FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/29UK/PHR/2020/0001
Property	**:**	Kingsdown Meadows Residential Park, Romney Street, Shoreham, Kent TN15 6XW
Applicant	**:**	Kings Meadow Residential Park Limited
Representative	**:**	Miss Kirstie Apps of Apps Legal Limited
Respondent	**:**	Sevenoaks District Council
Representative	**:**	Mr David Lagzdins Senior Solicitor
Type of Application	**:**	Appeal regarding conditions attached to a site licence
Tribunal Member(s)	**:**	Judge Tildesley OBE Mr Roger Wilkey FRICS
Date and venue of hearing	**:**	23 and 24 November 2020 Cloud video platform
Date of Decision	**:**	21 December 2020

DECISION

Summary of Decision

1. The Tribunal allows the Appeal and directs the Respondent to delete condition 2(iii) from the site licence, and to replace the layout plan, with the plan submitted to the Respondent on 15 April 2019 and signed off on the 1 July 2019.

The Appeal

2. This is an Appeal under section 8(2) of Caravan Sites and Control of Development Act 1960 ("the 1960 Act") by the owner and operator of Kingsdown Meadow Residential Park ("the Park") against a condition to a site licence imposed by Sevenoaks District Council, the authority responsible for licensing the operation of caravan sites under the 1960 Act.

3. The condition appealed against is condition 2(iii) which was added on 27 May 2020 to a site licence with conditions transferred and granted to the Applicant on 1 July 2019 [73].

4. Condition 2(iii) stated that "No park home shall be sited or occupied within the land hatched in red on the attached plan". The effect of this condition required the Applicant to remove three pitches numbered 01, 02 and 32 and the unoccupied mobile homes sited thereon.

5. The Applicant contended that the imposition of the condition was unduly burdensome. The Applicant stated that it had relied on the decision of the Respondent to grant a site licence with the amended plan on 1 July 2019, and that it would suffer significant financial loss from the removal of the three pitches.

6. The Respondent argued that it was entitled to add the condition to the licence and that the public benefit associated with the imposition of the condition outweighed the burden suffered by the Applicant. The Respondent asserted that the location of pitches number 01, 02 and 32 would cause harm to the amenity of future residents living there as a result of noise and disturbance caused by vehicles entering, exiting, and manoeuvring within the site as well as disturbance from headlights from vehicles parking or leaving the site, and potentially the fumes from the vehicles.

7. The parties agreed that the function of the Tribunal is to consider the evidence in relation to the burden that the condition imposes on the Applicant. Once that is established, then the Tribunal must consider in all the circumstances of the case, if that burden is undue.

The Hearing

8. The appeal was heard on 23 and 24 November 2020 using the Cloud Video Platform. Mr Ian Albutt of Counsel represented the Applicant, and Mr Aaron Walder of Counsel appeared for the Respondent. The

instructing solicitors, Miss Kirstie Apps for the Applicant, and Mr David Lagzdins for the Respondent were also present at the hearing.

9. The Applicant called Mr Gary Burns and Mr Jonathan Harvey as witnesses. Mr Burns is a director of the Applicant company and he supplied three witness statements [51-497]. Mr Harvey is a Director of Park Evolution Limited which was instructed by the Applicant to carry out the redevelopment of the Park. Mr Harvey supplied one witness statement [498-503].

10. The Respondent called Mrs Alison Salter and Mr Daniel Shaw as witnesses. Mrs Salter is employed by the Respondent as Development Control Manager, and is responsible for overseeing investigations into breaches of planning control and applications for development. Mrs Salter's witness statement is exhibited at [504-510]. Mr Daniel Shaw is employed by the Respondent as Private Sector Housing Manager and his witness statement is exhibited at [511-521].

11. The Tribunal had on 28 August 2020 given permission to call an expert witness jointly instructed to give evidence on the impact of traffic movements in the Park with specific reference to the three pitches which were the subject of the Application. The parties instructed Mr Jonathan Lloyd who held a BEng Honours Degree in Construction Engineering Management from the University of Portsmouth and is a Member of the Chartered Institution of Highways and Transportation. Mr Lloyd had over 19 years' experience in the design, implementation and assessment of transport schemes, and is currently a Board Director of Vectos, consultants in transport and infrastructure. Mr Lloyd's report is exhibited at [678-760].

12. At the hearing each party tendered their witnesses for cross-examination followed by re-examination and questions by the Tribunal. Mr Lloyd was called first.

13. The Applicant submitted an agreed bundle of documents. Page references to the documents are in [ ]. The parties filed and exchanged skeleton arguments.

14. The Application was made on 29 June 2020 which was within 28 days of the date of the receipt of the decision letter on 2 June 2020. A case management hearing by telephone conferencing was held on 14 August 2020 when directions were issued for a hearing in person and an inspection of the site. Hearings by telephoning conferencing were held on 28 August and 27 October 2020 to hear applications for the appointment of experts including a valuation expert[1].

15. On 3 November 2020 the Tribunal informed the parties that in view of the introduction of lockdown in England the hearing would be by means of

[1] Judge Tildesley OBE refused the Application for the appointment of a valuation expert.

video. The Tribunal indicated that it would inspect the site on 3 December 2020 when the lockdown restrictions had been lifted. Following the Tribunal's notification of a video hearing the Applicant supplied three short videos which showed the location of plots 01, 02 and 32 and a bundle of photographs. On the 27 November 2020, the Tribunal informed the parties that it had decided after considering the evidence including the video and photographic evidence supplied that the inspection of the site was not necessary in order for them to reach a determination. The Tribunal also noted that the whole of Kent would be in Tier 3 Covid Restrictions after the current lockdown came to an end of 2 December 2020.

History of the Park and Chronology of Relevant Events

16. The Park is an established residential caravan site and is set in a rural location. The site borders Bower Lane and Romney Street. Both roads are country roads. Romney Street is a single track road which serves approximately eight dwelling houses as well as the Park. The main access to the Park is off Romney Street. However, there is a separate access from Bower Lane.

17. At [524] a Memorandum dated 15 May 1962 recorded the decision of the Minister to quash an enforcement notice and to grant planning permission for the continuation of the Park for the stationing of caravans.

18. On 25 June 1992 a site licence under the 1960 Act was granted to MJ Bates and PP Bates. The Park was then known as Romney Street Mobile Home Park. The licence stated that the total number of mobile homes which shall be stationed on the site shall not at any one time exceed 40 [115]. The plan of the Park showed a car park and garages at the Romney Street entrance [125]. The Tribunal understood that the residents would park their cars there and walk to their homes in the Park.

19. In January 2019 Woodlands Croft Residential Park Limited[2] purchased the Park from M J Bates, PP Bates and SM Bates. The purchase price paid for the Park was £2,984,000 as recorded on the Transfer of the Freehold [165]. At the same time the site licence in the name of M J Bates and PP Bates was transferred to Serenity Parks[3].

20. The Applicant obtained funds from HSBC UK Bank PLC and Asset Advantage Limited to finance the purchase of the Park and the subsequent, complete redevelopment of it for 40 twin unit caravans.

21. When the Applicant bought the Park there were approximately 40 caravans stationed on the land. According to the Applicant, most of the

[2] Woodlands Croft Residential Park Limited is the previous name for the Applicant company.
[3] Serenity Parks, the Trading name for Serenity Parks Limited which has a controlling interest in the Applicant company.

caravans were old single units because the previous owners operated the site, mainly for rental accommodation (not owner occupied). The Applicant's purpose in buying the Park was to redevelop it in its entirety, to sell new park homes and to improve the standards in general including the installation of a new infrastructure.

22. The Applicant instructed Park Evolution Limited to carry out the redevelopment works on the site. The initial works began in early 2019.

23. Mr Harvey of Park Evolution Limited stated that the Applicant's brief for the Park was a high standard of development accommodating 40 residential park homes, which was compliant with planning and site licensing.

24. Mr Harvey said his Company finished on site in June 2020. According to Mr Harvey, the Park had been developed with 40 twin unit home bases which have all been spaced in line with the conditions of the site licence, (3 metres from boundaries, 2 metres from roadways and a minimum of 5.25 metres from neighbouring caravans). In addition, new services, new drainage, new water, new gas supply, new electric including a new 3 phase electric supply have been installed on the site. These works involved dropping some very unsightly and unsafe overhead power cables. Further Mr Harvey stated that his Company repaired and replaced damaged boundaries or fencing, and erected a bricked wall entrance with new gates and CCTV.

25. The Applicant spent £1,250,000 on the development of the Park. The Applicant expected to achieve a sale price of around £260,000 for a Park Home on the site.

26. On 26 March 2019 the Applicant's solicitor applied to the Respondent to transfer the site licence from Serenity Parks to the Applicant. The solicitor included with the application a proposed lay out plan which identified three pitches adjoining the entrance to the Park from Romney Street.

27. On 5 April 2019 The Respondent sent the Applicant's solicitor draft site licence conditions. On 15 April 2019 the solicitor responded with a tracked changed version of the draft conditions, and a revised layout plan showing space for visitors parking at the North of the site at the entrance from Bower Lane. The revised plan showed the same three pitches identified as numbers 01, 02 and 32 at the entrance to the site off Romney Street [209].

28. On 10 May 2019 the Respondent sent the Applicant's solicitor a final version of the site licence which had been considered by the Respondent's legal team for comment before it was signed off by the Chief Officer. There followed further exchanges between the Respondent and the Applicant's solicitor.

29. On 1 July 2019 the site licence was signed off by a Chief Officer and issued to the Applicant [88]. The conditions of the site licence did not prevent a Park Home from being sited on the area at the entrance to the site off

Romney Street. The site licence referred to a plan which was the amended one submitted by the Applicant's solicitor on 15 April 2019.

30. Mr Burns believed that three homes were sited on pitches 01, 02, and 32 before the end of August 2019. Mr Burns said they would have been connected to the services, bricked up with associated patios and soft landscaping by the end of November 2019.

31. Mr Burns said that a 2 bedroom 40 x 20 ft Prestige Sophia home was delivered for pitch 01 on or around 8 July 2019; a two-bedroom 40 x 20 ft Omar Ikon was delivered for pitch 02 on or around 11 July 2019; a 40 x 20 ft Oakgrove Waverton was delivered for pitch 32 on or around 28 August 2019. The homes were built to BS 3632:2015 standards and according to Mr Burns had superior insulation compared with the preceding version of the standard and had double glazing as standard.

32. The Applicant produced copies of the relevant invoices for the Prestige and Oakgrove Homes which were dated 30 July 2019 and 20 May 2019 respectively [292 & 293]. The Applicant did not have a direct invoice for the Omar because it was purchased through DF Capital.

33. Following the grant of the site licence Mr Shaw stated that residents of neighbouring properties made complaints to the Respondent about the site works, the siting of pitch 32 and the arrival of new homes for pitches 01 and 02.

34. Mr Shaw said that Respondent's Officers inspected the site on 5, 19 and 25 of July 2019. A member of the Planning Enforcement Team was present on the 5 July 2019 and Mr Leverett one of the Applicant's directors (now resigned) was there on 25 July 2019. The Officers found no breach of site rules.

35. Mr Shaw stated that in the Autumn of 2019 further new park homes started to arrive on the Park which instigated fresh complaints from residents of neighbouring properties. The residents questioned the size and positioning of the homes, disputed boundaries and expressed concerns about the potential increase in traffic on the access road. The Respondent's Officers carried out further inspections on the 16 September 2019, 28 October 2019 and 8 and 21 November 2019. The Officers found no evidence of breaches of site licence.

36. In January 2020 the residents complained about the size of the park homes on pitches 01, 02 and 32, their closeness to the boundary, and that they overlooked the neighbouring properties. The Officers carried out a further inspection of the site on 9 January 2020 and found that the position of the homes on pitches 01 and 02 was not compliant with the required three metre distance from the boundary. The Officers, however, did not consider the breach of site conditions material and decided to take no action.

37. On 31 January 2020 Mr Richard Morris, Chief Officer of Planning and Regulatory Services sent a letter to Mr Burns identifying developments on the Park which in his view were in breach of planning control [553]. The alleged breaches related to the front entrance wall, patios, boundary fencing and a raised caravan on Bower Lane.

38. Mr Morris also advised the Applicant that the Respondent was minded to impose an additional condition on the current site licence that prevents the placing or occupation of park homes within the land marked hatched red on the attached plan, which would mean that there would be no park homes placed on pitches 01, 02 and 32.

39. Mr Morris gave as the Respondent's reasons for imposing the additional condition that

> "such a condition is necessary in order to preserve the amenity experienced by residents on the land. The Council is of the view that caravans within that area of the site would experience unacceptable and excessive noise and activity, particularly from vehicle movements. The plots in that area would experience heightened levels of disturbance arising, in particular, from the slow moving traffic both in and out for the entire site while also being adjacent to the highway. The impact would be apparent from the amenity areas of each plot, and within the mobile homes themselves. The impact from traffic into and out of the site would be experienced across the long front elevations, particularly of plot 1. It is noted that the previous design of the site allowed for an area of car parking and garages to the front and that the design of the road system meant that no mobile home had to have all vehicle movements go past it. This harm would be compounded by the lightweight construction of the units and the proximity to the highway".

40. The Respondent sought the Applicant's views on the proposed additional condition which was required by section 7 of the 1960 Act.

41. The Applicant's solicitor responded on 5 February 2020 [558] pointing out that the effect of the Respondent's decision was to reduce the number of homes by three which would have a significant negative impact on the value of the Applicant's land and the income derived from the Park. The solicitor requested the Respondent to provide the evidence it was relying on in support of its contention that the condition proposed was necessary in order to preserve the amenity experienced by residents on the land.

42. On 10 February 2020 Mr Lagzdins replied for the Respondent agreeing that it should not add new conditions which would be considered "unduly burdensome" and that it would welcome discussions on how the Council's concerns should be addressed or mitigated without either the addition of an extra condition or appeal [560]. Mr Lagzdins emphasised that the Respondent had imposed the condition because of the adverse effects of traffic movements on the quality of life for the residents living in the homes on the three affected pitches, particularly in view of the lightweight

construction of the homes and their proximity to the road and entrance to the Park.

43. On 27 May 2020 Mr Shaw informed the Applicant that after taking into consideration all the relevant information and responses the Respondent had decided to impose a new condition to the site licence, namely that "no park home shall be sited or occupied within the land hatched red on the attached plan" and that with this in mind the Respondent would expect the existing three park homes located on pitches 01, 02 and 32 to be removed from the area.

Consideration

44. The issue for the Tribunal is whether the imposition of condition 2 (iii) to the site licence preventing the siting of pitches 01, 02 and 32 in the area of the Romney Street entrance to the Park is unduly burdensome.

45. The 1960 Act provides the legal framework for the licensing of caravan sites. Under section 1 a caravan site owner is required to hold a site licence. A caravan site as defined by section 1 (4) 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.

46. The local authority is the body responsible for issuing licences for caravan sites located in its area. Section 5 of the 1960 Act gives the Local Authority power to attach conditions to a site licence. Section 8 (1) enables the local authority to alter the conditions to a site licence at any time whether by the variation or cancellation of existing condition or by the addition of new conditions but before exercising its powers to alter conditions the local authority shall afford the holder of the licence an opportunity of making representations.

47. The site licence holder has a right of appeal under section 8(2) of the 1960 Act which states:

> "Where the holder of a site licence is aggrieved by any alteration of the conditions attached thereto or by the refusal of the local authority to an application by him for the alteration of those conditions, he may, within twenty-eight days of the date on which written notification of the alteration or refusal is received by him, appeal to a magistrates; court; or, in a case relating to land in England, to the tribunal; and the court or tribunal may, if they allow the appeal, give to the local authority such directions as may be necessary to give effect to their decision".

48. The words "unduly burdensome" appear in section 7 of the 1960 Act which deals with appeals against conditions to site licences but not in section 8(2). However, the case of *Llanfyllin Rural District Council v Holland* (1965) 16 P & CR 140 makes clear that the test is the same under section 7 appeals or section 8 appeals. Lord Parker CJ said :

> "It is to be observed that in regard to a condition attached to the original issue of the site licence, a magistrates 'court can only interfere if they are satisfied that the condition is unduly burdensome. Those words "unduly burdensome" do not in fact appear in the further appeal given under section 8 (2). Whether or not the ambit, as it were, of subsection (2) of section 8 is greater than that of Subsection (1) of Section 7 is, in my judgment, unnecessary to determine; it is sufficient to say that quite clearly the court may allow the appeal under subsection (2) of section 8 if at any rate they are satisfied that the condition is unduly burdensome."

49. Lord Parker CJ also clarified in *Llanfyllin* the meaning of "unduly burdensome":

> "I can see no ground whatever for extending the narrowing plain meaning of the words "unduly burdensome" in connection with the condition. No doubt any condition is burdensome, and "unduly burdensome" merely means burdensome in a respect which is unnecessary or unreasonable in all the circumstances of the case."

50. Lord Parker CJ in *Owen Cooper Estates v Lexden & Wintree Rural District Council (1965)* 16 P & CR 233 established that the Applicant bears the burden of proof to demonstrate the condition is unduly burdensome:

> "The burden of proof is specifically stated, and is clearly on the appellant. It is for the appellant to satisfy them on the evidence produced before them that the condition is unduly burdensome; in other words, they approach the matter by considering if some condition of this sort is necessary for the protection of the public, something which will benefit the public and equally that it will, of necessity, by a limitation, place a burden on the appellants. It is then for the justices to decide whether the burden out weighs, or duly out weighs, the benefit".

51. The Tribunal's powers on appeal are to refuse or allow it either in full or in part, and if the latter to give directions to the local authority to give effect to its decision. In respect of this appeal it is open to the Tribunal to vary the condition so that it affected only one or two of the disputed pitches.

52. The Applicant in its grounds of Appeal referred to the Tribunal's powers under section 231A (3A) of the Housing Act 2004 to issue directions requiring the payment of money by one party to the proceedings to another by way of compensation, damages or otherwise. The Applicant submitted that this power would come into play if the Tribunal dismissed the Appeal. Counsel for the Applicant did not pursue this point at the hearing.

53. The Applicant accepted that the Respondent had the legal authority to add condition 2(iii) to the site licence, and that it had the burden of proving that condition 2(iii) was unduly burdensome. Both Counsel agreed on the law and submitted that the dispute was one of fact to be determined by the Tribunal on the evidence before it.

54. The Tribunal does not intend to repeat the evidence given by the witnesses at the hearing. Instead the Tribunal will evaluate the evidence and make appropriate findings of fact within the context of the test of "unduly burdensome".

55. The Tribunal considered unhelpful Respondent's Counsel's submission that it should start with the Applicant's grounds of appeal set out at paragraph 50 a) to h) at [19]. The Tribunal unlike the Court is not constrained by "pleadings" provided each side knows the case that it is facing. The central issue in this Appeal is whether condition 2(iii) is unduly burdensome and that is what the Tribunal would determine.

56. The Tribunal intends to commence its deliberation with the Applicant's core proposition that if the condition was imposed it would suffer significant financial loss occasioned by the loss of the three pitches which had been developed with Park Homes sited on them. In this regard the Applicant relied on the evidence of Mr Burns.

57. Mr Burns in his first witness statement stated that the financial loss occasioned by the loss of the three pitches was approximately £470,000 [65-67]. This was made up of £120,000 for the removal of the homes, and returning the pitches to landscaping; £150,000 loss of income from pitch fees and sales commission, and £200,000 for loss of development value. Mr Burns in his second witness [418] provided a more detailed breakdown of the costs associated with the removal of the homes and the pitches which came out at £38,880 for each pitch (£116,640 as compared with £120,000).

58. Mr Burns in his third witness statement [487] said that he had contacted John Mitchell from Avison Young to assist him with the valuation of the financial loss. Mr Burns explained that the loss of £470,000 in his first statement represented the loss of plots to be developed based on a park valuation basis, and was not a true reflection of what the actual losses would be from the removal of pitches 01,02 and 32 with homes sited on them and for sale.

59. Mr Burns stated that the true financial loss would be £952,000 for three fully developed pitches with homes sited thereon which was made up of the loss of potential sales of the new homes and the loss of income in respect of pitch fees and sales commission.

60. Mr Burns added that if the Applicant suffered such a loss of almost £1 million it would impact upon the Applicant's ability to service the finance against the Park and would have a detrimental impact upon the wider business which would likely result in the loss of staff.

61. Mr Burns' calculations of the potential financial loss from the removal of three pitches with homes for sale were based on a plausible rationale. The Respondent did not challenge the rationale or the accuracy of the calculations.

62. At the application hearing on 27 October 2020 for the appointment of an expert to give valuation evidence on the potential financial loss the Respondent indicated that it did not intend to call evidence to counter the values given by Mr Burns in his witness statement dated 24 August 2020 at [57-64]. The Respondent said that its challenge was to the relevance of the evidence to the statutory criterion of "unduly burdensome". Given the Respondent's position, the Tribunal found that it was not proportionate to give permission for expert valuation evidence. Further the Tribunal considered that the overriding objective would be better met by requiring the Respondent to set out its objection in detail to Mr Burn's evidence and give the Applicant a right of reply.

63. The Respondent's objection comprised five questions [48 -49] which were about some of the removal costs and whether the Applicant could take steps to mitigate the losses. Mr Burns supplied answers to the questions in his third witness statements.

64. Counsel for the Respondent did not cross-examine Mr Burns on the calculation of the loss including the reasons for supplying the revised figure of £952,000. Counsel conceded at the hearing that the figures themselves were not in dispute. Counsel for the Applicant submitted that as there was no substantive challenge to the calculations the Tribunal had no valid reason to reject them. The Tribunal for its part did not consider it appropriate in view of the Respondent's approach to ask questions of Mr Burns of the method adopted to calculate the potential financial loss from the removal of three pitches. The Tribunal identified no obvious errors with the arithmetic and with the assumptions upon which the calculations were based. The Tribunal accepted Mr Burn's explanation for the revision of the potential loss from £470,000 to £952,000.

65. Counsel for the Respondent, however, maintained that the Tribunal should treat the Applicant's evidence of financial loss with scepticism. In Counsel's view the financial detriment caused to the Applicant by the removal of the three pitches and homes was self serving because the Applicant was wedded to the layout as specified in the revised plan of 15 April 219. Counsel pointed out that in reality condition 2(iii) did no more than regulate the position of the 40 caravans permitted by the licence, and that the only restriction on the number of caravans was the Applicant's choice to lay the site out in the manner it had and to maximise profits by limiting the type of caravan on the site. According to Counsel, the Applicant could avoid the financial detriment by redesigning the lay out and come up with another scheme to maximise profits.

66. At the hearing Counsel for the Respondent argued that the Applicant's evidence on financial loss lacked credibility. In his view the evidence demonstrated that the Applicant did not rely on representations of the Respondent for its chosen layout, and that the Applicant would have persisted with the layout regardless of any obstacles in its way.

67. Counsel's contentions on credibility were derived largely from taking an uncontroversial set of facts and inviting the Tribunal to interpret those

facts in a manner adverse to the Applicant's case. The Tribunal examines the evidential basis for Counsel's propositions on credibility.

68. Mr Burns accepted that the Applicant had invested significant sums totalling £4.15 million[4] in the Park for which the Applicant expected a return. Mr Burns also acknowledged that the Applicant had compiled a business plan for the Park in order to obtain funding to purchase and develop the site. Mr Burns accepted that the business plan would have been based upon the site plan which had the disputed pitches 01, 02 and 32 in place. Mr Burns confirmed that a version of this site plan was exhibited at [126] and dated February 2019 which was some eleven days after the purchase. Mr Burns agreed that the caravans for the disputed pitches were probably ordered around May 2019 or possibly earlier because of the three month lead in time for the caravans to be built and delivered on site. Mr Burns acknowledged that the caravans were ordered prior to the grant of the new site licence on 1 July 2019.

69. Respondent's Counsel invited the Tribunal to interpret the facts established in paragraph 68 above that the Applicant would not budge from its layout despite any obstacles put in its way because it had decided at an early stage that its preferred layout for the Park was the best means by which it could secure a return on its substantial investment. Counsel relied on the comments of Mr Gavin Leverett, the then Managing Director for the Applicant, in an email dated 31 July 2019 to the Applicant's solicitor for support of the interpretation [257]. Mr Leverett said that

> "The Units aren't going to be moved unless the Council are legally able to do so"; "but the Council seem to be just going round in circles, probably because they know there isn't anything they can do".

70. The Tribunal observes that the Applicant's use of a business plan which incorporated a design of the Park to maximise return for the purpose of securing finance for the purchase of the Park, and its settled intention to implement the business plan after purchase were the actions of a prudent business person.

71. The Tribunal finds that the Applicant conducted its application for a site licence with the Respondent in a transparent manner which included disclosure of the proposed site layout. Mr Burns in his first witness statement at paragraphs 14-23 [55-56] sets out the Applicant's solicitor dealings with the Respondent's officers regarding the application for the site licence culminating in the grant of the site licence on 1 July 2019. The solicitor informed the Respondent about the Applicant's intentions to develop the site, supplied the Respondent with a site layout, negotiated with the Respondent about the conditions to the site layout and amended the site layout plan following representations from the Planning Enforcement Team.

[4] £2.9 million purchase of the Park & £1.25 million redeveloping the site

72. Mr Shaw confirmed in his witness statement Mr Burns' account of the solicitor's dealings with the Respondent [514-515].

73. At paragraph 11 of his witness statement Mr Shaw stated that

> " in April 2019 a new site layout plan was also provided which was in full conformity with the plans that would usually be expected for Site Licences. The owners also advised that although they would like to improve the site there was no intention to increase the number of park homes stationed on the site at that moment in time".

74. At paragraph 12 Mr Shaw said that

> "The new site layout showed that the spacing of the homes, road layout and general amenities such as communal lighting, CCTV would be a significant improvement of the site that would benefit the residents and visitors of the site".

75. At paragraph 14 Mr Shaw stated that

> "in response to concerns raised by the Planning Enforcement Team …. the Applicant amended the site layout to accommodate the request for a visitors parking, as well as providing information of the size of the new homes being considered for the site for both the site licence and planning purposes. This was emailed to Katie Driscoll, Planning Enforcement Officer on the 5th June 2019 who replied along with her colleague Stephen Whitehead who was satisfied with park home sizes. The sizes of the new homes comply with the legal definition of section 13 of the caravan sites act 1968, and would not breach the Site Licence or Planning Law. The site licence was drafted and layout agreed and signed off by the Chief Officer in July 2020".

76. The Tribunal is satisfied that the evidence demonstrated that not only did the Applicant conduct its dealings with the Respondent on the site licence and the layout plan in a transparent manner but also took on board the Respondent's concerns such as the lack of visitor parking. The Tribunal finds that the Respondent approved the site licence on 1 July 2019 in full knowledge of the Applicant's business plans for the Park including the proposed layout.

77. The Tribunal considers that Mr Leverett's comments should be viewed in the context that the site licence had been granted after full consideration by the Respondent. In this regard his comments were an accurate statement of the legal position as at 23 July 2019 rather than an indication of bad faith on the Applicant's part.

78. The second limb of the Respondent's challenge on the Applicant's credibility was the Applicant's reluctance to alter its layout following the imposition of condition 2(iii). Respondent's Counsel pointed out that the previous owner of the Park was able to site 40 caravans on the Park and retain the area now occupied by pitches 01, 02 and 32 for garages and parking. Counsel contended that it was the Applicant's refusal to consider

alternative layouts to secure a return on its investment which was the cause of the financial detriment from the loss of the three pitches rather than the imposition of condition 2(iii).

79. The Tribunal starts its analysis of the second limb by examining the weight to be attached to the layout of the previous site owner. The Respondent did not dispute Mr Burns' evidence that the Applicant had inherited a run down site with all the caravans being single units, many of which were in extremely poor condition and used mainly for rental accommodation. In terms of the previous layout the occupiers had to park their vehicles in the area reserved for the garages and car parking and walk to their homes[5].

80. Mr Burns and Mr Harvey asserted that the Applicant's re-development of the Park as a site for 40 twin units with parking met the current demands of the market for Park Homes. Mr Burns stated the Applicant was targeting the older generation who were wishing to downsize and live as part of a community. According to Mr Burns and Mr Harvey, there was no appetite within the target market for single units which would provide limited space and one bedroom.

81. Mr Burns stated that if the Applicant developed the Park to accommodate single units or a combination of both, there was currently no demand for single units and these plots would remain empty unless or until the market changed. As a result the Applicant would be deprived of income from potential sales and pitch fees which would in turn challenge the viability of its investment in the Park[6].

82. Mr Harvey who is qualified as Chartered Surveyor and whose company specialises in designs for Park Home sites said from his experience a single unit park home is suitable for single people or possibly older couples but they are considerably less desirable than a twin unit park home. Further Mr Harvey said in terms of value, a single unit park home is considerably less profitable than a twin unit park home because the development costs for both types of homes were similar but the profit margin was much higher with a twin unit park home. In Mr Harvey's view, replacing twins with singles would not make financial sense[7].

83. The Tribunal accepts the evidence of Mr Burns and Mr Harvey on why the Applicant chose to populate the Park with 40 twin units rather than single units. The Tribunal considers the Applicant's choice commercially sound and necessary to achieve a return on its investment. The Tribunal attaches no weight to the Respondent's reliance on the previous owner's site layout and use of single units to undermine the Applicant's case that it would suffer a significant financial burden by the imposition of condition 2(iii).

[5] Mr Burns first witness statement paras 12 & 13 [53 & 54]
[6] Mr Burns' second witness statement at paragraph 3-5 [415 & 416].
[7] Mr Harvey's witness statement paragraph 19 [502].

84. The Tribunal's deliberation on the Respondent's second limb of its challenge, however, does not end with the futility of comparing the Applicant's layout with that of the previous owner. The Respondent's central contention still remained that the Applicant could choose another layout in order to minimise the financial loss by the removal of the three pitches from the hatched red area identified by condition 2(iii).

85. The Tribunal reminds itself that the Applicant was transparent in its dealings with the Respondent in respect of the proposed layout, and that the Respondent approved the proposed layout in April 2019 and the site licence on 1 July 2019. The Tribunal finds that the Applicant was entitled to rely on the Respondent's approval and to develop the Park in accordance with the approvals given. The Tribunal, therefore, is required to examine the Applicant's room for manoeuvre in respect of the layout as at 31 January 2020 when the Applicant first became aware of the proposed condition.

86. Mr Burns evidence which again is not challenged is that the Park Homes were sited on the three pitches by no later than August 2019, and that the majority of the park development was completed by January 2020 but there were delays with UK power dropping poles and power cables around the site[8]. Mr Burns and Mr Harvey confirmed that the site was completed in June 2020.

87. The Tribunal finds that the Applicant's room for manoeuvre as at 31 January 2020 has to be assessed on the basis of a developed site in line with the approved layout. It follows that the Tribunal's evaluation of the Applicant's choice is confined to the options if any offered by the approved layout.

88. Mr Harvey thought that the only way the Applicant could achieve 40 homes on the Park if pitches 01, 02 and 32 were removed was to replace eight or nine of the existing twin bases and relay them as single unit bases. Mr Harvey thought the cost of carrying out these works would be in the region of £300,000. Mr Harvey pointed out that it would also be necessary to redirect services from the former twin bases to the new single unit bases which, in his view, was a bigger problem than the laying of new bases. Finally Mr Harvey noted that some of the homes had already been sold and the occupied homes were spread out throughout the site which limited the options for relocation and redevelopment. Mr Harvey concluded that the option of replacing eight or nine of the existing twin bases, and relaying them as single bases was not a viable option, and in his view the imposition of condition 2(iii) would inevitably lead to the loss of three pitches with the Applicant operating a Park with 37 homes rather than the 40 originally planned.

89. Mr Burns said that the only space left remaining on the Park was between pitches 8 and 9 which in his view would only accommodate a single unit.

[8] Mr Burn's first witness statement paragraphs 27 and 34 [56 and 58].

The Tribunal noted that the Respondent did not provide an answer to the conundrum of where space could be found in the Park for the relocation of pitches 01, 02 and 32.

90. The Tribunal is satisfied that the Applicant had no realistic prospect of relocating the three pitches affected by condition 2 (iii) elsewhere on the Park which would mean that the Applicant would have to operate the Park with 37 Park Homes rather than the 40 originally planned.

91. In assessing whether condition 2(iii) would be unduly burdensome on the Applicant, the Tribunal must first decide whether the Applicant has suffered a burden. The Applicant maintains that it has in the form of significant financial loss from the removal of three pitches from the area at the Romney Street entrance. The Respondent contends that the potential financial loss arises from the Applicant's choice to lay the site out in the manner it has and to maximise profits by limiting the type of caravan on the Park. The Tribunal has weighed the evidence for the competing propositions and finds the following facts:

a) The Applicant was entitled to locate 40 Park Homes on the site. The Applicant made a substantial investment in the Park for which it expected to receive a return. The Applicant chose to populate the Park with twin caravan units with adjoining parking spaces to attract their target market of older persons. The Applicant adopted a layout for the Park which embraced the above considerations and the spacing requirements as set out in the Model Standards for Caravan Sites in England.

b) The Applicant disclosed its proposed layout to the Respondent when it applied for a site licence in April 2019. The proposed layout identified the location of pitches 01, 02 and 32 at the Romney Street entrance to the Park. The Applicant accepted the Respondent's amendments to the proposed layout by including an area for visitor parking accessed from Bower Street. The Respondent approved the site layout plan and considered it to be a significant improvement of the site that would benefit the residents and visitors of the site".

c) On 1 July 2019 the site licence and the site layout plan with pitches 01. 02 and 32 clearly identified were signed off by the responsible Chief Officer.

d) The Applicant was entitled to rely on the Respondent's approval of the site layout plan and to proceed with the development of the Park in accordance with the lay out plan.

e) By January 2020 the Applicant had substantially completed development of the site which included the siting of the Park Homes on pitches 01, 02 and 32. As a result their options for complying with condition 2(iii) which was first mooted towards the end of January 2020 were severely constrained.

f) The Applicant had no realistic option to relocate elsewhere on the site the three pitches affected by the imposition of condition 2 (iii).

g) The effect of the imposition of condition 2(iii) would be that the Applicant would have to operate the Park on the basis of 37 park homes rather than the 40 originally planned which would cause the Applicant significant financial loss.

h) The potential financial loss suffered by the Applicant by the imposition of condition 2(iii) has been valued at £952,000 which would compromise the Applicant's ability to service the borrowings for the Park and to run the Park at a profit.

i) The Tribunal is satisfied from the above findings that the Applicant would suffer a substantial burden from the imposition of condition 2(iii).

92. The next question for the Tribunal is whether the substantial burden imposed on the Applicant is outweighed by the benefits that the imposition of the condition seeks to address.

93. The Respondent contended that the condition was necessary in order to protect the public health of the prospective residents for the homes sited on pitches 01, 02 and 32. The Respondent relied on the evidence of Mrs Salter who had over 29 years of experience in development management and planning enforcement in local authorities and over 16 years experience as a planning manager [504-509].

94. Mrs Salter stated that the park homes nearer the entrance would have limited opportunity for protection from noise and disturbance due to their proximity to the road and the lightweight construction of the park homes.

95. Mrs Salter pointed out that the park homes for pitches 01 and 02 were on either side of the Romney Street entrance which meant that all vehicles entering and leaving the site would pass the homes on pitches 01 and 02. The park home for pitch 032 was above pitch 01 and would be affected by all vehicles entering the Park because of the one-way traffic system but the impact caused by vehicles entering the Park would be less on pitch 032 than the other two pitches.

96. Mrs Salter said that the park homes did not offer the same protection against noise as purpose built dwellings. In this regard the Respondent relied on the evidence of Mr Shaw who said that the homes sited on the three pitches conformed to BS3632 which offered a value of 35db as protection against noise. This contrasted with the Building Regulations requirement in Part E (2015) for purpose built dwellings of 62db for impact sound and 45db for airborne sound insulation [paragraph 20 518].

97. Mrs Salter concluded that future residents of the park homes on pitches 01, 02, and 32 would suffer actual harm from noise and disturbance caused by vehicles entering, exiting and manoeuvring within the site as

well as disturbance from headlights from vehicles parking or leaving the site, and potentially the fumes from those vehicles.

98. Mrs Salter asserted that her conclusion was validated by reference to three appeal decisions of The Planning Inspectorate. The first two decisions related to the same property at 30 Dynes road Kemsing. In the first appeal the Inspector stated that whilst the number of vehicle movements was likely to be limited, it would be sufficient to have an adverse impact on neighbouring occupiers from cars manoeuvring in the area. The Inspector concluded that the proposed development would not adequately protect the living conditions of neighbouring occupiers. The Planning Inspector allowed the second appeal relating to the property because the adverse impact from noise would be mitigated by the design of the proposed dwellings, tree screening and an acoustic fence. The final decision concerned a planning application for a new mobile home and a touring caravan. The Inspector refused the appeal because it was considered that the proposal would cause an unacceptable level of noise and disturbance to the occupants of an adjacent property. Mrs Salter said that these Appeal decisions demonstrated how the issues of noise and disturbance are considered in a planning context and provided examples of when that impact can be considered harmful.

99. Mrs Salter only became involved with the site licence for the Park in December 2019 when Richard Morris, Deputy Chief Executive and Chief Officer Planning and Regulatory Services requested verbally advice on the possible impact from a planning perspective of the change in layout between the existing and proposed layouts of the Park. Mrs Salter's advice to Mr Morris was based on a desk top study [588]. Mrs Salter suggested that Planning was not consulted when the Respondent granted the site licence in July 2019.

100. Mr Lloyd was instructed jointly to give his expert opinion on the traffic impacts at the Park and the specific impacts on pitches 01, 02 and 32. Mr Lloyd had over 19 years experience in the design, implementation and assessment of transport schemes. Mr Lloyd identified that the Respondent's reasons for imposing condition 2(iii) related to traffic impacts, noise, light and impacts on the amenity areas.

101. Mr Lloyd commissioned several traffic surveys to understand the current traffic conditions on the Park. The surveys included three manual counts at the Romney Street/Site access priority junction over a 24 hour period on 8, 10 and 11 October 2020 and an automatic traffic count of Bower Lane between 30 September and 6 October 2020. Mr Lloyd used the surveys to calculate a trip rate for each occupied dwelling which enabled Mr Lloyd to estimate the likely traffic flow for the Park fully built out and fully occupied. Mr Lloyd then validated his estimate of the likely traffic flow by comparing the trip rates for the Park with other similar

developments held on the TRICS database[9]. Mr Lloyd analysed the traffic data for specific periods of the day (day, evening and night) in order to identify the noise impacts of traffic movements which was a recognition that noise has a greater adverse impact if it occurs at night[10].

102. Mr Lloyd also assessed the design of the Park, and whether it complied with published standards for highway designs. In this regard Mr Lloyd referred to Manual for Streets and the Kent Design Guide. Finally Mr Lloyd had regard to the published Site Rules with particular reference to those rules controlling noise on the site.

[9] TRICS is the national system of trip generation analysis, and draws upon an extensive database of survey data for a wide range of land uses, which is regularly updated to reflect any trends in travel and transport.

[10] See UK Planning Practice guidance for Noise and Environmental Noise Guidelines for the European Region (2018).

103. Mr Lloyd concluded that

a) The Park generated very modest levels of traffic commensurate and appropriate for the character of the estate road design, which was typical of a quiet residential street.
b) While pitches 01 and 02 in particular would experience more internal traffic passing their demise than other plots, this would not be to the extent that it would be materially more detrimental than that experienced within a typical residential environment.
c) The design and traffic demands along Romney Street, were light which meant that the chance of conflict at the junction was slight with a significant majority of vehicles entering or emerging from the site junction doing so unopposed.
d) While the layout of the road around pitches 01, 02 and 32 take the form of a junction, the typical negative impacts of a junction would not generally occur in this circumstance. Therefore, the impacts were not of any significance that present a concern materially greater to traffic negotiating the internal site roads.
e) In relation to layout considerations, given the alignment of sleeping accommodation and the low levels of traffic, pitches 01, 02 and 32 would not be impacted any more unduly by traffic than other pitches within the Park.
f) The noise impact from road traffic were not a concern in relation to pitches 1, 2 and 32 given that the only impacts during the night time period was that of a milk float during the weekday and Saturday surveys, which would cause disturbance to many residents as it negotiated the site roads as well as the site access junction. There was one recorded inbound car movement during the Sunday night period, which likely related to a resident returning. This was a single recorded resident movement over the three day period, and therefore the forecast traffic given during this period should be treated with caution. It was recognised however there is extremely low volume of movements during the night period over all surveyed days.
g) Light impacts were largely screened in the areas that might be most at risk on pitches 01 and 02. There would be similar light spill issues to most of the properties within the estate, with some pitches such as pitches 31 and 33 being more exposed than pitches 1, 2 or 32 in my opinion. Pitches most susceptible to inconvenience would be those sandwiched between the internal access roads, where sleeping accommodation were not screened by the boundary or other plots, such as 33, and 27.
h) In regards to amenity and the impacts of traffic on amenity areas, pitches 01, 02, and 32 were no closer to the road than the other pitches within the pitches and would be subject to cars travelling at no greater speed than other pitches. Passing cars would have an impact on the amenity of pitches 01, 02 and 32 but this would not

be materially different than those of many of the other pitches within the Park[11].

104. Mr Lloyd's overall opinion was that in relation to traffic impacts and to the extent that he could comment on noise and amenity condition 2(iii) of the amended site licence dated 27 May 2020 was not reasonable and should be removed.

105. The Tribunal refers to aspects of the site rules. The rules prohibited persons under the age of 45 years from residing in the Park. Rule 30 required the occupiers to drive all vehicles on the Park carefully and within the displayed speed limit of 5 mph. Rule 33 required occupiers to park their vehicles in the permitted parking spaces on their respective pitches. Rule 40 required all visitors to park in any available allocated visitor parking spaces. Rule 46 prohibited occupiers from using radios and motor vehicles or other noise generating objects so as to cause nuisance to other occupiers especially between the hours of 10.30pm and 8.00am.

106. Applicant's Counsel argued that Mrs Salter had been parachuted in and given the job of justifying the Respondent's imposition of condition 2(iii). In Counsel's view, the justification put forward comprised Mrs Salter's subjective view of the impact of traffic movements on the amenity of potential residents living on the Park which was substantially influenced by her planning background. Counsel pointed out that Mrs Salter was unable to offer a credible explanation for the Respondent's change of heart in respect of the site licence. Counsel contrasted Mrs Salter's approach to that of Mr Lloyd, which he said was thorough, objective and compelling.

107. Respondent's counsel argued that the purpose of Mr Lloyd's report was to analyse the traffic movements on the Park at a specific point in time which was during the Pandemic. Counsel pointed out that Mr Lloyd had accepted that he was not a noise expert and that his report was not an assessment of the impact of noise on the future residents in the Park. Counsel acknowledged the Respondent's change of heart but in his view that did not diminish the force of its argument that the condition was necessary to protect the health of potential residents of pitches 01, 02 and 32. Counsel submitted that Mrs Salter had set out clearly the factual basis for imposing the condition supported by a number of planning appeals.

108. The Tribunal reminds itself of the reasons given by Mr Morris for condition 2(iii).

> "such a condition is necessary in order to preserve the amenity experienced by residents on the land. The Council is of the view that caravans within that area of the site would experience unacceptable and excessive noise and activity, particularly from vehicle movements. The plots in that area would experience heightened levels of disturbance arising, in particular, from the slow moving traffic both in

[11] See paragraph 8 of Mr Lloyds report [704-706]

> and out for the entire site while also being adjacent to the highway. The impact would be apparent from the amenity areas of each plot, and within the mobile homes themselves. The impact from traffic into and out of the site would be experienced across the long front elevations, particularly of plot 1. It is noted that the previous design of the site allowed for an area of car parking and garages to the front and that the design of the road system meant that no mobile home had to have all vehicle movements go past it. This harm would be compounded by the lightweight construction of the units and the proximity to the highway".

109. The Tribunal observes that the reasons given by Mr Morris for condition 2(iii) were based on facts that were known by the Respondent when it approved the new site licence and layout plan on 1 July 2019. Mr Morris' reliance on the previous plan to justify the Respondent's change of stance is questionable. The Respondent's Officers accepted in April 2019 that the Applicant's proposals for the site including the new layout was a considerable improvement on the previous layout. Also the Respondent's officers agreed to the location of visitor's parking at the Bower Street entrance which suggested that they were not concerned about the relocation of parking from the Romney Street entrance.

110. The Tribunal considers Mrs Salter's inability to offer an explanation for why the Respondent changed its mind in respect of the new layout plan undermined the strength of its case for the imposition of condition 2(iii). Counsel contended that where the Respondent alleged that future occupiers would suffer actual harm to their health the force of the Respondent's concerns was not diminished by the fact that it was raised after the site licence with the new layout plan had been approved. The Tribunal disagrees. This is a situation where the circumstances giving rise to the alleged threat to the health of future occupiers were present and considered by the then Chief Officer in July 2019 when he approved the licence and signed off the layout plan. In the Tribunal's view, it is incumbent upon the Respondent to explain why there was a difference of view between the two Chief Officers to enable the Tribunal to assess whether Mr Morris' judgment was influenced by matters not directly related to the health of the prospective residents for pitches 01, 02 and 32, in particular the complaints from the neighbouring property owners.

111. The Tribunal identifies that Mr Morris relied on traffic movements within the Park as the principal cause of the adverse impact to the amenity of the prospective residents of pitches 01, 02 and 32. Moreover Mr Morris stated that the three pitches would experience heightened disturbance from traffic movements than other pitches on their Park because of their close proximity to the Romney Street entrance.

112. The Tribunal is satisfied that the adverse impacts of traffic movements upon the health of the residents for the specific pitches was central to the Respondent's case of harm. Mrs Salter in her evidence referred also to noise created by the closing of gates, and by the playing of car radios. The Tribunal, however, considered they played peripheral roles in the Respondent's reasoning for the imposition of condition 2(iii).

113. The Tribunal considers that Mr Lloyd's evidence was critical in evaluating the impact of traffic movements on the health of the residents in the Park. Respondent's Counsel's submission that Mr Lloyd's evidence comprised simply a traffic analysis at a specific point of time failed to capture the relevance and thoroughness of his investigation. As identified earlier traffic within the Park was central to the Respondent's case, and is not surprising, therefore, that Mr Lloyd focussed on traffic movements. Mr Lloyd, however, did not restrict his analysis to a survey of the traffic but examined the interrelationship of layout and the junction with Romney Street on the impact of traffic movements, noise considerations, light generated from vehicles and residential amenity. Although Mr Lloyd accepted he was not a noise expert, he specifically referred to noise guidance and standards for the benefit of presenting traffic analysis in the correct format by which to make comment in relation to traffic impacts where noise may be a consideration.

114. The Tribunal acknowledges that Mr Lloyd's traffic survey of the Romney Street/Site Access was at a point in time over three days in October 2020. The Tribunal, however, is satisfied that Mr Lloyd took steps to enhance the reliability of the data by first scaling up the movements to mirror full occupation of the Park, and then comparing the results with the national TRICS database which was the industry standard method for determining trip rates for new developments. The outcome of the validation exercise was that the Park's trip rates broadly correlated with those rates for a residential development.

115. Respondent's counsel suggested that the traffic surveys were compromised by the Covid restrictions and that they were an underestimate of the potential traffic for the Park. The Tribunal, however, notes that in October 2020 Kent was in the lowest tier of Covid restrictions. The national lockdown did not take place until 5 November 2020. Also the traffic surveys conducted included a high proportion of goods vehicles entering and leaving the site which were associated with on-site construction activities and with home deliveries. Mr Lloyd believed that the surveys over estimated the potential traffic for the Park when fully occupied particularly in relation to the volume of construction traffic which would be minimal when the Park was fully developed. Mr Lloyd opined that the trip rate for the Park would be closer to the trip rates generated from retirement flats which were lower than those for a residential development. The Tribunal agrees with Mr Lloyd's opinion.

116. The Tribunal considers it instructive to compare Mr Lloyd's methodology with the one adopted by Mrs Salter as set out in her email to Mr Morris dated 20 December 2019 [586-588]. Mrs Salter carried out a desktop survey and did not inspect the Park until much later. Her analysis comprised a search of planning appeals and three were identified as useful, a comparison of the site layout plan with the one operated by the previous owners, and an identification of amenity concerns in relation of pitches 01, 02, and 32 as assessed by looking at the layout plan approved in April 2019. Mrs Salter relied on the planning appeals to validate her

conclusion that "it was reasonable to assume that the vehicle movement from traffic to and from this site would cause unacceptable noise and disturbance that could not be satisfactorily mitigated".

117. The Tribunal notes that the Respondent carried out no empirical studies of the traffic flows of Romney Street and the Park, no evaluation of the Park's construction in respect of layout, made no reference to design standards, and noise guidance and standards, and displayed no understanding of the operation and life style of Park Home communities. The Tribunal is not convinced by the Respondent's use of planning appeals to validate Mrs Salter's opinion of actual harm. The validation comprised three planning appeals, two appeals related to the same property and the last appeal was granted with conditions, and the final appeal concerned a property which had a history of unsuccessful planning applications. The Tribunal concludes that the Respondent's assertion that the future occupiers of pitches 01, 02 and 32 would suffer actual harm was subjective and not informed by the particular circumstances of the Park. In contrast the Tribunal finds that Mr Lloyd's evaluation of the potential harm to the health of future occupiers of pitches 01, 02 and 32 was rigorous and objective. The Tribunal is satisfied that his opinion was supported by a rationale grounded in the specific facts pertaining to the Park. It follows that the Tribunal prefers the evidence of Mr Lloyd to that of Mrs Salter.

118. The Tribunal upholds Mr Lloyd's conclusions at paragraph 103 and highlights the following:

a) The Park generated very modest levels of traffic which was typical of a quiet residential street. Similarly the design and traffic demands along Romney Street were light.

b) The impact from passing traffic on the future residents on pitches 01, 02 and 32 would not be materially detrimental compared to that experienced within a typical residential development.

c) The noise impacts from road traffic to pitches 01, 02 and 32 would not be a concern because of the minimal traffic movements at night time.

d) The impacts from passing cars on the amenity of pitches 01, 02 and 32 would not be materially different from those of many of the other pitches within the Park.

119. The Tribunal holds that the Respondent's claims that the future residents of pitches 01, 02 and 32 would suffer actual harm from impacts of passing traffic and that the impacts experienced by the three pitches would be greater than other pitches on the Park were not supported by the evidence.

120. The Tribunal finds that (1) the future residents of pitches 01, 02, 32 would experience impacts from passing traffic but those impacts would not be materially different from that experienced by other residents on the Park

and (2) that the detriment suffered from those impacts would be marginal and no different from those experienced in a typical residential development. The Tribunal is also satisfied that the site rules would provide a measure of control against unexpected sources of noise nuisance.

121. The Tribunal returns to the question posed by this application namely whether the imposition of condition 2(iii) is unduly burdensome upon the Applicant.

122. The Tribunal is satisfied that the substantial burden of significant financial loss is not outweighed by the marginal benefit to health of future residents of 01, 02, and 032. The Tribunal decides that the imposition of condition 2(iii) is unduly burdensome and that it is unnecessary and unreasonable in all the circumstances of the case.

Decision

123. The Tribunal allows the Appeal and directs the Respondent to delete condition 2(iii) from the site licence, and to replace the layout plan, with the plan submitted to the Respondent on 15 April 2019 and signed off on 1 July 2019.

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 application by email to the First-tier Tribunal at the Regional office at Havant (rpsouthern@gov.uk).

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, the 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.