FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/00HY/PHR/2018/0001**
Property	:	**Bungalow Caravan Park, Bradenstoke, Near Lyneham, Wiltshire, SN15 4EP.**
Applicant	**:**	**R S Hill & Sons Ltd.**
Representative	**:**	**IBB Solicitors**
Respondent	**:**	**Wiltshire Council**
Representative	**:**	**Mr James Hudson (Private Sector Housing Manager)**
Type of Application	**:**	**Caravan Sites and Control of Development Act 1960, section 7: Application by site owner for determination as to site licence conditions.**
Tribunal Members	**:**	**Judge M. Davey** **Mr S. Hodges** **Mr P. Smith**
Date of Decision with reasons	**:**	**14 March 2019**

Decision

The licence conditons shall be varied as follows.

2.10 The licensee must notify the licensing authority when it proposes that new or replacement homes are to be brought onto the site after the introduction of these site licence conditions.

7.2 Where new hard standings are constructed after the introduction of these site licence conditions the site owner must send to the local authority written notification of the new base and its location together with written confirmation that the base has been laid in accordance with the terms of the current GoldShield Code of Practice.

9.2 Any decking in excess of 150 mm from ground level which is installed after the introduction of these site licence conditions will be regarded as a "structure" under condition 2.7 of these site licence conditions. Any occupier who wishes to install decking on their pitch must comply with the site rules.

Reasons for decision

1. These are the reasons for decision of the First-tier Tribunal (Property Chamber) (Residential Property) ("the Tribunal") in respect of an application ("the Application") to the Tribunal under section 7 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act").

The Application

2. The Applicant, R.S. Hills and Sons Limited, is the site owner of the Bungalow Caravan Park, Bradenstoke near Lyneham, Wiltshire SN15 4EP ("the Park") which is licensed under the 1960 Act for use as a permanent residential mobile homes park. The Application, dated 12 October 2018, is an appeal by the Applicant against a number of site licence conditions attached to a new site licence issued by the Respondent, Wiltshire Council, on 26 September 2018.

3. Judge J F Brownhill issued Directions to the parties on 15 November 2018 setting out a timetable for determination of the matter. A Tribunal composed of Judge M Davey (Chairman), Mr S Hodges and Mr P Smith

was subsequently appointed to determine the matter on the basis of the written representations of the parties, and an oral hearing.

The Law

4. The relevant law is set out in the Annex to this decision.

The Inspection and hearing

5. The Tribunal inspected the Park at 10.15 a.m. on 28 February 2018 in the presence of Mr Doug Houston, Mr John Clement, Ms Morgan Wolfe and Mr James Hudson. A hearing was held at 11.00 a.m. on the same day at Swindon Magistrates' Court. At the hearing, the Applicant was represented by its Accountant, Mr Houston and by Mr Clement and Ms Wolfe of its solicitors, IBB. The Respondent was represented by its Private Sector Housing Manager, Mr Hudson and by its Housing Conditions Officer, Ms Sonia Clarke. The Tribunal was greatly assisted by the helpful constructive approach taken by Mr Clement and Mr Houston on behalf of the Applicant and by Mr Hudson for the Respondent when presenting their respective cases.

The Applicant's grounds for appeal

6. In its Application, the Applicant objected to conditions 2.7, 2.10, 3.1, 3.2, 7.2, 9.2 and 11.5 attached to the site licence dated 26 September 2018. In his witness statement of 14 December 2018, Mr Doug Houston, who is the Applicant's Company Accountant and authorised representative, indicated that the Applicant no longer opposed conditions 2.7, 3.1, 3.2 and 11.5. However, the Applicant remained opposed to the other disputed conditions dealt with below. Following receipt of the Respondent's submission of 4 January 2019, Mr Houston produced a second witness statement dated 11 January 2019.

7. The Applicant contested the imposition of the conditions in question on three grounds. First, that the Respondent had failed to follow the statutory guidance set out in the Government's 2008 Model Standards for Caravan Sites in England ("the Model Standards") when seeking to introduce the new licence conditions. The Applicant relied in particular on paragraph 3 of those Model Standards, which provides that

> "Where a current licence condition is adequate in serving its purpose the authority should not normally apply the new standard. Where it is appropriate to apply the new standard to a condition the local authority should be able to justify its reasons for doing so, having regard to all the relevant circumstances of the site. In deciding whether to apply the new standard the local authority must have regard to the benefit that the standard will achieve and the interests of both residents and site owners (including the cost of complying with the new or altered condition)."

The Applicant submits that the Respondent has either failed to take this Guidance into account or has considered it but failed to apply it correctly.

8. The second ground is that that the Respondent has either failed to take into account, or has considered but failed to apply correctly, paragraph 4.7 of the Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime ("the Best Practice Guide"), published in March 2015 by the Department for Communities and Local Government. That paragraph states that the government's view is that if an existing licence condition is adequate and enforceable under the new licensing provisions and there are no exceptional circumstances to warrant changing it then a local authority should not do so. The Guide states that where a licensing authority is proposing to impose new conditions it must have regard to a number of factors including

    - making sure any licence conditions are adequate and enforceable;
    - new conditions should not be proposed where current conditions are adequate;
    - local authorities should be able to justify any proposed change;
    - the benefit of the change it will achieve must be considered;
    - the interests of homeowners and the site operators should be taken into account and the cost of compliance should be taken into account.

9. The third ground is that the contested conditions are unduly burdensome and should accordingly be cancelled by the Tribunal under section 7(1) of the 1960 Act.

The parties' cases on conditions 7.2 and 9.2

Condition 7.2.

10. This condition states that

    "Where new hard standings are constructed after the introduction of these site licence conditions the site owner must send to the local authority written notification of the new base and its location together with a written undertaking that the base has been laid to the industry's current standards for bases."

11. The Applicant opposed the inclusion of this condition on the ground that it was too vague. It submitted that there was no "industry current standards for bases." Mr Houston said, in his statement of 14 December 2018, that neither the British Holiday & Home Parks Association nor the National Caravan Council (the two trades associations representing the parks industry), either individually or jointly, had published guidance on the construction of bases or hard

standings for caravans. Mr Houston also says that the condition is not in the Model Standards issued by the appropriate Minister under section 5(6) of the 1960 Act.

12. In response Mr Hudson stated, in his statement of 4 January 2019, that the Model Standards provided in paragraph 6(ii) that "the hard standings must be constructed to the industry guidance current at the time of siting taking into account local conditions." Furthermore, he says that paragraph 43 of the Model Standards states that "New bases should be laid as a minimum in accordance with the current industry guidelines issued by the National Park Homes Council and the British Holiday and Home Parks Association."

13. Mr Houston responded, in his statement of 11 January 2019, that, as noted above, neither Association had issued such guidelines. However, the wording in the Model Standards does follow the requirements for siting park homes set out in paragraph 3 of the GoldShield Code of Practice. Mr Houston stated that GoldShield is an independent insurance backed warranty scheme operated by a third-party company, which offers a warranty to purchasers of new residential park homes similar to the NHBC scheme which covers the buyers of new homes. He said that because the Park is registered with the GoldShield scheme and the Applicant is therefore required to ensure that all new homes are sited in accordance with its Code of Practice that condition 7.2 should be amended to read as follows:

"Where new hard standings are constructed after the introduction of these site licence conditions the site owner must send to the local authority written notification of the new base and its location together with written confirmation that the base has been laid in accordance with the terms of the current GoldShield Code of Practice."

14. Following discussion of the matter at the hearing with the Applicant's solicitor, Mr Clement, Mr Hudson said that the Respondent was now willing to accept a revised condition 7.2 on those terms.

Condition 9.2

15. This condition states that

"The installation of wooden decking to a mobile home plot is at the discretion of the site owners. Any wooden decking provided must be treated with a suitable intumescent (fire resistant) paint. The frequency of re-cover will depend on the manufacturer's instructions. Decking in excess of 150 mm from ground level will be treated as a structure in clause 2.7 of these site licence conditions."

16. In his statement of 14 December 2018, Mr Houston stated that the Applicant was confused as to the Respondent's reasoning for seeking to impose this new condition, which is not in the Model Standards or the

2015 Guidance. Mr Houston says that the issue of whether or not decking will be permitted on any resident's pitch is a contractual matter between the Applicant site owner and the individual Park Home occupier and each situation will depend on the individual facts and circumstances concerned. He stated that it is not an appropriate matter to include within the site licence.

17. In his statement of 4 January 2019, Mr Hudson, stated that on reconsideration of the matter, the Respondent proposed a new condition as follows:

"The installation of wooden decking to a mobile home plot is at the discretion of the site owners. Decking in excess of 150 mm from ground level will be treated as a structure in clause 2.7 of these site licence conditions."

18. In his second statement of 11 January 2019, Mr Houston welcomed this move but, having expressed concerns that the requirement as drafted could have retrospective effect, stated that the Applicant would be prepared to accept a modified condition as follows.

"Any decking in excess of 150 mm from ground level which is installed after the introduction of these site licence conditions will be regarded as a "structure" under condition 2.7 of these site licence conditions. Any occupier who wishes to install decking on their pitch must comply with the site rules."

19. At the hearing Mr Hudson stated that the Respondent was willing to accede to this proposal. The condition was accordingly no longer disputed.

Condition 2.10

20. This condition states that

"The licensee must notify the licensing authority when new or replacement homes are brought onto the site after the date of this licence. If a decision whether to grant consent is not made by the expiration of 28 days from the date on which the request for consent is received, the site owner may by written notice require that a decision is made within a further 14 days from the date of that notice. In default the licensing authority shall be deemed to have withheld consent

The Respondent's case and the Applicant's response

21. In his statement of 4 January 2019, and orally at the hearing, Mr Hudson explained why the Respondent had imposed this condition. He said that problems can arise on a site where new homes are sited too close to existing homes leading to enforcement intervention by the local authority. The purpose of condition 2.10 was to provide a preliminary stage at which such problems could be obviated by allowing intervention by the authority before any new home was sited by the site owner.

22. Mr Hudson referred in his statement to paragraph 4.8 of the Best Practice Guide which stated that "conditions should include notifying the local authority of changes to the site, for example in respect of bringing new homes onto the site or where alterations to the site layout are proposed or made. This allows officers to intervene if necessary and deal with issues at an early stage."

23. Mr Hudson also stated that the Respondent relied on the decision of the Upper Tribunal (Lands Chamber) in *Wyldecrest Parks Management Ltd v Guildford Borough Council* [2017] UKUT 0433 where His Honour Judge Huskinson approved a condition in the following terms:

> "3.1 No material change to the layout of the site shall be made without the prior written consent of the Head of Health and Community Care. Such consent will not be unreasonably withheld. If a decision whether to grant consent is not made by the expiration of 28 days from the date on which the request for consent is received, the site owner may by written notice require that a decision is made within a further 14 days from the date of that notice. In default the Head of Health and Community Care shall be deemed to have withheld consent."

24. Mr Hudson submitted in his statement that condition 2.10 of the conditions attached to the site licence issued in respect of the Park at Bradenstoke differed only slightly from the condition approved by the Upper Tribunal in the *Wyldecrest* case. He said that it was the Respondent's view that when a new or replacement home is brought onto the site this amounts to a material change to the site as the new home is unlikely to have the same dimensions and be sited in exactly the same position as any previous home. Mr Hudson said that generally replacement homes are larger than those they replace. He thus argued that the two cases were similar in all material respects and that it was reasonable of the Respondent to have imposed condition 2.10. Mr Hudson referred to section 5 of the 1960 Act, which gives the licensing authority a discretion as to the contents and nature of the conditions that may be attached to a site licence although

subject to the licensing authority considering it necessary and desirable to impose such conditions on the occupier of the land (i.e. the site owner) in the interest of persons dwelling in the caravans or any other class of persons or of the public at large.

25. The Applicant says that condition 2.10, which does not appear in the Model Standards, is unnecessary and that it would be unduly burdensome for the Applicant to have to notify the Council whenever new or replacement homes are brought onto the site. The Applicant considered that provided the number of homes on the site does not exceed the maximum number permitted under the site licence it cannot see why it should be necessary for the Applicant to notify the Council whenever homes are replaced.

26. The Applicant further submits that condition 2.10 goes significantly beyond what is envisaged by paragraph 4.8 of the 2015 Guidance by effectively requiring the Applicant to obtain the Respondent's consent before any new park homes can be brought onto the Park. The Applicant says that there is nothing in the 2015 Guidance which suggests or recommends that a park owner should obtain the consent of the relevant licensing authority before it is able to station new or replacement park homes on the site.

27. The Applicant submitted that if the Respondent's concern was that the Applicant might seek to site new or replacement homes in breach of the terms of the site licence then it would already have a remedy under the other clauses of condition 2 dealing with density and spacing matters. The Applicant says that since 1995 around six new or replacement homes have been sited on the Park in accordance with the licence conditions without any compliance notice having been served by the Council. The Applicant also produced evidence of sites that it owns in other areas none of which had condition 2.10 attached to the site licence. Indeed on one Park licensed by the Respondent in 2014 (Orchard Park, Wootton Bassett) no such condition was imposed. (In response Mr Hudson said that the Council is revising its licence conditions generally in the light of the 2015 Guidance).

28. The Applicant further submitted that condition 2.10 would create practical difficulties to the Applicant in running its business. This is because any agreement to sell a new home to a proposed purchaser would be conditional on the need for the Applicant to obtain consent from the Respondent to the new home being sited on the Park. However, a new home could not be ordered until a contract was in place and the delay caused by the need to obtain prior consent would inevitably lead to lost sales.

29. Finally, the Applicant submitted that the *Wyldecrest* case was distinguishable from the present case for a number of reasons. First, that the condition in *Wyldecrest* related to a "material change in the layout of the site". Second, that, unlike the present case. there was a history of non-compliance with site licence conditions by the site owner which had led to the authority serving a compliance notice that had been upheld by a previous tribunal. Third, that the Upper Tribunal in *Wyldecrest* had emphasised that a conditon in the form sought would not always be necessary and that the local authority should take into account the particular facts of the case.

Discussion

30. The Mobile Homes Act 2013 introduced, as from 1 April 2014, a new site licensing regime for relevant park home sites. It did so by amendment of the 1960 Act. Section 5(1) of the 1960 Act gives the local authority power to issue a site licence subject to such conditions as the authority may think it necessary or desirable to impose on the occupier of the land (i.e. the site owner) in the interests of persons dwelling therein in caravans or of any other class of persons or of the public at large. The same provision specifies examples of conditions that may be imposed. Section 5(6) empowers the Minister to specify model standards with respect *inter alia* to the layout of caravan sites and provides that in deciding what conditions (if any) should be attached to a licence a local authority shall have regard to the specified standards. The model standards, which represent those standards normally to be expected as a matter of good practice on caravan sites, are to be applied with due regard to the particular circumstances of the relevant site. In April 2008 the Department for Communities and Local Government ("the Department") issued Model Standards 2008 under section 5 of the 1960 Act.

31. The Applicant says that condition 2.10 does not appear in the Model Standards. However, as the Respondent submitted, local authorities may in the circumstances set more demanding ones. Furthermore, in March 2015 the Department published "A Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime." Paragraph 4.8 of that Guide says, by way of advice to be considered by the local authority when drafting licence conditions, that "Conditions should include notifying the local authority of changes to the site, for example in respect of bringing new homes onto the site or where alterations to the site layout are proposed or made."

32. In paragraph 8 of his witness statement Mr Hudson stated that the Respondent's aim in including condition 2.10 was to replicate with necessary modification the condition approved by the Upper Tribunal

in *Wyldecrest*. That is to say to impose an obligation on the site owner to obtain permission from the authority for new or replacement homes to be brought onto the site. It was anticipated that this would enable the authority to assess whether intervention by it at an early stage was necessary in order to avoid the risk of homes being placed too close to other homes. However, in paragraph 15 of the same statement, Mr Hudson inconsistently states that, "Condition 2.10 requires simple notification to the council should new or replacement homes be brought onto the site." This obviously falls short of the consent requirement for which he was also making a case.

33. At the hearing Mr Hudson recognised that it was clear that condition 2.10 as drafted would not achieve the aim set out in paragraph 8 of his statement. It made no explicit provision for requesting consent or reference to a reasonableness standard to be applied by the local authority when refusing consent. Mr Hudson then said that on reflection the Respondent no longer wished to impose a consent requirement and would be content for condition 2.10 to require only that the site owner notify the authority when any new or replacement homes are to be brought onto the site. Thus the authority no longer argued that it was appropriate in the circumstances of the case to include a clause that mirrored the condition approved of in the *Wydlecrest* case. In response, the Applicant clearly welcomed this concession but continued to submit that there was no need for condition 2.10, even as modified to remove any consent requirement, because the rest of condition 2 provided ample scope for the local authority to control the size and spacing of homes on the site.

34. The Tribunal finds that in the light of the Respondent's concession, it is not necessary to consider whether a conditiion based on that approved of in *Wyldecrest* should be included in the present case. The Tribunal does however find that a notification requirement is not unduly burdensome on the Applicant, nor would it be *ultra vires*. It is clearly within the local authority's discretion to include such a condition and, although not included in the Model Conditions 2008, is in line with paragraph 4.8 of the 2015 Guidance. The fact that such a condition has not been attached to any site licence for other sites owned by the Applicant does not mean that it should not be included on this occasion, given that the authority is reviewing its conditions in the light of the 2015 Guidance. The purpose of such a condition would be to enable the authority to enter into a dialogue with the site owner to see whether there is any likelihood of a breach of the spacing and density requirements of the remainder of condition 2 thereby preventing a situation arising where its enforcement powers would otherwise need to be invoked. Indeed Mr Houston recognised as much in paragraph 15 of his first witness statement of 14 December 2018.

35. The Tribunal therefore determines that condition 2.10 should be varied to read as follows.

"The licensee must notify the licensing authority when it proposes that new or replacement homes are to be brought onto the site after the date this licence condition comes into operation."

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional Office, which has been dealing with the case.

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

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

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

Martin Davey

Chairman

14 March 2019

Annex: The Law

Caravan Sites and Control of Development Act 1960

5 Power of local authority to attach conditions to site licences.

(1) A site licence issued by a local authority in respect of any land may be so issued subject to such conditions as the authority may think it necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large; and in particular, but without prejudice to the generality of the foregoing, a site licence may be issued subject to conditions—

(a) for restricting the occasions on which caravans are stationed on the land for the purposes of human habitation, or the total number of caravans which are so stationed at any one time;

(b) for controlling (whether by reference to their size, the state of their repair or, subject to the provisions of subsection (2) of this section, any other feature) the types of caravan which are stationed on the land;

(c) for regulating the positions in which caravans are stationed on the land for the purposes of human habitation and for prohibiting, restricting, or otherwise regulating, the placing or erection on the land, at any time when caravans are so stationed, of structures and vehicles of any description whatsoever and of tents;

(d) for securing the taking of any steps for preserving or enhancing the amenity of the land, including the planting and replanting thereof with trees and bushes;

(e) for securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained;

(f) for securing that adequate sanitary facilities, and such other facilities, services or equipment as may be specified, are provided for the use of persons dwelling on the land in caravans and that, at all times when caravans are stationed thereon for the purposes of human habitation, any facilities and equipment so provided are properly maintained.

7 Appeal against conditions attached to site licence

(1) Any person aggrieved by any condition (other than the condition referred to in subsection (3) of section five of this Act) subject to which a site licence has been issued to him in respect of any land may, within twenty-eight days of the date on which the licence was so issued, appeal to .... the tribunal; and the ....tribunal, if satisfied (having regard amongst other things to any standards which may have been specified by the Minister under subsection (6) of the said section five) that the condition is unduly burdensome, may vary or cancel the condition

(1A) In a case where the tribunal varies or cancels a condition under subsection (1), it may also attach a new condition to the licence in question.

(2) In so far as the effect of a condition (in whatever words expressed) subject to which a site licence is issued in respect of any land is to require the carrying out on the land of any works, the condition shall not have effect during the period within which the person to whom the site licence is issued is entitled by virtue of the foregoing subsection to appeal against the condition nor, thereafter, whilst an appeal against the condition is pending.