FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/45UC/PHS/2022/0001
Property	:	The Marigolds Caravan Park, Shripney Road, Bognor Regis, West Sussex, PO22 9NZ
Applicant	:	The Marigolds Management Ltd
Representative	:	Jon Payne LSL Solicitors
Respondent	:	Arun District Council
Representative	:	Solomon Agutu Arun Legal Services
Type of Application	:	Appeal under section 7 or 8 of the Caravan Sites and Control of Development Act 1960 against a Refusal by a Local Authority to alter conditions attached to a licence. Notice to bar the Respondent
Tribunal	:	Judge Tildesley OBE Mr N Robinson FRICS
Date and Place of Hearing	:	Havant Justice Centre 23 May 2022
Date of Decision	:	20 June 2022

DECISION

Summary of the Decision

1. The Tribunal dismisses the Appeal and confirms the decision of Arun District Council dated 21 December 2021 to reject the Applicant's application to remove the condition to the site licence limiting the number of caravans on the Site to 60.

The Appeal

2. The Applicant is the holder of a site licence under section 3 of the Caravan Sites and Control of Development Act 1960 ("1960 Act") in respect of a relevant protected site known as Marigolds Caravan Park, Shripney Road, Bognor Regis, West Sussex, PO20 9NZ ("the Site").

3. The Applicant appealed against a decision of Arun District Council ("the Council") dated 21 December 2021 to reject the Applicant's application to remove the condition to the site licence limiting the number of caravans on the Site to 60. The Tribunal received the Appeal on 13 January 2022. The Appeal is made under section 8(2) of the 1960 Act.

4. The Notice of Refusal [10] stated that the Council:

> "Having considered the application, together with any subsequent information submitted, the Council has determined to reject the application for the following reason: Insufficient evidence has been provided to demonstrate that the amenity of the site will not be adversely affected or compromised by the proposed variation".

5. The Applicant contended that the Council had not given sufficient reasons for its decision and that its request for further information was unspecific. The Applicant relied on the fact the Council in its capacity as the Local Planning Authority on 30 September 2019 had removed the planning condition restricting the number of caravans on the Site. Further the Planning approval permitted the redevelopment of part of the Site upon which permanent buildings had been constructed by demolishing those buildings and installing bases to enable the future stationing of mobile homes. The Applicant stated that it had provided the Council with the plans of the Site which showed the increased capacity for visitor's parking, which, according, to the Applicant met the concerns expressed by the Council about its application to vary the site licence.

6. The Applicant had offered to restrict its application to a limit of 65 caravans on the Site but was disappointed with the Council's unwillingness to compromise the Appeal. The Applicant submitted that the matter before the Tribunal was a simple one, which had been unnecessarily complicated by the Council. The issue was whether the Site had the space to accommodate the additional homes and that the capacity condition was necessary and/or desirable and proportional in

the interests of persons living in the caravans, any other class of persons, or of the public at large. The Applicant requested the Tribunal to direct that the condition on numbers be removed, or that it be set to a number that can be shown to be capable of being accommodated on the site within the constraints set by the other conditions in relation to fire safety.

7. The Council stated that on 16 September 2021 it had issued a Compliance Notice under section 9A of the 1960 Act against the Applicant for having more than the permitted number of caravans on the Site, and it was this Notice that had given rise to the application for variation of the condition. The Council's case was that as licensing authority for caravan sites in its area it was governed by a different statutory regime from its role as planning authority. The Council contended that the Applicant had failed to provide sufficient information to justify its application to remove completely the restriction on the permitted number of caravans on the Site in order for the Council to discharge its statutory functions under the 1960 Act. The Council said that it was prepared to consider an increase in the number of caravans on the Site but it was necessary for the Applicant to provide a new application with supporting information. The Council submitted that in the absence of sufficient information to give intelligent consideration of the Application, the Council had no option but to refuse the application. The Council asked the Tribunal to dismiss the Appeal.

The Proceedings

8. On 25 January 2022 the Tribunal directed a hearing on 1 April 2022 at preceded by an inspection of the site. The Tribunal also required the Council to provide the Applicant with a statement of case by 8 March 2022.

9. On 21 March 2022 the Applicant's representative informed the Tribunal:

> "We write in relation to the above matter. As you will see, we have been in contact with the Council last week to determine the position on the Council's statement and evidence, which was due on 8th March but does not yet appear to have been received.
>
> As the fee earner dealing with this matter is currently listed for other hearings until Friday of this week, it is therefore not possible for us to comply with the remainder of the directions (attached for convenience) and we bring this to the attention of the Tribunal.
>
> At this stage, we do not make any particular application at this stage but ask the Tribunal to consider its powers of case management in a proactive way to determine the course of this appeal. It appears to us that there are a number of options, which include;

- To proceed in the absence of any material from the Council, other than the decision notice and correspondence already collated by the Appellant; and/or
- To bar the Council from taking part under rule 9(7)(a); or
- To adjourn the listed hearing for the 1st April and to issue fresh directions.

It is of course also open to the Council to withdraw or to agree a settlement and we are copying in the Council so that such may be considered. Our client remains receptive to proposals that the Council may have".

10. The Tribunal requested the views of the Council by no later then 4pm on 24 March 2022 and repeated the request by no later than 12 midday on 28 March 2022. The Respondent did not reply to the Tribunal's request.

11. On 28 March 2022 the Tribunal directed that the inspection and the hearing fixed for 1 April 2022 at 11.30am would go ahead, and that the parties should attend the hearing. The Tribunal indicated that it would determine as a preliminary matter at the commencement of the hearing on 1 April 2022 whether the Council should be barred from taking a further part in the proceedings.

12. The Tribunal inspected the site on 1 April 2022 which was then followed by the hearing. Mr Payne together with Mr Sunderland appeared in person for the Applicant. Mr Agutu appeared for the Council by means of video link.

13. After hearing from Mr Agutu and Mr Payne the Tribunal decided to adjourn the appeal and fix a new hearing date of the 23 May 2022.

14. The Tribunal decided to deal with the Council's' failure to comply with the Tribunal's direction by the imposition of an Unless direction and an Order for Costs. The Tribunal considered this action just in accordance with rule 8(2) of the Tribunal Procedure Rules 2013 because it reflected the Tribunal's displeasure with the Respondent's default and mitigated the Applicant's loss by its attendance at the hearing and at the same time ensured a fair hearing by enabling the Council to participate so that the Tribunal could reach a decision having regard to all the relevant facts and circumstances.

15. The Tribunal ordered the Council to pay to the Applicant £800 towards the Applicant's costs of attending the hearing on 1 April 2022 by 1 June 2022 in accordance with rule 13(1)(a) of the Tribunal Procedure Rules 2013. The Council undertook not to enforce the Compliance Notice dated 16 September 2021 until the conclusion of these proceedings.

16. On 23 May 2022 the Tribunal heard the proceedings afresh. The Tribunal inspected the Site again in the absence of the parties. Mr Jon Payne of LSL solicitors represented the Applicant. Ms Elizabeth Best, a

director of the Applicant signed the statement of case but did not attend the hearing to give evidence. Mr David Sunderland, director of Wyldecrest Management Limited was also present. Mr Solomon Agutu, Head of Law and Governance, Monitoring Officer and Data Protection Officer, appeared for the Council. Miss Katharine Elizabeth Clare Giddings employed as the Senior Environmental Health Technician for the Council attended to give evidence in support of her witness statement dated 21 April 2022 [83]. The Applicant supplied the bundle of documents for the hearing. The page references for the documents referred to in the decision are in [ ].

Chronology

17. 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. 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 [46]. The licence specified that the number of permanent residential caravans permitted on the site is 60.

18. In 2019 the Applicant applied to the Council in its role of Planning Authority for the removal of the condition to Planning Permission restricting the number of caravans on the site to 60, which was granted by the Council on 30 September 2019 [127]. This enabled the Applicant to redevelop part of the Site by demolishing the bungalow and laying concrete bases to enable the stationing of caravans in that part of the Site. The Tribunal noted that the original planning permission of 9 May 2014 increased the number of caravans from 60 to 63. The permission was subject to the demolition of the bungalow. The Tribunal also noted the Applicant's intention following the grant of the new planning permission was to install four new caravans.

19. On 22 September 2020, 21 December 2020, and 3 September 2021 the Council wrote to the Applicant with regard to concerns about the parking provision and the number of caravans on the Site. In the absence of a response to the first two letters, the letter of 3 September 2021 notified the Applicant that a site visit was to take place on 8 September 2021.

20. On 8 September 2021 Miss Giddings visited the Site. Miss 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. 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. During her site visit Miss Giddings received complaints about the amenities on the site, especially parking provision.

21. Following the Site visit on 16 September 2021 the Council issued a Notice of Compliance under section 9A of the 1960 Act. On the 22 September 2021 the Applicant purported to make an application to vary the site licence. The Council did not accept it as a valid application. The Applicant at the hearing on the 23 May 2022 did not challenge the Council's decision on this matter and accepted that the Tribunal was dealing with the application to vary made on 15 October 2022.

22. On 5 October 2021 the Applicant appealed to the Tribunal against the issued of section 9A Compliance Notice which was heard on 8 February 2022. The Tribunal dismissed the Appeal publishing its decision (CHI/45UC/PHT/2021/0002) on 22 March 2022.

23. On the 15 October 2021 the Applicant applied to vary the site licence by requesting removal of the limitation on the number of caravans that could be stationed on the Site. The hearing bundle did not include a copy of the completed application because it was submitted online. The Tribunal understands that the completed application gave basic information about the owner and site, and brief details of the application sought.

24. On 24 November 2021 Miss Giddings requested additional information from the Applicant:

> 'Further to the variation application received on 15 October 2021, it appears from the submissions that the site licence holder is proposing a total of sixty-five units to be placed on the site. Please may you advise whether the site licence holder would be amenable to the condition being altered to reflect this increase. In addition, the information received to date does not appear to demonstrate how the amenity of the site will be managed; of particular concern is the provision of adequate additional parking for residents and their visitors. Please may the additional parking provision on site (other than the requisite one space per unit) and any amenity areas be clarified.'

25. On 25 November 2021 Mr Sunderland on behalf of the Applicant responded to the effect that it would be preferable to have no limit but that it was for the Council to justify the numbers that were imposed by a condition. On 3 December 2021 the Applicant stated in writing that it would not provide any more information. On 21 December 2021 the Council rejected the Application for the reasons given in paragraph 4 above.

26. On 13 January 2022 the Applicant's solicitors wrote to the Council making:

> "an open offer that if the Council is willing to agree that the number of park homes on the site is increased to 65, notwithstanding that the planning permission does not specify a limit, then our client will be willing to make an application to the Tribunal to have the proceedings withdrawn on the further basis of no applications for costs" [75].

27. On 20 January 2022 Mr Agutu of the Council responded to the Applicant's open offer stating that

> "I stress that the Council has always been open to receiving an application to vary the number of caravans on the site licence but it was your clients who wanted a licence with no limitation of numbers based on the erroneous position that the removal of the Planning Condition allowed a breach of the site conditions. .....
>
> Your offer of settlement is accepted on the following six conditions
> 1. The Council will consider amending the existing site licence condition to allow a maximum of sixty-five (65) units. However this will require submission of a valid variation application and it is not a guarantee that the application will be approved.
>
> 2. The site licence holder must demonstrate (or the Council will need to be satisfied) that the site is capable of supporting the required number of units - any submission should therefore include a density calculation, demonstration of service(s) provision and a scale-plan of the site showing the proposed new layout and associated facilities (e.g. parking provision, any amenity areas, structures, facilities, etc.).
>
> 3. Detail of what process(es) will be used to regulate the site.
>
> 4. Any variation application should also clearly show where additional on-site parking is located and be labelled to show how many spaces are provided.
>
> 5. The Applicant has stated that not all of the caravans on the site can be legally defined as caravans under section 29 of the Act - we require the unit numbers of these noncomplying units to be disclosed.
>
> 6. As we know, the site has an extra two units, which exceeds the current site licence conditions and there are a further three bases installed on the site. Therefore with immediate effect no additional caravans shall be brought onto the site until a variation application has been determined in favour of additional units or there is a determination of the Tribunal allowing additional Caravans over and above the sixty allowed in the current licence"[76].

28. On the 25 January 2022, the Applicant's solicitors responded, noting that the "agreement to settle is not such at all, as it in particular seeks that our client does something that it is already entitled to do, which is to make an application"[78].The Applicant's solicitors pointed out that section 8(1)(B) of the 1960 Act did not prescribe a form for making an application to vary a condition and suggested that all the licence holder need do is to send a request to the Council for the condition to be changed along with the fee. The solicitors, however, accepted that in order to secure an agreement it would be sensible for the Applicant to supply some justification for the change in condition relating to

maximum number of caravans on the site. The solicitors responded to the six points made in Mr Agutu's letter. The solicitors contended that the only relevant information required was whether the Site was able to accommodate the additional units and the arrangements for visitor's parking. In this regard the solicitors supplied a copy of a Part Site Plan dated 24 January 2022 which the solicitors said demonstrated that the new units could be accommodated on the Site and that the proposed visitor's parking was more than adequate and would have a positive benefit for the remainder of the site.

29. Mr Agutu for the Council responded on 27 January 2022 [81] stating that

> "Marigolds has a licence for 60 caravans. Marigold applied for a variation to remove the licence conditions so that the site could accommodate unlimited number of Caravans, The Council asked Marigold if they would confirm that they were making an application for 65 units and to provide information to allow the application to be assessed on that basis. Marigold stated that they wanted the application to be treated as an application to remove the condition completely and would not provide any additional information. The Council issued a decision in December 2021 refusing the application to remove the condition. You say that the Council already has an application. That application has already been determined and is functus officio.
>
> You have made an open offer of a settlement, which is that if the Council would issue a licence for 65 Units you would withdraw the appeal. The Council has rejected the offer and asked for an application to be submitted for 65 units for assessment. The Council believes in principle only that 65 units can be licensed but would need to carry out an assessment to confirm this number. This is the position we were in before December 2021. The only difference now is that you refuse to provide the information required to assess your offer of a settlement.
>
> In carrying out this regulatory function the Council is required to balance the interests of site occupiers and residents. The Council itself has no interests in the appeal. A quick and dirty settlement at your request would fail to consider the views of the residents and might be open to judicial challenge by the residents and/or a corporate complaint.
>
> The information you have provided is not what has been asked for. For instance you have submitted a part site plan not a whole site plan. To assess if the whole site can accommodate 65 units requires an assessment of the site plan for the whole site. The Council is conscious that caravans are getting bigger not smaller. The site is not getting any bigger. The argument might be that, other things being equal, bigger caravans mean less caravans on site rather than more. All these matters need to be assessed properly".

30. The Applicant supplied a copy of the "Part Site Plan showing New Plots at Entrance of the Park" dated 24 January 2022 [72]. This Plan showed the siting of the new pitches identified by 63, 64, 65, 66 and 67. Each

new plot had two areas shaded in grey which the Tribunal understood to represent parking for two vehicles. In addition there were five areas shaded yellow and identified by a "V", three areas were located adjacent to Plot 62, whilst the remaining two were located immediately on the left on entering the Site. The Tribunal understood these areas shaded yellow represented parking for visitors.

31. The Applicant also supplied a copy of the "Site Plan" dated 22 September 2021 which showed the layout of the whole Site [73]. The Tribunal understands that there was additional parking for visitors in front of pitch 10, although it was not identified on the Site Plan.

Consideration

32. Section 8(2) of the 1960 Act gives the holder of a site licence who is aggrieved by the refusal of the local authority of an application to vary a condition to the site licence a right of appeal to the Tribunal. Section 8(2) states that the Tribunal may, if they allow the Appeal, give to the local authority such directions as may be necessary to give effect to its decision.

33. Section 8(4) requires the Tribunal when exercising its powers on Appeal shall have regard amongst other things to any standards which may be specified by the Minister under section 5(6) of the 1960 Act. The relevant standards are the Model Standards 2008 for Caravan Sites in England published by Communities and Local Government in April 2008 ISBN: 978 1 8511 29089. The Model Standards represent those standards normally be expected as a matter of good practice on caravan sites that are used as permanent residential units in respect to the lay-out and the provision of facilities, services and equipment for caravan sites.

34. At the hearing on 23 May 2022 the Tribunal checked its understanding with the parties of its powers on Appeal and the nature of the Appeal hearing. In this regard the Applicant's solicitors helpfully referred to the authorities of *R (Chief Constable of Lancashire v Preston CC* [2001] EWHC Admin 928 and *R (on the application of Hope & Glory Public House Ltd) v City of Westminster Magistrates' Court [2009]* EWHC 1996 (Admin)). The Tribunal would add the Court of Appeal decision in *The Queen on the Application of Hope and Glory Public House Limited v The Lord Major and the Citizens of the City of Westminster* [2011] EWCA Civ 31, which confirmed the decision of Burton J at first instance, and the decision of *(R (Westminster City Council) v Middlesex Crown Court* [2002] EWHC 1104 (Admin) at [19] and [21]).

35. It was agreed that the Applicant had the burden of proving its case on the balance of probabilities. Further the Tribunal should place itself in the shoes of the local authority for the purposes of implementing its policy, and that the hearing of the Appeal is a complete rehearing of the evidence de novo, not a review of the decision made by the local authority.

36. This means the Tribunal should pay careful attention to the reasons given by the local authority for arriving at the decision under appeal, bearing in mind that Parliament has chosen to place responsibility for making such decisions on local authorities. The weight which the Tribunal should ultimately attach to those reasons must be a matter for its judgment in all the circumstances, taking into account the fullness and clarity of the reasons, the nature of the issues and the evidence given on the Appeal.

37. The Tribunal placed reliance on the "Hope and Glory" decisions for how it should determine the Appeal. Thus the Tribunal should not reverse the decision of the Local Authority unless it is satisfied that the decision is wrong on the evidence before it. It is not sufficient to allow the Appeal on the ground the Tribunal is not satisfied that the decision is right [43-45 of Burton J decision approved by Court of Appeal at 46].

38. Finally, although not explicitly stated in section 8(2), the Tribunal is satisfied that it has the power to dismiss the Appeal and confirm the decision of the local authority.

39. The Tribunal begins its consideration by identifying the evidence that it had before it in order to make its decision.

40. The Council has adopted a Mobile Homes (Site Licensing Applications) Determination Policy. Version 5 published April 2019 applied to this Application which was exhibited at [93].

41. Paragraph 2.5 of the Policy explicitly mentioned applications to vary licences. Paragraph 4.2 encouraged Applicants to read the Policy prior to making an application. Paragraph 4.4 sets out the requirements for a valid application which comprised: completion of the relevant form, payment of fee, and any further information reasonably required by the Council. Paragraph 4.4.4 specifies that the application may be refused where subsequent information is required but not provided. Paragraph 4.6 stated that the Council may still refuse the application where planning permission has been given if it considers the development would have an adverse impact on the amenity of the site, its access or the quality of any site services. Paragraph 4.8 enables the Council to refuse the application if granting the application would mean it would be unable to ensure that the site as a whole is adequately maintained or managed through the licence or otherwise. Paragraph 4.9 sets out a range of matters the Council will have regard to including whether the proposed licensing arrangements would reduce the amenity of, access to or quality of, services to the site, the conduct of the licence holder, and whether the site licence holder is being investigated in relation to an offence relating to the site regarding a breach of the licence. Paragraph 4.13 informs that the Council have a wide discretion in determining site licence conditions, nonetheless the Council would include regard to the current relevant Model Standards and if need be consult with relevant parties including individual home owners.

42. A "Decision Matrix" was attached to the Policy as Appendix D [108]. The Matrix gave clarification on the determination process, the types of information used and the weight given in the decision making. Applicants were advised to have regard to this when providing information.

43. The Matrix dealing with Policy ref 4.6 described as "Amenity Impacts" stated under "Considerations":

> "The planning regime includes consideration of a development's effects on the surrounding environment, places, people and buildings. The licensing regime provides for the protection of the residents of the site with regard to site integrity, residents' amenity and the provision of services to them. Impacts compliant with planning requirements may still adversely affect the management and running of a site in these respects".

44. Policy reference 4.6 contained another column for "Weighting" which stated that

> "Evidence that changes to a site have resulted, or will result in, a reduction in the level of services and amenities provided to residents may be sufficient in their own right to refuse an application.
>
> Evidence that changes have come about through consultation with residents and with their agreement will be considered as mitigation".

45. The Matrix dealing with Policy References 4.9.8, 4.12 and 4.13 described as "Licence Conditions" of the Matrix stated under considerations:

> "An applicant may propose new licence conditions, or amendments to or removal of, existing conditions. Consideration will be given to any such proposals, in particular with regard to the suitability of the conditions proposed and the ability of the proposed licence holder to follow them".

46. Policy reference 4.6 contained another column for "Weighting" which stated that

> "Evidence that any licence conditions will be adhered to should be deemed to support the application. Evidence of a failure to do so in relation to any caravan site licence held, currently or previously, may contribute to a decision to refuse an application but is unlikely to lead to a refusal in its own right".

47. The Tribunal turns next to the information supplied by the Applicant in support of its Application to remove altogether the condition imposing a maximum number of caravans on the site. The Tribunal finds that the Applicant completed an application form which provided basic information about the Applicant and the nature of the application, and paid the appropriate fee. Further the Applicant at some stage supplied

an overall plan for the site, and a more detailed plan of the part of the site developed which identified the pitches for the new caravans, and the additional sites for visitors parking. Finally the Applicant relied on the Planning Permission granted on 30 September 2019 removing the planning condition restricting the number of caravans on the Site, and on the fact that the additional pitches for the new caravans were located on land upon which there had previously been permanent buildings.

48. The Tribunal now considers Miss Giddings' evidence which explained the rationale for the Council's decision to reject the application for variation.

49. Miss Giddings stated that the application had been submitted because the Applicant had been served with a Compliance notice for failing to comply with the condition on the licence by having 62 caravans on the Site as opposed to 60 caravans. Miss Giddings said that the Council upon provision of relevant and satisfactory information would have supported an application to vary the licence by increasing the maximum number of caravans to 62 which would have enabled the breach to be regularised and remove potential homelessness concerns regarding the occupiers of the additional homes on the Site.

50. Miss Giddings explained that the assessment of a variation application was a specific task which differed to some extent from applications to grant and or transfer a site licence. In this case, although the variation related to one condition, it concerned the removal of the restriction of the number of caravans on the Site, which, according to Miss Giddings, could not be treated as a "stand-alone" task without reference to the other conditions on the licence and to the site as a whole. This was why the Council requested further information on how the application impacted upon amenity and safety of the residents and visitors to the Site. Miss Giddings asserted that the Applicant supplied no information on parking across the Site as a whole, no evidence on how the new homes would be serviced, for example water supply, effluent removal and electricity provision or screened/fenced, and no evidence of pitch demarcation.

51. Miss Giddings stated that she would have no objection in principle to an application to increase the number of units permitted on the site, as reflected in the planning consultation response on behalf of Environmental Health Department. Miss Giddings, however, pointed out that planning assessments and consideration were not the same as licensing assessments and considerations. Miss Giddings referred to Policy ref 4.6 which explained that the planning regime included consideration of a development's effects on the surrounding environment, places, people and buildings. In contrast the site licensing regime provided for the protection of the residents of the site with regard to site integrity, residents' amenity and the provision of services to them.

52. Miss Giddings added that assessing amenity requirements for an increase of five units was different from assessing amenity requirements for unlimited units. Miss Giddings said she would need to be satisfied that the current licence condition of a maximum permitted number of 60 was not adequate. According to Miss Giddings, this was the requirement of paragraph 3 of the 2008 Model Standards in respect of existing sites obliging the Council to have regard to the benefit that the Model Standards would achieve and the interests of both residents and site owners. In her view the Applicant should be able to demonstrate that the site is capable of supporting additional units which required much more information than the Applicant had so far been reluctant to provide.

53. Miss Giddings in response to questions from the Applicant and the Tribunal said that she had not carried out an inspection of the site except for the one on 16 September 2021 which was to do with the Section 9A Compliance notice. Miss Giddings had observed on the 16 September 2021 a delivery vehicle parked on the verge. Miss Giddings stated that the Council had recorded two complaints from residents. One related to the inadequacy of visitors' parking, and the other was to do with an alleged fall in the area of the Site being re-developed.

54. The Tribunal inspected the Site on 1 April 2022 and 23 May 2022. The purposes of the inspection were to form an overall view of the Site and to examine the Applicant's proposals for visitors parking. The Site was compact with a high density of caravans. The Tribunal notes that the Site licence [46] specified that the density should be consistent with safety standards and health and amenity requirements, and that the gross density should not exceed 50 caravans to the hectare.

55. An estate road ran around the perimeters of the Site and down the cul-de-sac on the South boundary. All the pitches had access to the road. There were no footpaths along the road. The Site Licence only required the provision of footpaths where the approach to the caravan was across ground that may become difficult or dangerous to negotiate in wet weather. The Site did not have the benefit of recreational or green spaces. The Site licence, however, had relaxed the requirement for recreational space so long as the Site was restricted to occupation by older persons and those without children.

56. The Tribunal considered that the Site was maintained to a good condition and was tidy throughout. There appeared to be adequate street lighting and sufficient fire hydrants for the Site.

57. The Applicant had re-developed the area which was on the Eastern flank of the Site next to the entrance on Shripney Road. The Tribunal observed on 1 April 2022 that five bases had been laid in this area, and that caravans had been sited on four of the five bases. Work was also being done on the remaining base giving the impression that another caravan was about to be sited. The Tribunal noted that the number of caravans on the Site was now 64 which was four more than the 60

permitted by the Site licence, and two more than the 62 which were present when the Section 9A Compliance Notice had been issued on 16 September 2021. The Tribunal shared its concerns on the additional caravans with the Applicant when it returned to the hearing from the inspection on the 1 April 2022. The Tribunal understands that following the hearing the Applicant ceased the work on the remaining base.

58. The Tribunal observed that each pitch on the site had parking for one car which was a requirement of the site licence. The five new pitches had spaces for two cars, one of which, according to the Applicant, was for visitors to the new pitches. The Tribunal was informed that there was visitors' parking outside pitch number 10 which was located in the middle of the Site. The area was not identified as visitors' parking and it was not clear to the Tribunal how many spaces were reserved for visitors. The Tribunal considered that the space for parking outside pitch 10 was narrow, and when the Tribunal members parked the cars in the space they protruded into the road. At the time of the Tribunal's inspection on 1 April 2022 the refuse lorry was doing its rounds, and it appeared to take up the whole of the estate road.

59. The Tribunal inspected the proposed five visitors car parking spaces which the Applicant said had been created in the re-developed area. The Tribunal formed the view that the three visitors space marked on the Plan [72] away from the entrance were on the pitch belonging to No.62. The Tribunal doubted whether the occupier of 62 would agree to the reduction of her pitch. The Tribunal did not consider that there was space to accommodate the two remaining proposed visitors' spaces immediately behind the entrance. The Tribunal concluded that the five proposed visitors' spaces were not viable.

60. The Tribunal noted that the site licence required the provision of suitable additional surfaced parking spaces to meet the additional requirements of residents and their visitors, which followed the wording of the Model Conditions.

61. The Tribunal formed the view that there was no scope for further development of the Site.

62. The Tribunal makes the following findings of fact:

    a) The Council has a published policy for determining Site Licensing applications in connection with Mobile Homes which was available on its Website. The Policy clearly sets out the considerations that the Council would have regard to when evaluating applications for variation of licence conditions. The Policy encouraged applicants to read it before making an application.

    b) The Application for variation concerned the removal of the condition restricting the number of caravans on the site to 60.

c) During the application process Miss Giddings invited the Applicant to make an application to restrict the number of caravans to 65 but this was declined with the Applicant stating that it was for the Council to justify the limitation on numbers.

d) The Applicant's case principally relied on the fact that it had planning permission to develop that part of the Site formerly housing a bungalow and that the planning permission had removed the restriction on the maximum number of caravans on the Site.

e) Paragraph 4.6 of the Policy was explicit that the Council might still refuse a site licence application where planning permission had been given, if it considers the development would have an adverse impact on the amenity of the site, its access or the quality of any site services.

f) The Applicant's evidence on how the amenity of the site would be affected by the removal of the restriction on maximum number of caravans was limited to the provision of a site plan and a plan of the developed area identifying the bases and driveways of the five proposed mobile homes and the location of the proposed five visitors' parking areas.

g) The Application for variation was made against the backcloth of proceedings for a section 9A Compliance notice for the Applicant's failure to comply with the condition regarding the maximum number of caravans on the Site. At the time of the commencement of the Section 9A proceedings there were 62 caravans situated on the Site. By the time of the Tribunal's first inspection on 1 April 2022 the number of caravans had risen to 64. The Tribunal is satisfied that this was a blatant disregard by the Applicant of its responsibilities as a holder of a site licence which was aggravated by the fact that the Applicants' recklessness posed unacceptable risks to the occupiers of the new mobile homes.

h) The Tribunal's inspection revealed that the Site was compact with a high density of caravans. The Tribunal found that the Site was maintained to a good condition and was tidy throughout. The Tribunal decided that the arrangements for visitors' parking were unsatisfactory and that the proposed five spaces for visitors in the re-developed area were not viable. The Tribunal concluded that there was no scope for further development of the Site.

63. The Tribunal reminds itself that the Appeal is against the Council's decision to reject the application to remove altogether the condition imposing a maximum on the number of caravans on the Site. The Tribunal is required to determine the Appeal on the merits of that

application. The Tribunal is not deciding upon the Council's refusal of the Applicant's open offer to settle the Appeal by imposing a limit of 65 caravans. The Tribunal, however, accepts that on Appeal it has the power to direct the Council to vary the condition by increasing the maximum number of caravans that can be located on the Site.

64. The Applicant's solicitor argued that the issue of removing the condition restricting the number of caravans on the Site was a question of law rather than one of fact. The solicitor reminded the Tribunal that it had to have regard to the Model Standards when considering an Application for variation. The solicitor stated that the current Model Standards gave no specific guidance on site capacities but set out a number of other matters that in effect controlled how many park homes might be stationed on the land. The solicitor said that these were replicated in the conditions that were already in force on the licence for this Site, including the requirement for separation spaces between homes and the need to provide parking space. The solicitor argued that the Tribunal should follow the approach adopted by another Tribunal in the *White Horse* case[1], which decided to cancel the condition limiting the numbers. The Tribunal gave as its reasons: there was no evidence before it that the site could not reasonably accommodate the number of the additional caravans proposed and that in any event the other conditions of the licence dealing with density and the space between the caravans would act as a brake on the total numbers of caravans accommodated on the site.

65. In the solicitor's view, there were clear parallels between this case and the *White Horse* case. The solicitor argued in this case the land released for redevelopment was more than capable of accommodating a greater number of caravans than the 60 specified, and that the other conditions on the site licence would prevent the Site from becoming overcrowded.

66. The Tribunal is not persuaded by the solicitor's arguments. The Tribunal considers that the question of the removal of the condition restricting the number of caravans is principally a factual question which should be evaluated in the context of the Site as a whole and not just in the context of the area released for redevelopment. The Tribunal agrees with Miss Giddings' evidence that an assessment of the impact of unlimited caravans was of different magnitude than the impact of an increase of five caravans. Miss Giddings had offered the Applicant the opportunity to amend its application to 65 caravans but declined to do so stating that it was for the Council to justify the limitation.

67. The Applicant complains that the Council was not specific about the type of information it required to support the application to remove the condition on the maximum number of caravans. The Tribunal disagrees. The Tribunal found that the Council had a Policy which set out its requirements where planning permission had been granted. The

[1] (CAM/38UE/PHR/2016/0001

Tribunal would have expected the Applicant to have been aware of the Council's policy on site licence applications and have addressed in its application the matters specified in the Policy of the impact of the removal of the restriction on the amenity of the site, the access to the site and the quality of any site services. The Tribunal also found that the Applicant did not respond in detail to Miss Giddings' request for further information on the impact of the removal of the condition on the amenity of the Site. The Tribunal, however, disagrees with the Council that paragraph 3 of the Model Conditions also applied to the Applicant's application. The Tribunal's understanding of paragraph 3 was that it related to an application brought by the Council to vary a licence condition to accord with Model Conditions, which was not the case here.

68. The Tribunal identified that the Applicant's evidence on how the amenity of the site would be affected by the removal of the restriction on maximum number of caravans was limited to the provision of a site plan and a plan of the developed area identifying the bases and driveways of the five proposed mobile homes and the location of the five visitors' parking areas. The Applicant had the opportunity to produce further evidence in line with Policy for this Appeal which was a rehearing but chose not to do so.

69. The Applicant's evidence on amenity was directed at the provision of visitors' parking spaces. The Tribunal concluded that the Applicants' proposals for visitors' parking spaces were not viable, and it, therefore, followed that the removal of the condition would likely have an adverse impact on the parking arrangements for visitors to the Site. The Applicant's failure to adduce further evidence on the matters identified by the Policy meant that the Tribunal had to rely on its visual inspection of the site to evaluate the impact of the removal of the condition on maximum numbers. The Tribunal decided that the Site was compact with a high density of caravans and that there was no scope for further development of the Site. The Tribunal is satisfied that the only effective means of controlling the number of caravans on the Site was by retaining the condition to the site licence which imposed a maximum number of caravans for the Site. The alternative of expecting the Council to police the spacing requirements between caravans was not practicable or realistic.

70. The Tribunal decides next whether the Applicant adduced sufficient evidence to support an increase in the maximum number of caravans on the site. The Applicant's case boiled down to the fact that additional space had been created by the demolition of the bungalow, and, it therefore, followed that more caravans could be accommodated on the Site. The Tribunal identified three problems with the Applicant's case.

71. The first problem was the conflicting evidence from the planning decision about the number of caravans that could be occupied on the land formerly occupied by the bungalow with what was happening on the ground. The original planning permission increased the maximum

by three caravans. The Applicant had suggested in respect of the new planning permission that the space could accommodate four caravans. Finally the Tribunal observed that the Applicant had laid bases for five caravans in this area. The Applicant has not provided the Tribunal with a rationale for deciding what was the appropriate number of caravans that could be located on the space formerly occupied by the bungalow.

72. The second problem was the Applicant's conduct in proceeding with the development of the Site in direct contravention of the site licence conditions which was aggravated by the fact that the Applicant had located two more caravans on the Site after the section 9A compliance notice had been issued. The Tribunal found that the Applicant's conduct constituted a blatant disregard of its responsibilities as a holder of a site licence and was reckless in exposing the occupiers of the new mobile homes to unacceptable risks.

73. The Applicant's solicitor submitted that the test for the variation was not the conduct of the site licence holder but whether the site was capable of accommodating the additional caravans. The Tribunal considers that the Applicant's solicitor had not taken into account the extent of the Council's role as statutory regulator of caravan sites. The Council is required to perform its role in a transparent manner and in accordance with its Policy. The Tribunal observes that the Policy has identified conduct of the licence holder as a relevant matter when considering site licence applications.

74. The Tribunal considers that the Applicant's conduct is of significance in this case in that its actions had ruled out a potential option which was under consideration by Miss Giddings. In her evidence Miss Giddings indicated that at the time of the issue of the section 9A compliance notice she would have looked favourably on an application to increase the maximum number of caravans by two. This would have enabled the Applicant's breach to be regularised and have removed potential homelessness concerns for the occupiers of the two mobile homes. In the Tribunal's view, the Applicant's decision to put on two more caravans after service of the section 9A compliance notice had ruled out this option because it would be tantamount to condoning the Applicant's blatant disregard of its responsibilities as a site licence holder, and to holding the Council and the Tribunal to ransom.

75. The third problem is that the Tribunal is required to stand in the shoes of the Council and apply its Policy to the evidence before it. The Policy required the Tribunal to consider the impact of the increase in the number of caravans on the amenity of the site, the access to the site and the quality of any site services. This requirement applied equally to the situation of a proposed increase to the number of caravans as well as the removal of the condition imposing a maximum number on the Site. In the Tribunal's view the assessment of impact would extend to including whether the land formerly occupied by the bungalow had amenity value to the Site before it was re-developed. As indicated previously the Applicant adduced no evidence of the impact of the re-

development on the amenity of the site except in relation to visitors' parking spaces which the Tribunal decided were not viable.

76. The Applicant's attempt to reduce the issue in this Appeal to the question whether the Site has space to accommodate the additional caravans disregards the statutory responsibility placed by Parliament on the Council to regulate caravan sites. In exercising its responsibilities the Council is required to consider a wider range of factors than simply the adequacy of the space which were set out in its Policy. The Applicant had the burden of proving on the balance of probabilities that the Council's decision was wrong. The Applicant contended that the Council's reasons for refusing the Application for variation were not clear. The Tribunal disagrees. The Council did not have sufficient information in which to make a decision in accordance with its Policy. The Applicant had the opportunity to put the matter right in this Appeal. The Applicant chose not to do so and attempted to shift the burden to the Council by requiring Miss Giddings to justify her stance. The Tribunal was effectively faced with the same information as that dealt with by Miss Giddings. The Tribunal inspected the Site on two occasions to do justice to the Applicant's case. The inspection revealed that the Applicants' proposals for visitors parking were not viable, and that the Applicant had gone ahead and located two more caravans on the site.

Decision

77. The Tribunal has examined at length the Applicant's case for removing the condition altogether and for increasing the maximum number of caravans. The Tribunal concludes that the Applicant has failed on the evidence to demonstrate on the balance of probabilities that the removal of the condition imposing a maximum number of caravans, and in the alternative increasing the maximum number of caravans met the requirements of the Council's Policy. The Tribunal, therefore, determines on the evidence before it that the Council's decision to reject the Applicant's application for variation was not wrong.

78. The Tribunal dismisses the Appeal and confirms the decision of Arun District Council dated 21 December 2021 to reject the Applicant's application to remove the condition to the site licence limiting the number of caravans on the Site to 60.

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.