

## **Communities, Equality and Local Government Committee**

### **Stage 1 Consideration of the Regulated Mobile Home Sites (Wales) Bill - Peter Black AM – Members Bill**

#### **Written Evidence from the Minister for Housing, Regeneration and Heritage**

##### **Consultation Questions**

###### **General**

1. Is there a need for a Bill to amend the arrangements for licensing and make provision for the management and operation of regulated mobile homes sites in Wales?

*Yes, there is a definite case to amend the existing mobile home site licensing regime and I would have considered including measures to change the existing arrangements in the context of the forthcoming Housing Bill if Peter Black had not been successful in the ballot for his Members Bill. Recent research by Consumer Focus Wales makes a strong case for amending the existing site licensing arrangements, which are in some respects quite outdated. We need a more modern approach to mobile home site licensing which protects the interests of residents and site owners and operators. There is a definite need for local authorities to be able to charge for issuing licences and to be able to cover their enforcement costs. The procedures surrounding the sale and gifting of mobile homes also need modernising so that the interests of all parties to the transaction are more securely protected. Mr Black's Bill does cover these matters but more work needs to be done on it to ensure that the new licensing system covers all the issues that are relevant to the success of a new licensing regime.*

2. Do you think that the Bill, as drafted, delivers the stated objectives as set out in the Explanatory Memorandum?

*Overall I would say yes. However, I have some concerns in relation to the transitional arrangements between the existing regime and the new system that Mr Black wants to introduce. It is not clear whether Peter's intention is to revoke all existing site licences, which could have consequences in relation to planning permission, or whether the new regime applies only to new sites which will be established after the Bill is enacted. If it is the latter option, then arguably the Bill will have little effect on the sector as a whole as it is unlikely that a large number of new sites will be established in the short term. The Bill as drafted does enable Welsh Ministers to make Orders which will cover transitional arrangements, but at the same time these could have been included on the face of the Bill for the purpose of clarity. We will need to find a way to ensure that the new regime applies to all sites and could achieve this by giving existing licence holders a period of grace to reapply for site licenses under the proposed new arrangements.*

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

*Whilst the general principles behind the Bill are suitable there are certain areas where key details are lacking and the Bill will need to be amended to ensure that all the relevant issues are covered. Whilst some unintended consequences of changing the licensing regime are highlighted in the Bill's Explanatory Memorandum, no real measures have been considered to deal with these unintended consequences. I am particularly*

concerned about the possibility of owners of residential sites applying to local authorities to have the use of their sites changed to providing holiday accommodation to avoid compliance with the new licensing regime that Peter's Bill seeks to introduce. This would obviously also have a detrimental effect on the accommodation that is currently provided by sites that are licensed for residential purposes and could provide significant problems for local authorities who have also licensed sites for mixed purposes. There would also be implications for permanent residents who might find themselves displaced if sites changed use. This issue will need to be addressed by this legislation in order not to provide a loophole that could be exploited by some site operators and owners.

4. Are the Bill's proposals in relation to a fit and proper person test for site owners and operators appropriate, and what will the implications be?

The Welsh Government recognises the need for some form of fit and proper person test to be included in any new site licensing regime that is under consideration. However, the test that is contained in the Housing Act 2004 in relation to HMO licensing does need to be enhanced and I am glad to see that Peter has worked on this and now includes contraventions of equality legislation in his enhanced test. It would also have been useful if he had considered firearms offences for inclusion as the Scottish Government recently did in its private rented sector legislation. Again this is something that we could look at as the Bill progresses.

There also seems to be some confusion in the Bill's Explanatory Memorandum about how the test is going to be applied and who will need to pass it. For example, paragraph 61 states that "In order to be granted a licence the owner and manager (or other persons involved in the management of the site) will need to pass a **'fit and proper' person test**" and goes on to state that this largely replicates the test that is applicable to owners of HMOs under the existing licensing arrangements. However, the whole point of the test under the HMO licensing regime is to enable an owner who fails the test to retain ownership of the property and appoint someone who passes the fit and proper person test to manage the property on their behalf. This would also have to be the case with the licensing regime that is outlined in Mr Black's Bill. In that sense an owner does not have to pass the test so long as the person managing or operating the site does so. This point needs clarification before the Bill proceeds.

5. Are the amendments to the contractual relationship between mobile home owners and site owners which would result from the Bill appropriate? If not, how does the Bill need to change?

The benefits of the amendments to the contractual relationship between mobile home owners and site owners/operators are recognised and I am pleased to see that Peter has tackled the issue of alleged "sale-blocking" and has clarified the role that the Written Statement plays within the contractual relationship. However, more work needs to be done on the costs associated with the new licensing regime and clarity is required around the issue of the additional costs for site owners being absorbed by them and what effect this will have on the numbers of sites in Wales. Will more site owners apply for a change of status for their sites to circumvent the new legislation? Will some site owners leave the industry altogether or choose to decrease investment in site facilities? These issues need addressing and are just mentioned in passing in the Bill's Explanatory Memorandum. The Bill needs to more fully address the issue of licensing costs rather than just allow Welsh Ministers to do this. There may be a case for allowing local authorities to determine their own licensing costs, either on a collaborative regional basis, or individually, provided they

*publish a fees policy that would cover their approach to all the fees associated with site licensing. I gather this is what the Department for Communities and Local Government is proposing in the context of the Private Members Bill that is being taken forward in England. There may be merit in considering whether this approach could be adopted as an amendment to Mr Black's Bill.*

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

*The intention that lies behind this Bill is a laudable one as it would improve the standards of management of mobile home sites and discourage some of the more undesirable practices that some site owners and operators engage in. This is the intended effect of the introduction of a fit and proper person test for site owners or their appointed managers. However, this measure alone is not a panacea, as experience with HMO licensing suggests that very few HMO landlords have actually failed the test to date. It is also arguably the case that a lack of evidence of previous criminal activity does not always show that a person is suitable to run a park home site as they could use other people to engage in intimidatory tactics that fall short of criminal activity and retain their fit and proper status. We need to be very careful in this regard and it may be the case that more stringent penalties for contravening site licence conditions are the answer in order to force people to comply with the legislation. Again these are issues to be considered as the Bill progresses. The key to improving the sector involves ensuring that local authorities can recover their licensing and enforcement costs through the new licensing regime. It should not become a revenue raising source for local authorities, but the powers to recover reasonable costs are undeniably needed and will modernise the sector.*

7. Do you agree that the Residential Property Tribunal should have jurisdiction to deal with all disputes relating to this Bill, aside from criminal prosecutions?

*I think that it makes sense to convey the powers of jurisdiction for dealing with all disputes associated with the Bill onto the Residential Property Tribunal (RPT) as we recently did this in relation to disputes between mobile home site residents and site owners. Furthermore, the RPT has experience with disputes and appeals that arise out of the Housing Act 2004 and is probably best placed to fulfil this function. The Courts obviously also have an important role to play when cases occur in relation to non-application for licenses and other penalties for non-compliance with the proposed legislation.*

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

*There are issues with the projected costs associated with implementing the Bill as it currently stands both for local authorities and the Welsh Government. It is not clear what the additional cost implications are at this stage for local authorities, but the ability to recover the costs of the new licensing regime and associated enforcement costs should help in this respect. Collaborative working agreements, which the Bill provides for, could also be useful in keeping costs at an acceptable level if these are managed properly. Costs falling to the Welsh Government in terms of implementing the legislation are also difficult to quantify and could be in the region of £270,000, if all the secondary legislation and guidance that the Bill seems to require all have to be implemented. The Bill's accompanying Explanatory Memorandum does raise these issues but seems to be lacking in solutions to the problems that are currently being posed.*

## **Powers to make subordinate legislation**

9. What are your views on powers in the Bill for Welsh Ministers to make subordinate legislation (i.e. statutory instruments, including regulations, orders and directions)?

*There seems to be a definite imbalance between the amount of subordinate legislation and guidance that the Bill requires when compared to the size of the Bill itself. Although the majority of the subordinate legislation powers place duties on Welsh Ministers to make Statutory Instruments it is evident that some of the content of the required subordinate legislation could have been included on the face of the Bill. The transitional arrangements from the existing licensing arrangements to the proposed new regime are an example of where this is the case. The HMO licensing arrangements in the Housing Act 2004, which Peter has based parts of his Bill on, include transitional provisions on the face of the Act itself.*

*More specifically, I am also a bit concerned about the way in which Part 4 of the Bill, which covers the Management of Regulated Sites, is currently drafted. It provides a discretionary power for Welsh Ministers to approve a code of practice covering the management of sites and to consult on a code, yet goes on to place a duty on Welsh Ministers to make regulations covering the management of sites. My question is whether both are needed? Surely well crafted management regulations would cover what is needed and requiring a code of practice as well amount to over regulation.*

*I also have concerns about Part 5 of the Bill, in particular Section 31(3), which provides an extremely wide-ranging power for Welsh Ministers to seemingly do almost anything in relation to site licensing under the Bill. Perhaps the Committee share my concerns and may wish to have more detail about this power?*

## **General Comment**

*Even though residential Mobile Home Sites represent a relatively small part of the overall housing sector in Wales, there are problems associated with this type of accommodation. This is why I had intended looking at reforms to the site licensing system prior to this Members Bill being successful in the ballot last year. Whilst the intention behind the Bill is laudable, it still seems that more clarity is needed on quite essential aspects of it before implementation. The scrutiny stages will no doubt tease the relevant issues out and the Welsh Government will be considering what amendments are necessary to the Bill in due course. I thank Peter Black for the work that he has done on drafting the Bill and would reaffirm my commitment to work with him to produce legislation that will modernise the Mobile Home sector in Wales.*

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20 November 2012