

Pembrokeshire County Council : Response to CELG Committee Consultation on the Holiday Caravan Sites (Wales) Bill (as introduced) – dated 20 May 2014

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Context: Holiday caravan parks in Pembrokeshire

1. There are currently 152 holiday caravan parks licensed in Pembrokeshire. In addition, a large number of caravan sites exist that are operated by exempt organisations (inc. the Caravan Club and Camping & Caravanning Club). These do not require a site licence, nor do they receive any intervention by the Authority.
2. The sites are inspected in accordance with a locally devised risk rating scheme that bands sites into 4 risk categories A to D. Sites in Categories A to C are inspected at 1, 2 and 3 year intervals respectively. Sites in Category D (approximately two-thirds of the total) are not subject to routine programmed inspection, but may be inspected in response to a service request (e.g. complaint), or otherwise subject to alternative intervention (e.g. newsletters and self assessment forms). This scheme was developed having regard to measures introduced in other regulatory areas (e.g. food safety and health and safety), to ensure a risk-based approach to intervention and the careful and proportionate management of the Authority's finite resources. This approach was also consistent with the Government's agenda on deregulation and lifting the red tape on business. Approximately 21 sites are currently subject to proactive inspection annually. In addition, the Authority processes approximately 10 licence transfers annually.
3. Limited formal enforcement action has been taken in response to identified non-compliance, with matters tending to be resolved informally or in rare circumstances through the application of wider health and safety powers. This approach has been influenced by a number of factors:
 - Blurring of the boundaries and hence responsibilities under planning legislation and caravan site licensing provisions.
 - Model conditions being ambiguous and therefore difficult to enforce.
 - Absence of any national policy steer or guidance on the application of the Act and associated conditions.

General Principles of the Holiday Caravan Sites (Wales) Bill and the need for legislation to modernise the regulatory framework for holiday caravan sites in Wales.

4. The Authority is in firm support of modernising the regulatory framework for the licensing of caravan sites, providing a more consistent basis and effective tools for ensuring compliance with conditions aimed at protecting public safety and consumer rights, and for preventing the potential uncontrolled drift towards residential use - though we have little evidence of this locally. However, it is appropriate that any new provisions are evidence based and proportionate, and that any increased burden is adequately resourced. The following comments are provided with these objectives in mind.

Licensing – Part 2

Proposed fit and proper person test

5. While the Authority fully appreciates the relevance of introducing a 'fit and proper person' test for 'residential caravan parks (under the Mobile Homes (Wales) Act 2013), having regard to vulnerable nature of many residential occupants, we are not convinced

that a similar test is needed for owners/managers of holiday parks, where caravans will generally be privately owned holiday units or otherwise let for short vacations. In the absence of a clear need, the introduction of such a test might be seen to impose an unnecessary burden and cost on the industry.

Site fees

6. The Authority fully supports the introduction of appropriate licence fees and system of annual charges. This charging mechanism will ensure that the cost of re-issuing site licences and of subsequently monitoring compliance at an enhanced level will be appropriately resourced, which is critical at a time when local authority budgets are under immense pressure. These charges should be tiered appropriately, so that smaller sites are not subject to a disproportionate cost burden.

Power to attach conditions to site licence

7. 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. We consider that the updated conditions relating to park home (residential) sites offer a useful starting point and should enable this work to be completed within a relatively short timeframe. 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.

Site inspections and licence reviews

8. We welcome that the proposal does not require the annual inspection of all sites, as was originally intended, and support the proposal of allowing scope for a risk-based approach. We understand that this proposal has been made recognising the disparity in approaches taken by local authorities in the absence of any national guidance and the desire to increase the level of inspection and enforcement in certain cases. However, the proposed requirement for all sites to be inspected at intervals of not less than 3 years still provides considerable scope for significant variation. This could have a direct bearing on local authority costs and in turn licence and/or annual fees, creating an uneven playing field. It might also give rise to ongoing concerns regarding the comparable levels of compliance. We would therefore support the introduction of a nationally agreed risk-rating scheme with corresponding inspection frequencies.
9. However, we would question whether all sites would warrant a routine programmed inspection and whether there might be scope for establishing a 'non-inspectable' risk category, having regard to the principle of earned recognition which is increasingly becoming a common feature across other regulatory areas (e.g. health and safety, and to a lesser extent food safety), and ties in with the Government agenda of minimising burdens on generally compliant businesses. This might be relevant for those with a strong track record of compliance and robust management systems in place for ensuring compliance with site licence conditions.

Fixed penalty notices and compliance notices

10. We welcome the opportunity to recover, separately, costs associated with any formal enforcement necessary. This will again help resource necessary intervention while ensuring that only those poorest performing sites, responsible for the more serious and/or persistent breaches are affected by this cost element.
11. One of the issues encountered is the numbers of units on site exceeding those permitted on the licence. This can result in site conditions being compromised and provide operators a commercial advantage over those sites that are run vigilantly. Fixed penalty notices, with an appropriate penalty, might deter such breaches.
12. The majority of breaches encountered can take time to resolve and require consultation with occupiers, e.g. the siting of wooden verandas/sheds/hedges within the separation distance between units, and issues with the separation distance between caravans and between caravans and the boundary. The introduction of compliance notices would seem to offer a far more effective tool in such instances, allowing for improvements to be secured over time, hopefully without recourse to the court system.

Residency test – Part 3

13. Historically, holiday static caravan sites in the County were given planning consent with a condition requiring a 6 week closed period during January and February. The purpose of this requirement was to prevent residency in accommodation that was not suitable for winter occupation. However under these terms occupiers could potentially live in their caravans throughout the open period and seek alternative accommodation for the 6 weeks that the site is closed. Such use would conflict with the proposed residency test designed to ensure holiday use only. More recently other forms of occupancy restriction have been imposed through planning permissions. These conditions clearly state that units must be used for holiday purposes only and that the length of any holiday is restricted to 8 weeks, with no return in 4 weeks and that site registers are maintained. More recently, 12 month planning consents have been issued to increase the tourism offer and it is foreseeable that residential misuse might arise as an unintended consequence.
14. Due to limited resources the Authority's Planning Division have not proactively monitored compliance with these residency conditions, though do respond to complaints. This situation might enable sites to set on a path to a 10 year breach that would allow them to provide evidence of lawful use. This can lead to residential development in the countryside and other areas, where it would not otherwise have been approved, can affect the appearance of the locality, put pressure on local services and change the dynamics of the community.
15. Enforcement options available to planning officers are very time consuming, having regard to the difficulties that can be involved in gathering evidence in relation to whether or not a breach has occurred. Any opportunity to deal with these matters more expediently would therefore be welcome.
16. The justification for making LAs responsible for taking direct action against an occupier who fails the residency test is unclear. As site owners will be responsible for obtaining evidence to ensure against residential occupation, it would seem reasonable to expect them to tackle breaches by the occupier, as they would for other conditions (e.g. those prohibiting the erection of verandas and wooden sheds that breach required separation distances). However, we can appreciate that the use of the proposed 'residence test failure notice' might be more expedient and that the option of issuing a fixed penalty notice on the occupant might also act as a further deterrent. Based on the limited evidence of residential occupancy on the holiday sites within the County we do not anticipate this being a significant issue for site owners, and the new condition, better awareness of the restrictions and enhanced monitoring should serve as an adequate deterrent in most cases. The advantages and disadvantages of each approach should be identified and subject to careful consideration in arriving at a final proposal.

17. 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.
18. 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.

Holiday caravan agreements – Part 4

19. The proposals for holiday caravan agreements are welcomed. Numerous sites in Pembrokeshire do not have written agreements, as while this is best practice there is no legal requirement for them to do so. A statutory obligation will ensure consistency across the sector, make enforcement easier and ensure protection for consumers.

Financial implications - Regulatory Impact Assessment (RIA)

20. We have a number of concerns regarding the RIA, for Option 2, in so far as it relates to the anticipated costs to local authorities should the Bill become law, which will in turn have a bearing on the licence and annual fees. It is recognised, however, that the costs are based on the current proposals, and presumptions made in support of these, and that actual cost would be heavily influenced by any final decisions regarding the frequency of inspections, necessity for residency checks by local authorities etc.

Presumptions regarding officer grades

21. The RIA presumes that following initial work to re-issue modified licences, which it anticipates will be undertaken by Environmental Health Officers (EHOs), that the subsequent inspection of sites and work to verify that residency checks are being undertaken will be undertaken by 'technical officers' (TOs) on a lower grade.
22. In Pembrokeshire, caravan site licensing is undertaken by the Health and Safety Regulatory Team, who are generally responsible for advising on and enforcing these provisions, in conjunction with other relevant health and safety arrangements. The team is staffed by EHOs, with no staff employed at a lower technical grade. While the proposals would increase the demands on the service, this would not be to the extent where it would be necessary/appropriate to employ additional staff (other than on a temporary basis to resource work to re-issue modified licences to the 152 holiday sites in the County), and so we anticipate that this work will continue to be undertaken by EHOs and salary costs would need to be reflected accordingly. This situation is likely to be relevant to other, though perhaps not all local authorities.

Estimated employment costs

23. In estimating employment costs, the RIA has used a typical salary for specified officer grades (EHOs and TOs), inclusive of salary on-costs (to cover National Insurance costs and employer pension contributions). Other corporate on-costs have not been included, yet would be relevant in calculating the full employment costs and be reflected in the calculation of the relevant fees. This will have a significant bearing on the local authority

costs that would inevitably need to be passed on. For example the RIA indicates the cost of employing an EHO to be in the order of £38,100, which is consistent with the rates for Pembrokeshire if corporate on-costs are excluded. However, with the inclusion of corporate on-costs this figure rises by a further 34.6% to £51,270.

Proposed requirement for the proactive inspection of all sites

24. Under the new proposals local authorities would be expected to inspect all licensed holiday caravan parks at intervals of not less than 3 years, with the expectation that actual intervals be determined through a process of risk assessment. As indicated under point 2 above the Authority currently implements a risk assessment scheme with 3 inspectable risk bands (A-C) and a further category (D) where alternative interventions are generally employed. The introduction of a requirement that all sites be subject to proactive inspection will increase the demands on the service significantly. In the absence of a nationally agreed risk rating scheme, the number of inspections that might be required each year remains unclear. Based on the Authority's current rating criteria and banding, we would class the majority (>90%) of our 152 sites as relatively low risk, and as such they would be inspected at the maximum interval of once every 3 years. However, the RIA anticipates an average inspection interval of every 2 years, suggesting that a more intensive programme of inspections might be expected.
25. The following table compares the cost to the Authority of monitoring compliance with the licensing requirements under the existing regime; the expected cost under the proposed regime using the assumptions in the RIA (i.e. regarding officer grade, discounted corporate on-costs and typical 2 year inspection interval); and, our predicted costs (i.e. where EHOs are employed, corporate on-costs included and a 2 year inspection interval becomes the norm). The table also indicates the average costs to be passed on to each site over the initial 5 year period, though we recognise in practice that this should be tiered appropriately.

	Current costs	Estimated costs based on assumptions in RIA	Predicted costs based on LA calculations
Over 5 years	£19,430	£97,865	£150,676
Annual costs for first 5 years	£3,886	£19,573	£30,135
Average cost per site over 5 years	Not applicable	£644	£991

26. The above costs reflect the costs in Year 1 of issuing modified licences (spread over 5 years), the cost of conducting annual risk-based inspections as required, and the cost of undertaking residency checks for sites not inspected in a given year.
27. Indirect costs associated service management and administration are not reflected in these calculations (e.g. policy and procedure development, training, monitoring, planning and co-ordination meetings, etc.), but would need to be determined and reflected in due course. Similarly, time spent dealing with associated service requests (e.g. requests for advice from site owners) has not been included, though would be expected to be fairly minor at the outset, due to the level of planned activity to be undertaken in support of re-issuing licences.
28. Enforcement costs have been specifically excluded as these would not be relevant to the setting of licence and annual fees, being recoverable directly from offending sites.