Y TRIBIWNLYS EIDDO

RESIDENTIAL PROPERTY TRIBUNAL

REFERENCE: RPT/0016/09/15

RE ORCHARD PARK, BONC YR ODYN, AMLWCH, ANGLESEY

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

APPLICANT: **ORCHARD PARK (AMLWCH) RESIDENTS ASSOCIATION**

RESPONDENT: **HILLS LEISURE UK LIMITED**

TRIBUNAL: **TREFOR LLOYD - LEGAL CHAIR**
COLIN WILLIAMS - SURVEYOR MEMBER
EIFION JONES - LAY MEMBER

VENUE: **THE DINORBEN ARMS HOTEL, AMLWCH,**

DATE: **19TH JANUARY 2016**

AMENDED Decision

The Respondent has failed to comply with the procedure as set out in Regulations 7 – 9 of the Mobile Homes Wales (Site Rules) (Wales) Regulations 2014 and accordingly is ordered to recommence the consultation process in accordance with Regulations 7- 9 within 14 days of receipt of this decision.

1. The Applicant, in an application dated 7th September 2015 objected to proposed changes to site rules governing Orchard Park, Bonc yr Odyn, Amlwch Port, Anglesey on the basis that the Respondent's decision was unreasonable having regard, in particular, to the proposal or the representations received in response to the consultation.
2. The tribunal gave written directions on 17th September 2015 to prepare the matter for hearing.

Background

3. Orchard Park ("the site") is owned by the Respondent and consists of 26 pitches. Eight of the nine Mobile Homes on pitches were occupied as at the time of inspection on the morning of 19th January 2016.

4. The site is a protected site under the provisions of the Mobile Homes (Wales) Act 2013 ("the Mobile Homes Act"). As a consequence the rights and obligations of mobile home owners and occupiers on the site, and the site owner are regulated by the Mobile Homes Act.

5. Part 4 of the Mobile Homes Act deals with agreements that relate to mobile homes and Section 52 relates to site rules. Each site rule is an express term of the agreement① which relates to the specific pitch on the site. The site rules are defined by Section 52(2) of the Mobile Homes Act as:

   'made by the owner in accordance with such procedure as may be prescribed by Regulations made by the Welsh Ministers, which relate to the management and conduct of the site or such other matters as may be prescribed by Regulations made by the Welsh Ministers'.

   In respect of Wales the Regulations can be found in the Mobile Homes Wales (Site Rules) (Wales) Regulations 2014 ("Site Rules Wales").

6. The Site Rules Wales Regulations are prescriptive in relation to the procedure for making, varying and deleting site rules. The other matters prescribed by the Regulations provide that site rules 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 (Regulation 4(2)).

7. A number of procedural steps are set out in the Site Rules Wales Regulations that have to be followed. These are set out in Regulations 7-9 and are summarised as follows:

   The site owner must consult with every occupier and any qualifying residents' association on any proposed variation and/or addition to the site rules by the issue and service of a proposal notice which contains prescribed information. The notice must:

   (a) Clearly set out a proposal.

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

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

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

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

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

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① Section 52(1) of the Mobile Homes Act

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

(h) The notice should be signed and dated by the owner and be in the appropriate form set out in Schedule 1 to the Site Rules Wales Regulations or in a form substantially to the same effect②.

8. The site owner within 21 days of the last consultation day has to consider responses received to the proposal notice and to decide, having taken into account any representations received, whether the proposal should be implemented either with or without modification③.

9. The site owner is then tasked with sending a consultation response document to each consultee notifying them of the decision. The consultation response document per Site Rules Wales Regulations 9(2)(a-g) is subject to a number of mandatory requirements, being:

(a) To provide details of the consultation carried out together with the first consultation day.

(b) Give details of representations received, the owner's response and any modifications made to the proposals themselves of the consultation;

(c) Contain a copy of the site rules in a form in which the owner proposes to deposit them with the Local Authority.

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

(e) Contain a statement of the date that any such rules or deletions will come into force provided that they have been deposited with the Local Authority in accordance with the Regulations, being no sooner than 28 days after service of the consultation response document and no later than 42 days after service of the same.

(f) Explain the rights of appeal under Regulation 10(g) in the form as set out at Schedule 2 to the Site Rules Wales Regulations or in a form substantially to the same effect.

10. Any consultee wishing to appeal to the tribunal must do so within 21 days of receipt of the consultation response document, upon specified grounds. When an appeal is made the consultee must notify the owner of the appeal in writing and provide the owner with a copy of the application made within 28 days of receipt of the consultation response document④.

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② Site Rules Wales Regulation 8(2)(a-g).

③ Site Rules Wales Regulations 9(1)(a).

④ Site Rules Wales Regulation 10(1) and (3)

11. Grounds upon which appeal can be made to the tribunal are set out in Site Rules Wales Regulation 10(2) and are that:

    (a) A site rule makes provision in relation to a prescribed matter

    (b) That the owner has not complied with the procedural requirements imposed by the Regulations.

    (c) That the owner's decision was unreasonable, having regard, in particular, to

        (i) the proposal or the representations received in response to the consultation;

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

Site Inspection

12. The tribunal met at the site on the morning of 19th January 2016, accompanied by Mr Tustin, the Applicant and by Mr Fred Thompson, Site Manager employed by the Respondent. The weather was cold, but dry and bright. The tribunal members carried out an extensive inspection around the site and consideration was given to all matters which had already been raised within the appeal documentation. In addition to walking the site and viewing the homes on site the tribunal members also walked along the access way from Amlwch Port to the entrance onto the site. The Applicant and the Respondent's representative were provided with an opportunity to draw attention to any matters they considered relevant.

13. On site we saw nine homes, of which eight are currently occupied. In addition, there were 17 empty pitches. We noted that, although there was a central parking area on the site, the same was not signposted. In addition, we noted the extent of the entrance onto Orchard Park from the Local Authority maintained single-track road and the steep gradient to the level ground, which in part was occupied by the car park as aforesaid. All of the homes appeared to be of similar age and condition.

The Hearing

14. The Applicant was represented by Mr Roy Tustin Chairman of the Applicant Association and was assisted at some stages by Mr Knight.

    The Respondent was represented by Mr Richard Mullan of Counsel, assisted by Mr Fred Thompson, the Site Manager. Other than Mr Tustin, Mrs Tustin and Mr Knight no other residents attended the hearing. In accordance with the Directions (as amended) the Respondent had prepared an indexed and paginated bundle. The Applicant's response to the park rules consultation document (pages 14-15 of the Bundle) raised the issue that the proposal notice (pages 120-123) referred to the Mobile Homes (Site Rules) (England) Regulations 2014 and in the first response relating to Schedule 1 (at page 14) states '*Therefore it could be interpreted that the document was not a legal park rules consultation document'*.

15. Although the point was raised by the Applicant within the application form to the tribunal at page 5, only the first box under the heading 'The owner's decision was unreasonable having regard in particular to: the proposal or the representations received in response to the consultation' was ticked. The Applicant did not tick the box above relating to 'The owner has not complied with one of the prescribed procedural requirements imposed by Regulations 7-9 of the Regulations'.

16. Thereafter, the Applicant went on to list eight rules in respect of which, issue is taken as being they are considered unreasonable. In addition the Applicant seeks to include two additional rules in relation to age of occupier and children living permanently on site.

17. It is clear that, having received the Applicant's response to the initial consultation a second letter was sent by the Respondent which this time contained the correct form of proposal notice referring to the Wales legislation and regulations (an example can be seen at page 130-133) and covering letter (at page 129) being the letter sent to Mr and Mrs Beech. Although undated it, in the tribunal's view, must be the case that it post-dates 6th July 2015, being the date of the consultation response document forwarded by the Applicant (dated at page 134). Mr Mullan of Counsel was unable to assist as regards a specific date for service of the perfected proposal notice and as a finding of fact the tribunal finds it has to post-date 6th July 2015. That being the case, the reference to the deemed date of service being 15th June 2015 is clearly incorrect and, furthermore, it only provides if the postal rule is followed (there being no suggestion of direct personal service) at best some seven or eight days for a response. Despite what is set out under Section 6 of the second proposal notice (page 130) by way of a further undated letter (page 155) to the Applicant the Respondent asserted that the last consultation day was 3rd August 2015. That being the case, and mindful of the requirement for the last consultation day to be at least 28 days after the first consultation day, puts the day of deemed service as at 6th July 2015 which for the reasons set out above renders it impossible to achieve.

18. The tribunal has considered the effect of the failure to utilise the Welsh form, an example of which is set out in Schedule 1 to the Mobile Homes (Wales) Regulations or a form that has substantially the same effect and the attempt by the Respondent to perfect the proposal notice by the issue of a further proposal notice. Mr Mullan, for the Respondent submitted that as the Applicant had not taken issue with procedural matters in his grounds of appeal it was not now appropriate to rely upon the same, and the tribunal is accordingly not entitled to deal with the matter. Further he submitted it would be perverse to do so being a matter that would have been live at a directions hearing, and it would be unusual for the tribunal of its own volition to rule on a procedural irregularity matter when not relied upon by the Applicant.

19. In addition, Mr Mullan submitted that the Respondent acknowledged the error, the same being apparent to the recipients being the mobile home owners. As such they were not misled in any way and the residents, via the Applicant, pursued objections predicated upon the original proposal notice. In essence, the tenor of Mr Mullan's submissions being that the original proposal notice was in substantially the same form and the reference to English as opposed to Welsh legislation was a procedural error which did not go to the heart of the matter, especially as not raised by the Applicant within the grounds of appeal.

20. Mr Mullan also took issue with the fact that the Applicant, having originally objected to eight rules plus an additional two new proposed rules by the time the statement of case was filed and served, sought to object to additional rules ("additional rules"). Accordingly, it was the Respondent's primary contention that the Applicant was not entitled to now challenge the additional rules as they were not raised within the original response to the proposal notification.

21. Mr Tustin, in response to the procedural matters, made the point that having been told how to respond initially there was a meeting with the residents' association, but it was only after that did they discover, having carried out further legal research, that some of the proposed rules by the Respondent were already the subject of tribunal decisions in England as being unreasonable. The additional rules were thus included

within the statement of case as the Applicant felt it was unreasonable for the Respondent to simply seek to include identical rules that had already been the subject of consideration, and found to be unreasonable elsewhere.

22. In summary therefore the thrust of Mr Mullan's submissions was that there was no material difference between the proposal notice citing the English regulations and the proposal notice that can be found within Schedule 1 of the Site Rules Wales Regulations. As a consequence, the Respondent's position was that the first consultation notice was sufficient and compliant due to the only difference being the reference to English legislation and, in the alternative, the second consultation notice, although upon its face stated that the last consultation day was 15th July 2015 as per the undated covering letter from the Respondent (at page155) that accompanied the Response Document, that the actual last consultation day was 3rd August 2015. Mr Mullan did, however, accept when asked by the tribunal that it was only by virtue of the undated letter accompanying the Response Document (page 155) the Applicant and the other residents were informed of the end date for the consultation period as considered to be the case by the Respondent.

Decision on the Proposal Notice

23. Having considered all the matters and specifically the fact that the Applicant raised the issue of the incorrect citing of the English regulations in his response to the consultation notice, we do not accept Mr Mullan's submissions on the original proposal notice that the error of citing the English regulations was simply a procedural error. Nor do we accept that because the Applicant had not sought to challenge procedure as a ground of appeal, the English notice stands. The Applicant clearly took issue with the incorrect use of the English Legislation and Regulations. It specifically raised it in response (at page 14) where it is stated '*Therefore it could be interpreted that the document was not a legal park rules consultation document'.* It is clear that at the initial stage the Respondent considered the English regulations applied. Not only are they included within the consultation notice, but also in the covering letter (page 119). The English regulations and Mobile Homes Act 1983 do not carry any weight, or have any effect or application in Wales. As such, the tribunal is of the view that the original proposal notice does not carry any effect.

24. Regulation 8(2)(g) makes it clear that the proposal notice '**must** be in the appropriate form set out in Schedule 1 or a form substantially to the same effect'. This is a mandatory requirement. As such, we reject the submissions on behalf of the Respondent that the English form can qualify as being substantially to the same effect. That, in our view, cannot be the case.

25. Having been alerted to the defect it was open to the Respondent to put its house in order by serving a further proposal notice. It attempted to do so, but clearly failed to provide the relevant time period for consultation. It seems that all that was done was to change references to English legislation and regulations to those applicable in Wales. Further, Regulation 8(2)(f) is abundantly clear and a mandatory requirement that a proposal notice must specify the date (the last consultation day) by which any representation must be received in response to the proposal. This date must be at least 28 days after the first consultation day. The second proposal notice did not comply with this requirement and in the circumstances we reject the submission that the second consultation notice provided the appropriate time frame. It was only by virtue of the undated letter (sample at page 155) that the Applicant and other mobile home owners would have been aware of the date which the Respondent considered was the last consultation day. By that stage it would have been too late for the mobile home owners to have made any further representations.

26. In addition, having considered all the documentation, we note that the park rules consultation response document (covering letter at page 155) in itself fails to comply with the requirements that are prescribed in Regulation 9 insofar as:

(a) There is no reference to the first consultation day as required by Regulation 9(2)(a).

(b) It failed to contain a statement that any site rules or deletions came into force in accordance with Rule 14 conditional upon deposit of the rules in accordance with Rule 12 and notified in accordance with Regulation 13 (as required by Regulation 9(2)(e)).

(c) There was a failure to explain any rights of appeal under Regulation 10 as required by 9(2)(f).

(d) Finally, it was not a in a form set out in Schedule 2 of the Regulations or in a form substantially to the same effect, as required by Regulation 9(2)(g).

27. In relation to a number of the points raised during the hearing, Mr Mullan sought to rely upon an alleged absence of prejudice to the Applicant as a result of what he referred to as procedural errors. We are of the view that, for the reasons set out above, the regulations are prescriptive and matters required under them are accordingly mandatory. However, if, which we do not find, consideration needed to be given to prejudice, the way in which the Respondent conducted the exercise by virtue of, for example, forwarding undated letters, failing to refer and include mandatory details such as, for example, the right of appeal in relation to the consultation response document, and use of the incorrect form and reference to incorrect legislation and regulations would likely have caused complete confusion and may well have given rise to prejudice.

28. In the circumstances we find that the Respondent failed to comply with the procedure contained within Regulations 7-9 and the Respondent is therefore ordered to re-commence the consultation process in accordance with Regulation 7-9 within 14 days of the receipt of this decision. We further rule that the date of receipt of this decision and accordingly the commencement and expiry of the 14 day time period shall be communicated clearly to the tribunal and the Applicant by the Respondent.

Site Rules

29. The Respondent had suggested a number of site rules. The Applicant, by virtue of the response to the initial consultation document, commented on some eight and also proposed the inclusion of a rule dealing with the age of the occupiers and also as regards children living on the site. In addition, the Applicant, by the time of filing the statement of case, included objections to other rules referred to above as the additional rules.

30. As we have found that the Respondent has failed to adhere with the procedure and ordered compliance with Regulations 7-9, there is no need to come to a decision as regards the reasonableness of either the rules as originally objected to by the Applicant and/or the additional rules included within the statement of case as being objected to plus the suggested additional two rules. However, as we heard evidence in respect of the rules which still remained in issue (see further below), we consider it prudent to provide the parties with the Tribunal's view as regards the Respondent owner's decision in the light of objections raised by the Applicant in relation to both the initial grounds of appeal and the others included within the statement of case i.e.

the additional rules in the hope that it will assist any further deliberations in due course.

31. We also consider it appropriate to comment on the proposed rules the Applicant seeks to introduce (notwithstanding the Respondent's argument as set out in the further written submissions which were directed at the conclusion of the evidence being heard) that there was no locus to make such a request. We do not, however, consider it appropriate to rule upon that specific technical issue within this decision.

32. At the commencement of the hearing Counsel for the Respondent and the Applicant were given time to discuss matters and, as a consequence, by the time the hearing turned to hear evidence as regards the rules in issue, only the rules set out below required consideration. Accordingly, we confirm either no objection was raised or a compromise had been reached prior to the hearing in respect of rules1,3,7,8,9,11,12,13,14,15,17,18,19,20,21,22,23,24,25,27,28,29,30,33,34,36,37,38,40,41,42,43,44,45 and 46.

33. Turning to the rules in issue:-

Rule 2 - You must not erect fences or other means of enclosure around your park home or pitch.

34. There were seven responses received disagreeing with the proposed rule. All responses are drafted in similar terms and suggested fences and enclosures be allowed with a height restriction of 1.22 metres.

35. The Respondent (at page 156 in the responses) argued that the park is of an open-plan nature with the occupied areas being communal and fences of 1.22 metres would create a bridge in the event of a fire and also help spread fire, endangering others on the park, also hindering access in the event of an emergency.

36. Mr Tustin, in evidence, stated that in a number of cases the fences had been supplied and erected by the company. Initially, being some 7 or 8 years ago they were some 3 metres high, and as time has gone on they have reduced slightly in height. In addition, Mr Tustin made the point that every other resident who had asked for permission has been given permission, and at times the Park Warden and the Respondent's staff have given permission.

37. Mr Mullan, in his submissions, made the point that the rules provided for no alteration without the permission of the park owner and also made the point that, without this prohibition, there would be a possibility of boundaries being moved to the detriment of some owners. In response Mr Tustin made the point that the purchasers are all told where the boundaries are and he could not see any example and/or situation where anyone would move a boundary and, in such an eventuality, it would be immediately detected in any event.

38. During the site inspection we noted that nearly all of the existing Mobile Homes had boundary features of one form or another.

39. Mr Mullan accepted that there had been permission in the past and maintained the concern related to the height. After some further discussion Mr Mullan confirmed the Respondent was now content with a height of 1.22 metres, but the location of any boundary had to be determined due to the concern about the possibility of encroachment.

Decision on Rule 2

40. Having seen the site, we are of the view that it would be appropriate to allow fencing. The agreed reduced height of 1.22 metres sufficiently enables the site to have an overall open appearance whilst at the same time not having an effect on the general amenity. We do not, however, accept the submissions that there would be the possibility of land being encroached upon the erection of fences in the absence of the park owner's consent. We accept Mr Tustin's evidence that owners are shown the boundaries and in practice the adjoining owners would be alert to any such issue bearing in mind the size and nature of the plots. In the circumstances the tribunal recommends quashing the rule and replacing it with a rule preventing the erection of fences in excess of 1.22 metres without any further qualification.

Rule 4

We may alter the materials out of which any boundaries on the park are constructed and also the height of any boundaries on the park, provided that we do not alter the location of any boundaries on the park.

41. At the hearing Mr Mullan confirmed that the Respondent was content for this rule to be struck out. Therefore we come to no conclusion in relation to the rule.

Rule 5

Save as permitted by Rule 13 (external decoration) and Rule 27 (advertisements), you must not make any alterations whatsoever to your pitch or any part of the park. You may make external alterations to your park home if you first obtain our written approval, which will not be unreasonably withheld. Before we permit you to carry out external alterations to your park home that may affect the site or other residents in any way (which permission we will not unreasonably withhold), you must supply us with satisfactory details, method statement, risk assessment, noise limitation and impact study in order to minimise disruption on the site.

42. This rule was not one of the rules that formed part of the grounds of appeal. The Applicant submitted that the rule contained discretionary elements and suggested an amendment. During the course of the hearing the Applicant confirmed that he withdrew his objection and, as such, the original rule stands with no need for a determination from the tribunal.

Rule 6

The park owner reserves the right to assess the condition of the park home at any time.

43. This was the subject of discussion between the parties and it was agreed subject to an amendment as set out in the Table at page 156. Accordingly, no decision is needed from the tribunal.

Rule 10

We are the sole supplier of new park homes for the park.

44. This rule was not the subject of one of the original grounds of appeal. The parties agreed the amendment as set out in the statement of case, page 167, to read as follows:

'We are the sole supplier of new park homes to the park subject to the owners having freedom to select the manufacturer'.

Rule 16

You must ensure that any structure erected in the separation space between park homes is of a non-combustible construction and position so as to comply with the park site licence conditions and fire safety requirements.

45. The Applicant withdrew the objection at the Hearing.

Rule 26

Where water is not separately metered at the park home and not separately charged you must not use hoses, except in the case of fire.

46. Seven responses were received, all suggesting amendment to allow for the use of hoses to water plants on a weekly basis and to wash the car on a two-weekly basis. In addition the Applicant, in the statement of case, page 168, suggested that the rule be amended so that handheld hoses are permitted, but only for the use where a gun attachment is fitted and such hoses are not left on or unattended. In light of both the statement of case and response to the consultation responses, the Respondent did not suggest any amendment.

47. The Respondent's case, as set out at page 112, paragraphs 24-26 in summary is that as water is not individually metered, but supplied commercially and charged on an equal basis, being a proportion of the entire bill problems could arise from time to time between residents in relation to consumption of water and in the circumstances a ban is proportionate. Further, the Respondent maintains the plots are relatively small, hoses are unnecessary and gardens could be watered by watering cans and buckets. Cars could also be washed in the same manner. The above was also the tenor of Mr Mullan's submissions at the hearing.

48. The Applicant's submissions were that there had never been any argument on site. When the question was raised by the Tribunal this was confirmed to be the case by Mr Thompson. The Applicant also contended that neither a time limited prohibition, ie weekly watering of plants, and fortnightly car washing was capable of enforcement.

49. In addition the Applicant submitted that the majority of the occupiers are elderly, some pitches are far larger than others, and it would be unreasonable to expect watering of a garden and washing a car to be undertaken with the use of buckets.

50. In addition Mr Knight submitted that to a great extent the same amount of water would be used if a car was washed by carrying water in a bucket as opposed to the use of a gun attachment.

Decision on Rule 26

51. We consider the Rule as proposed by the Respondent to be unreasonable and disproportionate and recommend it be quashed in favour of the following:

Where water is not separately metered at the Park Home or not separately charged you must only use hand held hoses fitted with "gun attachments" to control the flow of water. Such hoses are not to be left on whilst unattended.

Rule 32

You must not park more than one properly taxed and insured vehicle.

52. This Rule was not subject to the initial Grounds of Appeal. The Applicant proposed an amendment to the following:

> *You may only park one fully taxed and insured vehicle in the Park in any parking space allocated by the Park owner or in a parking space wholly within your pitch.*

That amendment was accepted by the Respondent and therefore there is no need to rule on the point.

Rule 35

Should commercial vehicles be required by you for delivery or removal purposes they must park at the entrance to the Park without obstructing any roadway or access to any homes or other buildings on the Park. Unless using a small van which does not exceed 1.81 metres in height and 1.5 tons in weight.

53. This Rule was not part of the original Grounds of Appeal and consultation. The Respondent in its Statement of Case (page 113, paragraphs 30 and 31) considers the Rule proportionate to benefit residents as a whole due to the public areas being limited and turning is difficult for large vehicles. At the hearing Mr Thompson when questioned agreed that the turn onto the site was “a tight turn”, but made the point that some commercial vehicles had driven over kerbs near the communal parking area, which we saw during the site visit.

54. The Applicant raised a number of issues being:

    (i) The residents due to their age being unable to carry large items to and from the entrance to the Park;

    (ii) Due to the restricted roadway at the entrance it would create a major obstruction when deliveries or vehicles above 1.81 metres and 1.5 tons were to park at the entrance.

    (iii) As was further amplified in evidence the Park receives bulk gas LPG deliveries and if the rule stands the residents would not then be to able to refill their tanks.

    (iv) If the rule stands there could be no refuse collection on the Park itself.

55. In response Mr Mullan submitted that it would be possible to obtain a bowser to carry LPG gas onto the site and that the Rule did not conflict with refuse collection as it was not caught by the provisions of delivery or removal as required by individual Mobile Home owners.

56. Mr Tustin in reply confirmed that he was not aware and doubted the availability of any such bowser to deliver LPG. In addition he made the point that the gas tanks on the site are either 500 or 1000 litre tanks, they are filled between twice and four times per annum, and when a tank is filled up it is customary for most of the other owners who also receive LPG gas from the same supplier to have their tanks topped up.

Decision on Rule 35

57. Having inspected the site we accept the Applicant’s submissions that forcing delivery lorries over a certain size to park at the entrance would cause even more disruption. The entrance from the publically maintained highway was conceded by Mr Thompson to be a tight turn and it would be unreasonable and disproportionate to restrict access to the size of vehicle as proposed by the Respondent. Further, we considered this to be an unreasonable and illogical position when at the same time the Respondent accepts that the refuse collection vehicles are permitted on and able to negotiate the site. In the circumstances we recommend this Rule is quashed as being unreasonable.

Rule 39

Visitors to the Park must only park in any available allocated visitor parking spaces and must comply with any parking restrictions that are displayed on the Park.

58. Seven comments to the Consultation Notice were received each of which stated as follows:

No parking restrictions are displayed or parking spaces allocated on the park.

In response the Respondent stated visitors only need to comply with what is displayed and where they are permitted to park. At the hearing it was accepted by the Applicant that there are no allocated spaces and the Rule can remain as drafted as it will only come into play when allocated spaces are provided for visitors.

<u>Rule 47</u>

You must keep your Park Home insured at all times and maintain a valid electrical, gas and oil safety certificate for your home where those utilities are supplied to your Park.

59. The Applicant relied upon a previous Tribunal decision relating to a site owned by the Respondent at Manor Park, Resugga, St Austell Cornwall [Ref CH1/00HE/PHN/2014/ 0012 /0016**]**.

60. Mr Mullan agreed that it was correct there was a contractual obligation in the Mobile Homes Act in relation to insurance, but contended that the remainder of the Rule was required in order to allow the Respondent to check that installations were properly installed and functioning. Mr Mullan did however concede that it was a policy in relation to certification and the Respondent was under no justification to ask for a copy, the rationale being that separate certification would reduce any risk.

61. It was noted by the tribunal that there is no mandatory requirement on an owner/occupier to have such certification tests carried out. Although the tribunal comments it would be sensible for such measures to be taken by individual mobile home owners it is not a legal requirement.

<u>Decision on Rule 39</u>

62. Having considered the matter, the tribunal finds that the position as regards the insurance is already a contractual matter. The position as regards certification, although desirable and Mobile Homes owners would be well advised to carry out such measures for their own safety, they are not legal requirements for owner/occupiers. In the circumstances the tribunal recommends the Rule be quashed.

<u>Proposed New Rules</u>

63. There were seven responses to the consultation which included provision for the following new Rules.

    (i) No new resident under 55 years of age unless proof of retirement or semi-retirement is given, and;

    (ii) No children be permitted to live on the Park.

64. The Respondents replied (page 158) as follows:

    (i) The Respondent considered the proposed age restriction to be discriminating against those under the age of 55 and would not promote community cohesion and possibly be in breach of human rights.

(ii) Similarly the Respondent considered the prohibition upon children living at the Park to be discriminatory and un-necessary.

65. Mr Richard Hills in his Statement on behalf of the Respondent at page 114, paragraph 37, in relation to comments about the proposed new Rules, accepted that the residents of the site are mainly elderly and stated *"we do not seek to change this balance or characteristic, such Rules may be unnecessary prescriptive"*.

66. Mr Mullan submitted that due to the now prohibition on any Rule that confers a right to an occupier subject to the exercise of a discretion the original Rule (see for example 2008 version, page 95), was no longer permissible. The Park owner [Respondent] is therefore faced with either not having a Rule at all or an absolute Rule. Mr Mullan went on to suggest the rule as proposed could possibly raise an issue of conflict with Human Rights Legislation and Equality Legislation. He further went on to maintain that if the concern was inappropriate behaviour by new residents that could be dealt with by virtue of the fact that the Respondent has an obligation to all residents to ensure quiet enjoyment.

67. The Applicant (Statement of Case page 169) refers to and relies upon, inter alia, that 12 of the current residents stated their prime reason for choosing Orchard Park was the age restriction, which has varied over the years from 45 to 60 years and has been advertised by Estate Agents and magazines in this regard. He referred specifically to Sales Particulars and the Respondent's own literature relating to Mobile Homes and also specifically referring to Orchard Park, (pages 50 to 64) and letters confirming the understanding of current owners (pages 171 to 174).

68. When specifically asked by the tribunal in relation to Mobile Homes on the site having been advertised as retirement homes, by reference to pages 59 to 62 and page 63, Mr Mullan accepted this was the position. He again submitted that due to the prohibition on a discretionary element to consent, the Respondent was now at a fork in the road and had to "skip one way or another" and due to the Human Rights Act and Equality Regulations it was not justifiable to maintain an age discrimination. Any concerns the current owners have that they bought upon a different basis could be the basis of a misrepresentation action to seek recompense.

69. As an issue had been raised with Human Rights Act compatibility and the Equality Regulations, the tribunal directed the Respondent file and serve supplementary submissions on the point, and thereafter, if so advised the Applicant to reply. In the supplementary submissions, Mr Mullan on behalf of the Respondent raised a procedural point insofar as there is no statutory regulatory provision for residents to propose Park Rules and the tribunal has no jurisdiction to consider the same. As the tribunal has already ruled on the procedural matters, the tribunal is not required to rule on this specific proposition and shall not do so.

70. In the same submissions Mr Mullan does, however, accept that the Equality Act 2010, Age Exceptions Order 2002 makes an exception to Section 29 for residential Park Home site owners and goes on to further submit that there was never an absolute policy of discrimination, but that it was discretionary. The reason for the change now is due to the prohibition upon any discretionary consent.

<u>Decision on the Age Restriction Proposed by the Applicants</u>

71. It is beyond doubt that Orchard Park has been developed and marketed as a retired and semi-retired site. The earlier Rules albeit containing a discretionary element provided for an age restriction. Bearing in mind the exception the Equality Act provides for Mobile Homes, it has been recognised by Parliament that it is not an age discrimination proposal to require the same within Site Rules.

72. We take the view that any difficulties due to allowing all age groups to occupy the site could be dealt with under the right to quiet enjoyment would be to say the least difficult. In addition as referred to above, the Site has always it appears been a retirement park with a minimum age limit at the time at least the current occupiers purchased their homes (as is evidenced from the letters received). Accordingly, we are of an opinion that an age restriction should be imposed on Orchard Park so it remains a retirement park.

Prohibition on Children Living on Site

73. As is conceded by Mr Mullan, a Rule prohibiting children from living on the site is permissible as an exception by virtue of paragraph 7 of the Equality Act 2010 - Age Exceptions Order 2012. It appears to the tribunal that both the age restriction and permanent residence by children go hand in hand and bearing in mind the recommendation as regards as Orchard Park remaining a retirement park, the tribunal recommend that a Rule prohibiting permanent residence by children also be imposed.

Reimbursement of Fees

74. In addition in accordance with our power under Regulation 50 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012 we order that all of the application fee of £155 that was paid by the Applicant be reimbursed by the Respondent within 14 days of receipt of this decision.

Dated this 25th day of April 2016

Amended this 20th day of May 2016

Trefor Lloyd

Chairman

CERTIFICATE

In accordance with Regulation 34 Sub section 5 and 6 of the Residential property Tribunal Procedures and Fees (Wales) Regulations 2012, I certify that the amount payable by the Respondent to the Applicant in this matter is £155 and there was an accidental slip in the decision dated 25th April 2016 whereby the sum was wrongly recorded as £515.00 under the heading “Reimbursement of Fees” at paragraph 74.

For the avoidance of doubt, the figure payable is as set out in paragraph 74 of the decision, namely £155.00 and that accidental slip is now corrected.

CHAIRMAN