Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0031/07/15

In the Matter of Caerwnon Park, Builth Wells, Powys, LD2 3SP.

In the matter of an Appeal against various proposed site rules (Regulation 10 of the Mobile Home Site Rules (Wales) Regulations 2013)(the Regulations).

APPLICANTS	Caerwnon Park Residents Association
RESPONDENT	Berkeley Leisure Group Limited
REPRESENTATIVE	Tozers LLP Solicitors

TRIBUNAL;
Paul Williams - Legal Chair.
Nicholas Hill – Surveyor Member.
Mrs J Playfair – Lay Member.

Date of Hearing:	18th November 2015
Date of Decision:	5th January 2016

DECISION

SUMMARY of DECISION

The Tribunal determines that Rule 21 of the site rules shall be modified as follows:

" Parking is only permitted in the garage (if any) and the driveway (if any) within the confines of your pitch and subject to any site licence condition in force from time to time."

The Application

1 The Applicant is a Residents Association and represents approximately 80% of the park home owners (the residents).

2 The Property is situated in open countryside some 3 miles from the town of Builth Wells. It has a Social Club and a limited bus service of twice daily on weekdays and once on Saturdays. The nearest Doctor's surgery is some 4 miles away and the nearest Accident and Emergency Department is some 40 miles distant. The site currently has 129 park homes and there is planning for a further 41 park homes.

3 On the 13th May 2015 the Respondent sent a proposal to make new site rules, inviting representations from the residents by the 11th June 2015.

4 As part of the Consultation there was a meeting of the parties and on the 26th May 2015 the Applicant wrote to the Respondent to object to Rules 13, 15, 19, 21, 22, 23 and 24 and on the 29th May 2015 it emailed the Respondent with its reasons for objection.

5 The Respondent sent the necessary Record of Consultation Responses (the Consultation Document) on the 1st July 2015 to the Applicant and the Applicant appealed against some of the Rules on the 15th July 2015.

6 The grounds of Appeal were stated to be that the Respondent's decision was unreasonable, having regard to the proposal or the representations received in response to the consultation and the size, layout, character, services or amenities of the site. Accompanying the Appeal was a letter from the Applicant to the Respondent objecting to Rules 13, 19, 21, 22, and 23 but omitting an objection to Rules 15 and 24.

7 The Applicant realised its error and requested that Rules 15 and 24 be included in the Appeal and the Respondent objected.

8 The Procedural Chairman issued Directions on the 22nd July 2015 and on the 27th August 2015 the Clerk to the Tribunal wrote to the Respondent, with a copy to the Applicant, stating that any issue about the Tribunal's jurisdiction to deal with Rules 15 and 24 would be dealt with by the panel that heard the case as a preliminary point.

The Dispute

9 The dispute concerned seven Rules.

10 Rule 13 is headed Age of Occupants and states "No person under the age of 50 may reside in a park home with the exception of the park owner and their family or the park's employees".

11 Mr Mountford, on behalf of the Applicant objected to any of the Respondent's employees living at the property if they had children but not to any such employee being under the age of 50.His point was that the residents were promised quiet enjoyment of their park homes and that this would be in conflict of that principle and that there was more chance of unruly behaviour if children were allowed. He stated that there had been a play area with swings but that this was removed when the Property was further developed. He considered that this removal increased the possibility of nuisance as there was now no place for children to play. He argued that if an employee had children then the family should live off site. He was not suggesting a blanket ban on children as he appreciated that residents would be visited by grandchildren.

12 Mr Paul Kelly, on behalf of the Respondent, stated that he considered the role of the Tribunal to be one that determined the reasonableness of any Rule. He said that the Respondent had carefully considered the representations of the Applicant, as evidenced by the Consultation Document and the fact that some Rules had been modified as a result. He made three further points. First, it would be unreasonable if the Respondent had to recruit older employees who did not have children. Secondly, it was preferable that a manager of

the Property was resident as it was easier to control and administer, although he conceded that currently there was no manager in residence. Thirdly, he pointed out that the existing Rule 17 (set out on Page 56 of the Bundle) was discretionary and hence had to be amended as discretionary matters were no longer permitted, as a result of legislation. He also referred us to Paragraph 19 of the Respondent's Skeleton Argument (which is set out on Page 216 of the Bundle) which states that park home owners are permitted to have children and grandchildren visit them and that the Respondent had not been made aware of any issues to date.

13 Rule 15 (Pets) Mr Mountford stated that this Rule, as set out on Page 84 of the Bundle was now agreed.

14 Rule 19 (Vacant Pitches) Mr Mountford stated that the Applicant's objection to this Rule was linked to its objections to Rules 21 to 24 inclusive. He referred us to conditions 10 and 11 of the previous Site Licence issued by Powys County Council (set out on Page 106 of the Bundle) and to Paragraph 72 of the Guidance for Model Standards 2008 (set out on Page 105 of the Bundle) and emphasised that " Parking requirements must reflect the reasonable needs of residents, having regard to the size and layout of the site, the number of units, the occupation criteria of the site and the availability of public transport in the immediate vicinity". He added that he had checked with other sites owned by the Respondent and discovered that it was using identical Rules for those sites and hence was not complying with Paragraph 72. His main point was that there was pressure on parking availability. Some residents did not have garages and some only had one parking bay. The Applicant could not see why vacant pitches could not be used. Previously there had been three communal parking areas and a previous manager of a predecessor site owner had agreed to vacant pitches being used for parking although, he accepted that the Applicant had not been given a legal right to park there. He wanted Rule 19 removed in its entirety. Mr Roberts, on behalf of the Applicant, added that the Licensing Officer had indicated that there were ample parking spaces available; but he pointed out that once the vacant pitches were occupied then there would only be very limited parking available. He added that the previous Site Licence (Paragraph 11 on Page 106 of the Bundle) had stipulated that there should not be less than one parking space per caravan, plus one further space for every five caravans and that this ratio was not being adhered to. He explained that the original communal parking areas had been developed. He stated that there was a particular parking problem if service maintenance was needed as those with only one parking space would either have to park at the Offices of the Respondent, which was a small area, or park at the Social Club which was another small area, or drive off site to allow vehicles from the service maintenance providers to access the park home. If the visitor was a Doctor because of illness then the problem was even more acute as the resident might not be well enough to drive.

15 Mr Kelly confirmed that the Site Rules were similar on each of the Respondent's sites and that Mr Curson, its Operations Director, and who was present at the hearing, had sat on the Committee of the Association that had drafted Model Rules for site owners. The Rules were considered reasonable and complied with Paragraphs 3 and 4 of the Model Standards (set out on Page 100 of the Bundle). However, he stated that the standards were for Guidance only and not mandatory and referred to Site Licence conditions rather than Park home Rules. He also referred us to Paragraph 13 of the Standards (Page 102 of the Bundle) which stated that "Suitably surfaced parking spaces must be provided to meet the requirements of

residents and their visitors" and to Paragraph 3 (Page 103) and Paragraph 73 (on Page 105) which stated that the provision of parking spaces must be consistent with local planning policies and he stated that there were no issues on the planning permission as regards parking. He pointed out that a new Site Licence had been issued on the 9th June 2015 (Page 107 of the Bundle) and that this supersedes the Conditions referred to by the Applicant (Page 106 of the Bundle).

Mr Curson then advised that the Property had 119 garages and approximately 216 additional parking spaces, which is in excess of Condition 11 of the previous Site Licence and that there was additional parking at the Offices and the Social Club. He accepted that his calculation of 216 spaces included all spaces and disregarded the fact that the proposed Rule 21 limited parking to one vehicle per park home and that the numbers quoted were not communal spaces as such. Mr Kelly advised the Tribunal that an amendment to this Rule would shortly be proposed.

Mr Kelly stated that the objection of the Applicant had been considered as referred to in the Consultation Document. He added that the existing Rule is the same as the proposed one and so the residents were aware of the position when they purchased. He pointed out that the Respondent might want to access a vacant pitch and that there were Health and Safety issues, particularly if plant, machinery or materials were in situ or adjacent to a vacant pitch. He argued that it was reasonable to repeat an existing Rule. Mr Curson explained that a vacant pitch base was not designed to accommodate vehicles so that there were inherent dangers in parking on same. Mr Kelly stated that the Licensing Officer had not supported the Applicant's objections as she stated (Page 172 of the Bundle) that she was not concerned that there was a parking issue. Mr Mountford responded by stating that the residents were only requesting to park on garage bases and had not contemplated parking on the pitch bases nor where there were plant and machinery. He did not accept that Mr Curson's estimate of available parking spaces was accurate and pointed out that some of the older garages were too small for some vehicles, as were the new garages which were even smaller, and this increased the parking problem.

16 Rule 21 The proposed Rule states: "Parking is only permitted for one vehicle per park home."

Mr Mountford stated that some residents had parking space for more than one vehicle and requested the deletion of the Rule. Mr Kelly stated that there was a discretionary element to the existing Rule which needed to be changed. The Tribunal was invited to amend the Rule to "Parking is only permitted on allocated parking spaces on the Park and within the confines of your pitch and subject to any site licence condition in force from time to time." The Tribunal pointed out that a reference to " allocated spaces" could give rise to disputes and the following Rule was agreed in substitution " Parking is only permitted in the garage (if any) and the driveway (if any) within the confines of your pitch and subject to any site licence condition in force from time to time ".

17 Rule 22 states: "You must not park on the roads or grass verges".

Mr Mountford argued that following the loss of the communal parking area and the objection of the Respondent to parking on vacant pitches it was necessary to park on the roads and grass verges.

18 Mr Kelly stated that the question of parking was under continual review by the Respondent but submitted that this was not a matter for the Tribunal to adjudicate on. He stated that the existing Rule was similar to the one proposed. In particular it was essential that the emergency services were not impeded in any way as this could be life threatening. Further, there were underground services so that parking on grass verges could not be sanctioned. In support of his argument he referred us to Condition 3 (1) of the Site Licence (Page 109 of the Bundle) and Condition 16 of the previous Site licence (Page 106).

19 Rule 23 states: "You must not park anywhere except in the permitted parking spaces".

Mr Mountford produced a plan of the property on which he had marked three communal parking areas which were originally available to the residents, and on which he had marked the position of the original Play Area referred to above. He also restated that it was very difficult, if not impossible, to obtain the consent of the Respondent to the erection of a shed. Given the small size of many of the garages there was nowhere to store items such as lawnmowers and ladders. He added that the overall position was worsened by the fact that a number of residents needed vehicles capable of transporting disabled people and that the isolated location justified 4 by 4 vehicles, which could not be parked in small garages. Mr Roberts considered that the reasonable needs of the residents were not being catered for, as encouraged by the 2008 Model Standards.

20 Mr Kelly pointed out that the garages complied with the planning rules from time to time and that residents knew the size of their garages at the time of purchase. He maintained that the Rule was a standard one. He added that the historic matters, such as what might have been accepted by previous owners, was not relevant and that in the case of Mrs Moulsdale (Page 208 of the Bundle) the position was not, in any event, stated precisely. He emphasised that no existing right was being taken away from the residents and that the Model Standards only apply to the Site Licence and not the Site rules. He added that the Respondent has a policy of permitting sheds as evidenced by a letter written by it to a resident on the 21st February 2008 (Page 142 of the Bundle).

21 Rule 24 (Commercial vehicles) Mr Mountford referred us to his letter of the 14th September 2015 to Mr Curson (Page 207 of the Bundle) .The main thrust of this letter is that it is not a retirement park and that a growing number of residents need to work and that, with increased longevity, this need will grow. He also submitted that small commercial vehicles would not be detrimental to the residential appearance of the Property and he submitted that the size of a commercial vehicle could be stipulated. At the Hearing he said that, as a compromise, commercial vehicles should not have logos. Mr Roberts added that commercial vehicles, belonging to or on business with the Respondent, were being parked adjacent to the resident of Number 100 The Dell in any event.

22 Mr Kelly said that the issue of commercial vehicles was a sensitive one. The existing Rule is discretionary and had to be changed. The proposed Rule is taken from the Model Rules issued by the Association. The Applicant's representations were taken into account as shown by the Consultation Document. The Respondent has never been asked for permission to park a commercial vehicle. One commercial vehicle was brought onto the site but the owner was asked to remove it. The Respondent's Rule does not mean that a resident cannot own

one but it needs to be parked outside of the Park. The Respondent also considers that permitting commercial vehicles of a specified size would be very difficult to police. Further, access to some of the pitches is restricted and this could lead to obstruction. Residents were made aware of the current Rule on commercial vehicles when purchasing and there is a danger of grievance by neighbours if there was a change. The Respondent must act reasonably in changing any Rule and given there has not been a single application to park a commercial vehicle under the current Rules it believes that it would be acting unreasonably towards the majority of the residents if it was to make a change.

23 Mr Mountford argued strongly that as the retirement age is rising it would be unreasonable not to allow working residents to park a commercial vehicle, with or without a logo. He pointed out that commercial vehicles, and vans in particular, were very often cheaper than cars and that some vehicles on site were larger, in any event, than small vans. Mr Roberts added that a high proportion of residents were working and that some people needed a van for work, and that without a van they might not be able to work.

24 SUBMISSIONS

a. Mr Kelly emphasised that the residents had every opportunity to make representations on the Site Rules and that the Respondent did properly consult as evidenced by the Consultation Document. Further, it was considered by the Respondent that it was only proposing standard rules adopted by site owners and that the Rules objected to were similar to the current Rules and which were in force prior to the Mobile Homes (Wales) Act 2013 (the Act). In addition the Respondent would have listened to any objection by the residents in formulating the present Rules.

b. He stated that, pursuant to Regulation 10 (2) (c) the Applicant has to prove that the Respondent's decisions were unreasonable as regards the Rules appealed against. In support of his case he referred us to the Employment Appeal Tribunal's decision in British Home Stores Ltd v Burchell [1978] IRLR 379 set out on Page 194 of the Bundle and to which we shall refer hereafter.

c. Mr Kelly then produced a copy of the decision in Miller v Portishead Investments Ltd Case reference CHI/00HY/PHN/2014/0010 and interpreted this case as meaning that the Tribunal needs to take an objective view in determining whether any Rule is unreasonable. He accepted that this decision was based on English law but argued that the English Regulations for Mobile Homes were very similar to the Regulations. We shall consider this case hereafter.

d. Mr Kelly emphasised that the Model Standards 2008, relating to Caravan Sites in Wales, were for Guidance only and not mandatory.

e. He added that Regulation 4 was relevant to this hearing as by "4(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"

24.6 Finally, Mr Kelly stated that it was the practice of the Respondent to keep Site Rules under review, and to consult with residents over any proposed improvement to a Rule.

24.7 Mr Mountford emphasised that the Applicant had consulted with not only its members but with all residents and that the main aim of the Applicant in making representations was to achieve harmony both for now and in the future.

25 MATTERS arising at the Hearing

25.1 It was confirmed by the Respondent that the correct Consultation Document is set out at Page 12 of the Bundle and that the version at Page 51 is incomplete.

25.2 Mr Mountford requested that we accept into evidence a two page document listing the objections to the above Rules and headed "Proposed Park Rules". The document is undated and had not been seen by either the Respondent or the Tribunal. On discussion it seems that it was likely to have been sent (if at all) to the Respondent or the Tribunal following the date of the Tribunal's Directions and hence would not have formed part of the Appeal documentation. The Tribunal ruled not to accept the document in evidence at such a late stage, not least because it would have been necessary to have adjourned the hearing for the Respondent and the Tribunal to consider same. It transpires that there was little new in the document and it was essentially a codified assembly of previous objections.

25.3 Immediately prior to the Hearing the Respondent produced a site plan at the request of the Tribunal and in the knowledge of Mr Mountford and we have accepted this into evidence as it identified the extent of the site and enabled us to make an inspection of the Property

25.4 Mr Mountford produced an aerial photograph of the site on which he had marked the former communal parking areas and the former play area. We accepted this into evidence as it helped us identify the locations and understand the objections.

25.5 The Appeal by the Applicant omitted any objections to Rules 15 and 24. As a preliminary point the Tribunal asked the Respondent whether it wanted to address this issue. Mr Kelly advised that the Respondent did not wish to take up the point. However, as this is a matter of law, we have decided that we must make a decision on the matter and we have addressed same at Paragraph 26.

26 The Act, the Regulations and Case Law

26.1 The Tribunal has jurisdiction on questions arising on the Site Rules pursuant to Sections 52(2) and 54 of the Act.

26.2 The first issue before the Tribunal is whether we have jurisdiction to make decisions as regards Rules 15 and 24 of the Site Rules. The Applicant's letter of the 8th July

2015 only objects to Rules 13,19,21,22 and 23 and the Applicant acknowledges that it made an error in omitting a reference to Rules 15 and 24. The Application Form MH-21 in Section 5 gave the grounds that the owner's decision was unreasonable and under the box marked " Please provide any further information in support of your appeal grounds " it inserted the words" See attached". Also accompanying the Appeal Application was a letter from the Applicant dated the 15th July 2015 in which it was stated that the Licensing Officer had no objection to commercial vehicles. We have concluded that this is sufficient to indicate that the Applicant was including Rule 24 in its objections at the time of the Appeal. The Respondent confirmed at the Hearing that it was not taking the point. Although we do not consider that the parties have the right to waive a statutory requirement we have proceeded to make a decision on Rule 24. The position is different as regards Rule 15 in that it is not mentioned in the Appeal documentation; but fortunately the Applicant has stated that it now agrees with that Rule.

26.3 The second issue concerns Regulation 10(2)(c) and the test relating to "the owner's decision was unreasonable….". In Paragraph 64 of the decision in Miller v Portishead Investments Limited (as referred to above) the Tribunal took the view "that its enquiry on the question of reasonableness is wide and takes account of all relevant circumstances" and "This view is supported by the options available to the Tribunal when determining an appeal on the site owner's decision which includes quashing the owner's decision or substituting the owner's decision with its own decision".

We are not bound by this decision as it relates to both English Laws and regulations. We also differ in our interpretation of the Regulations. It is our view that the Regulations are paramount and that we are limited to deciding whether the site owner's decision was unreasonable, having regard to the three sub-clauses set out in Regulation 10 (2)(c) of the Regulations. We consider that Regulation 10 should be interpreted on the basis that there is a subjective test on the part of the site owner and that we must then adopt an objective test to establish whether the decision was unreasonable. We further consider that by stating that the site owner's decision is not to be unreasonable then this is a slightly stiffer test than had the Regulations stated that the site owner's decision must be reasonable. Accordingly, we do not consider that we are entitled to look at "all relevant circumstances" in its widest sense. Further, it is only if we consider the Rule to be unreasonable can Regulation 11 arise and enable us to quash, modify or substitute the Rule. We reached this conclusion because Regulation 11 states "In determining an appeal under regulation 10 the tribunal may…" In other words we have to address Regulation 10 and find the rule unreasonable before we are entitled to make any amendments. We do not consider that Regulation 11 is a stand alone provision to enable us to make amendments without first applying the test.

Whilst we accept Mr Kelly's submission that Site Rules are a form of contract between the site owner and the resident and should not be changed lightly, we consider that the sole test is one of reasonableness on the part of the site owner. Mr Kelly argued that as the residents had accepted the existing Rules and that as the proposed Rules did not materially alter the position then there was a presumption that the Rules were not unreasonable. We entirely reject this argument. The existing

Rules were not introduced under the Act and it is our duty to look at the proposed rules afresh and apply the test set out in the Regulations. We do, however, accept Mr Kelly's argument that it is not for the Tribunal to determine the best possible Rule but rather to determine what is in front of us, and apply the test before considering any alterations in the event that the Rule does not adequately express the intent of the parties.

26.4 The case of British Home Stores and Burchell is an Employment Appeal Tribunal case and hence outside our jurisdiction; but has some interest. Essentially, an Employment Tribunal adopted a strict standard of proof- beyond reasonable doubt- to the question of the dismissal of an employee on alleged acts of dishonesty. The Appeal Tribunal determined that the correct test was to examine the reasonableness or otherwise of the conclusions reached by management, and that to apply the criminal test was incorrect. We do not consider that this case assists us as the test of reasonableness is already set out in Regulation 10.

27 The CONTESTED RULES

27.1 Rule 13. In considering this Rule and the arguments submitted by both parties the Tribunal reflected on the actual wording. We surmised that the Respondent intended to make an exception on behalf of the park owner or the park owner's employees and their respective families. However, as drafted, the exception only applies to the park owner and family OR the park owner's employees as there is no mention of the family of the employee. We have no power to amend as the Appeal is by the Applicant who has been arguing for this very position.

Had the Rule been drafted as we envisaged then our view is that it would be unreasonable to exclude the family of the park owner's employee. There is a clear benefit in having a resident Manager, and it would reduce the ability to recruit if a manager has to live off site. We accept the Applicant's point that if children do live at the Property then a Play Area (such as there had been) would be beneficial by giving children the opportunity to play at a distance from the present park homes; but we have no right to interfere with the arrangements of the Respondent.

27.2 Rule 15. This Rule is outside of our jurisdiction, as stated above; but it has been accepted by the Applicant following the amendment that was added following the Consultation. Rule 15 is stated as not applying to pets owned by the park owner, park manager and their family. If the intention is that such persons can keep any number of pets (that is, more than 1 dog or 1 cat) and that the Note about nuisance does not apply to them, then that seems to be the effect of that exclusion. However, we doubt that this is the intention and the parties might wish to consult further on this Rule. An alternative interpretation would be that the Respondent is not permitted animals on site; but this would be in conflict with the use of the word "pets" in the exclusion.

27.3 Rule 19. The main thrust of the Applicant's objection was that there is a shortage of communal parking at the Property and that this created difficulties. The available communal parking was at the Offices and the Social Club whereas previously there had been three additional parking areas, which are now lost to development. The Applicant considered it reasonable to use the garage bases to vacant pitches, save when there was plant, machinery or materials on same. The Applicant did not agree with the Respondent's estimate of available parking spaces, especially as it was including parking spaces within individual pitches as these were not available communally. The Applicant had also accepted that the previous site owner's permission to use vacant pitches did not amount to a legal right and that the Respondent had not allowed its continuance. The Respondent objected to such usage on Health and safety grounds and argued that there was sufficient parking, although it acknowledged that it was considering the question of communal parking and was likely to consult with the Applicant on the issue. The Tribunal did not find that the Licensing Officer's letter of the 20th May 2015 (Page 172 of the Bundle) was supportive of the Applicant's position as she was not presently concerned over the question of parking. We do, however, consider that there is a relative shortage of communal vehicle parking. Further, Condition 13 of the current Site Licence (Page 163 0f the Bundle) is the relevant Condition for the site so far as Communal Vehicle Policy is concerned and this states "Suitably surfaced parking spaces must be provided to meet the requirements of residents and their visitors". We consider that there is sufficient parking available for the residents themselves but that the available parking for visitors is minimal. We considered this Rule at length but concluded that it would be unreasonable for us to effectively grant the residents a right that they do not currently enjoy and we concluded that the proposed Rule was not unreasonable in any event.

27.4 Rule 21. The rule has been amended and agreed by the parties at the Hearing and is set out on Page 2 of this Decision.

27.5 Rule 22. The Applicant raised similar concerns to those expressed for Rule 19. The Respondent argued that it was essential that the emergency services were not impeded so far as the roads were concerned and pointed out that there were underground services under some of the grass verges so that parking could not be sanctioned. We agree with the Respondent on these points and determine that this Rule is not unreasonable.

27.6 Rule 23. The Applicant raised similar objections to those raised for Rule 19. It also advised that those residents with disabilities needed larger vehicles and given the small size of some of the garages, there were problems parking on some of the driveways. It added that storage of equipment or materials was an issue because there was not much room in the garages and that consent for sheds was not readily given by the Respondent. There is evidence that consent for a shed has been given by the Respondent, albeit on strict terms but we can appreciate that the parking of large vehicles might be problematic. The Respondent countered these points by stating that there was a policy for accepting sheds, and that the residents knew the size of their garage and driveway at the time of purchase. We accept the

Respondent's evidence that there is a policy of consenting to sheds and we also accept that there is a shortage of communal parking areas which is an issue; but one that is outside our jurisdiction. We confirm, that in our view Rule 23 is not unreasonable in limiting parking to permitted parking spaces.

27.7 Rule 24. The Respondent accepted that this was a sensitive area as some residents were in employment and some not. It had followed the Model Rules of its Association. It had consulted and had never been asked for permission to park a commercial vehicle, but had requested one resident to remove one. It stated that it was a residential park and that it would be very difficult to police a Rule which stipulated a maximum size for a commercial vehicle. Further, it considered that vans with, or without logos were not consistent with a residential area and that there was a similar Rule in the existing Rules. It also pointed out that there was no prohibition on owning commercial vehicles, but only on parking of same. Finally, it said that some of the pitches had restricted access and that there was a danger of damage or obstruction if the Rule was changed. There was also the risk of residents being aggrieved by a change in the Rule which might have a visual impact on a residential area.

The Applicant argued that as it represented 80% of the residents, and had consulted with the remainder, it was better placed to express the views of the residents. It argued that it was not a retirement park and that many residents worked and that the number was likely to grow given that retirement ages were increasing. It did not accept that small vans would detract from the residential appearance and that small vans were often cheaper than cars so that working residents were being disadvantaged. It also pointed out that if commercial vehicles were owned and the Rule remained then the owners would have to park some three miles away in Builth Wells. Further, there were a number of vehicles on site which were larger than small commercial vehicles.

This a difficult rule to determine as there are valid arguments by both parties. The Respondent believes that there would be many objections to a relaxation and yet the Applicant believes that the residents are relaxed over a change in the Rule. There is also the fact that we have evidence that the Respondent has not received a single application to park a commercial vehicle under the existing Rules whilst the Applicant maintains that there is a demand and has the support of its members. The existing Rule is similar to the proposed Rule and the Applicant has suggested a compromise of commercial vehicles not bearing logos. We have decided that the weight of evidence before us favours the Respondent. It is evident that site owners do not favour commercial vehicles on residential sites, given that its Association has formulated Rules against them; but the issue before us is the test of whether the Respondent's proposed Rule is unreasonable. We have concluded that it is not, and that the Rule shall stand.

28 DECISION

The Tribunal amends the Respondent's decision as follows:-

Rule 21 - Amending the Rule to read:- "Parking is only permitted in the garage (if any) and the driveway (if any) within the confines of your pitch and subject to any site licence condition in force from time to time."

29 The parties made no application for reimbursement of fees and /or costs.

30 GENERAL CONCLUSIONS

30.1 The Applicant has, quite understandably, interpreted the Welsh Government's Guidance on Site Rules (Page 114 of the Bundle) as meaning that its views on the proposed Rules carry equal weight to those of the Respondent because it has to be consulted. However, this is not entirely accurate in that the true test is whether or not the Respondent has acted unreasonably in formulating its proposed Rules, and the onus is on the Applicant to overcome this proposition.

30.2 The limited amount of communal parking areas is of genuine concern to the Applicant and it feels particularly aggrieved that there were three such areas prior to development at the Property. Historically, residents were permitted parking on vacant plots, and although the Applicant accepts that there was no legal right to park, the removal of the permission has exacerbated the situation. The Tribunal has ruled against the Applicant on amending the Rules to increase communal parking but appreciates that it is a genuine problem. At the Hearing the Respondent indicated that it was actively considering providing additional communal parking and the Tribunal considers that this is both necessary and welcome; but accepts that this issue is outside of its jurisdiction.

30.3 The fact that the Respondent has proposed similar Rules on its other sites is understandable as any site owner would want consistency, and we do not consider that such an approach would be a breach of Paragraph 72 of the Guidelines for Model Standards 2008 (Page 105 of the Bundle).

30.4 However, the fact that the Respondent is using similar Rules elsewhere, and that such Rules have been formulated by its Association does not mean that they are intrinsically reasonable and the Tribunal is entitled to put each Rule to the test set out in Regulation 10.

30.5 The Tribunal also debated Rule 24 at length as there was an apparent conflict of evidence, with the Respondent stating that it had not received any requests for permission to park commercial vehicles, and the Applicant stating that there was an existing need. Whilst we have determined that the Rule is not unreasonable, it was a rule that we debated at length before coming to our unanimous decision. We would, however, encourage the Respondent to keep an open mind over changing this Rule should there be a volume of applications for permission in the future.

30.6 The Respondent had argued that it was not acting unreasonably when an existing Rule was being repeated as a proposed Rule. We do not accept this proposition as each Rule must be considered on its merits and having regard to the test in Regulation 10.

31 RIGHTS of APPEAL

31.1 A person wishing to appeal this decision to the Upper Tribunal (Lands Tribunal) must seek permission to do so by making written application to the First-Tier Tribunal at the Residential Property Tribunal's office which has been dealing with the case.

31.2 The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

31.3 If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit, the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

31.4 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking

REGULATION 10 of the Regulations and Sections 52 and 54 of the Act- See Appendix 1

DATED this 5th day of January 2016

CHAIRMAN

APPENDIX 1

Regulation 10 - Right to appeal to Tribunal in relation to the owner's decision

(1) Within 21 days of receipt of the consultation response document a consultee may appeal to a Tribunal (3) on one or more of the grounds specified in paragraph (2).

(2) The grounds are that:

(a) A site rule makes provision in relation to any of the prescribed matters set out in Schedule 5.

(b) The owner has not complied with a procedural requirement imposed by regulation 7 to 9 of these Regulations.

(c) 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
(iii) The terms of any planning permission or conditions of the site licence.

(3) Where a consultee makes an appeal under this regulation, the consultee must notify the owner of the appeal in writing and provide the owner with a copy of the application made, within the 21 day period referred to in paragraph (1).

Section 52 – Site Rules

(1) In the case of a protected site, other than a local authority Gypsy and Traveller site, for which there are site rules, each of the rules is to be an express term of each agreement to which this Part applies that relates to a pitch on the site (including an agreement made before commencement or one made before the making of the rules).

(2) The "site rules" for a protected site are rules 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.

(3) Any rules made by the owner before the coming into force of this section which relate to a matter mentioned in subsection (2) cease to have effect at the end of such period beginning with the day on which this section comes into force as may be prescribed by regulations made by the Welsh Ministers.

(4) Site rules come into force at the end of such period beginning with the first consultation day as may be prescribed by regulations made by the Welsh Ministers, if before the end of that period a copy of the rules is deposited with the local authority in whose area the protected site is situated.

(5) Where a site rule is varied, the rule as varied comes into force at the end of such period beginning with the first consultation day as may be prescribed by regulations made by the Welsh Ministers, if:

(a) The rule is varied in accordance with the procedure prescribed by regulations made by the Welsh Ministers, and
(b) A copy of the rule as varied is before the end of that period deposited with the local authority in whose area the protected site is situated.

(6) Where a site rule is deleted, the deletion comes into force at the end of such period beginning with the first consultation day as may be prescribed by regulations made by the Welsh Ministers, if:

(a) The rule is deleted in accordance with such procedure as may be prescribed by regulations made by the Welsh Ministers, and
(b) Notice of the deletion is deposited before the end of that period deposited with the local authority in whose area the protected site is situated.

(7) The Welsh Ministers may by regulations provide that a site rule may not be made, varied or deleted unless a proposal to make, vary or delete the rule is notified to the occupiers of mobile homes on the site in question in accordance with the regulations.

(8) The Welsh Ministers may by regulations provide that site rules, or rules such as are mentioned in subsection (3) are of no effect in so far as they make provision in relation to matters prescribed by the regulations.

(9) The Welsh Ministers may by regulations make provision as to the resolution of disputes:

(a) Relating to a proposal to make, vary or delete a site rule,
(b) As to whether the making, variation or deletion or a site rule was in accordance with the applicable procedure prescribed by the regulations,
(c) As to whether a deposit required to be made by virtue of subsection (4), (5) or (6) was made before the end of the relevant period.

(10) Provision under subsection (9) may confer functions on a Tribunal.

(11) The Welsh Ministers may by regulations:

(a) Require a local authority to establish and keep up to date a register of site rules in respect of protected sites in its area,
(b) Require a local authority to publish the up-to-date register,
(c) Provide that any deposit required to be made by virtue of subsection (4), (5) or (6) must be accompanied by a fee of such amount as the local authority may determine.

(12) In this section “first consultation day” means the day on which a proposal made under regulations under subsection (7) is notified to the occupiers of mobile homes on the site in accordance with the regulations.

Section 54 – Jurisdiction of a Tribunal or the Court

(1) A Tribunal has jurisdiction:

(a) To determine any question arising under this Part or any agreement to which is applies, and
(b) To entertain any proceedings brought under this Part or any such agreement, subject to subsections (2) to (6).

(2) Subsection (1) applies in relation to a question irrespective or anything contained in an arbitration agreement which has been entered into before that question arose.

(3) The Court has jurisdiction:

(a) To determine any question arising by virtue of paragraph 5, 6, 7(1)(b), 38, 39 or 40(1)(b) of Schedule 2 under this Part or any agreement to which it applies, and
(b) To entertain any proceedings arising by virtue or any of those provisions brought under this Part or any such agreement, subject to subsections (4) to (6).

(4) Subsection (5) applies if the owner and occupier have entered into an arbitration agreement before the question mentioned in subsection (3)(a) arises and the agreement applies to that question.

(5) A Tribunal has jurisdiction to determine the question and entertain any proceedings arising instead of the Court.

(6) Subsection (5) applies irrespective or anything contained in the arbitration agreement mentioned in subsection (4).