



Department for Communities and Local Government

Park Homes

**Government Response to the House of Commons Communities
and Local Government Committee's First Report of Session 2012-13**

August 2012



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Presented to Parliament by the Secretary of State
for Communities and Local Government
by Command of Her Majesty

August 2012

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Introduction

The Government welcomes the report from the Select Committee on the Park Homes sector. We have considered the Committee's comments and recommendations carefully and we set out our responses to each of those and the Committee's conclusions below.

Overall, the Committee's thorough and searching inquiry has confirmed that there are serious problems with the sector. The Government acknowledges that whilst there are good site operators who provide a decent service to their resident home owners and operate within the law, we agree with the Committee that malpractice is widespread. We also agree with the Committee that the current legislation does not adequately protect residents and their assets, and fails to enable them to fully exercise their rights as home owners.

1. Sale blocking and its prevention

The Committee's comments and recommendations:

- **We are clear that sale blocking is a serious problem in the park homes sector and that it needs to be prevented. (Paragraph 17)**
- **We conclude that removing a site owner's right to approve prospective buyers provides the only effective way to eliminate sale blocking. The existing approval process is unnecessary and it is rarely used legitimately. Given current experience there is a significant risk that any mechanism to provide site owners with the power to approve, or review, a sale through the RPT would be exploited to block sales, either by slowing the sale process down or by threatening its use. We recommend that the Government remove the site owner's power to approve buyers of park homes on his or her site. (Paragraph 24)**

The Government's response:

- The Government agrees that sale blocking is one of the most serious problems in the sector and furthermore we consider the practice is widespread and not limited to the operations of a few rogue site owners. Evidence to the Committee and responses to the Department for Communities and Local Government (DCLG) consultation paper "A better deal for mobile home owners" indicate that sale blocking is usually achieved by making contact with a prospective purchaser and in many cases through demanding an interview with them.
- The fact that the approval process has been retained in successive legislation has to some extent perpetuated the concept that residents are "tenants". It is the Government's aim to dispel this myth. Park home residents are home owners and should have the right to sell their homes, subject to reasonable safeguards without undue interference.
- We, therefore, agree with the Committee that the role of the site operator in approving a buyer should be removed.

2. Awareness-measures to aid sales (site rules and information)

The Committee's comments and recommendations:

- *We recognise that the removal of a site owner's right to approve buyers will reduce the owner's contact with the seller and, to work satisfactorily, will make a significant change to the position of the seller. It would transfer responsibility on to the seller to make a buyer aware of site rules and the pitch agreement. Removing the right to approve would only be a workable solution if the Government simultaneously enacts measures to ensure that buyers are better informed of the rights and obligations of park home owners. We have included recommendations on site rules (see paragraph 74) and providing information to buyers (see paragraph 82) to do this.*
- **We welcome the Government's proposal that site owners should be required to deposit site rules with a licensing authority as this would ensure that residents on a park have access to an authoritative version of the rules governing their site, which both they and the site owner had to follow. We recommend that only those rules in the deposited set with the local authority will be capable of enforcement against a home owner. We also recommend that abiding by the site rules deposited with the authority become a requirement for every site owner under the site licence conditions. This would provide the local authority with an enforcement power to intervene when a site owner breaks site rules (for example, if they rented out properties to tenants under**

the age stipulated in the rules), and that this would provide stronger sanctions to deter such actions. (Paragraph 72)

- **We recognise that over time site rules will need to be updated and amended. We recommend that the legislation allow site owners to change the authoritative version of the site rules providing:**
 - a) **site owners give park home owners on the site notice in writing at least 28 days before the changes are due to take effect;**
 - b) **if at least a third of the park home owners request a meeting, the site owner arrange a meeting which all occupiers are invited to attend to consider the proposals; and**
 - c) **at the meeting a majority of park home owners have to endorse the proposed rule changes. (Paragraph 73)**
- **We further recommend that purported changes to site rules that fail to follow the process required by statute have no force and that any attempt by a site owner to enforce such a rule be treated as a breach of the site licence. (Paragraph 73)**
- **We recommend that the 'implied terms' are amended so that home owners are required to provide prospective buyers with a copy of the site rules. (Paragraph 74)**
- **In addition, we recommend that the Government amend the 'implied terms' in the park home owner's agreement to provide that before selling his or her park home the seller must advise a prospective buyer in writing to seek qualified legal assistance to help with transferring and explaining an assignment of the park home. In addition, all purchasers must confirm in writing to the seller and the site owner that they have received and read the written statement and site rules. (Paragraph 82)**

The Government's response:

- **The Government agrees that the removal of the site owner's involvement in the process would constitute a considerable shift of responsibility to the seller and purchaser.**
- **Whilst we would hope that any prospective purchaser would seek legal assistance before purchasing a park home, in reality many will not. If the requirement for approval was removed, it would be necessary to consider enacting measures to ensure both parties are aware of their rights and obligations to enable sales to proceed smoothly. The purchaser would particularly need to know the terms of the agreement, the site rules and the requirement to pay commission before committing to buy. A key element would be the requirement to deposit accurate site rules with the local authority and we accept the Committee's**

recommendation that a site operator should only be able to change the site rules in consultation with the home owners. We will publish further details about these measures in the response to the DCLG consultation.

3. Sale blocking: Immediate measures for Residential Property Tribunals

The Committee's comments and recommendations:

- **Sale blocking is an ongoing problem that blights the sector. Immediate action is required to deter site owners from exploiting residents and blocking sales. We recommend that Government bring forward a statutory instrument this session to enable the Residential Property Tribunal to award compensation and damages in cases where sales have illegitimately been blocked. If the Government is unable to do this, in responding to our report it must set out why it feels unable to do so. (Paragraph 28)**

The Government's response:

- Under the Housing Act 2004 the Residential Property Tribunal has a power to make a direction requiring the payment of money by one party to proceedings to another by way of compensation, damages or otherwise. The Government will consider whether this power will extend to any changes made to the legislation.

4. Raising awareness in and of the sector

The Committee's comments and recommendations:

- **We recommend that the Government promote an awareness campaign to make residents, local authorities, site owners and other parties aware of the regulatory regime and changes to be made to it. This campaign must encompass the park home trade bodies, estate agents, local authorities, the Local Government Association, police authorities and the legal profession. Park home residents as a group appear particularly unaware of the regulatory regime and are more than usually susceptible to mis-selling or being taken advantage of by unscrupulous owners. (Paragraph 81)**

The Government's response:

- We agree that there needs to be much more awareness both amongst existing residents and people who are thinking of buying a home about the rules, rights and statutory framework that applies to the sector. We will work with the industry and national resident groups to achieve this

and, in particular, to challenge the view that the use of legal assistance by prospective purchasers is not necessary.

- There is also a need for greater professionalism among site owners. It is clear from responses to the DCLG consultation that the existing law is not well understood, even by those site owners who do belong to trade bodies. We believe the trade bodies should be actively seeking to ensure their members are acting responsibly and within the law and should be holding them to account when they are not.
- Local authorities need to be made more aware of the regulatory regime and in particular their role in dealing with harassment and intimidation of home owners. We will work with the Local Government Association to raise awareness of the sector and in particular local authorities' powers to deal with harassment and bullying of residents and others. Indeed the police need to be made more aware of criminality in the sector and the Government will work with Association of Chief Police Officers to ensure that.

5. 10% commission rate

The Committee's comments and recommendations:

- **We conclude that the right of site owners to receive up to 10% commission from the sale of park homes on their sites should remain in place. Without this revenue pitch fees would have to rise. Furthermore, the commission provides site owners with an incentive to allow home owners to sell their homes on the open market. Without it, and in the absence of legislation to abolish the site owner's approval of buyers, incidents of sale blocking may increase. (Paragraph 31)**

The Government's response:

- The Government welcomes the Committee's conclusion on the 10% commission rate and entirely agrees with its reasoning.

6. Site Licensing

Committee's comments and recommendations:

- **We welcome the Government's proposal to increase the fines for breaching site licence conditions. To ensure that fines are an effective deterrent and can be proportionate in even the most extreme cases, we recommend that there be no upper limit on the fines that can be imposed. To ensure that these increases are an effective deterrent and are applied consistently the Government**

must ensure that the Sentencing Council's guidance for Magistrates is updated to reflect these changes and guide magistrates to impose fines in proportion to the scale of the offence that has been committed. (Paragraph 38)

The Government's response:

- The Government is proposing that there should be no upper limit on fines for site licensing breaches. In particular, the Government is proposing that the legislation is amended to give the courts discretion regarding the level of fine imposed so that it reflects the benefit that a site owner might gain from not complying with his legal obligations.

The Committee's comments and recommendations:

- **It is clear that local authorities do not have the resources to monitor park homes effectively. The existing regime should be changed to provide local authorities with a funding source to resource adequately their park home licensing activities.**
(Paragraph 41)
- **We conclude that the Government should allow local authorities to charge for their costs of issuing licences for park home sites. The legislation to enable them to charge should make a clear link between fees received and resourcing activity to license and monitor park home sites, to encourage more monitoring action across all authorities and encourage consistent performance. The legislation should also ensure that each licence is reviewed annually, so that the existing licence is updated, and it should introduce a fee for this so that authorities are resourced to carry out this function. We consider that site owners should be able to pass licence fees on to home owners but that this could only be done fairly if:**
 - **licence fees are linked to the number of pitches on a site. If they are not, residents on smaller sites would risk facing disproportionate pitch fee increases.**
 - **licence fees are not used to resource local authorities' enforcement action but only to cover the cost of administration, review and monitoring. Authorities should be able to resource their enforcement operations through a cost recovery model instead. (Paragraph 44)**

The Government's response:

- The Government acknowledges that local authorities are poorly resourced to monitor conditions on park home sites. We accept that without a proper funding stream many local authorities are unable or

unwilling to devote resources to monitoring and enforcement. We have, therefore, consulted on changes to the licensing regime which would enable local authorities to charge site operators for their licensing functions, including a power to levy an annual fee for administration and monitoring of licences. Any fee structure must be transparent and proportionate and we would work with both local authorities and the industry to develop appropriate models. In particular, we agree with the Committee that any licensing charges must not include the cost of enforcement action.

Committee's comments and recommendations:

- **We recommend that the Government give local authorities a power to undertake works to ensure sites are safe and conform to licence conditions. This should reflect the existing Houses in Multiple Occupation licensing regime by providing authorities with a power to issue a notice to a site owner to require that works are undertaken and that, if such works are not undertaken, provide an authority with a power to undertake the works themselves. It should also ensure that authorities are able to recover costs from site owners for any work that is undertaken, including visits (both investigatory and confirmatory), investigative work and improvement works, when a site owner is found to be in breach of licence conditions. We further recommend that the legislation ensure that any of these charges or costs cannot be passed on to park home owners by site owners through pitch fees or by any other charge. (Paragraph 49)**

The Government's response:

- The Government agrees that the current powers for local authorities are ineffective. We have, therefore, consulted on proposals to give local authorities a power to serve a notice on the licence holder (site operator) requiring works to be done to remedy a breach of a licence condition. Furthermore, a prosecution for such a breach could not be initiated unless the notice has not been complied with to the authority's satisfaction and the period for appealing against it has expired.
- All costs of such enforcement action, including administrative charges and cost of doing the works in default, would be payable by the site operator. We agree with the Committee that the site operator should be prohibited from passing on any charges and costs incurred as a result of enforcement action to home owners through pitch fees or other charges.

7. Fit and Proper person test

The Committee's comments and recommendations:

- We conclude that a fit and proper person test could be a useful addition to local authorities' armoury to exclude the worst offenders from owning and managing park home sites. (Paragraph 58)**
- It is, however, clear to us that the introduction of such a test would require a significant increase in the regulation of the sector. The Government is confident that the reforms it proposes are sufficient to drive the unscrupulous out of the sector. We do, of course, hope that this would be the outcome from the Government's proposals but we must nevertheless conclude that, if the measures prove insufficient, the sector should not have to wait for further consultation and then an opportunity to legislate. On current projections that could be after 2020. This would not be satisfactory. We therefore recommend that the Government bring forward as part of the proposed legislation an enabling power to establish a fit and proper person test, which could be activated through secondary legislation, if required. (Paragraph 59)**
- To ensure that the improvements it expects happen and are effective, we recommend that the Government undertake a comprehensive survey of the sector in three years' time. If the situation has not improved, we recommend that the Government use the power to introduce a fit and proper person scheme through secondary legislation. Under such a scheme it should be a requirement of the site licence to have a fit and proper person as site manager. Failure to meet this term would be grounds to revoke a site licence. We consider that a fit and proper person licensing scheme would work most effectively if it was coordinated at a national level so that information about owners could be shared between authorities. The Government should therefore be able to put in place arrangements for a body to carry out the function and it should be financed by a levy included in all licensing fees. The scheme could operate using similar criteria to those used to determine applications for consumer credit act licences, so that authorities would be able to consider the associations of a licence holder or applicant, in addition to those set out in the Government's 2009 consultation on park homes. The scheme could also include provisions for local authorities to take over the management of sites when licences were revoked and to compulsorily purchase sites, in extreme cases, when returning management of a site to the owner would not be possible. (Paragraph 60)**

The Government's response:

- The Government is not convinced that there is a need to introduce a fit and proper test at present. We accept there is widespread malpractice in the sector and it has clearly attracted a number of criminal operators, as evidenced to the Committee and in responses to the DCLG consultation.
- The Government believes, however, that the package of measures already proposed, should remove the opportunity for criminal operators to make easy profits through unscrupulous practices, such as sale blocking. Combined with a more active approach to self-regulation from the industry itself, we hope that this will deter criminal operators from the sector, avoiding the need for an industry-wide fit and proper licensing scheme.
- We will, however, consider carefully the Committee's proposals, and will respond more fully on this point shortly, alongside the summary of responses to our recent consultation.

8. Site owner's (repairing) obligations

The Committee's comments and recommendations:

- **We welcome the Government's proposals to clarify the obligations on site owners for maintaining their sites. This includes in particular the proposals in the consultation that define the maintenance works which must be undertaken by site owners as a statutory duty and cannot be included in pitch fee increases. We also welcome the Government's proposals to ensure that improvement works undertaken, to comply with licence conditions or enforcement action from the local authority, cannot be charged through pitch fee increases. (Paragraph 68)**

The Government's response:

- The Government believes that its proposals to introduce greater transparency at a pitch fee review and clarify the site owners repairing obligations, will enable home owners to make an informed judgement as to whether any element claimed is properly chargeable or not.

The Committee's comments and recommendations:

- **Because the problems associated with agreements between site owners and home owners are so widespread, and as primary legislation may be years off, we recommend that the Government enact changes, to clarify the obligations on site owners to**

maintain sites, through secondary legislation this session.
(Paragraph 69)

The Government's response:

- The Government acknowledges the significant difficulties in this area. However, the Government no longer has the power to amend the implied terms in the pitch agreement between a resident and a park owner retrospectively. The implied terms were amended by secondary legislation in 2006¹ under a power derived from section 2A of the Mobile Homes Act 1983 (which was itself inserted into the Act by section 208 (1) of the Housing Act 2004). The power could only be exercised once. Any further change would therefore require primary legislation.

9. Pitch fees

The Committee's comments and recommendations:

- **We recommend that the maximum annual increase in pitch fee increases be calculated in accordance with the rate of increase in the Consumer Price Index, to create a fairer link between home owner incomes and pitch fees.** (Paragraph 77)

The Government's response:

- The Government does not accept this recommendation. Pitch fee increases are already significantly regulated and site operators (subject to certain exemptions) are only entitled to seek a review in line with changes to the Retail Price Index. Unlike the Consumer Price Index the Retail Price Index takes account of all housing costs and is, therefore, a more accurate reflection of inflation in that sector.
- It is understandable that many older residents on fixed incomes which may be linked to the Consumer Price Index, see that their pitch fees should be linked to it. However, potentially reducing the amount of pitch fees further could have unintended consequences, leading to further reductions in standards of maintenance and upkeep, which the Committee has already identified as an issue.

10. The Committee's conclusions

- **Legislation is urgently needed and while some useful improvements can be achieved through secondary legislation this session—and we set these out in our report—primary legislation**

¹ SI 2006/1755

is urgently required to overhaul the park home sector, especially to stop sales blocking and to put licensing on a firm footing. We therefore recommend that a comprehensive package consisting of the measures we have set out is brought forward by the Government. We further recommend that a bill reforming the park home sector be given a slot as soon as possible in the Government's legislative timetable and that priority is given to assist the department in drafting this legislation. (Paragraph 86)

The Government's response

- The Hon Member for Waveney (Peter Aldous) introduced the Mobile Homes Bill in the House on 20 June. This is due to receive second reading on 19 October 2012. This Bill has the full support of the Government and we hope all members of the House will support its aim of tackling abuse in the sector and improve the rights of park home residents.



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