FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/45UC/PHT/2021/0002
Property	:	The Marigolds Caravan Park, Shripney Road, Bognor Regis, West Sussex, PO22 9NZ
Applicant	:	The Marigolds Management Ltd
Representative	:	David Sunderland
Respondent	:	Arun District Council
Representative	:	Solomon Agutu Arun Legal Services
Type of Application	:	Appeal of a compliance notice served by a Local Authority under section 9A of the Caravan Sites and Control of Development Act 1960
Tribunal	:	Judge Tildesley OBE Mr W Gater FRICS Mr D Ashby FRICS
Date and Place of Hearing	:	Havant Justice Centre 8 February 2022 Hybrid Hearing
Date of Decision	:	22 March 2022

DECISION

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Summary of the Decision

1. The Tribunal dismisses the Appeal and confirms the Compliance Notice dated 16 September 2021.

Background

2. The Applicant appealed against a Compliance Notice served by Arun District Council (the Council) under section 9A of the Caravan Sites and Control of Development Act 1960 (1960 Act) on 16 September 2021. The Tribunal received the Appeal on 6 October 2021.

3. The Notice stated that the Council had issued a site licence dated 18 February 2021 in respect of The Marigolds, Shripney Road, Bognor Regis, West Sussex, the relevant protected site to Marigolds Management Limited (The Applicant). The Notice further stated that the Council is satisfied that the Applicant was failing to comply with the condition of licence, namely, that there were 62 caravans on site which exceeded the number of permanent residential caravans permitted under the licence, namely 60.

4. On 18 November 2021 the Applicant applied to strike out the Compliance Notice.

5. On 2 December 2021 a Legal Officer, directed that a hearing would take place on 8 February 2022. The Legal Officer also required the parties to exchange statements of case.

6. On 3 December 2021 the Tribunal refused the application for strike out on the ground that the application was misconceived. The Tribunal has no jurisdiction to strike out a Compliance Notice. The Applicant's grievance is dealt with by means of an Appeal which the Applicant has already submitted, and for which directions have been issued.

7. On 6 December 2021 the Applicant applied to stay the proceedings. The Application was refused first by a Legal Officer on 10 December 2022, and then on referral by a Judge on 16 December 2022.

8. At the hearing on 8 February 2022 Mr Sunderland of Wyldecrest Parks Management Limited represented the Applicant. Mr Solomon Agutu, Senior Lawyer and Deputy Monitoring Officer represented the Council. Ms Katharine Giddings, Senior Environmental Health Technician, attended to give evidence in support of her witness statement. The parties attended the hearing by video link. Mr Ashby expert member of the Tribunal also joined by video. The Applicant supplied a hearing bundle. The Tribunal uses the electronic page numbers for the documents in the bundle referred to in the decision which are in [ ].

Consideration

9. The Applicant has held the site licence under section 3 of the Caravan Sites and Control of Development Act 1960 (The 1960 Act) for The Marigolds as a residential caravan park since 11 January 2016 [33]. The Council is the licensing authority for The Marigolds. The record showed that a site licence had been in existence since 7 November 2007. On 18 February 2021 the Council issued a new site licence for The Marigolds which replaced the one on 9 August 2018. The licence specified that the number of permanent residential caravans permitted on the site is 60.

10. The Council is also the Planning Authority for the area in which The Marigolds is situated. On 19 September 2019 the Council removed the condition on the restriction on number of the caravans of the Planning Permission for The Marigolds as a caravan site [115].

11. The Council maintains that its role as the Local Planning Authority under the Town and County Planning Act 1990 is separate from its role as a Local Authority for the regulation of caravan sites under the 1960 Act. The Council asserts that planning decisions are made under different criteria from decisions about licensing conditions. The Council states that granting planning permission does not override other regulatory, consent or approval regimes.

12. Under the 1960 Act local authorities are given powers and duties to regulate the activities of those managing caravan sites and to safeguard the interests of the home owners. The Mobile Homes Act 2013 amended the 1960 Act by introducing a new site licensing regime which give local authorities more effective control of site licence conditions of caravan parks which come within the definition of protected sites. As a result local authorities can now issue compliance notices under section 9A of the 1960 Act instead of criminal prosecution against site owners who are failing or have failed to comply with a condition to a site licence. Under section 9G of the 1960 Act site owners are given rights to appeal to the Tribunal against section 9A compliance notices.

13. This case involved an appeal against a Compliance Notice dated 16 September 2021 issued by the Council which stated that the Applicant had failed to comply with the condition of the licence regarding the number of permanent residential caravans on the site. The Council said there were 62 caravans in situ which were above the permitted number of 60.

14. The Applicant's grounds of appeal were various contending that the Notice was invalid and should be quashed, the Notice went beyond what was reasonably required to ensure compliance with conditions, there was no breach because the Council tacitly agreed to a variation of the condition, and the Council had not complied with its enforcement policy, the Model Standards and the Code for Crown Prosecutors. The Council's case was that the Applicant had breached the condition and

the Applicant had produced no evidence to the contrary. The Council maintained that the issue of the Compliance Notice was proportionate and in compliance with its enforcement policy. The Council stated that it had not tacitly approved an invalid application for variation of site conditions. The Council acknowledged that the Applicant had submitted subsequently a valid application for variation which had been refused and was the subject of another appeal which was due to be heard on 1 April 2022.

15. The Tribunal's powers on Appeal are set out in section 9G of the 1960 Act. Section 9G(5) provides on an appeal under section 9A the Tribunal may by order confirm, vary or quash the Compliance Notice.

16. Judge Bridge in the Upper Tribunal Decision of *Shelfside (Holdings) Ltd v Vale of White Horse DC* [2016] UKUT 400 LC gave helpful guidance on the exercise of the FT Tribunal's powers of Appeal which is summarised in the case digest as follows:

> "Role of the First-tier Tribunal - Appeals from compliance notices were governed by s.9G of the 1960 Act. An appeal was by way of a re-hearing. The tribunal was 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 was 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. The appropriate questions to address in the course of an appeal against a compliance notice issued under s.9A were whether (a) there had been a breach of licence conditions; (b) service of the compliance notice was justified; (c) if so, whether the remedial works required were reasonable and proportionate to the nature of the breach (paras 9-10, 31)".

17. Martin Rodger QC Deputy Chamber President in the second Upper Tribunal Decision of *Shelfside (Holdings) Ltd v Vale of White Horse DC* [2017] UKUT 259 explained that at (15):

> "Moreover, on an appeal to the FTT against a compliance notice, the question for the tribunal is whether the facts stated in the notice are made out. In reaching its own conclusion on that question the FTT will apply the civil standard of proof".

18. Martin Rodger QC Deputy Chamber President then went onto say at (18- 21; 25):

> "The general rule in civil proceedings is that the party who asserts a fact must prove it. On an appeal to the FTT under section 9A of the 1960 Act against the service of a compliance notice the relevant facts are those asserted in the compliance notice itself, namely that the occupier of a protected site has failed to comply with a condition attached to the site licence for that site.

> Although section 9A(1) permits a local authority to serve a compliance notice "if it appears" to it that there has been a failure to comply with a condition, those words should not be taken to dilute the requirement of proof of non-compliance if there is a challenge to the notice. It is not then the appearance of non-compliance which must be proved, but non-compliance itself.
>
> An appeal under section 9A is said by section 9G(4)(a) "to be by way of a rehearing". That choice of language may appear slightly strange in this context, since there will not previously have been any process which could sensibly be referred to as a "hearing". Nevertheless, the intention is clear: on an appeal to the FTT against a compliance notice the FTT will not determine whether the local authority was entitled to conclude on the evidence available to it that there had been a failure to comply with a condition of a site licence, but will decide for itself whether there was or was not such a failure. When it does so, the FTT may have regard to matters of which the local authority was unaware (section 9G(4)(b)).
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> In its grounds of appeal the appellant asserts that the 1960 Act contains no provision that has the effect of requiring it to prove compliance with the site licence. I agree.
>
> The flaw in the appellant's argument is that overlooks the fact that a point is often reached in proceedings where the evidence relied on by the party which has the burden of proof is sufficient to discharge that burden and will do so unless evidence is provided to counter it".

19. Before considering the specific grounds of Appeal the Tribunal wishes to comment on the evidence before it. The Applicant produced no witness statements as part of its case despite a direction to do so. The Applicant had appointed Mr Sunderland as its representative under rule 14 of the Tribunal Procedure Rules 2013. Mr Sunderland is a director of Wyldecrest Parks Management Limited. Mr Sunderland is not a director of The Marigolds Management Limited and does not hold the site licence for The Marigolds. On the information before the Tribunal Mr Sunderland had no involvement with the management of The Marigolds.

20. The Applicant's case was based on the statement of case and response signed by Mr Sunderland. The statement of case contained several factual assertions which were not substantiated by a statement of a witness of fact. Mr Sunderland as a representative appointed under rule 14 is not entitled to give evidence. Mr Sunderland is not acting as a Director of the Applicant. Rule 14 makes it clear that a representative cannot sign a witness statement. The effect of this is that the Applicant called no witness evidence of fact to counter the case presented by the Council.

21. The Respondent called Ms Giddings to give evidence on its behalf. Ms Giddings had supplied a witness statement. The hearing of this Appeal was listed for three hours. The parties were informed of this beforehand and no representations were made to the contrary. Mr Sunderland

spent over two hours cross-examining Ms Giddings. Mr Sunderland's cross examination was at times inelegant and repetitive. The parties were given time to state their cases and the hearing was completed around 1320 hours. The Tribunal concluded having heard from Ms Giddings that she was a reliable and truthful witness.

Has there been a breach of the licence conditions?

22. In September 2020 complaints were made to the Council that bases for additional caravans were being installed at The Marigolds. On 22 September 2020, 21 December 2020 [135] Ms Giddings wrote to the Applicant advising that the licence permitted 60 units on the site and if this number was exceeded it would constitute a breach of the site licence. Ms Giddings did not receive a response to the letters. On 3 September 2021 [134] she wrote the Applicant to inform it that she had not received a response to the letters of 22 September 2020 and 21 December 2020 and that she would be visiting the site on 8 September 2021.

23. On 8 September 2021 Ms Giddings visited the site. After familiarising herself with the site layout she walked around the site and counted 62 residential caravans on the site. Ms Giddings explained that she had to double check because two units (numbers 13 and 48) were not present. Ms Giddings confirmed the number of caravans on the site as 62. Ms Giddings noted that plots 66 and 67 had bases, parking areas and caravans stationed on them, one appeared to be occupied which was confirmed by her informant and the other had a "For Sale" sign in the window. Ms Giddings also observed that the bases and services for plot numbers 63, 64 and 65 were in place but no caravans had been located on them. Ms Giddings also knew from Council Tax records that 62 properties were listed as residential properties on the site for Council Tax Purposes. Ms Giddings also carried out a search of Google Street view which appeared to show that the condition of 60 permanent caravans had been breached since March 2021. Ms Giddings had not been able to inspect the site prior to September 2021 due to Covid 19 restrictions.

24. The Applicant called no evidence to dispute Ms Giddings' evidence of 62 permanent caravans on the site. Mr Sunderland in his statement of case said it was an oversight but this was not supported by a witness statement.

25. Mr Sunderland on behalf of the Applicant raised two arguments that no breach of the licence had occurred. The first was that according to Mr Sunderland there were several homes on the site which due to their age and condition were incapable of being moved and no longer met the definition of a caravan. The Applicant supplied no evidence to substantiate Mr Sunderland's assertion.

26. The second concerned an application submitted on 22 September 2021 by the Applicant to vary the site licence to remove the condition altogether restricting the number of permanent caravans on the site [61]. This application was made through the Government portal which said that a decision would be made by 17 November 2021, and if no decision was made then tacit consent would apply. According to the Applicant no decision was made by the Council and, therefore, tacit consent applied.

27. The Respondent disagreed with the Applicant's version of events. Ms Giddings stated in evidence that it was not a valid application. Ms Giddings said that the application had not been made by the site licence holder or their approved agent, and that the declaration at the end of the form had not been made by the same person. Ms Giddings insisted that she had advised Mr Sunderland on at least three occasions that the application was not valid. Mr Sunderland responded that the application was valid and that if the Council did not respond it would be granted by default.

28. Ms Giddings pointed out that the information on the Government portal stated that it only applied to a valid application. Ms Giddings, however, indicated that the advice on the Portal about tacit consent was wrong and not in accordance with Council policy and the legislative requirements. In this regard Mr Agutu referred the Tribunal to section 8(3) of the 1960 Act which said that alteration of conditions of the site licence by a local authority shall not have effect until written notification thereof has been received by the holder of licence. Mr Agutu contended that the advice on the Government portal could not subvert the legislative requirements, and that the Council had not given written notification of a variation of the condition to the site licence regarding the maximum number of permanent caravans on the site.

29. On the 15 October 2021 the Applicant submitted a new and correctly completed application to vary the condition to the site licence regarding the maximum number of caravans on site. On 21 December 2021 the Council refused the application which is now the subject of an Appeal due to be heard on 1 April 2022.

30. The Tribunal finds the following facts in relation to the breach of a condition to the site licence for The Marigolds concerning the maximum number of permanent caravans.

    a) The site licence for The Marigolds under the 1960 Act is subject to a condition that the number of permanent residential caravans permitted on the site is 60.

    b) The Council did not accept the application to vary the condition made on 22 September 2021 as a valid application. The Application knew that and submitted a valid application on 15 October 2021 which has been refused by the Respondent.

c) The Council has not given written notification that the condition regarding the maximum number of permanent residential caravans of 60 on the site has been varied.

d) The Tribunal finds that Ms Giddings a truthful witness and accepts her evidence that on the 8 September 2021 there were 62 permanent residential caravans on the site which was in excess of the maximum number of 60 permitted under the site licence condition. The Tribunal also accepts her evidence that the Applicant's non-compliance with the condition has been ongoing for some time and dates back to at least March 2021. The Tribunal is satisfied that the Applicant has adduced no evidence to undermine Ms Giddings' testimony.

31. **In view of the above findings the Tribunal is satisfied that the Council has established on the balance of probabilities that the Applicant is in breach of the condition to the site licence for The Marigolds relating to the maximum number of permanent residential caravans on site.**

Is the Compliance Notice a Valid Notice?

32. Section 9A(2) of the 1960 Act states that "A compliance notice is a notice which:

> (a) sets out the condition in question and details the failure to comply with it,
> (b) requires the occupier of the land to take such steps as the local authority consider appropriate and as are specified in the notice in order to ensure that the condition is complied with,
> (c) specifies the period within which those steps must be taken, and
> (d) explains the right of appeal conferred by subsection (3).

33. The Tribunal now describes the Compliance Notice which is the subject of this Appeal.

34. The Notice was dated 16 September 2021 and addressed to Marigolds Management Limited [42]. The Notice recited that the Council had issued a site licence dated 18 February 2021, and that the Council was satisfied that Marigolds Management Limited was failing to comply with a condition of the site licence which was specified in Schedule 1. This said that the failure was with condition 2 which was set out in detail, and then gave details of the failure, namely 62 caravans on the site which exceeds the maximum number of caravans for which the site is licensed (60).

35. The Notice required Marigolds Management Limited to carry out the works specified in Schedule 2 to this notice. The Notice said that the Council considers these works will ensure that the Licence condition

referred to in Schedule 1 is complied with. Further Marigolds Management Limited should begin the works no later than 8 October 2021 (being not less than 22 days from the date of the service of the Notice) and to complete the works no later than 28 January 2022.

36. Schedule 2 under the heading "Works specified as necessary to comply with licence condition 2 at Schedule 1" stated that "Ensure the number of caravans stationed on the site does not exceed the number of permanent residential caravans permitted or, alternative works that achieve compliance with licence condition two".

37. The Notice explained that Marigolds Management Limited had a right of appeal against the Notice which must be made within 21 days to the First-tier Tribunal (Property Chamber). Marigolds Management Limited was referred to the enclosed notes for further information about the Rights of Appeal.

38. The Notice comprised six pages with page 2 blank which did not have the endorsement "deliberately left blank".

39. The Notice also had two pages of Notes explaining various matters relating to the Compliance Notice.

40. Mr Sunderland raised three objections to the Notice: (1) Page 2/6 was missing and the information incomplete. Mr Sunderland contended that the Applicant was not fully aware of the contents of the Notice and was thereby prejudiced. (2) The Notice would have been served on the 20/21 September 2021, and the date of 8 October 2021 to commence the works would not have been 22 days after the date of the service of the Notice. (3) The requirement under schedule 2 of the Notice of "alternative works that achieve compliance with licence condition two" was vague and unenforceable.

41. In response Ms Giddings explained that she sent the Notice and covering letter by email to the post room staff at the Civic Centre who printed and posted the letter on the 16 September 2021. Ms Giddings said that page two was deliberately blank so that it would form the reverse side of the first page of the Notice when printed. This in turn meant that the schedules were printed on the same sheet of paper which she considered made the documents easier to read. Ms Giddings pointed out that the Applicant had not raised the issue of the blank page 2 until Mr Sunderland submitted the statement of case. Ms Giddings also stated that this happened when the majority of staff were working from home due to Covid 19 and in normal circumstances the Order would have been checked before being sent out.

42. Mr Agutu acknowledged on behalf of the Council that the Notice would have been served on 20 September 2021, and that the date of the 8 October 2021 was incorrect. Mr Agutu argued that this was a technicality which did not affect the validity of the Notice, and that the

Applicant had been given an extended time to comply with the Notice of over four months.

43. Finally Mr Agutu argued that the phrase "alternative works that achieve compliance with licence condition two" was not vague it meant a successful application to vary the condition, and that the Applicant knew this.

44. The Tribunal starts with the legislative requirements. The Tribunal observes that section 9A(2) does not specify a prescribed form for a compliance notice instead it states a series of requirements that the Notice should meet. The Tribunal is satisfied that when the Notice of the 16 September 2021 is set against the requirements of section 9A(2) it complies with those requirements.

45. Mr Sunderland's objections are more about form rather than substance. The Tribunal considers that a reasonable person reading the Notice would have been clear about the reason for issuing the Notice, what that person had to do in order to comply with the Notice, and what that person had to do if s/he wished to Appeal the Notice.

46. The Tribunal understands that page 2 was included in the Notice, and a reasonable person seeing it would understand it was a blank page. The reasonable person would have noticed the error of the 8 October 2022 because it was immediately followed with the words "being not less than 22 days from the date of the service of the notice". A reasonable person may have queried it with the Council but would have been fortified by the extended period of over four months in which to comply with the requirement. Finally a reasonable person would have read Schedule 2 as a whole and knew that the works had to relate to ensuring that the number of caravans stationed on the site did not exceed the number of permanent residential caravans permitted. A reasonable person would also have read the covering letter which said that "if you wish to discuss this matter or if there is anything you do not understand, please make contact using the details provided above".

47. **The Tribunal is satisfied that the compliance notice dated 16 September 2021 was valid and met the requirements of section 9A(2) of the 1960 Act.**

Was the Service of the Compliance Notice justified?

48. Mr Sunderland argued that the Council had not complied with the Model Standards 2008 for Caravan Sites in England [173] , with its own Enforcement Policy [133] and The Code of Crown Prosecutors in that the Council did not carry out a risk assessment, it acted to hasty with no consultation with the site owner, and that its actions were disproportionate.

49. Mr Sunderland pointed to the fact that the caravans were all owned privately by occupiers with occupation rights under the Mobile Homes

Act 1983 and that the Applicant had no legal powers to remove their homes. In this respect Mr Sunderland contended that in requiring the Applicant to remove homes which they were not able to do the Council was going beyond what was reasonable for the Applicant to comply with the condition. Mr Sunderland argued that the Council instead should have use its powers to vary the condition rather than putting the Applicant in an impossible position.

50. Further Mr Sunderland submitted the condition restricting the number of the caravans on the site licence was unduly burdensome and unenforceable because of the decision of the Local Planning Authority to remove the planning condition on the maximum number of caravans on the site. Mr Sunderland also postulated that the condition on the site licence about maximum numbers was no longer valid because of the grant of the new planning permission.

51. Mr Sunderland cited the Court of Appeal Decision in *Esdell Caravan Parks Ltd v Hemel Hempstead Rural DC* [1965] 3 W.L.R. 1238 in support of his proposition that a local authority cannot apply a condition to a site licence restricting the number of caravans where there is no planning restriction.

52. Mr Agutu reminded the Tribunal that it was dealing with an Appeal against a Compliance Notice, and not an Appeal against a variation of a condition to a site licence. Mr Agutu repeated the Council's position that planning decisions were made under different criteria from decisions about site licensing conditions, and that granting planning permission did not override the regulatory regime for site licensing.

53. Mr Agutu for the Council stated that the site licence was clear as to how many caravans could be on the site, and that the Applicant had been aware of the condition limiting the number of caravans on the site to 60. Mr Agutu asserted that the Applicant had wilfully allowed more caravans on the site than what was permitted, and it was for the Applicant to resolve with the owners of the caravans which had been allowed by the Applicant to be occupied in excess of the maximum permitted number.

54. Ms Giddings acknowledged that she had not completed a written assessment but she insisted that she had carried out a risk assessment with her Manager following the return from her inspection of the property. Ms Giddings documented the risk assessment in her witness statement which the Tribunal recites below:

> "Following the visit, I discussed the case with my manager and reported that I had counted 62 units on site. We also know that from Council Tax records that there are 62 properties listed as residential dwellings at the site for Council Tax purposes. In the light of this, it was agreed that there was a clear breach of condition two of the site licence. We agreed that a compliance notice was the most appropriate course of action, in consideration of the risks from

> potential amenity and safety impacts. From the site visit and having observed new concrete bases, I was also concerned that further units could readily be installed on the site. If this occurred it would further increase the risks to the residents. I was aware from the site visit that one of the two new units might be permanently occupied. My manager and I discussed the possibility if two additional units were removed from site (to comply with the licence condition) there was potential for the occupier(s) of this unit to be made homeless. We considered that an alternative route to seek compliance with the condition would be for the site licence holder to apply to vary condition 2 of the site licence. We, therefore, agreed that the compliance notice would be written to include a longer compliance period than would usually be the case (compliance to be achieved by 28 January 2022), during which time, the site licence holder could seek to achieve compliance with the notice and with the site licence condition"
>
> It was considered that upon provision of relevant and satisfactory supporting information we should be able to support an application to vary the licence to permit two extra units. Placement of additional units on the site, however, raises concerns. Of the two extra caravans already placed on site, one was thought to be occupied. An application to vary the licence by increasing the maximum number of units to 62 would enable the breach to be regularised and remove potential homelessness concerns. It was also noted during this discussion we had invited the site licence holder to discuss the complaints, our concerns and or to make application to vary the site licence condition, no communication had ever been received. Requesting further contact from the site licence holder did not, therefore, appear to be an appropriate option. Given the lack of response from the licence holder to previous communication, it was still deemed necessary to ensure compliance through a compliance notice. We decided that including an alternative works provision the notice would support the licence holder in addressing the breach via a successful variation application, in the event that they chose to apply for variation".

55. Mr Sunderland made various attempts in cross-examination to undermine Ms Giddings' evidence on carrying out a risk assessment but Ms Giddings held firm. The Tribunal finds Ms Giddings a truthful witness, and accepted her evidence on the risk assessment carried out by her and her manager.

56. The Tribunal disagrees with Mr Sunderland's proposition that the removal of the planning condition on maximum numbers invalidated the condition to the site licence restricting the number of permanent caravans to 60. In this regard Mr Sunderland's reliance on the decision in *Esdell Caravan Parks Ltd* was misplaced. The summary of the case digest states:

> "A local authority has express power under the Caravan Sites and Control of Development Act 1960 s.5(1)(a) to impose a condition restricting the number of caravans to be placed on land even though the effect is to take away existing rights

> without paying compensation, providing that the reasons for attaching such a condition are fairly and reasonably relevant to the use of the land as a caravan site and are not pure planning considerations".

57. The Tribunal considers that the decision in *Esdell* supports the Council's position that a local authority has the power to impose a condition restricting the number of caravans provided it is done for reasons connected with the use of the land as a caravan site.

58. The Tribunal finds the following facts on whether the service of the compliance notice was justified:

a) On 20 September 2020 and 21 December 2020 Ms Giddings had informed the Applicant in writing of her concerns that additional units were being installed on the site and that the Applicant would be in breach of the conditions of its site licence if it exceeded the permitted number of 60. The Applicant did not respond to the letters and have given no reason for not replying.

b) On 18 February 2021 the Council sent the Applicant a new site licence which repeated the condition that the maximum number of permanent residential caravans permitted on the site was 60.

c) The Applicant should have known that it was in breach of its site licence when it allowed additional caravans in excess of the permitted number of 60 to be installed on the site.

d) The Applicant had brought the situation upon itself and was now attempting to divert attention from its own actions by castigating the Council for taking its statutory responsibilities seriously. The Applicant's suggestion that it was for the Council to use its powers of variation to remedy the Applicant's blatant disregard of its legal obligations was unmeritorious and defied common sense and decency.

e) The Council carried out a thorough risk assessment before it issued the compliance notice. It weighed up the flagrant disregard by the Applicant of the site licence condition and the Applicant's unwillingness to engage with the Council with the likely impact upon blameless occupiers of the additional homes. The Council's decision to issue a compliance notice but to extend the time for compliance whilst retaining an open mind to consider a suitable application to vary to the licence condition struck the right balance between the competing requirements of ensuring compliance with the site licence conditions and respecting the needs of innocent home owners.

59. **The Tribunal decides for the reasons given above that the service of a compliance notice was justified.**

Whether the Remedial Works required were reasonable and proportionate to the nature of the Breach?

60. The Tribunal is satisfied that the Applicant's breach of the site licence condition on the maximum number of caravans was flagrant. Given these circumstances the Tribunal considers, that it was necessary for the "remedial works" specified in the Notice to require the Applicant to comply with the condition by "ensuring the number of caravans stationed on the site did not exceed the number of permanent residential caravans permitted". However, as explained by Ms Giddings, the second part of the requirement, "alternative works that achieve compliance with licence condition two" gave the Applicant an opportunity to regularise the breach and remove potential homelessness concerns by making a successful application to vary the condition. Further the Council granted an extended period of time than what would normally have been given in order to carry out the "remedial works". The Tribunal considers it proportionate and reasonable to place the obligation upon the Applicant to initiate an application for variation of the site licence condition on maximum numbers which met the Council's requirements and satisfied its statutory responsibilities regarding the licensing of caravan sites.

61. **In view of the above findings the Tribunal determines that the "reasonable works" specified in the Compliance Notice dated 16 September 2021 were reasonable and proportionate.**

Decision

62. The Tribunal has determined the following:

a) The Council has established on the balance of probabilities that the Applicant is in breach of the condition to the site licence for The Marigolds relating to the maximum number of permanent residential caravans on site.

b) The Compliance Notice dated 16 September 2021 was valid and met the requirements of section 9A(2) of the 1960 Act.

c) The service of a Compliance Notice was justified.

d) The "reasonable works" specified in the Compliance Notice dated 16 September 2021 were reasonable and proportionate.

63. The Tribunal dismisses the Appeal and confirms the Compliance Notice dated 16 September 2021.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to rpsouthern@justice.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.