FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**BIR/17UB/PHW/2019/0001**
Property	**:**	**Haytop Country Park, Alderwasley Park, Whatstandwell, Derbyshire DE4 5HP**
Applicant	**:**	**Haytop Country Park Ltd**
Representative	**:**	**Mr Richard Harwood QC, instructed by Apps Legal Limited**
Respondent	**:**	**Amber Valley Borough Council**
Representative	**:**	**Mr Thomas Graham, Solicitor**
Type of Application	**:**	**Application under Regulation 6 of the Mobile Homes (Site Licensing) Regulations 2014 with regard to the local authority's refusal to issue a site licence.**
Tribunal Members	**:**	**Judge C Goodall** **Mrs A Rawlence, MRICS**
Date and venue of Hearing	**:**	**30 April 2019 and 21 June 2019 at Derby Court Centre**
Date of Decision	**:**	**25 July 2019**

DECISION

Background

1. This is an appeal against the refusal by Amber Valley Borough Council ("the Respondent") to grant a licence under section 3 of the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") to Haytop Country Park Limited ("the Applicant").

2. The Applicant is part of a substantial multi-site mobile homes park operator, trading as Countrywide Park Homes ("Countrywide"). It owns land to the south west of Whatstandwell in Derbyshire which has been used by caravans of the car trailer type since about 1952. Both caravan types and the commerciality of running mobile home sites have changed significantly over the last 65 years and the Applicant, which purchased the land in November 2016, wishes to operate a caravan site with modern twin-unit type caravans for permanent occupation. It has hit turbulence in persuading the Respondent that this land, which is otherwise undeveloped, and adjoins an area of special scientific importance, is appropriate for this use. The parties are in dispute about whether the Applicant has, or may obtain, planning permission for its proposed use.

3. Notwithstanding the planning dispute, an operator of a mobile home site is required to be licenced under the 1960 Act, and where it operates pitches with permanent occupation, must comply with statutory requirements set out in the Mobile Homes Act 2013.

4. This case concerns the licensing element of the Applicant's proposed mobile home site.

Inspection

5. The Tribunal inspected the land on 30 April 2019. It is approached from the A6 on the bend of the road at Whatstandwell which crosses the River Derwent. Access is via a road/track off the A6 through a substantially wooded area. After driving in a southerly direction for around just over half a mile, there is a disused building on the left-hand side called the Lodge. The track to the right of the Lodge then curves to the southwest. To the east side of that track is the site, which is wedge shaped. The thick end of the wedge is at the northern end. It tapers to the thin end at the south. The whole wedge slopes upwards from the north to the south and falls away to the east. The track from the Lodge leads to a disused bungalow at the top and just outside the proposed area to be licensed. That track forms the north western boundary of the wedge/site.

6. If instead of turning southwest along the track at the Lodge one had continued south-eastwards, at the far boundary of the site one would have come across another building known as the Millhouse. The little used track between the Lodge and the Millhouse is important for an understanding of the site. The land to the southwest of that track is the land on which the Applicant has laid out its proposed pitches in its

application for a site licence, so that track is the north eastern boundary of the site/wedge.

7. On the south easterly edge of the wedge, the Applicant has constructed 13 substantial concrete pitches, supplied with electricity and drainage. As at April 2019, most of these pitches already had twin-unit caravans positioned and some were clearly occupied.

8. On the north westerly part of the wedge, five more bases have been constructed.

9. There is space between the row of 13 pitches on the south east and the row of 5 pitches on the north west of the wedge for a third row of pitches between these rows. The Applicant has already laid out the intended pitches in this row, which would allow for another 6 pitches on the central row. There is then space for another 3 pitches immediately to the south of the Lodge – Millhouse track.

10. Thus, on site in April 2019, the wedge-shaped area was already marked out with 27 pitches, many of which had already been finished and had twin unit mobile homes positioned on them.

11. On the north westerly side of the wedge, at the thin end, is an area with no pitches marked out. This area is shown on a plan attached to a site licence granted in 1968 as a "Recreation Area". It is also known as a common green ("the Common Green") referred to in a 1966 planning permission. The intention is for it to remain undeveloped, to be a recreational / green area for the site.

12. Reference in this decision to the site are references to the wedge-shaped area of land identified above.

The Regulatory Consents

13. On 27 March 1952, a planning consent ("the 1952 consent") was granted by Derbyshire County Council under reference BER/352/12 for permission to "use seven and one half acres of land at Shinincliff Wood, Whatstandwell for the siting of thirty mobile dwellings and one wooden bungalow, in the manner described on the application and shown on the accompanying plan(s) and drawing(s)".

14. The term "mobile dwelling" was set out in a note on the front of the permission to mean "trailer caravans specially designed and constructed for drawing by private cars, and motor caravans in full mechanical order, in all cases complying with Ministry of Transport Acts and Regulations, and horse drawn caravans of the gypsy type."

15. The plan referred to is a plan showing an area coloured red, and shaped like a shoe, lying to the south west of, and across the valley from,

Whatstandwell. The plan is marked with what appear to be OS references XXXIV – 16, and XXXIX – 4.

16. The wedge-shaped area of land described above is part of the land shaped like a shoe. The wedge is the shoe land minus the heel of the shoe.

17. Five conditions were imposed in the 1952 consent, the first of which was that "the number of mobile dwellings shall not at any time exceed thirty". The second condition required that "the dwellings shall all be sited below, i.e. to the south and east of the footpath crossing the field No 165". The other three conditions are not relevant to this case.

18. There are no restrictions in the 1952 consent limiting occupation to seasonal use. The Tribunal finds, and it was common ground, that the 1952 consent permits permanent occupation for the type of caravan authorised to be placed on the site.

19. On 24 October 1960, Mr W H George, who the Tribunal understands was the owner and operator of the site at the time, applied to Belper Rural District Council for a licence under section 3 of the Caravan Sites and Control of Development Act 1960. This was granted on 15 February 1961, subject to eleven conditions. These governed, inter alia, distances between the caravans, fire points, and the provision of sanitary accommodation. Key conditions were:

    "1. The licensed site shall be occupied by no more than 30 caravans at any time.

    2. The caravans occupying the site shall be of the car trailer type.

20. There was no specific layout specified in the 1961 licence.

21. In response to an application dated 23 September 1964, on 17 June 1966, Derbyshire County Council granted another planning consent ("the 1966 consent") under reference BER/064/39 for permission "for extension of existing caravan site from 30 to 60 caravans for seasonal and towing use, Haytop Farm Site, Whatstandwell for Mr W H George in the manner described on the application and shown on the accompanying plan(s) and drawing(s). Those plans and drawings have not been found.

22. Eleven conditions were imposed in this consent. Those relevant to this case are:

    1. This consent is supplementary to that granted on 27 March 1952 (Code No. BER/352/12) for the siting of 30 caravans. Not more than 60 mobile dwellings, including touring vans, shall be accommodated on the whole site at any one time.

2. All caravan standings shall be sited within the areas shown as groups A-H on the attached plan, subject to compliance with the requirements of Conditions 7, 8 and 9 and notwithstanding any requirement of the Town and County Planning General Development Order 1963 every standing and every caravan in groups C, D and H shall be oriented in a northeast to southwest direction. Groups A, B, and F, shall be limited to maximum of nine, eleven, and three caravans respectively.

5. The occupation of the caravans authorised by this consent shall be limited to seasonal use; no caravan shall be occupied as a permanent residence.

9. The central green on the site shall be maintained permanently open as a recreational area and neither tents, caravans nor buildings shall be permitted to be sited thereon.

23. The 1966 consent set out reasons for the imposition of the conditions, as follows:

"This is a site of great scenic importance in a stretch of the Derwent Valley indicated in the approved Development Plan as an area of great landscape value. It is also adjacent to an area notified by the Nature Conservancy as of special scientific interest.

This part of the valley is the gateway for many travellers to the National Park further north, and it is the Local Planning Authority's aim to protect and, where it has been harmed, to restore the area's scenic attractiveness.

In this context the conditions are imposed specifically for the reasons:-

(a) That the further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A6 trunk road and the Derby-Manchester railway line, from both of which they are at present effectively concealed, and from many vantage points in the surrounding area.

(b) That this consent is granted, having regard to the acknowledged demand, for holiday and weekend caravan sites in the area. It is remote from any major settlement and is not therefore felt to be suitable for use as a permanent residential caravan site.

(c) That the screening of the site and the details of any new buildings required, should be the subject of further consideration after decisions have been taken on the precise location of individual caravan standings.

(d) [Not relevant – relating to tents]

24. On 22 September 1964, being the day before the application for the 1966 consent, the operator of the site had applied for a further site licence in respect of the site, no doubt in anticipation of an increase in permitted units on site as a result of the application for the 1966 consent.

25. Belper Rural District Council granted the further site licence to the operator on 27 July 1968. Conditions were again imposed. These included:

> "1. The licensed site shall be as shown edged in red on the plan attached to the licence.
>
> 2. The licensed site shall be occupied by not more than 60 caravans at any one time, and at least 30 of these shall only be occupied during the period 1st April to 30th September in each year.
>
> 4. The caravan standings shall be sited within the area shown as groups A-H on the plan attached to the licence.
>
> 5. The caravans occupying the licensed site shall be of the car trailer type.

26. Other conditions dealt with tents, the nature of the hard-standings, fire, sanitary accommodation, laundry, drainage, and parking.

27. The plan for this licence does exist. It has a layout showing 57 specific plots, grouped in 8 groups within marked areas A – G. The area marked in red is the area coloured red on the 1952 consent plan but extended in a north easterly direction beyond the track joining the Lodge and the Millhouse. It includes the whole "shoe" plus land to the east of the shoe. The land over which a licence is sought in included in this licence plan.

28. To summarise therefore, by the end of the 1960's there was an existing caravan site at the site with planning permission (by virtue of the combined provisions of the 1952 consent and the 1966 consent) for 60 caravans. Thirty were not restricted to occasional use; the other thirty were. The thirty caravans not restricted to occasional/seasonal use were required to be designed and constructed for "drawing by private cars". The other thirty had consent "for towing use". The site was also licensed as required by statute. A condition of the licence was that all caravans were required to be of the car trailer type. The site layout was specified in the 1968 licence.

History of site operation

29. It appears that Mr W H George operated the site in the 1950's and 1960's and possibly the 1970's as well. He died in May 1979 leaving three sons, Henry, William and James. As far as the Tribunal can ascertain, Henry took over the ownership and running of the site then, until his death on 4 October 2015. Mr William George was his personal representative and

probably the member of the George family who sold the site to the Applicant, possibly with James having been appointed an additional trustee.

30. Mr David Arkle, the Respondent's lead officer for licensing of mobile home sites, has provided an uncontested statement recounting the Respondent's involvement with the site during its ownership by the George family. The only point of note that is relevant to draw attention to in this narrative is that the Respondent had been concerned during the George ownership to ensure regulatory compliance with sites which were "relevant protected sites". In 2014, the Respondent had however been given an assurance by the George family that there were no permanent occupants on site, and that the Respondent would be notified immediately if that were to change. As the site was therefore not being operated as a "relevant protected site", so that a number of the new requirements in the Mobile Homes Act 2013 did not apply, Mr Arkle appears to have adopted a relatively light regulatory touch to the site during the latter years of its ownership by the George family.

31. A statement provided by Sarah Stevens gives some details of how the site was run in the latter years of the George ownership. Mrs Stevens says that there were around 24 static caravans and 29 touring caravans on the site in December 2016. Following Mr Henry George's death, she had taken on the responsibilities of managing the site. In her statement she said that most of the caravanners were not permanently resident but there were 4 or 5 who "lived" on the site.

32. At the end of 2016 therefore, there were certainly static and touring caravans pitched on the site with enough activity to justify a resident manager. Possibly some occupants resided permanently at the site, which would have been a breach of the 2014 assurances given to the Respondent. Mrs Stevens does comment that neither Mr Henry George nor his father were ones "to follow the rules".

33. It also appears to be the case that the 1968 site licence was never transferred from Mr W H George to Mr Henry George. It may of course have passed by operation of law; the Tribunal has not been told.

34. The Tribunal understands that the ownership of the site remained in the George family until 11 November 2016, when it was purchased by the Applicant.

35. Mr Arkle was dealing with Countrywide through a person called Gilly Cook. In December 2016 he sought, and received, confirmation from Ms Cook that the site was not being used as permanent accommodation, so was not being operated as a relevant protected site. He raised the issue of a licence for the site with Ms Cook in December 2016 and provided a copy of the licence held by Mr George and emailed a link to allow an application for a licence to be made by the Applicant. Ms Cook said she thought the

licence had already been transferred. No application for a licence was made at that point.

36. On 13 February 2017, the Applicant gave notice to all the existing site occupants that they must leave the site with immediate effect. The site occupants were extremely unhappy about the peremptory way the Applicant closed the site, and there was a certain amount of adverse press about the decision. From a licensing point of view though, as the site was apparently not being operated as a relevant protected site, Mr Arkle did not consider that he had powers to challenge this action.

37. Whilst matters were relatively quiet on the licensing front, there was considerable activity in relation to both development activity on the site and the planning position. On 14 February 2017, the Applicant applied for a certificate of lawfulness arguing (inter alia) that the 1952 consent allows residential use of 30 caravans, the 1966 consent allows 30 caravans to be permanently occupied, and that caravans may be sited on the Central Green.

38. On 17 March 2017, complaints were received by the Respondent that unlawful tree felling was occurring on the site. The Respondent's tree officer visited and advised that all tree works were illegal, and work should cease. However, tree felling works continued on site and the Respondent sought and obtained an injunction against the Applicant. This was probably obtained ex parte, and it was confirmed by a full injunction lasting for a two-year period on 27 March 2017. It is not clear whether this injunction was consented to by the Applicant.

39. The Applicant's application for a certificate of lawfulness was refused by the Respondent on 19 April 2017. The Tribunal understands this refusal has not been appealed.

40. On 24 August 2017, Mr Paul Thompson, who is the Respondent's planning enforcement officer, visited the site and noted that excavation works to earth banks had left tree roots exposed, which Mr Thompson was later advised would destroy the trees.

41. Although the Tribunal has not been supplied with the detailed documentation, it is apparent from an email from Mr Thompson to Countrywide dated 5 September 2017 that the Applicant's planning consultants and the Respondent were in correspondence regarding a planning application for the site, though none had at that point been received by the Respondent. Nevertheless, Mr Thompson informed the Applicant's planning consultants that two concrete bases were being laid to the north-west of the roadway that leads from the Lodge. He informed the planning consultants that development works in that area required planning permission and works should cease immediately.

42. Mr Thompson visited the site on 8 September 2017 when he noted that the concrete bases were being laid within the Central Green, in breach of condition 9 of the 1966 consent.

43. Another visit to the site was undertaken on 13 September 2017 by "council officers", to verify that a concrete base had indeed been laid in the Central Green area. On the same day, the Respondent issued a temporary stop notice under the Town and Country Planning Act 1990 ("the 1990 Act") requiring that work on the Central Green should cease.

44. On 21 September 2017, at a meeting between representatives from the Applicant and the Respondent, the Respondent was given assurances and an undertaking that no actions in breach of the temporary stop notice would be undertaken.

45. Even so, the Respondent was notified an hour later that part of a twin-unit caravan had been sited on one of the newly created bases located on the Central Green.

46. Mr Thompson visited the site again on 11 October 2017 and noted that part of a caravan was still stationed on a concrete base within the Central Green.

47. On 12 October 2017, the Respondent issued a Breach of Condition Notice under section 187a of the 1990 Act requiring the central green to be reinstated.

48. On 14 November 2017, Mr Thompson again visited the site and noted that, although no further ground works had been undertaken, the second half of a twin unit mobile home had been positioned on a concrete base on the Central Green and bolted, presumably, to the half unit noted on 11 October 2017. The Council therefore decided to pursue injection proceedings, in view of the Applicant's failure to comply with the assurances, the stop notice, or the breach of condition notice given by the Applicant.

49. On 7 December 2017, the Applicant was convicted of contravening the Town and County Planning (Tree Preservation) (England) Regulations 2012 in respect of the tree felling on 17 March 2017, when 121 trees had been felled. A financial penalty of £8,030.00 by way of fine and costs was imposed.

50. Also, in December 2017 (the exact date has not been supplied to the Tribunal) the Applicant applied for planning permission to develop 11 park homes on the site in substitution for the 30 seasonal caravans permitted by the 1966 consent. The Tribunal has been told that the application relates to an area of land within the vicinity of the site, but is not an area that is part of the site licence application site.

51. On 12 January 2018, an interim injunction was issued in the Derby County Court against the Applicant restricting development of the Central Green for the positioning of caravans, or any preparatory works in connection with the siting of caravans.

52. On 4 May 2018, the Applicant submitted an application for a certificate of lawfulness seeking to demonstrate that caravans had been sited on the Central Green, in breach of condition 9 of the 1066 consent for a period in excess of 10 years.

53. At some point in June 2018, and possibly before, Mr Arkle, as licensing officer became involved with the site again. It appears he had not been involved since the site was cleared in February 2017. No doubt all the activity regarding trees and the construction work on the Central Green came to Mr Arkle's attention, and he informed the Tribunal that he understood the site was now developing into a caravan site.

54. Mr Arkle therefore visited the site on 6 June 2018. He noted that a twin unit caravan had been placed on a unit known as 1 Riverside Lodge. He was able to establish from the occupiers that they were occupying it as their permanent residence. From enquiries of the Council Tax department, Mr Arkle established that they had been so occupying since 3 April 2018. From his further enquiries, Mr Arkle then established that in his view there were at least two occupied twin units on the site.

55. Mr Arkle formed the view that an offence may have been committed under section 1 of the 1960 Act, in that a caravan site was being operated without the benefit of a site licence. On 4 July, he invited Countrywide to attend an interview under caution. They declined the invitation.

56. However, on 6 July 2018, an application to transfer the existing site licence to a Mr Anthony Cooper-Barney, who stated that his business was Haytop County Park Ltd, was received by the Respondent. The planning permission relied upon to support the application was the 1952 consent.

57. On 31 July 2018, the Respondent refused the 4 May 2018 application for a certificate of lawfulness. This refusal has not been appealed.

58. For various reasons (which may have been right or wrong, but which do not in fact concern the Tribunal), Mr Arkle refused to accept the application to transfer the existing site licence submitted on 6 July 2018, on the grounds that the licence issued to Mr George in 1968 had lapsed. He wrote to Mr Cooper-Barney on 2 August 2018 to remind him that the Respondent had invited his company to apply for a new licence on several occasions, and he repeated that invitation.

59. That same day, 2 August 2018, the Applicant submitted an application for a new site licence for the site. The Applicant was still Mr Cooper-Barney, in relation to his business, Haytop Country Park Ltd. The application was

for 30 permanent residential pitches. Again, reliance was placed upon the 1952 consent to support the application.

60. On 3 October 2018, an Order, by consent, was made in the Derby County Court that the interim injunction made on 12 January 2018 in respect of the Central Green should remain in force indefinitely, pending a further application or the grant of planning consent permitting the matters presently prohibited under the injunction.

61. On 31 October 2018, Mr Arkle was contacted by an individual whose identity has not been disclosed to say that it had been brought to that individual's attention that pitches on the site were being advertised for sale as permanent homes without there being a licence in place, nor planning permission.

62. Mr Arkle exhibited some press adverts to his statement which indicated that the Applicant had held open days in August, September and October 2018 to generate purchase leads. Homes, described as bungalows, were priced at £200,000 in the adverts, with the offer including a "no stamp duty" and "no legal fees" incentive.

63. Mr Arkle informed Derbyshire County Council Trading Standards of these disclosures. That authority wrote to the Applicant on 12 November 2018 informing it that the omission of information clarifying that the site was unlicensed and had no planning permission appeared to be a breach of Regulation 6 of the Consumer Protection from Unfair Trading Regulations 2008, in that the advert contained material omissions relating to the regulatory compliance issue. Mr Arkle was informed by Derbyshire County Council that the Applicant had changed its website in response.

64. Between 2 August and 20 November 2018, Mr Arkle raised a number of queries on the 2 August licence application, including seeking a plan that reflected the position of the pitches as they were laid out on site, and queries regarding the finances and management structure of the applicant. He regarded the application as complete on 20 November 2018.

65. On 21 December 2018, the Respondent determined to refuse the application for a new licence. The grounds were:

    a. "The Site does not benefit from an appropriate planning permission as required by section 3(3) of the 1960 Act;

    b. Further or in the alternative, the proposed licensing arrangement would reduce the [Respondent's] ability to ensure that the Site as a whole is adequately managed as provided by Regulation 3(2)(e) of the Mobile Homes (Site Licensing) (England) Regulations 2014. Namely, the Applicant has been convicted of two offences under section 210 of the [1990 Act] in relation to the Site, has breached

planning control in the relation to the Site and currently is in breach of section 1 of the [1960 Act] by allowing persons to reside on a site with no site licence;

c. Further or in the alternative the [Respondent] is not satisfied that the Applicant is a fit and proper person to hold a Caravan Site Licence having regard to the conduct of the Applicant. The [Respondent] is able to make this assessment in accordance with Regulation 3(3) of the Mobile Homes (Site Licensing) (England) Regulations 2014."

66. On 15 January 2019, the Applicant appealed against the Respondent's decision to refuse a licence. Directions were duly issued, and the case was set up for an inspection and hearing on 30 April 2019.

67. On 15 March 2019, the Respondent issued two planning enforcement notices. One is directed at a material change of use at the site, and the other is directed at operational development undertaken on the site. The Tribunal understands that proceedings relating to these notices are ongoing.

68. On 29 March 2019, the Respondent applied for the appeal to be struck out under Rules 9(3)(d) and/or 9(3)(e) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules"). A procedural decision was made that this application would be considered by the Tribunal at the hearing already arranged.

69. The hearing on 30 April 2019 took place following the inspection on the same day. It was adjourned part heard, and the case hearing was concluded at a further hearing on 21 June 2019.

The Law

70. Licensing of mobile homes is governed by the Caravan Sites and Control of Development Act 1960 ("the 1960 Act").

71. Section 1 sets out the requirement for a licence and the consequences of not obtaining a licence if it is required:

1.— Prohibition of use of land as caravan site without site licence.

(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.

(2) If the occupier of any land contravenes subsection (1) of this section he shall be guilty of an offence

72. Section 3 sets out the requirement that planning permission is required if a licence is to be granted:

> 3.— Issue of site licences by local authorities.
>
> (1) An application for the issue of a site licence in respect of any land may be made by the occupier thereof to the local authority in whose area the land is situated.
>
> (2) An application under this section shall be in writing and shall specify the land in respect of which the application is made; and the applicant shall, either at the time of making the application or subsequently, give to the local authority such other information as they may reasonably require.
>
> …
>
> (3) A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order.

73. Under sections 3(5A), 3(5B) and 3(5C), regulations may be made governing the matters mentioned in those section:

> 3(5A) The Secretary of State may by regulations require a local authority in England to have regard to the prescribed matters when deciding whether to issue a site licence under subsection (4) or (5) on a relevant protected site application in respect of land in their area.
>
> 3(5B) The regulations may require a local authority in England, where they decide not to issue such a site licence under subsection (4) or (5), to notify the applicant of the reasons for the decision and of such right of appeal as may be conferred by virtue of subsection (5C).
>
> 3(5C) The regulations may—
> (a) confer on an applicant under this section a right of appeal to the tribunal against a decision of a local authority in England not to issue a site licence as mentioned in subsection (5B);

74. There are various important definitions in the 1960 Act as follows:

> Section 1(4) In this Part of this Act the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

Section 3(7) In this Part, "relevant protected site application" means, subject to subsection (8), an application for a site licence authorising the use of land as a caravan site other than an application for a licence—

(a) to be expressed to be granted for holiday use only, or

(b) to be otherwise so expressed or subject to such conditions that there will be times of the year when no caravan may be stationed on the land for human habitation;

whether or not because the relevant planning permission under Part 3 of the Town and Country Planning Act 1990 is so expressed or subject to such conditions.

Section 3(8) For the purpose of determining whether an application for a site licence is a relevant protected site application, any part of the application which is for the licence to permit the stationing of a caravan on the land for human habitation all year round is to be ignored if, were the application to be granted, the caravan would be so authorised to be occupied by—

(a) the occupier, or

(b) a person employed by the occupier but who does not occupy the caravan under an agreement to which the Mobile Homes Act 1983 applies (see section 1(1) of that Act)

75. Section 4 of the 1960 Act governs the duration of a licence:

4.— Duration of site licences.

(1) Where permission for the use of any land as a caravan site has been granted under Part III of the Act of 1947 otherwise than by a development order, and has been so granted in terms such that it will expire at the end of a specified period, any site licence issued in respect of the land by virtue of the existence of that permission shall expire, and shall be stated to expire, at the end of that period; but, subject as aforesaid, a site licence shall not be issued for a limited period only.

76. Section 5 deals with conditions on a licence:

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.

77. The Regulations envisaged by sections 3(5A), 3(5B) and 3(5C) of the 1960 Act are the Mobile Homes (Site Licensing) (England) Regulations 2014 ("the 2014 Regulations"). Paragraph 3 sets out the prescribed matters to which the local authority is to have regard:

3.— Matters prescribed for the purposes of subsection (5A) of section 3 and the purposes of subsection (1C) of section 10 of the Act

(1) Paragraphs (2) to (4) set out the prescribed matters to which a local authority must have regard when deciding whether to issue a site licence or consent to the transfer of a site licence in respect of a relevant protected site.

(2) In relation to the management of the site and the proposed licence holder—

(a) the proposed licence holder's interest or estate in the land forming the site, including, where relevant, the duration of the lease and any restrictions contained in the lease;

(b) the proposed licence holder's ability to comply with any conditions of the site licence and to provide for the site's long-term maintenance;

(c) the funding arrangements in place for managing the site and complying with any conditions of the site licence;

(d) the management structure that will apply to the site, including the competence of the proposed licence holder and any other person nominated to manage the site; and

(e) whether the proposed licensing arrangements would reduce the amenity of, access to or quality of services on the site, or reduce the local authority's ability to ensure that the site as a whole is adequately managed and maintained.

(3) In relation to any existing licence holder for the site in question, whether—

(a) the existing licence holder—

(i) has been convicted of an offence under section 9B of the Act, due to failure to comply with a compliance notice served under section 9A of the Act;

(ii) is in the process of being investigated by the local authority in relation to an alleged offence under section 9B of the Act; or

(iii) is involved in proceedings in relation to an alleged offence under section 9B of the Act, and a determination is pending;

(b) the local authority has—

(i) applied to a court or tribunal for an order revoking the site licence and a determination is pending; or

(ii) notified the existing licence holder, in the six month period prior to receipt of an application for the issue, or consent to the transfer of, a site licence, of its intention to apply for an order revoking the site licence;

(c) any demands for expenses served on the existing licence holder in connection with enforcement action carried out under section 9A, 9D or 9E of the Act have been paid;

(d) any costs awarded to the local authority by a court or tribunal, against the existing licence holder, as a result of any proceedings in relation to the site, have been paid;

(e) any annual licence fees charged to the existing licence holder under section 5A of the Act have been paid; and

(f) the existing licence holder owes any money to the local authority in respect of costs it has incurred to protect the health, safety or welfare of site residents.

78. Regulations 5 and 6 of the 2014 Regulations deal with the local authority's obligations if it refuses to grant a licence and with appeals:

5.— Notification of reasons for the refusal to issue or consent to the transfer of a site licence in respect of a relevant protected site

(1) Where a local authority decides not to issue, or consent to the transfer of, a site licence in respect of a relevant protected site, it must serve a notice of its decision on—

(a) the proposed licence holder; and

(b) any existing licence holder for the site.

(2) Such a notice must contain the following information—

(a) an explanation of the reasons for the decision;

(b) details of the right of appeal against the decision to the tribunal under regulation 6; and

(c) an explanation of the effect of the decision on the parties, which sets out that any existing licence holder shall remain the licence holder of the site in question until such time as either the local authority's decision is successfully appealed or a new application is made and the local authority decides to issue, or consent to the transfer of, the site licence.

6.— Right of appeal

(1) The applicant may appeal to the tribunal against a local authority's decision not to issue, or consent to the transfer of, a site licence in respect of a relevant protected site within 28 days of receipt of notification of the decision by the local authority.

(2) The appeal shall be a re-hearing of the local authority's decision and shall be determined having regard to—

(a) any undertaking given to the tribunal in relation to one or more of the matters set out in regulation 3(4); and

(b) any other matters that the tribunal thinks are relevant (which may include matters of which the local authority was unaware).

(3) On determining an appeal, the tribunal may—

(a) confirm the local authority's decision; or

(b) reverse the local authority's decision, by ordering that the local authority issues a site licence, or consents to the transfer of a site licence, as applicable.

79. The nature of the Tribunal's role in a re-hearing was considered in *Shelfside (Holdings) Ltd v Vale of White Horse District Council* [2016] UKUT 400, where His Honour Judge Bridge said at paragraph 10:

"The effect of this provision is that the tribunal is obliged to consider all the circumstances prevailing at the time of the hearing before it and to determine whether it was right and proper to issue the compliance notice in the light of those circumstances. The tribunal is required to put itself in the position of the local authority, as the primary decision maker, and having considered all material factors determine what decision it would have made. In this process, it is not principally concerned with the legality (or otherwise) of the local authority's actions."

80. The Caravan Sites Act 1968 contains a further important definition in section 13:

13.— Twin-unit caravans.

(1) A structure designed or adapted for human habitation which—

(a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and

(b) is, when assembled, physically capable of being moved by road from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer),

shall not be treated as not being (or as not having been) a caravan within the meaning of Part I of the Caravan Sites and Control of Development Act 1960 by reason only that it cannot lawfully be so moved on a highway when assembled.

The issues

81. The Tribunal's function is to decide whether to confirm the Respondent's decision to refuse a licence to the Applicant, or to order the Respondent to issue a licence (Reg 6(3) of the 2014 Regulations).

82. This will require:

    a. A brief comment on the status of the existing licence and whether a new licence was the correct application;

    b. Consideration of the Respondent's application to strike out;

    c. If then relevant, consideration of whether the Respondent was entitled to refuse a licence on the grounds;

        i. That the site did not have the benefit of a permission for the use of the land as a caravan site; and/or

        ii. That there was a justifiable reason for otherwise refusing to grant a licence.

The existing licence

83. It is surprising to us that a transfer of the existing licence did not occur when the Respondent purchased the site in 2016. At that point, the site was being operated as a caravan site, though possibly not as a relevant protected site, and was occupied by caravans for the purposes of human habitation, and so the operator required a licence to avoid committing a criminal offence.

84. Nevertheless, the licence was not at that point transferred. We are therefore dealing with a new application submitted in August 2018 rather than a transfer in November 2016. We do however have in mind that had there been a site licence transfer in 2016, the reasons for refusal of the licence put forward by the Respondent in December 2018 would not have been available to it then. In particular, it would not have been open to the Respondent to argue that there was no planning consent for the caravan site, for there was a licence in place the very existence of which required that planning permission had been granted.

85. The question of whether the Respondent was correct to refuse to consider a transfer of the licence in July 2018 has not been canvassed before us. The parties initially maintained different stances on the status of the previous licence; the Respondent said it had lapsed and the Applicant took the opposite view, though at the hearing Mr Graham accepted that the site licence remained extant. Both parties have however pursued this appeal on the basis that the Tribunal must adjudicate upon the refusal to grant the application that was actually determined by the Respondent (i.e. an application for a new licence), and we therefore make no ruling on

whether the Respondent should have accepted the July 2018 application to transfer the licence.

The strike out application

86. Mr Graham submitted that the appeal was frivolous, vexatious, or otherwise an abuse of process, arguing that the Tribunal should strike it out under Rules 9(3)(d) and/or 9(3)(e) of the 2013 Rules. These provide:

"9(3) The Tribunal may strike out the whole or a part of the proceedings or case if—

(d) the Tribunal considers the proceedings or case (or a part of them), or the manner in which they are being conducted, to be frivolous or vexatious or otherwise an abuse of the process of the Tribunal; or

(e) the Tribunal considers there is no reasonable prospect of the applicant's proceedings or case, or part of it, succeeding."

87. Mr Graham put his reasons for the strike out application as being:

a. No planning permission exists, and the Tribunal therefore does not have jurisdiction to consider the appeal, citing in support *London Borough of Havering v Wyldecrest Parks (Management) Ltd* [2018] UKUT 354 ("Wyldecrest");

b. The appeal is ill founded because of uncertainty over the approved drawings. In relation to this, he argued that the proposed boundaries for the site licence must fall within the boundaries of the land for which planning consent is granted, and that where the planning consent specifies a lay-out, the site licence cannot provide for a different lay-out. As the Applicant had not produced the approved drawings for the planning consents, it cannot establish whether the boundaries for the proposed licence are within the boundaries of the planning permissions.

88. Mr Harwood resisted the strike out application. He said that the alleged uncertainly over the site boundaries had not been a reason for the Respondent to refuse the site licence application. If there is uncertainty over the site boundaries for planning purposes, secondary evidence can be adduced to establish them. He reminded the Tribunal that this has been as established site for some many years with both planning permissions and a site licence in place, and no contention was put forward during that time that the boundaries were in doubt.

89. The Tribunal does not consider that this appeal is of itself frivolous, vexatious, or otherwise an abuse of process. It will be apparent from the discussion below that the appeal raises genuine issues. There is no doubt that there was an application for a site licence and that it was refused.

There is a statutory right of appeal, and the Applicant is entitled to exercise it. That act cannot of itself be considered frivolous, vexatious, or an abuse of process. There is no basis under paragraph 9(3)(d) for the application to be struck out.

90. Paragraph 9(3)(e) requires consideration of the prospect of success of the appeal. It is entirely apparent to the Tribunal that there are arguable issues in relation to all three limbs of the Respondent's grounds for refusing to grant the licence. Furthermore, the Tribunal's jurisdiction is to consider the application for a site licence afresh, by virtue of paragraph 6(2) of the 2014 Regulations. We would be unable to exercise this jurisdiction were the appeal struck out.

91. Wyldecrest requires comment. In that case, the Upper Tribunal agreed that the first-tier tribunal did not have jurisdiction to entertain an appeal where a local authority had not made a decision to refuse to grant a licence; they had merely said that they declined to consider the application as no planning permission existed for the site to be used as a caravan site. That is entirely different to this case, where, even in his application to strike out, Mr Graham concedes the existence of two planning permissions for use of the site as a caravan park. Importantly, the Respondent made a positive decision to refuse the licence, complying with the requirements of Regulation 5 of the 2014 Regulations, and giving details of the Applicant's right of appeal.

92. For the reasons expressed above, the Tribunal refuses the Respondent's application for an order striking out the appeal.

The substantive issue - planning

The party's submissions

93. At the commencement of the case, it had been the Respondent's position that the plans for both the 1952 consent and the 1966 consent had not been produced. Between the two hearing days, further evidence was produced, including a statement from Ms Kirstie Apps and Mr Adrian Corfe on behalf of the Applicant and from Mr Philip Thompson on behalf of the Respondent. This additional evidence substantially clarified the issues raised by the Respondent on the plans, and we make findings below, which in the end we believe were not contentious. Submissions relating to the inadequacy of the plans or otherwise will therefore not be summarised or commented upon. This discussion will focus on the parties differing approaches to the impact of the existing consents and whether they are sufficient to satisfy section 3(3) of the 1960 Act.

94. Two planning permissions exist in relation to the site – the 1952 consent and the 1966 consent. Do these two consents constitute permission for the use of the land as a caravan site?

95. Mr Harwood urged the Tribunal to determine that they do. They are consents for mobile dwellings (which includes caravans) in the case of the 1952 consent, and for caravans in the 1966 consent.

96. He acknowledged that there are issues between the Applicant and the Respondent in relation to the size, type and layout of the caravans, but he said the Respondent can control these questions by granting a licence subject to conditions. Section 5(1) of the 1960 Act allows the Respondent this option.

97. On the question of whether the licence application site was within the area permitted under the planning consents, Mr Harwood said the evidence established that the proposed layout of the site in the application for a licence was within the "shoe" shown on the 1952 consent. In so far as the 1966 consent plan was missing, the evidence was that that plan would encompass a larger area than the 1952 consent plan.

98. Mr Graham opposed Mr Harwood's position. In his view, section 3(3) of the 1960 Act needed to be read as if the requirement for planning consent related to a planning consent for the specific layout and type of caravan that the Applicant proposed to use the site for, as set out in the application for a licence. In this case, the existing layout, as shown on the plan submitted as part of the licence application, was not consistent with the layouts approved in either the 1966 consent nor the 1968 licence. New hardstandings had been constructed (in his submission in breach of planning law), so the layout differed from the previously permitted layouts, and the proposed type of caravan was not the type permitted by the consents. Therefore, there was no planning consent authorising the way in which the Applicant proposed to use the site.

Discussion

99. Based on the original and additional evidence presented, we find, in relation to the plans:

    a. The plan attached to the 1952 consent is the plan headed "plan referred to" behind tab 2 of hearing bundle 1;

    b. The footpath crossing field no 165, referred to in condition (b) in the 1952 consent, is the westerly path along the edge of the "wedge" shaped area of land described above;

    c. The proposed layout of caravans in the site licence application final plan (behind tab 19 in bundle 1) is wholly within the land which has the benefit of the 1952 planning consent;

    d. The site layout plan originally attached to the 1966 consent is missing;

e. The location plan for the 1966 consent is on the balance of probabilities the plan produced by Mr Thompson and exhibited to his statement dated 24 May 2019;

f. As the applications for the 1966 consent and the 1968 site licence were both submitted within a day of each other, and the layout markings on the layout plan attached to the 1968 site licence accord with the lettering system used in the 1966 consent, on the balance of probabilities, the 1968 site licence layout plan is the same or virtually identical to the plan that would have been attached to the 1966 consent;

g. The whole of the proposed layout in the licence application is within the area of land for which the 1966 consent granted planning permission.

h. The whole of the area of the proposed layout in the licence application is also within the area of land for which the 1952 consent granted planning permission – see para 101.

100. We do not consider that the 1966 consent can subsist as a stand-alone planning permission. It is plainly related to, and possibly dependent upon the 1952 consent, for it is described as being supplemental to and an extension of the 1952 consent.

101. We do consider that the 1952 consent grants planning permission for a caravan site on the land which the Applicant's seek to licence. It is a consent for permanent location of mobile homes, including caravans. It is therefore a consent for use of the land as a caravan site, and therefore satisfies section 3(3) of the 1960 Act.

102. We therefore determine that the Respondent may not refuse a licence on the grounds that there is no planning consent for use of the site as a caravan site.

103. However, we do not consider that the 1952 consent on its face permits the type of caravan proposed by the Applicant. If the Applicant considers that it does (or that subsequent alterations in the definition of a caravan mean that it should be construed in that way), there is then a planning dispute between the parties, which we understand is already being litigated by the parties. It is not for the Tribunal to be involved in endeavouring to determine that dispute.

104. We therefore also agree, as was indeed suggested by Mr Harwood, that the Respondent is not obliged to grant a licence to allow the site to be used in such a way as would breach what it regards as the current correct planning consent. It would therefore be entitled to impose conditions, if it wished, regarding the type of caravan permitted, and the layout it considers

appropriate. One option it has is to grant a licence on the same or similar terms as the 1968 licence.

The Substantive Issues - the Applicant's conduct and competence

The party's submissions

105. It will be recalled that the Respondent refused to grant the licence on two further grounds, both related to the Applicant's conduct and competence.

106. Mr Graham brought the following matters to the attention of the Tribunal to justify refusal of a licence:

    a. The Applicant had operated the site without a licence in its name from the time of its purchase in November 2016, and was still doing so, in breach of section 1 of the 1960 Act, including allowing a permanent resident to occupy a pitch from April 2018;

    b. The peremptory and immediate closure of the site in February 2017, which included requiring residents to move with no notice;

    c. The marketing of caravans for sale from August to October 2018 in a misleading manner;

    d. The felling of trees in March and August 2017, and the failure to cease illegal tree works even when told to do so, resulting in a Stop Notice, an injunction, and convictions;

    e. The carrying out of works on the Central Green in breach of the 1966 consent, requiring an informal request to cease works, a temporary stop notice, a breach of condition notice, and finally an injunction to stop.

107. There are also planning disputes and enforcement proceedings under way between the parties, but Mr Graham did not rely upon them.

108. In response, Mr Harwood submitted:

    a. So far as the attempted sale of permanent units was concerned, this action had been frustrated by regulatory disputes, so no sales had taken place. He suggested there had been no breach of consumer protection regulations, and no prosecution, and he pointed out that this aspect had not formed part of the Respondent's reasoning for refusing the licence;

    b. Regarding operating a site without a licence, there could have been no breach after February 2017 when the site was cleared. He accepted that in 2018, the position should have been regularised from April; It has now been accepted by the Respondent that there is an extant site

licence, but it is in not in the name of the Applicant. Mr Romano, who is the acting Managing Director of Countrywide (though not a director of the company), said he was very aware that the licence is not in the name of the Applicant, which is why steps were taken to regularise the position. The Respondent had not indicated any concern about the apparent breach of section 1 of the 1960 Act during the negotiations around the adequacy of the application for the new licence;

c. The work on the Central Green had been commenced based on receiving advice from planning consultants that there was evidence that the planning condition in the 1966 consent had not been observed for a period in excess of 10 years, so was not enforceable. In the end, the Applicant conceded that this was not a supportable position, but it had been a genuine dispute, not a wilful breach. There had been no contempt proceedings and the final injunction had been agreed, with the Applicant's costs being paid;

d. Work on the trees in March 2017 which resulted in enforcement proceedings and a criminal conviction came about because of advice from planning consultants that the work was permitted under the General Development Order and did not require separate consent. The second breach of tree protection legislation was pure inadvertence; a digger had come too close to a tree and had inadvertently disturbed the roots of 4 trees;

e. In their reasons for refusal, the Respondent had raised conduct, not the Applicant's competence or ability to manage the site;

f. The Respondent had not sought to cross examine any of the Applicant's witnesses on the issue of competence;

g. The Applicant was well resourced and had invested around £750,000 to tidy up and modernise a facility that had become very run down over the years.

Discussion

109. As the application is for a licence for a relevant protected site, the Respondent is entitled to consider whether there are any grounds upon which it could refuse a licence. The prescribed grounds are set out in Regulation 3 of the 2014 Regulations.

110. It seems to the Tribunal that it is appropriate to consider grounds 3(2)(d) and 3(2)(e), i.e. whether in relation to the management of the site and the proposed licence holder, the management structure that will apply to the site, including the competence of the proposed licence holder is satisfactory, and whether the proposed licensing arrangements would

reduce the local authority's ability to ensure that the site as a whole is adequately managed and maintained.

111. We do not consider that the Respondent was right to rely upon Regulation 3(3) at all. Those provisions relate to an existing licence holder, not the Applicant.

112. Neither can the Respondent apply a "fit and proper person" test to the Applicant. Though section 3 of the Mobile Homes Act 2013 inserts a new section (section 12A) into the 1960 Act introducing such a test, that provision is not yet in force and cannot be applied by the Respondent.

113. This issue therefore turns upon whether the Applicant is competent and whether with the Applicant as the licence holder the site can be adequately managed.

114. We are of the view that the Applicant has demonstrated incompetence, or worse, in a number of material respects. In our view, in November 2016 it acquired a caravan site that was then licensed and licensable, and it should have arranged the transfer of the existing licence at that point.

115. The Applicant was clearly incompetent or worse when it permitted a permanent occupier to take residence in a twin-unit caravan in April 2018 without having a site licence.

116. The Applicant's acts in marketing caravans for sale between August and October 2018 show a disregard of the licensing (and probably the planning) regulations, and also, had it not been for the timely intervention of the authorities, might have caused members of the public substantial financial loss had they proceeded to invest in the offered residential units. Our own view is that these acts fall within the category of being reprehensible, not merely incompetent.

117. Likewise, we regard the acts taken by the Applicant regarding tree works to be incompetent. What we find supports this view is not so much the initial work on the trees noted by the Respondent on 17 March 2017, but the Respondent's inability to respond to the statutory authorities, who had to issue informal advice, then issue a stop notice, then an enforcement notice, and finally an injunction before the Applicant complied with its legal obligations in respect of tree preservation.

118. We also consider that in carrying out engineering works on the Central Green, in breach of a planning condition, the incompetence lay not so much in carrying out initial works; after all the Applicant had been professionally advised that it could. It was the failure to respond to the Respondent's remonstrations that the Applicant was breaching its obligations to the extent that, again, the Respondent had to obtain a county court injunction before the Applicant ceased the works that we find to be incompetent.

119. We therefore find that there is a strong case for a determination that by reason of incompetence and repeated breaches of statutory obligations and restrictions such that the Applicant would be unlikely to manage the site adequately as set out above, it would be permissible to refuse to grant the Applicant a licence under both paragraph 3(2)(d) and 3(2)(e) of the 2014 Regulations. We are aware that the Respondent did not mention 3(2)(d) in its decision notice, and that we have added an additional area of behaviour beyond those mentioned in the Respondent's decision, so our grounds would be wider than those relied upon by the Respondent. We are entitled to rely on all of these provisions because we are considering this case by way of rehearing and are making our own decision rather than deciding whether the Respondent's decision was right.

120. This conclusion however leaves the Tribunal with a difficult decision. Although there would be grounds for us to find that a licence should be refused, we still must decide whether to exercise our discretion in this way. Matters which fall within paragraph 3(2) of the 2014 Regulations are only matters to which the decision maker can "have regard". If they exist, there is still a discretion to determine what weight to give them.

121. After considerable consideration of what we regard as a finely balanced question, we have decided not to refuse a licence. In the end we have been swayed partly by the arguments "in mitigation" put by Mr Harwood, and partly as a result of the fact that the real issue between the parties here relates to planning issues, not licensing issues.

122. We have noted that the Respondent has taken a fairly relaxed approach to licensing here. Whilst in our view the licence should have been dealt with on purchase by the Applicant, for whether or not the site was at that point a relevant protected site, it was still occupied for human habitation, and thus still licensable. Yet the Respondent was content, essentially, to take a very hands-off approach to licensing issues for the period from purchase of the site by the Applicant until July 2018.

123. We have also noted that the Respondent insisted that the site layout plan it required in order to consider the licensing application had to mirror the layout of the pitches as they had been laid out on the ground, even though the Respondent at the same time took the view that the layout on the ground was in breach of planning regulations. It therefore required the Applicant to produce a plan for a layout that it was not willing to approve. That is an odd position for it to take.

124. As a result of these points, we take account of the Respondent's willingness to be flexible in its approach to breach of licensing obligations and consider there are grounds for us to be so as well.

125. We see some force in the arguments put by Mr Harwood concerning the investment already put into the site by the Applicant. We also note that

the Applicant has access to professional resources, which is clearly apparent to us through the conduct of this case. We hope they are deployed in the future towards getting management decisions right first time, rather than being used to clear up the consequences of poor initial decisions.

126. Finally, we have to view the whole context of this case. There is planning consent for a caravan site at the site, though its extent and terms are in dispute. There is also an extant licence, though in the wrong name. When the parties can resolve their planning issues, it seems highly likely that these existing consents will result in there being a continuation of the use of the site for caravans in some form or another. It seems to us that the consequences of upholding the Respondent's decision not to grant a licence would be disproportionate.

127. Whether the Applicant will be allowed to develop a site with thirty substantial twin-units, which would result in a permanent residential development of what are to all intents and purposes residential bungalows, quite against the spirit of the reasoning set out in the 1966 consent, is a planning matter, not a licensing matter.

Decision

128. The appeal is allowed.

129. The Respondent is directed to issue a site licence.

130. The Respondent is entitled to impose conditions on the site licence (by using its powers in section 5 of the 1960 Act) restricting the use of the site to the use it considers to be permissible under the existing planning consents benefitting the site, and to impose any other conditions it reasonably considers appropriate.

Appeal

131. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)