Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

Reference: RPT/0016/09/15

In the Matter of Woodland Park, Old Crumlin Road, Pontypool, NP4 6UP

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, ("the regulations'') Regulation 10.

APPLICANT Woodland Park Residents Association

RESPONDENT Hills Leisure UK Limited

TRIBUNAL;

Richard Payne- Legal Chair.
Kerry Watkins – Surveyor member.
Carole Calvin-Thomas – Lay member.

VENUE: The Parkway Hotel Cwmbran, 20th of January 2016.

**DECISION**

**The Respondent has failed to comply with the procedure set out in Regulations 7 to 9 of the Regulations and the Respondent is therefore ordered to recommence the consultation process in accordance with Regulations 7 to 9 within 14 days of receipt of this decision. The date of receipt of this decision and therefore the commencement and expiry of the 14 day time period is to be communicated clearly to both the tribunal and to the Applicant by the Respondent. The Respondent is to reimburse the application fee of £515 to the Applicant within 14 days.**

1. By an application dated 8th September 2015 from Ian Hunt, the Secretary of the Woodland Park Residents Association, the Applicant objected to proposed changes to the site rules governing Woodland Park on the basis that;

a. the site rules make provision in relation to prescribed matters,

b. that the Respondent had not complied with the prescribed procedural requirements of the Mobile Homes (Site Rules) (Wales) Regulations 2014, (2014 No.1764 (W.179), (referred to as "the SRW regulations" from now on in this decision), and

c. The Respondent's decision was unreasonable having regard, in particular, to the proposal or the representations received in response to the consultation; the size, layout, character, services or amenities on the site; or the terms of any planning permission or conditions of the site licence.

2. The tribunal gave directions on 25th September 2015 to prepare the case for hearing and subsequently determined a preliminary issue in relation to compliance with regulation 10(3), in the Applicant's favour by written decision dated 28th October 2015.

**Background.**

3. Woodland Park ("the site" or "the Park") is owned by the Respondent and is a protected site under the Mobile Homes (Wales) Act 2013 ('the Act'). The rights and obligations of the mobile home owners and occupiers and the site owner are regulated by the Act. There are around 29 occupied homes on the Park.

Part 4 of the Act deals with agreements relating to mobile homes and section 52 relates to site rules. Each of the site rules is to be an express term of each agreement[1] relating to a pitch on the site. The "site rules" are defined[2] as those *"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."*

4. The SRW Regulations are the prescribed regulations that apply, and they prescribe the procedure for the making, variation and deletion of site rules. The 'other matters' prescribed by the regulations are as follows;

*"(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."*[3]

5. The SRW regulations set out a number of procedural steps that are to be followed[4]. The first step is that the site owner must consult with every occupier and any qualifying residents' association on any proposal that they make.[5]This is done by issuing a proposal notice to each consultee which must contain certain information.

[1] Section 52(1).

[2] Section 52(2)

[3] Mobile Homes (Site Rules) (Wales) Regulations 2014, ("SRW") regulation 4(2).

[4] SRW regulations 7-9.

[5] SRW regulation 7.

6. The next step is for the site owner, within 21 days of the last consultation day, to consider the 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 any modification.[6] The site owner is then to send a "consultation response document" ('CRD') to each consultee, notifying them of their decision. The CRD itself is subject to a number of mandatory requirements.[7]

7. If a consultee wishes to appeal to the tribunal, then this must be done within 21 days of the receipt of the CRD, upon specified grounds. Where an appeal is made, then the consultee must notify the owner of the appeal in writing **and** provide the owner with a copy of the application made, also within 21 days of receipt of the CRD.[8]

**Site inspection**

8. We inspected the site on 20th January 2016, accompanied by Mr Hunt and Mr Burch of the Applicant Residents Association and by Mr Fred Thompson site manager and Richard Mullan, Counsel for the Respondent. The weather was cold and frosty but dry and bright at the time of inspection. The tribunal panel walked around the site and considered all aspects of the site that either party wished to draw our attention to. We noted for example in the middle road in the site, there is a retaining wall below number 32 which is bowing, and we also noted for example that this home had a rotary washing line in the garden. There were a number of vacant pitches throughout the site, for example at the top of the site near numbers 54 and 56. The site occupies a south facing hillside and is backed by woodland. Our attention was drawn by Mr Hunt to an external sign stating "Woodland Park Retirement Village" situated near the entrance to the park facing the public road, and to a noticeboard for residents near the park entrance in which the address for the licence holder was said to be PO Box 214 Morecambe. We noted that there were 5 mph speed signs in the park. The public/visitor car parking area is close to the entrance at the base of the hillside. The mobile homes themselves vary in appearance and age.

**THE HEARING**

9. The Applicant was represented primarily by Mr Ian Hunt, assisted by Mr Graham Burch and Mrs Christine White, respectively the Secretary, Chairman and Treasurer of the Association. The respondent was represented by Counsel Mr Mullan assisted by Mr

[6] SRW regulation 9(1)(a).

[7] SRW regulation 9(2) (a) – (g)

[8] SRW regulation 10(1) and (3).

Fred Thompson, Site Manager. There were a number of residents of Woodland Park in attendance who contributed to the hearing at appropriate times. A full list of attendees is attached at Appendix One to this decision. All parties had an indexed and paginated hearing bundle prepared by the Respondent in accordance with the tribunal's directions.

10. The Applicant had three principal concerns;

    a. Whether the Respondent had correctly complied with the procedural requirements of the Act by reason of the business address that they had supplied throughout the consultation process.

    b. Whether the Respondent had complied with the procedural requirements of the Act and the SRW regulations arising from the initial use of forms in use in England.

    c. Whether the site rules proposed by the Respondent were reasonable or whether they should be quashed or replaced.

11. We determined that we would hear arguments and evidence upon all of these matters at issue and reserve judgement.

**The Respondent's business address.**

12. Mr Hunt submitted that the Respondent had failed to provide the correct address as required by the Act. He pointed out that on the covering letter accompanying some of the documents there were varying letterheads describing the Park operator as Hills Park Homes, Hills Leisure or Hills Leisure UK Limited. He gave examples of letters[9] that failed to mention the Company's registered address. He submitted that Hills Leisure UK Limited continued to use a numbered PO Box and that the Respondent was in breach of Schedule 2, chapter 2, paragraph 24 of the Act. This states as follows:-

*"Owners name and address*

*24(1) The owner must by notice inform the occupier and any qualifying residents association of the address in England or Wales at which notices (including notices of proceedings) may be served on the owner by the occupier or a qualifying residents association.*

Further Section 24(3) states as follows:-

*"Where in accordance with the agreement the owner gives any written notice to the occupier or a qualifying residents association, the notice must contain the following information –*

*(a) the name and address of the owner, and*

*(b) if that address is not in England or Wales, an address in England or Wales at which notices (including notices of proceedings) may be served on the owner.*

Section 24(4) states as follows:-

[9] At page 111 and page 282 of the bundle.

"*Subject to sub-paragraph (5), where –*

*(a) the occupier or a qualifying residents association receives such a notice, but*

*(b) it does not contain the information required to be contained in it by virtue of sub-paragraph (3), then*

*(c) the notice is to be treated as not having been given until such time as the owner gives the information to the occupier or qualifying residents association in respect of the notice"*

13. Mr Hunt submitted that the Respondent was obliged to formally give notice of an address and that the address could only be the Company's registered address, namely Brynford House, 21 Brynford Street, Holywell CH8 7RD. He also submitted that Section 86 of the Companies Act 2006 was applicable which states that "*A company must at all times have a registered office to which all communications and notices may be addressed"*. He also referred to the duties upon a Company under Section 87(3)(b) of the Companies Act 2006 "*To mention the address of its registered office in any document"*. Mr Hunt had also included within the hearing bundle[10] an email from Companies House that informed him that to comply with the Companies Act a PO Box can only be used if the address also shows a building name/number and the name of the street. He further said that the Post Office tracking receipt[11] shows a postage receipt for a house number 21 and a post code CH8 7RD, which he said identified the address as Hills Leisure's registered office at Brynford House, 21 Brynford Street, Holywell. However he said that the Post Office tracking system identifies the destination as being in Morecambe, 150 miles from Holywell and he submits that Hills are diverting their post and no longer using the registered address, contrary to the requirements of the Companies Act and that in practice therefore they are using a PO Box as a registered address without notifying Companies House. Mr Hunt contended that the use of a PO Box did not meet with the requirement of the Park owners to supply the correct address and asked the tribunal to dismiss the Respondent's attempt at the consultation process upon this basis.

14. Mr Mullan for the Respondent said that as far as the Company was concerned, then it was entitled to trade under a different name and it can trade in different locations. He referred to an undated letter[12] to Mr and Mrs Beech which was headed "Hills Park Homes The Name You Can Trust For Quality And Value" at the top of the letter. At the bottom of the letter it said "Hills Leisure UK Limited T/A Hills Park Homes and contained details of the registered office at Brynford House, 21 Brynford Street, Holywell CH8 7RD

[10] At page 286

[11] Page 288 of the bundle.

[12] At page 112 of the bundle.

together with the Company Registration Number and VAT number. He submitted there may be some confusion about the trading name, but the use of this was perfectly proper.

15. With regard to the Act, Mr Mullan stated that paragraph 24(1) of Schedule 2, chapter 2 simply referred to *"…the address in England or Wales at which notices...may be served on the owner by the occupier or a qualifying residents association"*. He said this was a very general provision. With regard to paragraph 24(3) where notices must contain the name and address of the owner, he referred to the proposal notice, for example the incorrect English one[13], which under the heading about the name and address to which responses were to be sent, stated "Thomas Hill, Hills Leisure UK Limited, PO Box 214, Morecambe, Lancashire LA4 9BB." He submitted that this did not need to be the Company's registered address, just an address at which contact could be made.

16. Mr Mullan pointed out that when the Respondent realised its error in serving the English proposal notice, it then sent the Welsh one[14] and again at box 6 in that notice, the name and address to which responses to be sent was the same as for the English notice. Mr Mullan stated that as far as the Act was concerned, then that PO Box address in Morecambe was compliant with the Act.

**Decision on business address**

17. Schedule 2, chapter 2, paragraph 24(1) simply refers to the address in England or Wales at which notices may be served on the owner by the occupier or a qualifying residents association. It does not contain any explicit provision that this must be the Company's registered office.

18. Paragraph 24(3) refers to the owner giving written notice to the occupiers or a qualifying residents association in accordance with the agreement (this being the agreement to occupy on the mobile home park) and refers to the notice containing the name and address of the owner and if that is not in England or Wales an address at which notices including notices of proceedings may be served upon the owner. Again there is no requirement for this to be the registered office of the Company where the owner is a limited company.

[13] Page 33 of the bundle.

[14] Page 43 of the bundle.

19. We also have regard to the SRW Regulations where Regulation 8 in relation to the notification of a proposal states at 8(2)(e)(iii) that the proposal notice must specify "*the name of the owner and address to which any such representation must be sent*". There is no requirement that the address should be that of the Registered Office. It may well be the case that a Registered Office of a Company may be at some distance from the mobile homes site and/or may be at some distance from the workplace at which the mobile homes site is administered. It is clearly envisaged by the Regulations that the address to which any such representations must be sent is that which is given on the proposal notice.

20. Therefore, we do not accept the Applicant's submissions upon this matter and we do find, as contended by Mr Mullan, that the Respondent was entitled to give an address at which it wishes to receive representations, but this does not have to be the Company's Registered Office address. There is nothing in the legislation to say this should be the case. However, as an observation, it clearly would be preferable for the Respondent in future to use consistent terminology both in relation to the Company name and correspondence address to eliminate any potential confusion. **Therefore we do not find that the consultation process was deficient by reason of the address point raised by the Applicant.**

**Proposal Notice – Procedural Requirements**

21. The Respondent sent a letter with the heading Hills Leisure UK Ltd to consultees and owner occupiers at Woodland Park dated 15th June 2015.[15] The Respondent's address was PO Box 214, Morecambe, Lancs LA4 9BB and the letter was signed electronically by Thomas Hill, Director. This contained a Proposal Notice[16] also dated 15th June 2015 which annexed the proposed new site rules for Woodland Park[17]. Both the letter and the proposal notice referred to the Mobile Homes (Site Rules) (England) Regulations 2014 and the Mobile Homes Act 1983 as amended by the Mobile Homes Act 2013. In Wales the governing law is the Mobile Homes (Wales) Act 2013 and the Mobile Homes (Site Rules) (Wales) Regulations 2014. This was pointed out to the Respondent by an undated letter sent by the Applicant,[18] and signed by Graham Burch, Christine White

[15] Page 32 of the hearing bundle. References to page numbers in this decision relate to the page number in the hearing bundle.

[16] Page 33.

[17] Page 37.

[18] Page 52.

and Ian Hunt, respectively the Chair, Treasurer and Secretary of the Applicant, and by a letter dated 1st July 2015 sent to the Respondent by Ray and Christine White.[19]

22. A second letter was sent by the Respondent which this time contained the correct form of Proposal Notice that referred to the Welsh legislation.[20] It is undated but headed "Hills Park Homes" with the same PO Box address as previously. It contains the electronic signature of T. Hill and the description "Thomas Hill Director Hill Park Homes". However, accompanying the original application to the tribunal were enclosures, the second of which was an original of this second, undated letter from the Respondent to Mr and Mrs Hunt which enclosed "the corrected documentation and rules", and the original envelope upon which was handwritten "2nd Proposal notice (Welsh) received 9 July 2015".The postmark on this envelope was 8th July 2015 at 7.15pm.

23. Further there was a letter dated 12th July 2015 that Mr and Mrs White sent to the Respondent[21] which stated "With reference to your undated letter received on 10th July regarding the proposed new site rules, as this is the first correct documentation you have sent, the response date should be in August not July." We are satisfied on the evidence that the Welsh proposal notice was sent on 8th July and received by consultees on 9th and 10th July 2015. It was stated on the Welsh proposal notice that the deemed date of service and the first consultation day was 15th June 2015 and the date by which any responses to the consultation must be received was 15th July 2015.[22]

24. The Respondent then sent a covering letter to consultees with the CRD. For a number of consultees this letter was undated, and for others it was dated the 24th August 2015[23]. The letter was headed "Hills Leisure UK", with the same PO Box address and was electronically signed 'T Hill Director Hills Leisure UK Ltd. This letter states "The last consultation day has passed on 3rd August 2015." The 3rd August would give a period of 25 days from 9th July to 3rd August. The letter also stated "I confirm that the name and address of the park owner is Hills Leisure UK PO Box 214, Morecambe, Lancashire LA4 9BB."

25. What was the effect of the initial failure to serve the correct proposal notice? The Respondent was aware that the form was the wrong English one, referring to the

[19] Page 56.

[20] A copy of such letter is at page 42 of the bundle addressed to Mr and Mrs White.

[21] Page 55.

[22] See the Welsh proposal notice on page 43, boxes 5 and 6.

[23] Page 16 of the bundle has the copy of this letter that was sent to Mr and Mrs White.

English regulations and sent the correct Welsh form referring to the Welsh legislation on 8th July. The Respondent clearly felt that the English notice was sufficient to start the consultation period, and that this consultation period was unaffected by the subsequent service of the correct Welsh proposal notice. The Form of Proposal notice was to "be in the appropriate form set out in Schedule 1 or a form substantially to the same effect."[24]

26. Mr Hunt points out that the first proposal document had a covering letter of Monday 15th June and the documents arrived on 16th and 17th June, but the consultation date was given as 15th June which was before the residents had received the papers. However he accepts that the 28 day period in the notice was to 15th July which would have been 28 days after they were received. He points out that as the Welsh notice contains the same dates as the original English one, that they would only have had 6 days to respond, namely from 9th July when the Welsh notice was received, until 15th July 2015.

27. Mr Hunt further made the point that residents had become confused as to whether they should reply to the first proposal document or wait for the correct papers. He said the Residents Association advised that they ought to reply as they were concerned that they would lose the opportunity to respond if they did not do so. Mr Hill also says that he believes that around seven residents did not respond to the consultation and although he does not know the reason for this, he believes that confusion over use of the incorrect documents may very well have been a factor.

28. Mr Mullan for the Respondent, stated that the deemed date of service of the letter and the first English proposal notice of 15th June 2015, would have been 2 days later, namely 17th June and therefore 28 days from that leads to 15th July and so an appropriate period had been given. Mr Mullan stated that the Respondent recognised its error and attached the appropriate Welsh notice in exactly the same form as the English one had been save for the references to the Welsh Act and Welsh Regulations. He said that "regrettably" the Welsh notice contained the same date for the end of the consultation period as the English notice, namely 15th July. He stated that as a matter of practicality this was the wrong date, but submitted that as a matter of law there was no material distinction between the form of the English notice and the form of proposal notice required in Wales according to Schedule 1 of the Regulations.

29. Mr Mullan submitted that the use of the English notice first and then the Welsh notice had not given rise to any misapprehension by any of the residents and that they had not missed the opportunity to raise a point. He described how "with impressive

[24] SRW Regulation 8(2)(g) .

perspicacity" the residents had written back timeously and referred to residents' responses contained within the bundle.[25]

30. Mr Mullan said that "in the raft of responses, virtually all of them point out with patriotic acerbity that the [English] Rules do not apply". He submitted that as a matter of practicality this demonstrated that the residents were alert to the different notices and to the existence of the proposal notice, but also that they had had the opportunity to respond in the proper way. He submitted that no prejudice had arisen from the use of the English notice first.

31. Mr Mullan referred to a timetable prepared by the Respondents[26] which recorded that the mistake had been made and the Welsh documents were sent out on 6th July 2015. He described that regrettably the date for responding to the consultation was not amended upon the Welsh form, however the Respondents' own practice was in fact to extend the consultation period to 3rd August 2015 which was 28 days, allowing two days for service, after the correct notices were sent out on 6th July.

32. Mr Mullan therefore made two principal submissions; firstly that the first of the notices, the English one, was to be treated as sufficiently and substantially compliant because it was virtually indistinguishable from the Welsh one, although it clearly applied to the wrong Act and Regulations.

33. Secondly, and in the alternative, Mr Mullan submitted that the second Welsh iteration of the notice sent out on 6th July was compliant and the erroneous reference to the last consultation date being 15th July was simply wrong and in fact the consultation did and could only end on 3rd August 2015. Mr Mullan stated that the Respondent Company as a matter of both fact and practice did not end the consultation period until 3rd August 2015 in any event, and the fact that an incorrect date was given does not nullify the notice. He said that the incorrect date could give rise to a complaint if the residents were materially misled by it or prevented from replying and caused understandable, proper and significant prejudice.

34. Mr Mullan, however, stated that there was no prejudice to the residents because firstly, wholesale responses were received from them by the Respondent well before the date of 3rd August 2015 and secondly, there was no complaint from anyone saying that they would have put in a response but they didn't because of the time period. He submitted that even if the Respondent was wrong about this, then in fact the Residents Association as a matter of practice have responded to and objected to every Rule,

[25] At page 185 onwards in the bundle.

[26] At page 101 of the bundle.

which has then been considered by the Respondent in the process that led to the CRD. He said it was not the case that any Rule has been left untested as a result of any non-compliance and that therefore either the first or second notice could properly be regarded as to be relied upon for the reasons given.

35. When asked by the tribunal why he considered prejudice to be a consideration, Mr Mullan submitted that it would always be relevant and referred to the overriding objective to ensure matters were dealt with justly. The tribunal asked Mr Mullan about the prescriptive nature of the Welsh Act and Regulations, but Mr Mullan submitted that the fact the first notice referred to the English Regulations did not in itself give rise to non-compliance with the Welsh Regulations. The Tribunal also asked Mr Mullan about the form of the CRD prescribed by the Regulations at Schedule 2 of the Welsh Regulations and that the CRD used by the Respondents in this case did not comply. Mr Mullan stated this was not a point that had been raised by the Applicant and also referred to Rule 9(2)(g) of the Regulations which referred to the consultation response document form "*being in the form set out in Schedule 2 or in a form substantially to the same effect*". The tribunal asked whether the Respondent's CRD contained, for example information explaining the rights of appeal available to consultees under Regulation 10[27]? Mr Mullan accepted that the Respondent's CRD of itself did not give information about the rights of appeal but submitted that if this information was given at the same time in a different document then it would then be of the same effect.

36. With regard to the requirements of Regulation 8 in relation to the proposal notice and the requirement that they must specify the date upon which the notice will be deemed to be served on each consultee and the date by which any representations made in response to the proposal must be received by the owner,[28] Mr Mullan said "the dates are on them, but they are not the correct dates". He submitted that, read in combination the first notice is compliant notwithstanding it refers to the English Regulations, and that on the second Welsh notice a date is provided notwithstanding it is the wrong one, but the consultation period was extended. Mr Mullan again referred to the Respondents' timetable[29] which stated "Last consultation day- 3rd August 2015".

37. The tribunal asked about the timetable and, if the Welsh documents were sent out on 6th July then how allowance had been made for the 2 days postage in calculating the 28 day consultation period? Mr Mullan said that although it does not expressly state it, if the documents were sent out on 3rd July 2015 they would be deemed served on 5th

[27] As required by regulation 9(2)(f).

[28] Regulation 8 (2)(e)(i) and (ii),

[29] Page 101 of the bundle.

July 2015 and the subsequent 28 day consultation period would end on 3rd August 2015.

38. The Tribunal asked Mr Mullan where it was communicated to the residents that 3rd August 2015 was the last day of the extended consultation period? Mr Mullan accepted this had not been communicated to the owners other than retrospectively once that time period had passed. Mr Mullan's attention was drawn to a letter from the Respondent to Mr and Mrs White dated 24th August 2015[30] which stated that "the last consultation day has passed on 3rd August 2015". This was the letter that enclosed the CRD. Mr Mullan accepted this was the first communication from the Respondent to the home owners at Woodlands Park informing them that 3rd August was in fact the last date of the extended consultation period.

39. With regard to whether or not there had been prejudice caused to the residents, Mr Hunt stated that as a number of residents had rejected the original notice then they may not have responded to the originally proposed Rules. He said that residents would expect the Park owners to understand and follow the Welsh Act and he said this shows that they don't understand the Act, that their document was incorrect and therefore what it said was immaterial. He also said that the use of two documents and dates confused the residents. He stressed the Residents Association was concerned and that is why they responded although upon reflection and considering the evidence in the hearing he now said that there were more incorrect issues than they had realised at the time. He believed the 3rd August date was "made up on the hoof". He suggested that the Residents Association had to race through the process rather than organise matters in a more timely fashion and he felt that if they had ignored the original incorrect English notice they were worried that the process may go ahead and that site rules may have been imposed on them by the Respondent in any event.

**Decision on the Proposal Notice**

40. **We find that the Respondent has failed to comply with the procedure set out in Regulations 7 to 9 of the Regulations and the Respondent is therefore ordered to recommence the consultation process in accordance with Regulations 7 to 9 within 14 days of receipt of this decision. The date of receipt of such decision and therefore the commencement and expiry of the 14 day time period is to be communicated clearly to both the tribunal and to the Applicant by the Respondent.**

41. We reject Mr Mullan's arguments. With regard to the first English notice, that referred to the Mobile Homes (Site Rules) (England) Regulations 2014 and the Mobile

[30] Page 16 of the bundle.

Homes Act 1983 As Amended by the Mobile Homes Act 2013. This was accompanied by a letter to residents dated 15th June 2015 (this enclosed Park Rules for Woodlands Park which referred to agreements under the Mobile Homes Act 1983 As Amended), which also stated that "As you may know, under the Mobile Homes Site Rules (England) Regulations 2014... any current Park Rules will cease to have effect on 30th September 2015 unless they are replaced through a consultation process such as this"[31].The English proposal notice also said at box 2 that the Respondent was making these proposals in line with the English Regulations. The English Regulations and the Mobile Homes Act 1983 are of no effect or application at all in Wales, which has its own Act and Regulations.

42. The Welsh Regulations in their explanatory note frequently mention how the Regulations "prescribe" the procedure to be undertaken. We particularly have regard to the prescriptive nature of the Regulations. We also note the prescriptive nature of Section 52 of the Act as set out at paragraph 3 of this decision. Regulation 8(2)(g) states that the proposal notice must "*be in the appropriate form set out in Schedule 1 or a form substantially to the same effect*". The use of the "must" makes this a mandatory requirement. We reject Mr Mullan's submission that the English form was a form substantially to the same effect as that set out in Schedule 1 to the Regulations. The English form was of no effect whatsoever since it wrongfully referred to legislation that was of no application in Wales. Therefore, although it is clear that the actual format of the English and Welsh proposal notices is similar, the effect is different. No explanation was proffered by the Respondent as to why the English proposal notice was served in Wales. The Respondent operates a number of mobile home sites and given that the changes to the Mobile Homes Act 1983 in England and the introduction of the Mobile Homes (Wales) Act 2013 have brought about the most significant changes in this area of law for many years, there is no excuse for the Respondent apparently failing to appreciate the different legislative regime in Wales.

43. With regard to Mr Mullan's submission that the English notice was virtually indistinguishable from the Welsh notice, it is clear that the notices are very similar, however they are distinguishable and the principal distinguishing features are that the English one refers to the law in England and the Welsh notice refers to the relevant law in Wales.

44.The Respondent of course realised its mistake, possibly alerted by the responses of the residents of Woodland Park, and sent out the Welsh proposal notice which was correct in form. The Respondent's own evidence of its timetable[32] said that the correct

[31] Letter to Mr and Mrs White at page 32 of the bundle, and the English proposal notice at page 33.

[32] Page 101 of the bundle.

documents were sent out on 6th July 2015. If this was the case they would have been deemed served on 8th July and a consultation period of 28 days would then have ended on 5th August. Mr Mullan submitted that if the documents had been sent on 3rd July they would have been deemed served on 5th July and therefore the subsequent 28 day consultation period would end on 3rd August 2015. However, there was no evidence this was the date the Welsh notices were sent. The statement of Tom Hill, Director of the Respondent, was silent[33] upon the date the Welsh notice was sent out referring only to his exhibit TH/3 which was an undated letter sent to Mr and Mrs Beech[34] containing the Welsh proposal notice[35] which, as noted, had the deemed date of service of the notice of 15th June and the date by which any responses must be received as being 15th July 2015.

45. It was not clear to the tribunal upon what evidential basis Mr Mullan relied upon 3rd July and it appeared to be as part of an opportunistic attempt to shoehorn in the consultation period's ending date of 3rd August. We have found at paragraph 23 above that, on the evidence, the Welsh notices were sent out on 8th July and received on the 9th and 10th July 2015. The Welsh notice was of no legal effect because it failed to comply with the requirements of the Regulations. It specified 15th June as the first consultation day which was plainly incorrect. It follows that by specifying 15th July as the date by which any responses must be received, that this was also incorrect as the last consultation day had to be at least 28 days after the first consultation day. The Welsh notice was also to be signed and dated by the owner and clearly the Regulations envisage that the correct date will be upon the notice.

46. We emphatically reject Mr Mullan's submissions that a combination of the English and Welsh notices would be sufficient to comply with the Regulations and noted Mr Mullan's surprising admission that the Respondents had purported to extend the consultation period following the service of the Welsh notice, to 3rd August 2015, but had not at any stage communicated this to the Woodland Park residents until a letter dated 24th August 2015 which informed them retrospectively that the extended consultation period had ended.

47. We also note that the CRD prepared by the Respondent[36] failed to comply with the mandatory requirements of Regulation 9. The CRD failed to give details of the first consultation day contrary to Regulation 9(2)(a), failed to contain a statement that any

[33] Statement of Thomas Hill 23rd October 2015, paragraph 5, at page 97 of the bundle.

[34] Page 112 of the bundle.

[35] Page 113 of the bundle.

[36] Page 17-26 of the bundle.

site rules or deletions would come into force in accordance with Rule 14 provided that a deposit of the Rules had been made in accordance with Regulation 12 and notified in accordance with Regulation 13 as required by Regulation 9(2)(e), it failed to explain the rights of appeal available to consultees under Regulation 10 as required by Regulation 9(2)(f), and it was not in the 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). It is an unattractive submission that the Respondent makes in relation to the form of the CRD, to point out that these were issues raised by the tribunal rather than the Applicant, as if this were sufficient reason to ignore the Respondent's multiple failures to comply with Regulation 9. Had the Respondent used the form of CRD required by Schedule 2 of the Regulations then the Regulations would have been complied with.

48. We reject Mr Mullan's submissions upon any prejudice being caused to the residents of Woodland Park. The Regulations are prescriptive and we do not consider that we are required to find prejudice to the residents by reason of the Respondent's admitted failures to comply with the Regulations. However, as an observation, the tribunal considers it likely that the use of the wrong form and Regulations and the subsequent attempt to rely upon that incorrect form in some way, is likely to have caused confusion to the residents of Woodland Park. The Act and Regulations are by no means straightforward for professional site operators to understand (as demonstrated by the Respondent in this case), let alone lay persons.

49. In summary there are failures to comply with the procedural Regulations throughout and we find that, for the reasons given above, the Respondent has failed to comply with the procedure set out in Regulations 7 to 9.

**The Respondent's proposed site rules.**

50. The Applicant had contended in relation to many of the Site Rules proposed by the Respondent, that the Respondent's decision was unreasonable having regard in particular to the representations received in response to the consultation. Given that the tribunal have found that the Respondent has failed to comply with the procedure set out in Regulations 7 to 9 and have ordered the Respondent to comply with those regulations, we are not required to make decisions upon the reasonableness of the proposed rules. However at the hearing, given that there were numerous mobile home owners present, the Applicant had incurred fees in bringing the case and that we had had the opportunity to consider both written and oral evidence and arguments upon the proposed rules, we shall set out below for the information of the parties, the tribunal's considerations upon whether the owner's decision with regard to the rules should be confirmed, quashed or modified.

51. At the hearing we took each rule that remained in dispute and heard the evidence and arguments on both sides. We are reflecting that procedure here and provide our putative decision on each individual rule. In doing so we confirm that we have taken into account all of the evidence before us both oral and documentary.

52. We looked at the rules as proposed by the Respondent and that appeared as an exhibit to Mr Hill's statement at TH/5.[37] We have only detailed the rules here that were in dispute. We record that there was no objection to Rules 1, 3, 4, 8, 9, 12, 16, 17, 18, 21 to 23, 26 to 28, 30, 32, 33, and 36 to 38.

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

53. There were fourteen responses disagreeing with this proposed rule. It was argued that small fences below 1 metre should be allowed and pointed out by eight consultees there are already fences around many pitches, some of which have been in place for many years. There were concerns that this rule could contradict the prescribed matters in the Act and it was felt that fences keep dogs and visiting children safely within the park boundaries.

54. The Respondent argued that fences can create bridges for fires as well as hindering access in the event of an emergency and that they should not be used to keep children and dogs within boundaries. However Mr Thompson did concede that whether a fence would be a bridge for a fire would depend upon the separation distances. Mr Mullan submitted that there is no good reason to erect fences around the properties and the general provisions have always been that there are no fences without permission of the Park owner. He stated that the location is best advantaged by an open plan layout and if each property is fenced then this detracts from that appearance. He also considered that open plan is more conducive to social cohesion. He said that if fences were put up for the purpose of keeping animals in then that would again detract from the overall appearance of the Park.

55. Mr Mullan stated that the purpose of the rules was to bring equity and equanimity to all Park residents and one of the concerns is that without a rule of this nature there would be nothing to stop somebody putting up a large fence and the Respondent was concerned about preventing changes to the nature of the Park. Mr Thompson confirmed that if the height of a fence was restricted to 1.22 metres then this would not cause a problem.

**Decision on Rule 2**

[37] Page 260 of the bundle.

56. We consider that as accepted by Mr Thompson whether fences are fire hazards depends upon the separation distances. We do not accept that the fences necessarily detract from the general amenity of the site and are not good for social cohesion and we note that the rules are not retrospective and therefore would not affect the many existing fences that are upon the site. It would also be important at Woodland Park for there to be barrier fences on those plots where there is a substantial drop from the plot to the road, for example as we saw with the retaining wall at Number 32. The tribunal recommends quashing this rule and replacing it with a rule preventing the erection of fences in excess of 1.22 metres.

**Rule 5 – "Save for 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 a satisfactory detailed method statement, risk assessment, noise limitations and impact study in order to minimise disruption on the site."**

57. Mr Hunt pointed out that the Residents already had a duty to maintain the exterior of their homes under Paragraph 21(1) of Chapter 2 of Schedule 2 to the Act. He also suggested that this may be a breach of the prescribed matters in that it relied upon the discretion of the site owner. Mr Mullan stated that in the previous rules[38] that there were to be "No alterations to the pitch or surrounding area including the external of the park homes, without first getting the park owner's permission", so there would essentially be no change here. With regard to the second point about the requirement of method statements, risk assessments and so forth he says that this will be necessary depending upon the scale of the work. He referred to the bowing wall that we had seen on inspection this morning that would need reconstruction. He said that will require a lot of work and it is important that the Park owners have some control over these large jobs. He accepted that it was difficult to draft where the cut off point would be for a smaller job which would require less for the method statement to include.

**Decision on Rule 5.**

58. The proposed rule contains a discretionary element but we note that the prescribed matters included at Schedule 5 of the Regulations at 2(a) that "any matter which is expressed to grant an occupier a right subject to the exercise of discretion by the owner" is prescribed "except in relation to improvements to an occupier's plot". Therefore in relation to improvements on the plot the Site Owner's discretion may be allowed. However the tribunal would quash the second part of the rule which requires

[38] Page 64 of the bundle.

detailed method statements, risk assessments and so forth. We believe that the point that Mr Mullan makes in relation to the extent of works and the Site Owner wishing to have some element of control over major works is a reasonable one but we do not consider detailed method statements, risk assessments and impact studies will be required for all works and it would be unreasonable to expect them to be provided. We also note that the reference in the rules in the Schedule 5 is to improvement to an occupier's **plot** and further on in those prescribed regulations there is reference to the plot but also the **home** and the **pitch**.

**Rule 6 – "You must maintain your park home to the latest industry standard. You must ensure that the condition of the park home is compliant with the Mobile Home Act and does not have a detrimental effect on the amenity of the park. The Park owner reserves the right to assess the condition of the park home at anytime."**

59. The Applicant was concerned that the latest industry standard may be inappropriate for older park homes and it should be the standard for the age of the home. The Applicant was also concerned that the Rule as drafted appears to give the site owner a right of entry contrary to the Act.[39]

60. Mr Mullan stated that the Rules would always be subject to the statutory provisions and was unable to say with absolute certainty what the industry standard was. Mr Hunt told us that the British Standard was 3632 and Mr Thompson acknowledged that this was very detailed and believed that it was due to change again this year.

**Decision on Rule 6**

61. We consider this Rule should be quashed. It appears to be superfluous in any event given that under paragraph 21(1)(c) and (d) of chapter 2, schedule 2 of the Act, the mobile home occupier must keep the mobile home in a sound state of repair, maintain the outside of the mobile home, the pitch and all fences and outbuildings in a clean and tidy condition.

**Rule 7 – "If you instruct an independent tradesperson to carry out work on your park home or pitch, you must ensure that the tradesperson has the necessary qualifications and certificates for the work that he or she is doing, together with sufficient professional indemnity insurance."**

62. There was discussion as to the use of the word "professional" and Mr Mullan pointed out that public liability insurance would only be one element of indemnity insurance and therefore the Respondent was content to remove the word "professional", but otherwise considered the Rule should remain.

[39] See paragraph 16, Chapter 2 of Schedule 2 to the Act.

**Decision on Rule 7**

63. The tribunal recommend that the word "professional" is removed, but that the rule otherwise remain unchanged.

**Rule 10 – "We are the sole supplier of new park homes to the park."**

64. Mr Hunt submitted this Rule should be amended so the residents should have the freedom to choose their own manufacturer.

**Decision on Rule 10.**

65. This was not opposed and therefore we would suggest that the appropriate Rule would be to read "We are the sole supplier of new park homes to the Park subject to the home owners having freedom to select the manufacturer".

**Rule 11 "You must not erect any washing lines on your pitch or on any part of the park. You may erect a rotary line on your pitch, but it must be removed and stored away at the end of each day."**

66. Mr Hunt indicated that the residents were of varying ages and physical abilities and questioned the need for this Rule. A resident, Mr Green, stated that when he first came onto the Park 12 years ago there were no objections to washing lines provided it did not obscure the sight line of anybody else and felt that the Respondent was not taking into account that there are places where you could have a line without causing problems for others. Mrs Grimison, a fellow mobile home owner, indicated that many occupiers have manual dexterity issues which would cause problems if they were to have to take down and re-erect a line every day.

67. Mr Mullan drew the Tribunal's attention to previous Rules, for example those of 20th November 1998[40] at Rule 11, that washing lines were to be reasonably screened from public view, and the previous set of Rules which stated that "no washing lines – rotary lines are permitted, but these must be removed on a daily basis"[41].He stated this was necessary for the general amenity of the Park because washing lines can lead to complaints often on an anonymous basis. He said that the Rule has been there for a long period of time and that anybody coming on to occupy the site since 1998 would have come on subject to those Rules and it is washing left flapping overnight that causes problems.

**Decision on Rule 11**

[40] Page 63 of the bundle.

[41] Page 64 of the bundle.

68. We do not consider that this Rule would be reasonable or necessary for the statutory or regulatory purposes. We do not accept that the presence of rotary washing lines or indeed other washing lines would adversely affect the community cohesion or the appearance of the site and we do not consider it reasonable for a requirement that the rotary line should be collapsed, removed and stored away at the end of each day. We therefore would recommend quashing this Rule.

**Rule 13 – External Decoration. "You must maintain the exterior of your park home and your pitch in a clean and tidy condition. Where the exterior of your park home is repainted or recovered you must use reasonable endeavours not to depart from the original exterior colour scheme."**

69. Mr Hunt said that residents would like to have the right to choose the colour of their home. Mr Mullan submitted that some colours could be offensive and the Respondent was concerned about the potential for colour schemes that may be inappropriate. Mr Thompson stated that the Respondent had had problems at other Parks. For example they had had a pink home and a blue home which had detracted from the appearance of the Park. We heard from Mr Mullan that all of the colours for the homes are pastel shades apart from a wooden home.

**Decision on Rule 13.**

70. We consider that this Rule is reasonable and would approve the same.

**Rule 14 – Storage – "You must not have more than one storage shed on your pitch, which must be of non-combustible minimum Class 1 fire rating. Where you source the shed yourself the design, standard and size of the shed must be approved by us in writing (approval will not be unreasonably withheld). You must position the shed so as to comply with the Park's Site Licence and Fire Safety Requirements and as agreed with us (such agreement not to be unreasonably withheld.)**

71. Mr Hunt said a lot of the Applicant's concern was the manner in which this Rule was written. A Class 1 fire rating should be sufficient and he believed the residents should be able to site the shed. It is understood that 8' by 6' is the normal size of shed, Mr Thompson stated he believed there were guidelines as to these in the Site Licence and Mr Mullan submitted this Rule reflects an obligation being passed on from above and that the Respondent is to comply to ensure there is no difficulty with the overall Site Licence.

**Decision on Rule 14.**

72. We recommend approval of Rule 14 as drafted. Although it could be argued that the requirement for the positioning of the shed to be agreed with the Respondent is discretionary, the fact that must be positioned so as to comply with the Park Site Licence means that in practice this would need to be discussed with the Park owner in

any event and provided that the shed is positioned in accordance with the Site Licence, then we do not consider that the owner would be exercising discretion as the shed would be entitled to be placed there. Therefore we consider that this Rule would be reasonable. It is also worth us pointing out that we did not have a copy of any previous or contemplated site licence before us.

**Rule 15 – Storage – "You must not have any storage receptacle on your pitch other than the shed mentioned in rule 14 and any refuse bins supplied by the local authority for personal domestic use. Any such refuse bins must be positioned on your pitch as agreed with us (such agreement not to be unreasonably withheld)."**

73. Mr Hunt stated that a number of residents already have storage receptacles and that the size of the shed limits what can be placed in it. Mr Mullan stated that this Rule is about keeping the site neat and tidy and preventing residents from using the storage on their pitch which would diminish the visual amenity of the site.

74. With regard to the location of the bins, he stated that again from time to time neighbours can fall out over this as bins can be placed by neighbours in a location that causes problems. He said that this Rule is not a discretionary one because under the Rule it would have to be dealt with by consensus. It required agreement. Mr Mullan had indicated that if an individual did not have a shed upon their pitch then the Respondent would agree a single storage receptacle.

75. In the CRD the residents had argued that small plastic seat type boxes should be allowed for additional storage for small items and also to sit out in the garden and it was pointed out that the Rule was unenforceable as the residents currently have a plethora of storage containers. Mr Mullan agreed that if there is no shed then the Respondent agrees that a single storage receptacle would be appropriate.

**Decision upon Rule 15**

76. We consider that for those occupiers that do not wish to have a shed, then it should be possible for them to have a storage receptacle in addition to the refuse bins supplied by the Local Authority. Therefore we recommend that this Rule ought to be redrafted to reflect that one storage receptacle on the pitch in addition to or instead of the shed would be acceptable. We agree that small plastic seat type boxes should be allowed for additional storage and also to sit out in the garden. We therefore recommend that the parties agree a Rule to reflect this when the consultation is commenced again in accordance with our Order. Any receptacle should also be Class 1 fire rated.

**Use of your Park home – Rule 19 – "You must not use your Park home for any use other than a residential dwelling. Your Park home must be your only residence."**

77. Mr Hunt submitted this Rule should be amended to reflect that the Park home should be your only UK residence. Mr Mullan stated this Rule was directed against

properties being left vacant. He said it would not stop anybody residing, for example for 9 months of the year in Spain.

**Decision on Rule 19**

78. We consider that this Rule is reasonable and recommend its approval.

**Rule 20 – "The resident named in the Written Agreement for your Park home must reside at your Park home."**

79. Mr Hunt was concerned that this would affect residents if they had to go into hospital or care. Mr Mullan confirmed that it would not affect such individuals and it was directed at those people who were looking to permanently live elsewhere when they still owned a mobile home on the Park.

**Decision on Rule 20**

80. Given Mr Mullan's comments upon the same, the Tribunal recommend that the Rule is amended to reflect this, for example with the wording "save where the resident is unable to do so owing to health or social care needs".

**Pets – Rule 24 – "You must not keep more than two pets or animals at your park home, save always that you must not keep any dog of any breed subject to the Dangerous Dogs Act 1991. You must keep any dog under proper control and you must not permit it to frighten other users of the park. You must keep any dog on a leash not exceeding 1m in length and must not allow it to despoil the park. You must keep any cat under proper control and must not permit it to frighten other users of the park, or to despoil the park."**

81. With regard to this rule Mr Mullan noted the comments on the CRD that "cats don't scare people" and "it is difficult to control cats" and suggested amending the Rule to "You must not permit any cat to despoil the Park". When asked by the tribunal if this could be prevented, he said the Respondent does get complaints that neighbours' cats defecate upon neighbouring gardens and these are the sort of practical difficulties that do arise. Mr Thompson confirmed that this was not a problem on Woodland Park. Mr Green indicated that there had previously been a Site Manager with 10 cats. Mrs Grimison was concerned about the dog leash not to exceed 1 metre in length. She felt the leash should relate to the size of the dog, but Mr Mullan considered that the Park was not open ground and it was appropriate to have the dog on a short lead.

**Decision on Rule 24.**

82. We recommend that the following Rule be adopted and would quash the proposed Rule; "**You must not keep more than 2 pets or animals at your Park home, save always that you must not keep any dog of any breed subject to the Dangerous Dogs Act**

**1991. You must keep any dog under proper control and you must not permit it to frighten other users of the Park. You must keep any dog on a leash and must not allow it to despoil the Park".**

**Rule 29- "You must not wash any vehicles on the park, other [than] by bucket and sponge."**

83. Mr Hunt pointed out that all the residents pay for their water and should be able to use a hose if they wish to do so. Mr Mullan accepted this was a fair point for those whose water was metered and suggested that the rule had been drafted because the situation was different for those who aren't separately metered and the concern of the Respondent had been disproportionate use of water. However he accepted the Applicant's position and withdrew Rule 29. Therefore we note that this rule would be withdrawn in the future.

**Vehicles and Parking- Rule 31- "All drivers of vehicles on the park must drive carefully and at no greater speed than five miles per hour, unless otherwise stated on [the] park."**

84. Mr Hunt had pointed that on the site there were steep corners that can't be negotiated at five miles per hour and believed that there was a need for a ten mile per hour speed limit and this was agreed. Therefore we recommend that this rule be amended to reflect the limit of ten miles per hour.

**Rule 34- "You must not drive or park commercial vehicles of any sort, including light commercial goods vehicles and heavy goods vehicles as described in the vehicle taxation legislation on any part of the park, with the exception of commercial vehicles operated by us and our family and employees and the park warden, and any utility suppliers and the Royal Mail."**

85. In relation to the reference to "our family" and given that the Respondent is a company Mr Mullan suggested that the words "our family and" be replaced by "the company, its...".

86. Mr Hunt submitted that this proposed rule would breach the prescribed matters more particularly under Schedule 5 Paragraph 2 (J) "Whether the vehicular access to the site should be restricted in any way;" He was also concerned that this would impact upon refuse vehicles and fire engines and pointed out that residents could be using commercial vehicles if they were moving furniture and so forth.

87. Mr Mullan stated that the proposed rule was directed at generating a peaceable atmosphere in the Park and submitted that the restriction in the regulations related only to the vehicles of residents and they were seeking to restrict third parties. He said that emergency vehicles would not be there at the invitation of the residents and refuse collection vehicles would be covered under utilities. Mr Mullan said that the

Respondent was happy to make an exception for emergency services vehicles and the CRD document recorded that commercial vehicles had never been permitted on the Park and it was not designed for regular use of HGV or commercial vehicles due to the limited space to manoeuvre a vehicle of that size.

**Decision on Rule 34.**

88. The rule of course refers to residents of the Park. We consider it is most unlikely that the residents would be driving Heavy Goods Vehicles upon the Park although it can be seen that perhaps lighter commercial vehicles could be hired by residents for the purposes of things such as deliveries of furniture on the site. Given that Rule 32 states that residents mustn't park more than one properly taxed and insured vehicle upon the park, then we do not consider that it would detract from the amenity of the site if the occasional commercial vehicle was to be used by residents for temporary and specific purposes, as indeed they are used in other streets and housing estates in Wales. There was no evidence that there was a problem on this particular Park with commercial and Heavy Goods Vehicles and we recommend the quashing of this rule.

**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 roadways or access to any homes or other buildings on the park. Unless using a small van which does not exceed 1.81m in height and 1.5 tonnes in weight."**

89. Mr Hunt said that this rule did not take into account the interests of the residents on the Park and had no consideration of how the residents live. He said if tradesmen come onto the Park then it simply isn't feasible for them to park at the bottom. He said that residents are happy for tradesmen to park outside the appropriate pitch on the Park for delivery of items even if this may cause a small temporary inconvenience.

90. Mr Mullan said that the purpose of this proposed rule was to prevent large vehicles coming on to the Park and blocking and inconveniencing other residents for the benefit of one resident. He said the reason for the dimensions in the rule was probably the height and weight of a lightweight van and that was what was in mind. Mr Thompson confirmed that there had not been any difficulties on Woodland Park that he was aware of in this regard.

**Decision on Rule 35.**

91. We note that due to the topography of the site there will undoubtedly be issues arising where residents of an advanced age cannot carry large items to their plots from the visitor's car park and we do not think, as Mr Mullan submitted, that the fact that the workmen usually have trolleys and or manpower to transport goods, is sufficient reason to accept this proposed rule. We consider that contractors' vehicles should also be allowed where larger repair or replacement works are required. For example the

work to the retaining wall on the upper part of the site that we witnessed upon inspection may very well require commercial vehicles to access this area. Therefore we recommend quashing this rule 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."**

92. A number of consultees had pointed out that some visitors would be unable to walk up from the car park to make their visit and that there is no visitors car park at the top of the site. There were also concerns expressed about where any visiting Doctors or nurses would be expected to park if this rule was implemented. Mr Hunt further pointed out that although the proposed rule refers to allocated visitors parking spaces there aren't any allocated spaces.

93. Mr Mullan accepted that there are no allocated parking bays but he said there were two parking areas where it is possible to have more freestyle parking. The problem is that the rule was directed at people parking in an ad hoc fashion and the intention was to allocate visitors spaces. Mr Thompson indicated that there were very few visitors' spaces at the top end of the Park but he said there had been issues with parking and it has been a problem. Mrs Winch from Number 28 told the hearing that her parking bay does not go alongside the property it is just flat on the road and sometimes somebody will park there which can be a problem for her.

**Decision on Rule 39.**

94. Whilst it is important on mobile home sites for residents to be assured that they will have parking spaces and it is equally important that there should be space for visitors, the topography of the Woodland Park site is such that it is not reasonable to expect visitors to park only in the visitors car park near the entrance. The site is steep in places and if there are elderly visitors visiting residents at the top end of the site then it is not reasonable to expect them to park and proceed upon foot to make their visit. It is also unreasonable because there are no allocated visitors parking spaces throughout the rest of the Park save for the car park at the entrance. Therefore we recommend the quashing of this rule but suggest that the parties consider if agreement can be reached upon alternative wording, particularly if there is in due course further clarity about allocated visitors' spaces at different parts of the Park. Certainly the access roads should not be obstructed by any visitor parking and at all times parking should allow access for the residents and emergency vehicles.

**Fire Precautions- Rule 40 – "You are recommended to have in your park home a fire extinguisher and fire blanket conforming with the relevant British Standard."**

95. It was agreed that this rule would be removed.

**Rule 41 – "You must not have external fires on your pitch or any part of the park, including incinerators."**

96. Mr Hunt said that the residents wanted to be able to have barbeques but were concerned that this rule would prevent the same. Mr Mullan said that the company would be content for residents to have barbeques and he suggested that the answer would be to carefully redraft the wording to reflect that equipment manufactured for the purpose of barbeques would be allowed.

**Decision on Rule 41.**

97. We agree that the rule should be redrafted as Mr Mullan suggests and we recommend that the parties consider this and come to an appropriately agreed form of wording when the Respondent re-consults upon this matter in accordance with our order. We note that in the First-Tier Tribunal Property Chamber Case of Manor Park Residents Association and Mr and Mrs Witty v Hills Leisure UK Ltd[42] the parties (of course including the Respondent in the instant case) agreed to an amended Rule 41 as follows "You must not have external fires on your pitch or any part of the park, including incinerators. However you are at liberty to have barbeques if sensible fire precautions are taken." The Manor Park decision is not binding on us in any way however since it involved the same Respondent and that wording was acceptable to the Respondent then there appears to be no reason why the Respondent shouldn't agree to the same wording at Woodland Park.

98. We record that there were no further challenges to Rules 42 – 47 inclusive.

**Proposed New Rules.**

99. Mr Hunt then indicated the concerns of the Applicant that the proposed rules had not contained any information about age limits of residents of the park. He submitted that there should be an age limit of 55 years minimum for residents, with a caveat that this should be the age limit except for, with the agreement of all parties, any carers. He submitted the parties would be the Council, the Respondent Site Operator and the Applicant Qualifying Resident's Association. He also submitted that there should be a rule stating that no children were to live permanently on the park. We noted that in previous rules, for example those of the 20th November 1998,[43] that Rule 21 stated "Persons of an age of 52 years and over shall only be entitled to reside on the park" and that Rule 20 that year was "All mobile homes must be sold to semi and retired persons only."

[42] CHI/00HE/PHN/2014/0012 and CHI/00HE/PHN/2014/0016

[43] Page 63 of the bundle.

100. The subsequent Woodland Park rules[44] stated that "No new residents under 55 years of age unless proof of retirement is given or exemption is given by the park owners for special circumstances at their discretion." These rules also stated "No children are permitted to live on the park".

101. Mr Hunt said that through custom and practice this had always been a retirement park with a minimum age limit and every resident had purchased their home with that being their understanding. He said that although some children may visit at the weekend you never really see children around the park.

102. Mr Mullan stated that with regard to the age restriction the purpose of the rules was to regulate behaviour and he said nothing that had been said so far had indicated why there should be an objection to, for example a 40 year old living upon the site. He asked rhetorically whether it's more likely that a 40 year old would play loud music? He said that if that was the case then it could be dealt with in a less heavy handed way and could be dealt with by rules directed at particular features of undesirable behaviour.

103. We heard evidence that there was planning permission upon the site for some 70 further pitches. Mr Mullan said that he did not know what the intention of the company was with regard to that but he accepted that park homes of this sort are attractive to people of retirement age in attractive and quiet locations such as Woodland Park. He said the previous rule was not absolute and gave discretion to the Park owners and now they had come to a fork in the road they had to give up the discretion or be bound by an absolute rule. He submitted that it would not be justified and would hamper the company in renting pitches out if they were to impose the age limit, and he submitted that if current residents were concerned by the prospect of inappropriate behaviour by new residents then they could be reassured by the primary obligation upon all residents and on the company to ensure that there was quiet enjoyment.

104. In the alternative Mr Mullan submitted that if the tribunal were not persuaded by his submissions on that, then the Respondent would seek a lower age limit than that sought by the Applicant, of 45 years. He submitted that that had been imposed in the Manor Park case although the Respondent sees it as being unjustifiable.

105. With regard to children, Mr Mullan submitted there was interplay between the age limit and children and that the lower the age limit the more likely residents were to have children. He said the concern again with children and teenagers could be noisy or antisocial behaviour and suggested that matters could be dealt with

[44] Page 64 of the bundle.

disjunctively, namely if children were banned then the age limit of residents could come right down.

106. He submitted that the ban on children was discriminatory and although it was subject to an exception in the Equality Act he submitted that just because it was there did not mean it should be relied upon. He said that children often come for holidays and school holidays comprise 14 odd weeks of the year and at weekends. He suggested that if children were a problem then this would have been apparent before now. Again he suggested that the concerns of the residents must be reassured by the ongoing legal obligation for them to have quiet enjoyment of their properties.

107. Mr Mullan also submitted that the question of children was not a proper matter for the rules per se because the purpose of the rules was to regulate conduct between residents. With regard to residents who had purchased on the park on the understanding it was a retirement park, he said this was not a contractual requirement but was something under the rules. If those that purchased under the previous rules failed to have regard to that then he suggested that proper avenues could be available to them in misrepresentation. In answer to the tribunal's question as to whether he considered the rules were incorporated into the residents' contracts, he said that if that was the case then there could still be contractual remedies and misrepresentation.

108. Mr Hunt referred us to the Woodland Park Design and Access statement[45] prepared by Saunders Boston Ltd and dated 7th July 2015 in which the site description stated that Woodland Park catered for "retired and semi retired people over the age of 50." He referred us to the earlier rules for residents with their age limits and to a Hills Park Homes website entry[46] for Woodland Park which stated that "We cater for semi retired and retired people over the age of 50". He said that it was fundamental to everything the residents wish for that Woodland Park should be a community of that particular age. He said the world is changing and that is why they want to keep Woodland Park as it was. Mrs White informed us that everyone there had bought into the retirement idea.

109. Many residents expressed their concern that if the new part of Woodland Park was developed and there were no restrictions upon age that there could be tenants funded by benefits, and children, and this would completely change the nature of the park and the community. Mrs Grimison stated that she was the last person to move in in July 2014 and she did so on the grounds that it was for semi retired and retired people and there were no children.

[45] Page 61 of the bundle.

[46] Page 66 of the bundle.

110. Mr Mullan sought to reassure the residents by saying that it was not the intention of the company to offer holiday or short term tenancy agreements to new potential occupants.

**Decision upon the proposed rules regarding age limits.**

111. We consider that Woodland Park has clearly and indisputably been developed and marketed as a park for the retired and the semi retired. Previous rules have accepted this even though the ones that we were referred to by Mr Mullan contained the age limits of 52 and more recently 55 years of age. We noted a contradiction in Mr Mullan's submissions indicating at one stage that he was unaware of the Respondent's intentions for Woodland Park and in his closing remarks seeking to reassure residents that it was not the intention of the company to place holiday or short term lets and residents on Woodland Park. If the age limits were to be removed then this would clearly change the nature of the park.

112. There is, as Mr Mullan accepts, an exception in the Equality Act for mobile homes and by virtue of Paragraph 11 of Schedule 4 to the Mobile Homes (Wales) Act 2014, Paragraph 11 amends Paragraph 30 D(5) of Schedule 3 to the Equality Act 2010 to reflect that the exceptions apply to the Mobile Homes (Wales) Act 2013. Therefore the statute recognises that it is not age discrimination to impose a requirement in the site rules that mobile homes may be occupied only by persons who have attained a particular age.

113. We are not persuaded by Mr Mullan's submission that if there are problems then these could be dealt with by the enforcement of the right to quiet enjoyment. Parliament has specifically allowed an exception to the age discrimination provisions of the Equality Act as it recognised the particular character of mobile home sites and the intention that they should be for retired or semi retired people. Therefore we consider that there should be rules drafted and agreed to reflect that Woodland Park remains a park for the retired and the semi-retired with a residents' age limit of 55 and that no children should be permitted to reside upon the site.

**Reimbursement of fees.**

114. Finally, in view of the Respondent's failure to follow the proper procedures, we order, in accordance with our power under Regulation 50 of the Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012, that the application fee of £515 that was paid by the Applicant, be reimbursed by the Respondent within 14 days of receipt of this decision.

DATED this 4th day of March 2016

Richard Payne LLB M Phil
CHAIRMAN

**Appendix One**

WOODLAND PARK RESIDENTS IN ATTENDANCE AT HEARING HELD ON

WEDNESDAY 20TH JANUARY 2016, PARKWAY HOTEL, CWMBRAN, TORFAEN

| Name | House No. |
|---|---|
| C White | 17 |
| A Stevenson | 21 |
| Pat and Syd Jones | 6 |
| G Edwards | 49 |
| N Cowles | 23 |
| Betty Green | 22 |
| Vernon Green | 22 |
| Val Winks | 28 |
| Alison Grimison | 30 |
| Ian Hunt | 19 |
| Kath Beech | 59 |
| Stephen Beech | 59 |
| G Ham | 1 |
| Stephen Hucker | 18 |
| M Gosling | 24 |
| D Austin | 5 |

**Appendix 2**

**Equality Act 2010 Schedule 3**

30D(1)A person (A) who is the owner of a protected site does not contravene section 29, so far as relating to age discrimination, by:
(a)entering into a mobile home agreement with a person (B) that entitles only persons who have attained a particular age to station and occupy a mobile home on land forming part of the site, or
(b)refusing to permit assignment by B of a mobile home agreement to any person other than a person who has attained a particular age.

(2)A does not contravene section 29, so far as relating to age discrimination, by imposing a requirement in park rules that mobile homes stationed on land forming part of the site and occupied under mobile home agreements may be occupied only by persons who have attained a particular age.

(3)A does not contravene section 29, so far as relating to age discrimination, by—

(a)imposing in or under a mobile home rental agreement with a person (C) a requirement that the mobile home to which the agreement relates may be occupied only by persons who have attained a particular age, or

(b)refusing to permit assignment by C of a mobile home rental agreement to any person other than a person who has attained a particular age.

(4)But A may not rely on sub-paragraph (1) or (3) unless, before doing something mentioned in that sub-paragraph, A provides B or C, as the case may be, with a written statement to the effect that the mobile home in question may be occupied only by persons who have attained the age in question.

(5)In this paragraph,

- "mobile home agreement" means an agreement to which the Mobile Homes Act 1983 applies; and "owner", "protected site" and "mobile home" have the same meaning as in that Act;
- "park rules" means rules applying to residents of mobile homes on the protected site and required to be observed by a term in the mobile home agreement or the mobile home rental agreement as the case may be;
- "mobile home rental agreement" means an agreement (other than an arrangement to occupy a mobile home for the purposes of a holiday) under which a person ("the occupier") is entitled to occupy a mobile home on the protected site as the occupier's residence

whether for a specified period or for successive periods of a specified duration subject to payment of money and the performance of other obligations.**]**