance. The Rule itself does not address the question of who is to pay for any such maintenance of hedges and/or fences in the future but the tribunal agree with Mr Curson that in accordance with the Occupiers' Agreements it would be for an individual Occupier to maintain any fence or hedge that they erect. Therefore Rule 2 is approved as drafted in the proposed Rules.

Storage

[16] Page 252 – 258 of the hearing bundle.

[17] Page 254 of the hearing bundle

Rule 7 – "You must not have more than one storage shed on the pitch. Where you source the shed yourself, the design, standard and size of the shed must be approved by us in writing (approval will not be withheld unreasonably). You must position the shed so as to comply with the Park's Site Licence and Fire Safety Requirements. The footprint of the shed shall not exceed 48 square feet or 4.47 square metres".

Rule 8 – "You must not have any storage receptacles on the pitch other than the shed referred to in Rule 7 and any receptacles for the storage of domestic waste pending collection by the Local Authority".

32. Mr Lawrence objected to this proposed Rule. He pointed out that the pitches at Lighthouse Park vary considerably in size and that he had one of the larger pitches and the prescribed concrete shed of 4 feet x 5 feet 10 inches (or 23.35 square feet) is not of sufficient size. Mr Lawrence pointed out that upon his pitch he has additional storage space which in no way clutters his pitch nor does it restrict the natural percolation of any storm water. He pointed out that when he purchased his home there was a concrete base which had a storage box on it already and the pitch was inspected by Berkeley Parks and no objections were made known to Mr Lawrence or the previous owner. Mr Lawrence stated that he had added more storage space as the need arose and had also noted that many other residents of Lighthouse Park had more than one storage shed tucked away behind their homes as they have found the restriction of one storage shed to be unreasonable and insufficient. Mr Lawrence had provided photographic evidence of this and indeed we had noted the position upon our inspection.

33. Mr Lawrence told us that he had also seen extra storage sheds on pitches in Caerwnon Park in Builth Wells which was also owned and managed by Berkeley Leisure Group Limited. Mr Lawrence also referred to some of the pitches which had a garage with internal measurements of 2.4 x 5 metres or 129 square feet. He said these are not actually used for storage of vehicles, because they could only accommodate a very small car in any case as they are too narrow for most cars, and the owners who have these garages at Lighthouse Park use them for storage and workshops. He said that most garages are not used for their intended purpose, but instead used for storage, and cited this as an example of double standards by the Berkeley Leisure Group Limited.

34. Mr Williams stated that although the garages were initially to house cars and the idea was that the owner would park their car in the garage and visitors would park on the drive, because Homeowners are not using the garages for parking, the Homeowners are parking their cars on the driveway and visitors' parking has to be accommodated elsewhere. (It is fair to say that parking arrangements upon Lighthouse Park were the principal concern of Mr Williams as shall be seen.)

35. However, with regard to this Rule, this also concerned Mr Williams because he has a wooden shed upon his pitch in addition to the concrete shed. Mr Williams said that the

original owner of the Park, Mr Berkeley, knew the shed was there and had agreed to it. He said that Environmental Officers from the Council had said it was perfectly positioned according to the Rules in force at the time and he also said that Mr Berkeley had seen it from his helicopter and then told Mr Williams by the then Manager of Lighthouse Park that the shed could stay up. He said that he did not have it in writing although his shed had been in existence since around 1989. Mr Williams confirmed there had been no objections to it since that time.

36. With regard to Mr Williams' shed and others who may be in a similar position, Mr Curson said that the issue is to do with licensing and it is the licensing authority who have taken issue with extra sheds, but they were not seeking the removal of Mr Williams' shed as the Rules would not be retrospective.

37. Mr Curson had said that with regard to Rules 7 and 8 on storage, that consideration must be given to the visual amenity of the Park as a whole and that the Company were of the view that to allow multiple storage facilities would clutter the park, create more hard surfacing, reduce the ground area for natural percolation of storm water and may also prevent access to underground surfaces. He believed that the maximum permitted shed size of 6 feet by 8 feet (maximum footprint of 48 square feet or 4.47 metres) should be of sufficient size in most cases. He pointed out the park was for persons of aged 50 and over and many homeowners moving onto mobile home parks tend to be downsizing in property when they move into the park and as such would be aware of the amount of storage space available when purchasing their home.

38. Mr Curson argued that the Rules were necessary to ensure acceptable standards were maintained on the Park which will be of general benefit to occupiers, and to promote and maintain community cohesion on the park. He said that the Rules should be fair to all and to allow one Homeowner to have more than one storage shed/receptacle because their pitch is larger, would be using discretion which is not permitted under the new legislation.

39. Mr Lawrence had suggested that there should be different Rules for different sizes of pitch. Mr Curson told the Tribunal that in terms of the range of pitches at the Park the smallest would be 2 metres on 3 sides of the home and 3 metres on another side. He said that on the other hand Mr Lawrence and Mr Williams have 6 to 7 metres out to a fence upon their boundaries, but most will have 3 metres either side and at the back and will be 2 metres from a road. Therefore most would have 6 metres around them.

40. Mr Lawrence readily accepted the need for rules and for them to be uniform otherwise it can cause discontent, but he still argued that Berkeley could give storage relative to the size of the plot and again contended that the garages were being used for storage and where this happened they made a mockery of the storage rules anyway. We were

for example shown a picture [18] showing a shed on a plot that had been built around 1988 and a garage on the same plot that had been built around 1997 as an example of this.

41. Mr Williams, in a letter to the tribunal dated 9th September 2015 had suggested that under the 1983 Mobile Homes Act that all residents on Lighthouse Park Estate should have an express term in their Statements from the Site Owner, stating that they were not to build without the written consent of the Site Owner and therefore questioning the need for a Site Rule upon this issue. He also said that Berkeley had let matters slide since they took over the Park with second and even third sheds appearing on some pitches.[19]

42. Mr Curson accepted in evidence that there had been double standards and pointed out that these sheds were built before his team took over and that they were now looking for the best way forward and the new Rules were about moving forward. He reiterated that they would not be using discretion in future and would be making sure that the Rules were abided by. In answer to a question from the tribunal about Mr Lawrence's suggestion for a Rule regarding storage in proportion to the size of a pitch, Mr Curson said he could see the merits of that and that it was an interesting suggestion that could possibly work, however he considered that an 8 feet x 6 feet shed was big enough for the pitch and said that that had been increased from 6 feet x 6 feet to 8 feet x 6 feet now. With regard to the garages, then Mr Curson said these should be allowed and used for parking of vehicles.

Decision on Rules 7 and 8

43. We note that the Site Licence conditions state at (iv)(d)[20]that "a garage, shed or car port may only be permitted within the separation distance if it is of non-combustible construction and sufficient space is maintained around each unit so as not to prejudice means of escape in case of fire…… Existing timber sheds are to be replaced with non-combustible sheds upon any renewal or when the existing caravan is removed and a new caravan is brought to the site standing." The separation distance is 6 metres from any other caravan which is occupied as a separate residence. The Licence itself does not give a prescribed size for a shed or storage facility. Likewise the 2008 Model Standards are silent upon this issue.

44. We note that the reason given for the rules on the storage by Mr Curson relate to the need to ensure acceptable standards are maintained upon the park and in the interests of the visual amenity of the park as a whole. The tribunal agree that allowing multiple

[18] Page 105 of the bundle

[19] Page 104 of the bundle.

[20] Page 96 of the hearing bundle.

storage facilities does have the potential to clutter the park and to detract from the overall visual amenity. However as against that, we consider there is force in the observations of Mr Lawrence and Mr Williams, namely that there are some pitches which have a garage as well as a shed where the garage is apparently being used for storage purposes. Mr Curson accepted this and accepted what he described as the double standards that had arisen from matters before Berkeley's management of the park. The tribunal accepts in principle that a uniform shed size is reasonable to assist in the aims of the visual amenity and the consistency of rule enforcement within the park, however whilst noting that the park owner does not have discretion, the tribunal sees no reason why Mr Lawrence's suggestion should not be investigated. In other words, that for a larger pitch, where the visual amenity of the site overall and of the park would not suffer if larger storage sheds or an additional storage shed were allowed, then the tribunal invite the Respondent to consult with homeowners and consider a further rule change to reflect this. Mr Curson had not argued against such a proposal. We did not have sufficient information about the number and sizes of pitches to order or draft such a rule ourselves, and the fact that we make these comments does not make the proposed rule unreasonable. We find the proposed rule to be reasonable- we note that it is not to be of retrospective effect.

45. **Rule 13 – Age of occupants – "No person under the age of 50 years may reside in a Park home *with the exception of the Park Owner and their family or the Park Owner's employees*"**

46. Mr Lawrence objected to this Rule, but made it clear that he did not object to employees of the Park being under 50 years of age, but he did object to such employees living on the Park. He was concerned that a situation could arise with a young employee if they had young children because children are not always well behaved and that this could cause a problem on Lighthouse Park as it is deemed as a semi-retirement park. He felt therefore there should be no exceptions to the under 50 Rule. He acknowledged that Home Owners do have grandchildren visiting occasionally but he believes that residents would not want children there permanently. With regard to children at weekends, Mr Lawrence stated that there are no amenities or recreational facilities for children and if children were upon the park on a permanent basis, there really ought to be recreational spaces for them.

47. Mr Curson referred to the prescribed matters under the Act in relation to site Rules which were of no effect and these apply to any matter which was expressed to apply to only particular persons or to persons of a particular description, apart from where a Rule makes an exception for the Owner, the Owner's family or an employee of the Owner (where an employee of the Owner does not occupy the site under an agreement to which the 2013 Act applies)[21]. He submitted that the Government have recognised that

[21] Page 64 of the bundle.

Park Owners need flexibility with the staff and that has been encompassed within the Park Rules. He submitted that to apply all the restrictions to potential employees would limit the pool of candidates significantly and that some aspects of the job could be physically demanding. He said that on occasions staff accommodation is included as part of an employment package as it can be important to have staff upon the site to attend to emergencies, although he stated that to date Berkeley had not encountered a staff member living on any of their 50 Parks around the country who had young children, but he believed the provision needed to be in the Rule to cater for this eventuality. He said that if any member of staff did reside upon the Park with a young family, then the staff member would have to ensure that the conduct of their children did not cause a nuisance to anyone on the Park. He said that Mr Lawrence was right that there should be 10% of an area for recreation for children, but overall this would only be for 2 children, but they would want the scope to employ somebody with children.

Decision on Rule 13

48. Whilst the tribunal have sympathy with Mr Lawrence's concerns upon this issue, we accept the evidence of Mr Curson that the jobs upon the Park may be physically demanding and that to have a Rule where the employees were not allowed to have children, could unduly restrict the potential pool of applicants for that job. We also note the legislative exemption from certain prescribed rules for Park Owners, their families and their employees/ employee's families. Those exemptions are there for a purpose. **We therefore consider the Rule to be reasonable** and in the event that a staff member with children was employed in the future, we note that in practice the accommodation upon the park would be not be able to accommodate more than two children and that such children would be expected to be well behaved. Whilst noting that the park is designed for those in retirement or semi-retirement, the tribunal are not satisfied that the general amenity of the site or the character of the site would be unduly affected by the presence of children of a member of staff. Therefore we consider that the Rule is reasonable.

Rule 15 – Pets – "You must not keep any pet or animal at the Park Home or on the pitch except for one of the following; - not more than one dog (other than any of the breeds subject to the Dangerous Dogs Act 1991 which are not permitted). You must keep any dog under proper control and you must not permit it to frighten other users of the Park. You must keep any dog on a leash and must not allow it to despoil the Park,

Or – not more than one domestic cat.

Note – the express terms of a Home Owner's agreement contain an undertaking on the part of the Home Owner not to allow anything which is or becomes a nuisance, inconvenience or disturbance to other occupiers of the Park and this undertaking

extends to the behaviour of pets and animals. A similar requirement not to cause a nuisance applies to tenants and again this includes the behaviour of pets and animals

"*Rule 15 does not apply to pets owned by the Park Owner, Park Manager and their family although its provisions regarding the control and behaviour of such animals shall apply equally to all*"

49. Mr Lawrence objected to the proposed exception to this Rule in favour of members of staff. Again Mr Curson considered that flexibility was required on this otherwise they would be turning away potential employees. He said that any member of staff who had a dog would be expected to ensure the dog was on a leash and not allowed to roam freely or to despoil the park, but again he considered that the government had recognised the need to maintain flexibility in recruiting staff at the park and applying all of the restrictions to potential employees would limit the pool of candidates significantly. He explained that the Rule as originally drafted had been modified to make it clear that the provisions regarding the control and behaviour of such animals should apply equally to all. In answer to a question from the tribunal, Mr Curson confirmed that the Respondent had two out of fifty Parks where employees were under 50 and only one Manager had two or more dogs. He said that it would usually be one dog, but they would have to see how many pets a potential employee had. Mr Lawrence clarified that he did not believe that the proposed Rule would affect the pool of potential employees and he made it clear that he did not object to a potential employee having two or three dogs, but what he considered unreasonable was that the concession was not to be allowed to residents.

50. Mr Lawrence believed that around half of the homes had a pet. He referred to Mr Curson's suggestion that if there was a "shining star" of a potential employee who had two dogs and they would wish to be able to employ that person, that he did not believe on principle that there should be continued exceptions to the Rule in favour of Park employees.

Decision on Rule 15

51. We consider that the thrust of the Rule is reasonable having regard to the proposals and the representations received and having regard to the size, layout, character, services and amenities of the site, and therefore all persons living on the site whether they be home owners or employees/ site owner, should follow it. Whilst a situation has not yet arisen in practice, we note Mr Lawrence's principled objections to there being any difference between the employees and the Home Owners and we agree that there should not be an exception to this rule for employees or site owners. There was not sufficient evidence to support Mr Curson's proposition about potential recruitment difficulties which was a theoretical argument. There is no reason why the rule would unduly fetter an employer in the recruitment pool, particularly as it would be for the

Respondent in any advertisement for a position to specify that the potential employee would need to comply with the terms and conditions of employment which would include compliance with the site rules. Therefore we approve the rule as reasonable save for the italicised exception relating to pets owned by the Park Manager, Park employees or their families which is removed as being unreasonable.

52. **Vehicles and Parking – Rule 21 – "Parking is only permitted for one vehicle per Park Home"**

Rule 24 – "Other than for the delivering of goods and services, you must not park or allow the parking of commercial vehicles of any sort including:

- **Light commercial or light goods vehicles as described in the vehicle taxation legislation and:**
- **Vehicles intended for domestic use, but derived from or adapted from such a commercial vehicle.**

***With the exception of commercial vehicles operated by the Park Owner, their family and the Park Owner's employees*"**

Rule 25 – "You must not park boats, campervans, motor homes, touring caravans or trailers of any sort on the Park"

53. Mr Williams indicated that a lot of residents of the park are working and a lot of them now are moving in owning two cars. Mr Lawrence referred to the evidence in photo number 14 that he had supplied which showed a white Rolls Royce wedding car and he gave evidence that the white Rolls Royce, taxi and a private car all belong to one individual who is a taxi operator. He also said that photograph number 15 demonstrated there were 2 cars parked on a drive of the pitch right next to the Site Office. He further pointed out that in photograph 16 number 50 had 3 vehicles for the one Park Home. These were all examples of homeowners having more than one vehicle. Mr Lawrence however also said that he did not object to there being more than one vehicle provided there was sufficient space to accommodate the vehicles. Mr Lawrence said that the photographs again illustrated the double-standards employed by the Berkeley Leisure Group. He said that he had no objection to the use of commercial vehicles used on the site for building and maintenance purposes, but again could see no reason why there should be any exception to this Rule for the Park Owner, their family and the Park Owner's employees to use private commercial vehicles when the Residents were not able to.

54. Mr Lawrence also made it clear that he wished to purchase a small campervan, such as a Volkswagen Transporter and to park it on his driveway. He said that this would not infringe on any Fire Regulations nor would the Local Authority object to it. However, Berkeley Leisure Group does object. Mr Lawrence again pointed out that his photo

showed a VW Transporter campervan had been parked on the driveway of another pitch for the past 4 months and a VW Transporter T25 campervan had been parked in another location upon the Park for the past 3 ½ years and Berkeley Leisure Group had turned a blind eye to these two campervans. Mr Lawrence had also pointed out that in fact his proposed camper van would take up no more room than a standard car and there are cars on the site longer than the campervan. Mr Lawrence had suggested that vehicle size should be restricted to 6m in length and 2.1m in height, which would be a more consistent way of dealing with matters and then would allow small campervans. He submitted that denying him permission for a small campervan would regulate and restrict his own activities contrary to his rights.

55. Mr Curson said that he had not been aware of the Rolls Royce and the taxi and that they would not be able to relax the Rule to allow multiple vehicles. He accepted there may have been discretion used in the past by the Site Manager, but with the new Rules they will not be using discretion in the future and he suggested that in fact the use of discretion in the past demonstrates why they need new Rules which are completely clear and concise for everybody. Mr Curson's witness statement also gave further detail upon the approach taken and how under the current Rules the Respondent was only obliged to provide one car parking space per householder and that occupiers with more than one vehicle and visitors may be obliged to park their vehicle off the Park. He said that taking into account the size and layout of the Park, there was insufficient space to permit multiple vehicles for Home Owners and provide a quota for visitors. He did point out that where space and Site Licence conditions permit, Home Owners would be at liberty to construct a car parking bay upon the pitch with written consent from the Respondent which would not be unreasonably withheld or delayed.

56. Mr Curson pointed out that the current conditions of the Site Licence require that the Respondent complies with the Regulatory Reform (Fire Safety) Order 2005, which requires a Fire Risk Assessment to be undertaken. When this is done, the Respondent must have regard to cars parked in the space between mobile homes and the potential increased risk of fire spread which those cars may represent. He said the Respondent was required to ensure that it takes steps to prevent against this additional risk. He said that if the Respondent fails to have regard to this risk, then the Licensing Authority may take steps to require that action is taken by the Respondent or otherwise formal action may be taken against it in the form of criminal prosecution.

57. He said that the Respondent was concerned that allowing an increase to the number of cars permitted on the Park would cause congestion and there would be a risk that cars would be parked in breach of the Fire Safety Requirements and therefore the conditions of the Site Licence.

58. With regard to campervans and commercial vehicles, Mr Curson said that there was one campervan that had been there with permission, but the dark Volkswagen had arrived

recently and the Home Owner had been written to. He said the concern was the space that these vehicles take up and he said that to police the different types of vehicle, to distinguish between a campervan or a motor home and so forth would be an impossible task. He said that this is a well known Rule in Park Homes and it has to be a person's choice as to the vehicle they have, and if they are aware of the Rule then they can purchase such a vehicle but just park it elsewhere and not upon the Park itself. He said that in Mr Lawrence's case, Mr Lawrence signed a Park Interview Form on 27th October 2011 acknowledging that he understood the information received from the Park Manager at the time of the introduction meeting before moving onto Lighthouse Park, in particular with regard to the Park Rules and the Site Licence conditions. He said the Respondent was also concerned that by allowing campervans and motor homes on the Park that may have an effect upon the visual amenity of the Park.

59. In answer to a question from the tribunal, Mr Curson said that this is not a big problem, but occasionally people will come in and wish to park campervans etc and they have to address it. However, he considered that it was not a big problem simply because the Rules are in place to address it and prevent it. Mr Lawrence asked Mr Curson whether he considered there should be any exemptions and Mr Curson did not consider this to be the case. Mr Lawrence said he was aware of another Park owned by Berkeley at Caerwnon in Builth Wells where someone has been given permission for a campervan, and that Mr Lawrence felt aggrieved that he had obeyed the law and Rules and that if he had flaunted them and purchased a campervan then he believed he would be able to keep it as enforcement of the law and the Rules would not be retrospective.

60. With regard to commercial vehicles, Mr Curson had said that as the Respondent is unable to use discretion, they cannot say that one van is ok, but not another and so they have a policy of no commercial vehicles. He said that it is a constant and time consuming task addressing those cases where a commercial vehicle is brought onto the park in breach of the Park Rules.

61. He said that to operate and maintain the efficient day to day running of the park, then Park employees may need to use commercial vehicles to move materials and kit etc around the park to achieve this, but they did not foresee a situation where a Park Owner or Park Manager would be driving multiple commercial vehicles around the park.

62. Mr Curson pointed out that the previous Park Rule stated that commercial vehicles, boats, touring caravans and motor homes of any size may only be parked on the park with prior permission from the Company, but since allowing vehicles at the Park Owner's discretion was no longer possible under the new legislation, the proposed new Rules were necessary. Mr Lawrence stated that there are commercial vehicles on the Park every day and in terms of the volume of vehicles, he said it was not uncommon for a husband and wife to have two cars in a household. He also described that in his opinion

some residents must have the moral right to choose a small van or a pick-up and he felt there should be no exception to the commercial vehicles Rule for the staff.

63. With regard to Rule 21 and parking only to be permitted for one vehicle per home, Mr Williams' contention was that he had had a parking bay numbered 115 and designated to him. It was clearly very important to Mr Williams that he should have his own parking space and in both his application form and at the hearing he referred to a plan number BRK4600/LH5 which was a plan of 20th January 1997 which he said had been submitted by the Respondent to the Planning Department of the Council prior to the development of the southeast corner of the Park showing the bay marked 115 next to his home. Amongst the documents that Mr Williams submitted with his application was a letter to Mr Curson that he had sent on 20th May 2015 in which he stated that "My designated parking bay has now been deemed communal"[22]. Mr Williams had provided other correspondence on the issue of parking over the years. However, upon further questioning he accepted that there was no parking bay reserved to him in the title deeds and he had come to the understanding that he had his own bay because when he moved in people parked on what they considered to be their positions and if visitors came to the Park then Owners would ask them not to park in a particular place. With regard to the plan already referred to, his belief was that the bays were marked for the homes already in situ and designated so that there would be ample parking for those residents.

64. Mr Williams said that if he was going out, then he would use a cone that he would place upon the parking space closest to his home, although he accepted he was not entitled to use a cone or to otherwise mark the parking space. Mr Williams then described how there had been an exchange with a neighbour and Mr Williams' wife about somebody blocking one of the parking spots which he said "led to a disagreement that lasted 10 years". Mr Curson stated that there is ample parking and it has worked well and trying to designate spaces would be impossible. Mr Curson confirmed that the numbering of parking spaces referred to by Mr Williams upon the plan, was an annotation to demonstrate that there were sufficient spaces for the new development when it had been submitted to the Planning Department seeking permission and it was not an allocation of a parking space to individual homes. Mr Curson said that one of the disadvantages where Home Owners do try to reserve a parking space, it is that it can lead to all manner of markings, ranging from hand painted signs to number plates to traffic cones or hand painted numbers on the road and Berkeley cannot police and manage allocated spaces for individuals.

[22] Page 56 of the hearing bundle.

Decision on Vehicles and Parking

Rule 21

65. The Rule that parking is only permitted for one vehicle per Park Home is reasonable and upon the evidence we are satisfied that the purpose of the Rule is to preserve the character and amenities of the site and that the Rule was necessary to ensure that acceptable standards would be maintained, which would be of general benefit to Occupiers and to promote and maintain community cohesion.

66. The Tribunal noted the strength of feeling of Mr Williams in particular and his belief that he should have a designated parking space. We are aware of the frustrations that can be caused if a Resident is not able to park close to their home. However, upon the evidence we are satisfied that when Mr Williams commenced his occupation of his pitch, there was no designated parking space. In fact, the space that he now claims for his own was not constructed until many years later in the late 1990's. We are satisfied and accept the evidence of Mr Curson on this point, namely that the indication of number 115 upon the plan was not intended to denote a designated parking space, but was for planning purposes to ensure there were sufficient spaces for the number of pitches. We were told in evidence that it was 2001 when the Site Licences were combined. There had been previously a Lighthouse Park site and a Seaways Park site and the 8 parking bays that Mr Williams had referred to were built in or around 1997/1998 which was many years after he had first occupied his pitch. We noted that Mr Williams questioned Mr Curson about new pitches being given a parking bay and that this was often the case, but this does not mean that the pre-existing pitches are retrospectively entitled to have a designated parking bay. Notwithstanding Mr Williams' strength of feeling, there was no compelling evidence to support his contention that he had been granted and/or should be granted a designated parking bay and **we find the Rule reasonable.**

Decision on Rule 24

67. We consider that this Rule is reasonable and necessary for the statutory purposes. Whilst we note Mr Lawrence's objection to there being an exception in favour of commercial vehicles operated by the Park Owner, their family and the Park Owner's employees, we consider that this is an entirely reasonable Rule. This would relate to the use of a commercial vehicle which would be used, amongst other things, to maintain the condition of the Park and therefore to contribute to the maintenance of its visual amenity. Allowing the exception in favour of the Park Owner, their family and the Park Owner's employees would not detract overall from the community cohesion or appearance of the Park.

Decision on Rule 25.

68. We have sympathy with Mr Lawrence's point of view, particularly his point that it should be possible to provide a maximum length and height of a vehicle in order to preserve the standards upon the site and the visual amenity of the site. However we also note Mr Curson's evidence and his contention that at present it would not be possible or practical to try and define what sort of campervans or vehicles should be allowed on the site and the proposed Rule with its blanket ban upon all such vehicles certainly has the benefit of clarity. It was apparent to the Tribunal that Mr Lawrence felt aggrieved in part because of what he saw as the inconsistent application of the Rules and that some had apparently flouted those Rules with impunity. However, the fact that some Residents do not keep to the Rules does not make them unreasonable or unnecessary. The answer of course is in the consistent enforcement of those Rules and we were assured by Mr Curson that this was the approach that Berkeley was now going to take. In the circumstances therefore, we consider that the Rule is reasonable and does provide consistency and ease of application, notwithstanding that this may result in individuals such as Mr Lawrence being disappointed in not being able to have their choice of vehicle kept at Lighthouse Park.

Rule 29 – Weapons – "You must not use or display guns, firearms and offensive weapons (including crossbows) on the Park and you may only keep them on the pitch or in your home if you hold the appropriate licence, a copy of which should be provided to the Park Owners and they are securely stored in accordance with that licence"

69. Mr Lawrence objected to this Rule because he wanted to use a pellet gun for the control of vermin that spread disease. Mr Lawrence's pitch is at the boundary of the Park and close to a reen. He said that now and again rats from the reen appear in the garden and around his pitch. He has tried blocking potential routes of access. He said that this can depend upon the times of year. We noted that Mr Lawrence is a nature lover and had an enviable collection of bird feeding stations and facilities for the wild birds. Inevitably, as Mr Lawrence accepted, such provision of food could also attract rats. Mr Lawrence said that he ruled out the use of poisons due to the extensive wildlife in the area and he described that he has had hedgehogs on his pitch and he was concerned that a small hedgehog could go into a bait trap and that pest control would not give a 100% guarantee that it would kill rats. He told the tribunal that he had shot ten rats this year and he used a spring powered airgun. Mr Lawrence stated that there was no way this weapon could kill anyone although he did say at worst it could blind someone. This was not a comment we found particularly reassuring.

70. Mr Curson stated that the Park was not an appropriate place for the use of even pellet guns or air rifles. He acknowledged that they don't require a licence, but due to the close proximity of the mobile homes, the environment was not appropriate and there is

the danger of a potential ricochet from a pellet if the target was missed. He was also concerned that there are many different makes and models of pellet guns and air rifles on the market and some could be mistaken for authentic firearms that do require a licence and could cause concern to other Home Owners who are not familiar with pellet guns/air rifles. Although he accepted that Mr Lawrence was on the boundary and it was unlikely that his use of the spring powered weapon was going to harm anyone, there are still people who walk on the other side of the fence at times and he stated that the Respondent needs a Rule that would protect all Residents. Again he said it would be difficult to write and police a Rule that distinguished between different makes and models of what may or may not be allowed.

Decision upon Proposed Rule 29

71. We were satisfied upon the evidence that Mr Lawrence has used his pellet gun responsibly and safely and we note with admiration the provisions he makes and the concern he has for the local wildlife (save for rats). However, we accept Mr Curson's arguments and believe that the site Rule is necessary and that it would not be practical to try and make exceptions for different types of weapons. The proposed Rule as drafted has the virtue of consistency which should enable effective enforcement. **We therefore find the rule to be reasonable.**

Proposed New Rule by Mr Lawrence

72. In response to the CRD, Mr Lawrence had proposed a new Rule that the Park Owner was responsible for the maintenance of boundary fences. He considered that the boundary wooden fences were the responsibility of the Park Owner and any maintenance and repair should be undertaken by Berkeley Leisure Group. He said that it would not be good enough for a post and wire fence to mark the boundary and he disagrees with Berkeley's contention that it is the Home Owner's responsibility to maintain them.

73. Mr Curson stated that Mr Lawrence was right that the Berkeley Group do have an obligation to demark the boundary and he said that sometimes they would not want to see, for example, a 6 foot high panel fence and some people would want, for example, a hedge. He said that it would be unreasonable for Berkeley Group to foot the bill for ongoing maintenance where the hedge and/or fence had been planted/erected by the Home Owner. He made it clear that if it was Berkeley's original fence, then they would maintain it. Mr Curson made it clear that if the Home Owners' home bordered the boundary of the Park and they wanted to erect a fence or plant a hedge, then they would be requested to complete a Park Home Refurbishment Form where consent would not be unreasonably withheld or delayed, but it would then be the Home Owner's responsibility to maintain the same. Likewise, he said any current wooden fences or hedges on the boundaries would have been erected/planted by Home Owners and therefore would be their responsibility.

74. We have considered the proposed new Rule suggested by Mr Lawrence as a representation received in response to the consultation, but we are satisfied that no such Rule is necessary and we accept Mr Curson's submissions upon this point.

Concluding Remarks

75. We note that Mr Lawrence in his closing submissions agreed entirely that there should be Rules, but he felt they ought to be constructive and not what he described as of a "petty draconian nature". We were impressed by the way that the Applicants and the Respondent prepared their cases and represented themselves before us. We record that Mr Lawrence is clearly a principled gentleman who has been very honest and open with his views and feels that he has followed the Rules and others that have not done so have benefitted by breaching them. Upon the evidence, we can understand Mr Lawrence's frustration. As stated, Mr Williams' prime concern related to his contention that he has an individually designated parking space. Upon the evidence, we are satisfied that he does not and that the Rules in relation to parking are reasonable.

76. We do not consider that the proposed Rules are of a petty draconian nature as contended by Mr Lawrence, but in fact meet the statutory tests. We were impressed with the appearance of Lighthouse Park and the way in which Mr Curson and his colleagues prepared the case and carried out the consultation process. We were satisfied from the evidence before us that the objections raised by the consultees upon the site including the Applicants, had been carefully considered and that reasoned responses had been provided to deal with those objections.

DATED this 22nd day of December 2015

Richard Payne LLB M Phil
CHAIRMAN