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Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/CS/0490/14

Christine Chapman AM
Chair of the Communities, Equality and Local
Government Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

28 May 2014

Dear Chris,

Evidence to the Communities, Equality and Local Government Committee – Holiday Caravan Sites (Wales) Bill

Thank you for your letter dated 1 April inviting me to provide a contribution to your Committee's scrutiny of Darren Millar AM's Holiday Caravan Sites (Wales) Bill. I am grateful for the opportunity to comment.

I attach my written evidence as requested.

Yours sincerely,

A handwritten signature in black ink that reads "Carl Sargeant". The signature is fluid and cursive, with a large initial 'C' and 'S'.

Carl Sargeant AC / AM
Y Gweinidog Tai ac Adfywio
Minister for Housing and Regeneration

Communities, Equality and Local Government Committee: Stage 1
consideration of the Holiday Caravan Sites (Wales) Bill – Darren Millar AM
(member in charge)

Written evidence from the Minister for Housing and Regeneration

Introduction

I thank the Committee for the opportunity to comment on Darren Millar's Bill.

When I first heard that Darren was proposing to legislate on holiday caravan sites, I was pleased and broadly supportive of his aims. I believed Darren's intervention was timely, coming in the wake of Peter Black's Regulated Mobile Home Sites (Wales) Bill which is now the Mobile Homes (Wales) Act 2013, and would provide us with an opportunity to modernise the law applying to holiday caravans in the same way as we have with those mobile homes used for permanent residence. I was aware, from discussions with Darren, that we shared the same concerns about people effectively using holiday caravans as their permanent residence and the problems this caused. Such an action might breach of planning permission in place in respect of the caravan site but also places additional, unfinanced, burdens on public services and action was needed to stamp out this practice. However, having now seen the Bill and had the opportunity to carefully consider Darren's proposals and the evidence provided by those involved in the tourism sector, including my colleague the Minister for Economy, Science and Transport, I am not persuaded this Bill is either appropriate or proportionate. Therefore I cannot support it.

Specific questions from the Chair of the Committee

The Chair has asked for my views on specific aspects of the Bill and I will address each of these in turn:

- **The need for legislation to modernise the regulatory framework for holiday caravan sites in Wales**

The current legislation in respect of holiday caravan sites is the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968. This legislation would no longer have any application in Wales if Darren's Bill became law.

There are good reasons to suggest that the 1960 Act is in need of modernisation in respect of holiday caravans, not least to provide local authorities with the ability to better respond to licensing issues and to give them the powers to recover costs of enforcing the legislation. In modernising this Act we could also address the needs of caravan owners to provide them with greater security and clarity. Other factors that need to be addressed are the level of fines that can be enforced when offences have occurred, in

relation to the 1960 Act, which are miniscule by modern standards, and the steps needed to revoke a licence, where possible, which are lengthy and overly bureaucratic. Such issues were, of course, key features of Peter Black's Bill in respect of residential mobile home sites, which the Welsh Government supported and are currently implementing. I would therefore support the need to modernise the legislation for holiday caravan sites subject to further detailed research on the nature of problems and possible solutions being undertaken.

- **The Parts of the Bill, namely: Licensing (Part 2); Residence test (Part 3); Holiday caravan agreements (Part 4); Protection from harassment (Part 5); and, Supplement and General (Part 6)**

Taking these in order:

Licensing (Part 2)

I am surprised to see that the Bill does not require all existing holiday site licences to be revoked, but continues 1960 Act site licences issued under section 3 of the 1960 Act (section 9). The proposal to continue existing site licences has the potential to create confusion. It has previously been suggested that, in some areas, the local authorities themselves are not clear what sites are licensed in their area and which are not – particularly where the site was established prior to the 1960 Act.

The British Holiday and Home Parks Association (BH&HPA) state that they alone represent 423 parks in Wales. While this is a significant number, I understand there are many other sites in Wales who are not members of the BH&HPA. Section 9 of the Bill states that within 12 months of commencement, local authorities will need to assess whether the managers of these sites are fit and proper and, if so, the licence issued under section 3 of the 1960 Act must be modified to ensure compliance with the requirements of the Bill within 12 months and the local authority may attach conditions. Holiday caravan sites are not distributed equally across Wales and some areas have far greater numbers than others. This requirement has the potential to place a significant additional burden on some local authorities.

The Bill does not provide for "mixed use" sites so presumably such sites would need two licences, one under this Bill and another under the Mobile Homes (Wales) Act 2013, which may be perceived as being overly bureaucratic and costly to site owners.

I am not sure the "Fit and Proper Person" Test has been fully thought through. The suggestion is that the same test and criteria will apply which is being introduced for residential mobile home sites. Holiday sites are tourism

businesses and a different test and criteria that is more appropriate for that industry would need to be developed.

Residence Test (Part 3)

I appreciate what Darren is trying to achieve – reducing the numbers of people who use holiday caravans as their main residence, but I am not sure the Bill is the best mechanism for achieving this goal. There is a requirement that a site licence contains a condition requiring the site owner to conduct tests to establish that occupiers are not occupying holiday caravans as their only or main residence and occupiers must provide evidence that they are not using the caravan as such. Evidence must include 2 documents listed in Schedule 2. In addition to placing an additional burden on businesses, I am not actually sure how this test would help address his concern. If the occupier of a caravan can demonstrate that the holiday caravan is not their only or main place of residence then nothing will change as regards occupancy. Conversely, if an owner of a holiday caravan site believes that an occupier has failed the residence test, the owner must notify the local authority as soon as practicable. If the local authority believe an occupier has failed the residence test, they must serve the occupier with a “residence test failure notice” and may give the occupier a fixed penalty notice” (section 49). This has the potential to impact upon homelessness, the environment and increase harassment (see Unintended Consequences below).

The Explanatory Memorandum (para 75) states that “...the test is unlikely to apply to most people who stay in holiday caravans which they do not own”. I am concerned that this provides a loophole that the less trustworthy in society will exploit – particularly those who are cash rich but asset poor and are happy to rent a caravan for long periods.

Holiday Caravan Agreements (Part 4)

I would support this measure. The provision of written agreements setting out the key terms agreed between the consumer and park business is already seen as best practice in the industry and I believe that this should become the norm.

Protection from harassment (Part 5)

Again, I would support any measure that seeks to protect people from harassment, but I am not sure that the measures contained in the Bill add to the safeguards that already exist under current legislation (e.g. the Caravan Sites Act 1968). In addition, the additional responsibilities offered to site owners in relation to residence tests, might actually increase harassment (see Unintended Consequences below).

Supplemental and General (Part 6)

These seem appropriate and I have no comments to offer.

- **Any potential barriers to the implementation of the Bill's provisions and whether the Bill takes account of them**

The Bill creates new rights of appeal to the Magistrates Court and one to the County Court. An assessment of these new rights of appeal needs to be undertaken to ensure they are within the legislative competence of the National Assembly for Wales.

Local authority resources – the Bill will place a significant amount of additional work on local authorities, some more than others that will need to be completed within a set timeframe. Local authorities will, at the same time, be dealing with the implementation of the changes introduced in respect of residential mobile home sites and, if passed, the Housing (Wales) Bill. I have concerns about their ability to further deliver a new, licensing regime for holiday caravan sites and enforcement of that regime.

- **Whether there are any unintended consequences arising from the Bill**

The biggest unintended consequence of the Bill is that identified by my colleague the Minister for Economy, Science and Transport, and others, namely that the Bill would make Wales less competitive in terms of tourism than other parts of the UK. The Minister, I believe, has clearly set out the implications from a tourism and economy perspective in her evidence to the Committee so I will not dwell on them here. From a wider perspective, some of the other unintended consequences could be:

- The impact on homelessness – there is little evidence to suggest that the issue of “illegal occupation” is as widespread as Darren suggests but, even so, every person identified as failing the residence test would need to be rehoused. In certain areas, this could place a significant additional burden on the authority at a time when budgets are tight. A more reasoned approach to this problem might be to allow “dual licensing” of an offending site (e.g. granting a temporary or partial residential licence covering only the units that are used as sole residence that will expire with the tenure of the occupants).
- Environmental impact – the Bill as currently drafted provides for the removal of caravans where the owner fails the residence test. Such relocation does not come cheaply and is dependent on another site agreeing to take the caravan knowing the home owner is “problematic”. Some units will not be worth the expense of relocation which might lead to illegal dumping etc resulting in additional costs for local authorities.
- Increased harassment – the proposed Residence Test provides the site owner with an opportunity to influence whether an owner stays on the site. This power could be abused by the less scrupulous site owners.

- The additional burdens on the Courts - the Bill proposes that, in the main, the Courts will decide on any disputes arising from this legislation. No estimate is given on the likely cost to the Courts or their ability to cope with the likely additional demand. These costs could be quite significant and will need to include the cost of guidance/training to Magistrates.
- **The financial implications of the Bill (as set out in Part 2 of the Explanatory Memorandum (EM), the Regulatory Impact Assessment (RIA), which estimates the costs and benefits of the Bill**

I have several points to make on the EM and RIA:

- The RIA correctly states that at the time the Bill was prepared, it was not possible to accurately estimate the costs to the Welsh Government without knowing the detail. We still do not have an accurate estimate but, given the greater number of parks, we can reasonably expect the total cost to the Welsh Government to be in excess of the £270,000 costs estimated to be incurred as a result of implementing the Mobile Homes (Wales) Act 2013.
- It is unclear from the EM/RIA what the scale of the current problem is and whether this legislation is actually needed. The information presented on permanent residents is not conclusive and the relatively low response rates to the consultations (e.g. 2 responses from LAs to the first consultation and 6 to the second) could suggest that the problem is not significant. This begs the question of whether the Bill is a proportionate response to the problem.
- Is there a further 'Do Minimum' option around amending the existing legislation or ensuring that the existing legislation is enforced by local authorities? Judging by the consultation summary, this seems to be the preferred approach from the industry's perspective and is therefore likely to be raised during the scrutiny process. Has this option been fully considered and explored?
- The RIA only presents an assessment of the costs and benefits of the preferred option. It would be helpful if there was an assessment of each of the identified options to enable an informed decision to be taken on the relative costs and benefits of each option.
- Linked to the above point, are all of the costs identified under Option 3 additional?
- Para 199 states that the design of licensing fee regimes will be left for each individual local authority to determine. Whilst this approach is consistent with that outlined in the Mobile Homes (Wales) Act 2013, this Bill applies to far more sites. The proposal raises the potential for differing fee levels across Wales and may impact on competition (see also below). There is also an additional cost to local authorities in having to design, consult (presumably) and communicate the fee regime in their area.
- The EM/RIA makes a number of references to enforcement action/appeals being taken through the courts, however, the RIA makes no assessment of the additional cost being imposed on the non-devolved (or devolved)

justice system. While Ministers, and I am sure the National Assembly, will naturally wish to see a clear focus on Welsh impacts, the cost benefit analysis should cover any impact on the UK economy, including UK Government Departments. It is unclear whether the Ministry of Justice has been contacted by Mr Millar in relation to this Bill.

- While the cost of the preferred option to industry is not insignificant, it is not clear from the RIA that the benefits of introducing the legislation justify these costs. This is linked to the first point re: what the scale of the current problem actually is. However, the RIA would also be strengthened by the inclusion of evidence that the requirements/activities in the legislation have been effective in addressing the problems elsewhere.
 - It would be helpful if the RIA included a competition assessment. This legislation could place caravan sites in Wales at a disadvantage relative to sites in England by imposing additional regulatory burdens and costs on them – this would be the case whether the costs are passed on to occupiers or not.
 - The RIA has a section on Equality Considerations but it would be helpful if the impacts on other important areas, such as human rights or the Welsh language, were set out
 - The RIA rightly identifies that a number of the quantified costs are illustrative at this stage. This makes it difficult for me to understand the exact financial impact of the Bill and if it should be supported. Further work will therefore be required if the powers in the Bill are implemented.
- **The appropriateness of the powers in the Bill for Welsh Ministers to make subordinate legislation (as set out in Part 1 of the Explanatory Memorandum, which contains a table summarising the powers for Welsh Ministers to make subordinate legislation)**

I am reasonably satisfied that the subordinate legislation powers are appropriate. Many of the powers enabling Welsh Ministers to make subordinate legislation do not immediately require action.