FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**BIR/17UB/PHR/2022/0001**
Property	**:**	**Haytop Country Park, Alderwasley Park, Whatstandwell, Derbyshire DE4 5HP**
Applicant	**:**	**Haytop Country Park Ltd**
Representative	**:**	**Mr Richard Harwood KC, instructed by Apps Legal**
Respondent	**:**	**Amber Valley Borough Council**
Representative	**:**	**Mr Richard Kimblin KC, instructed by AVBC Legal Dept**
Type of application	**:**	**Appeal against conditions attached to a site licence under section 7 of the Caravan Sites and Control of Development Act 1960, as amended**
Tribunal members	**:**	**Judge C Goodall** **Mr V Ward FRICS, Regional Surveyor**
Date and place of hearing	**:**	**17 & 18 January (at Derby Magistrates Court) and 27 February (by Video Hearing Service)**
Date of amended decision	**:**	**06 July 2023**

SECOND AMENDED DECISION UNDER RULE 50 OF THE TRIBUNAL PROCEDURE (FIRST-TIER TRIBUNAL) (PROPERTY CHAMBER) RULES 2013

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On 16 May 2023, a decision was issued in this case ordering (in paragraph 166a) that a caravan park site licence for Haytop Country Park should be issued by the Council for occupation by not more than 17 (SEVENTEEN) caravans in the positions shown hatched and black on the site plan shown in the Appendix to this decision. Paragraph 166b listed the numbered plots that should be included in the licence.

On 30 May 2023, the Tribunal issued an amended decision under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to deal with a clerical mistake, being the inclusion of plat 12 in the list of approved plots twice. The amended decision reduced the number of plots to 16.

The Applicant than asked whether the absence of plot 9 in the list could also be a clerical mistake. On further consideration, the Tribunal realised that both plots 8 and 9 should have been included in the original list. This second amended decision therefore restates our decision, save for amendments to paragraphs 159, 160, and 166 as are shown in those paragraphs.

Background

1. On the deemed date of 26 April 2022, Amber Valley Borough Council ("the Council") granted a site licence ("the Licence") to Haytop County Park Ltd ("the Applicant") under the Caravan Sites and Control of Development Act 1960 ("the Act") in respect of a site known as Haytop Country Park, Alderwasley Park, Whatstandwell, in Derbyshire ("the Site").

2. The licence had three conditions attached, being:

    1. The licensed site would be the site shown in red on the plan attached to the licence;

    2. The licensed site shall be occupied by not more than 3 (THREE) caravans shown hatched and black on the site plan;

    3. The site shall be maintained and managed in accordance with the standards attached.

3. The standards attached contained 19 standards. The Applicant objected to condition 2, and to some of the provisions in standards 2, 3, 8, 9, and 19. On 18 May 2022, it therefore appealed against these conditions pursuant to section 7 of the Act.

4. The appeal was heard on 17 & 18 January 2023 at Derby Magistrates Court. There was insufficient time to hear closing submissions, which were therefore heard by video hearing on 27 February 2023.

5. The hearing was preceded by a site inspection on the morning of 17 January 2023.

6. During the hearing, the issues between the parties narrowed. Condition 2 remained in issue, as did the whole of the amended paragraph 3 of the standards (see paragraph 31 below).

7. This decision sets out the Tribunal's determination on the Appeal and our reasons for so determining.

Law

Conditions

8. The Tribunal's powers on an appeal against site conditions are that, having regard to any standards specified by the minister under section 5(6) of the Act, if we are satisfied that any condition is unduly burdensome, we may vary or cancel the condition. If we vary or cancel a condition, we may also attach a new condition to the site licence (see sections 7(1) and 7(1A) of the Act).

9. The Council has wide powers to impose conditions on a site licence, from section 5(1) of the Act, which provides:

> 5 Power of local authority to attach conditions to site licences.
>
> (1) A site licence issued by a local authority in respect of any land may be so issued subject to such conditions as the authority may think it necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large; and in particular, but without prejudice to the generality of the foregoing, a site licence may be issued subject to conditions—
>
> (a) for restricting the occasions on which caravans are stationed on the land for the purposes of human habitation, or the total number of caravans which are so stationed at any one time;
>
> (b) for controlling (whether by reference to their size, the state of their repair or, subject to the provisions of subsection (2) of this section, any other feature) the types of caravan which are stationed on the land;
>
> (c) for regulating the positions in which caravans are stationed on the land for the purposes of human habitation and for prohibiting, restricting, or otherwise regulating, the placing or erection on the land, at any time when caravans are so stationed, of structures and vehicles of any description whatsoever and of tents;
>
> (d) for securing the taking of any steps for preserving or enhancing the amenity of the land, including the planting and replanting thereof with trees and bushes;
>
> (e) for securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained;
>
> (f) for securing that adequate sanitary facilities, and such other facilities, services or equipment as may be specified, are provided for the use of persons dwelling on the land in caravans and that, at all times when caravans are stationed thereon for the purposes

of human habitation, any facilities and equipment so provided are properly maintained.

(2) No condition shall be attached to a site licence controlling the types of caravans which are stationed on the land by reference to the materials used in their construction.

…

(6) The Minister may from time to time specify for the purposes of this section model standards with respect to the layout of, and the provision of facilities, services and equipment for, caravan sites or particular types of caravan site; and in deciding what (if any) conditions to attach to a site licence, a local authority shall have regard to any standards so specified."

10. Model Conditions have been promulgated. They are the "Model Standards 2008 for Caravan Sites in England". The Council has also issued its own set of Standard Conditions. Neither of these documents incorporates a provision for the precise location of a pitch to be set out in the licence granted. Rather, the documents control pitch location by reference to minimum separation distances. However, the Model Conditions are to be applied "with due regard to the particular circumstances of the relevant site, including its physical character, any relevant services, facilities or other amenities that are available within or in the locality of the site and other applicable conditions"; see Model Condition 4.

11. A condition may not be imposed in a site licence purely for planning reasons – *Babbage v North Norfolk District Council [1990] 59 P&CR 248*.

Permitted development

12. Where a caravan site licence is granted, the Town and Country Planning (General Permitted Development) Order 2015 provides (within Part 5 of Schedule 2 to the Order, Class B) that "development required by the conditions of a site licence for the time being in force under the 1960 Act" is permitted development, so the issue of a licence grants permitted development rights ("PDR") to the licensee.

Trees

13. Tree preservation orders ('TPOs') can be made by local planning authorities to protect individual trees, groups of trees, or woodlands if it is 'expedient in the interests of amenity': Town and Country Planning Act 1990, s 198(1). A TPO may identify an individual tree, a group of identified trees, be an area order which covers those trees in existence in a specified area at the time that the order is made, or a woodland order which applies to current and future trees and saplings within the identified area but which allows regeneration and new planting: see Planning Practice Guidance ID 36- 011, 026-029. Subject to exemptions, tree preservation area consent is required to cut down, top, lop, uproot or wilfully damage or destroy a tree or cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of a tree specified in a TPO: See Town and Country Planning (Tree Preservation) (England) Regulations 2012, reg 13 and the form in the Schedule at para 3. Tree preservation order consents are granted

by the local planning authority (or on appeal, the Secretary of State) and may be subject to conditions.

14. A tree covered by a TPO must be replaced if it was removed, uprooted or destroyed in contravention of tree preservation regulations: Town and Country Planning Act 1990, s 206(1)(a). If the replacement requirements are not complied with, the local planning authority may serve a notice requiring the planting of specified trees in a specified time - Section 207(1), Town and Country Planning Act 1990. The tree replacement notice can be appealed to the Secretary of State: s 208.

Inspection

15. The Site is approached from the A6 on the bend of the road at Whatstandwell which crosses the River Derwent. Access is via a road/track off the A6 through a substantially wooded area. After driving in a southerly direction for around just over half a mile, the road opens up onto the Site, which is shown on the plan in the appendix to this decision (the "Plan"). It can be seen on the Plan that there is a fork in the road/driveway at the northern end of the Site one limb of which continues in a south / south-westerly direction, the other continuing is a south-easterly direction. The south-easterly limb is a dividing line between two parts of the Site each with somewhat different characteristics. The southern section, below the south-easterly road, is more open, and it includes the common green (see below). It is apparent from the Plan that some trees remain in the southern section, primarily in the norther corner. It is also apparent from the black dots that the eastern part of the southern section used to be rather more densely wooded. The northern section is more still densely wooded.

16. The Plan shows the location for 36 pitches which the applicant proposes to install. The open area to the south-west of pitches 7 and 8 is the common green which is required to remain unbuilt upon (see paragraph 23 below). The plan also indicates with dark dots, each marked with a red number T followed by a number, the location of trees that are required to be replaced under a Tree Replacement Notice (see below). The Site slopes upwards from the north to the south and falls away to the east.

17. The Plan shows the location of 28 pitches in the southern section. Concrete bases have already been constructed on the pitches on the eastern part of this section on pitches running from 23A in the southern tip through to pitch 1. Each has utility services also available. Bases are also already installed on pitches 8, 9, 10 and 11.

18. At the inspection, the Tribunal requested that a sample pitch base be measured. The parties agreed that the largest pitch base already constructed on site measured just under 86sqm.

19. Previously, the Applicant had already placed caravans on the Site, though at our inspection, some had been removed. Our understanding is that pitch 24 is occupied.

20. No pitches have been constructed on the northern section of the Site, above the south-easterly road / track.

21. Pitches 23, 24, and 1 are the pitches permitted under the Licence.

Planning and regulatory history

22. The Site has the benefit of two extant planning consents, being a consent dated 27 March 1952 for the siting of thirty (30) mobile dwellings and one (1) wooden bungalow, and a consent dated 17 June 1966 permitting the extension of the existing site from 30 to 60 caravans for seasonal and towing use.

23. The 1966 planning permission has 10 conditions attached to it. One condition (no 9) provides that "the central green on the site shall be maintained permanently open as a recreational area and neither tents, caravans, nor building shall be permitted to be sited thereon".

24. The Site is also impacted by a tree preservation order ("the TPO") dated 27 September 1978 preventing the cutting down, felling, damaging, uprooting etc of any trees located within the woodlands shown on a map attached to the order, which includes the Site.

25. The map splits the Site into two parts. Part is labelled A1, which is an Area Order classification. In this area, the "several trees of whatever species standing in the area numbered A1 on the map" are protected by the TPO. The area designated A1 is to the west of the western access road, which is not part of the area on which the Applicant proposes to place pitches. The rest (i.e. the whole of the Site) is labelled W1, which is a Woodland Order classification. In this area, the protected trees are described as "woodland of mixed hardwoods".

The Licence

26. The Applicant had applied for a new site licence for the Site under the Act on 2 August 2018. This tribunal determined that the Council must issue a site licence. Following a successful appeal to the Upper Tribunal, the matter was remitted to this Tribunal for further consideration. On 26 April 2022, and by consent, the Council granted the Licence as described in paragraph 2 above.

27. Brief identification of the conditions on the Licence have been set out in paragraphs 2 and 3 above. Condition 2 is disputed. It reads:

    > "The license site shall be occupied by not more than 3 (THREE) caravans shown hatched and black on the site plan"

28. Of the 19 standards set out in condition 3, by the time of the hearing, it had been agreed that standard 2(x) would be amended to read:

    > "No caravan shall be located within the central green area."

29. During the hearing, Mr Arkle accepted that he would not insist on the imposition of standard 8(ii), and he would agree to amend standards 9(iii) and (iv) so that they read:

> "9(iii) Grass and vegetation must be cut at frequent and regular intervals;
>
> 9(iv) Trees within the site must (subject to necessary consents) be maintained;"

30. Between the issue of the Licence and the hearing, the Council had agreed the deletion of standard 3(iii) in the original Licence, so that by the time of the hearing, the version of standard 3 sought by the Council read:

> "3 WOODLAND SETTING
>
> (i) All caravans shall be located in positions in accordance with the site plan to ensure that there is no conflict with the restrictions imposed by the Tree Preservation Order 34. No caravan should be located in any part of the site that could cause damage to existing or newly planted trees which could then in turn make the site less safe for the occupants.
>
> (ii) Hardstanding, bases, roads and other infrastructure shall only be located in agreed locations so that the integrity of the Woodland Tree Preservation Order is not compromised particularly having regard to root protection areas.
>
> (iii) To ensure the prevention of damage to hardstanding, bases, roads and infrastructure the following minimum distances for the planting of trees shall be applied. All distances are based on centre of the stem;
>
> - 3 metres of any paths and drives with flexible surfaces and paving slabs
> - 2.5 metres from any in-situ concrete path and drives
> - 2 metres from any masonry boundary walls
> - 2 metres from services that are more than 1 metres deep
> - 3 metres from services that are less than 1 metres deep
> - 1.5 metres from any lightly loaded structures such as sheds and garages"

31. By the time of the hearing then, the appeal was in respect of the restriction in condition 2 to limit the number of caravans on the Site to three, and the restrictions in standard 3 (above) under the heading Woodland Setting ("the Disputed Conditions").

The Application

32. The appeal is against the Disputed Conditions. The Appellant seeks:

    a. Amendment of condition 2 so that it reads "No more than 60 (SIXTY) caravans shall be sited on the land for human habitation", and

b. The deletion of paragraph 3 of the standards set out in condition 3.

33. The existing conditions are said by the Appellant to be unlawful and/or unduly burdensome. As set out in the Appellant's skeleton argument, the issues are:

> "Is it unlawful and/or unduly burdensome for the site licence:
>
> (i) to prevent the replacement of infrastructure that is to be removed under the planning enforcement notice, this being part of the rationale for the limit to 3 caravans?
>
> (ii) to require the layout to be approved by the Council?
>
> (iii) to duplicate controls applied by the planning regime (including trees)?
>
> (iv) to impose separation distances from trees as proposed in condition 3/3(iii) or otherwise?
>
> (v) to limit the number of caravans to 3. If not, what limit should be imposed?"

34. The grounds of appeal are covered elsewhere in this decision, save for reference to a claim that the restrictions imposed by the Disputed Conditions amount to a violation of the Appellant's rights under Article 1 of the European Convention on Human Rights, for which the Appellants seeks compensation. By direction 22 of the Directions dated 22 September 2022, the Tribunal directed that only the principle of payability would be determined at the hearing. Any assessment of quantum would be subject to further directions.

History of the site development by the Applicant

35. The Applicant purchased the Site in around October 2016. Prior to purchase, the Site had been used as a caravan park for many years, as permitted by the planning consents identified.

36. Following the Site purchase, the Applicant commenced operational works to clear and re-model the Site (under the misapprehension that these works were permitted development), constituting:

> "lay[ing] out to provide 23 new caravan bases, accessed off a newly created internal road … . Terraces stepping up the hillside have been formed to provide a level platform associated with each base. These are retained by gabion walls of various heights. Services have been provided. The operational development carried out to date is to the south west of the historic wall within the caravan site. …"[1]

37. The evidence was that the Applicant spent in the region of £750,000 in carrying out these works.

[1] As set out in the planning inspector's decision, paragraph 15, at page 2/296 of the hearing bundle

38. Some twin-unit static caravans were stationed on some of the 23 pitches, and occupied.

39. The Council took the view that the operational works were impacting the central green area of the Site in contravention of condition 9 to the 1966 planning permission. Attempts to persuade the Applicant to cease such works in so far as they were affecting the central green area were unsuccessful. The Council therefore brought proceedings in the County Court. An interim injunction was granted on 12 January 2018, which, by consent, became a permanent injunction on 2 October 2018. The Applicant is prevented from stationing, constructing, siting, erecting, placing, or positioning any structure, tent, caravan, or building on the central green area, which is identified by reference to a plan.

40. In the course of these works, between 17 and 23 March 2027, the Applicant unlawfully felled 121 trees in contravention of a Tree Preservation Order made by the Council on 23 January 1979. On 7 December 2017, it was prosecuted for these unlawful acts and fined. On 1 March 2018, the Applicant was further convicted of a second offence of damaging 4 trees.

41. In consequence of the convictions, a duty arose upon the Applicant to re-plant trees under section 206 of the Town and County Planning Act 1990. A formal tree replacement notice to do so ("the TRN") was issued by the Council on 27 January 2021. This notice has been appealed. It is not known when the appeal will be heard. The Tribunal understands that no re-planting has taken place whilst the appeal is outstanding.

42. The Council (a) considered the stationing of the new twin-unit static caravans to be a material change of use, and (b) considered the works referred to in paragraph 36 above to be unlawful development. It therefore issued:

    a. An enforcement notice dated 15 March 2019 ("the Use Notice") requiring the Applicant to cease using the Site for the stationing of trailer caravans that are not designed and constructed for drawing by car;

    b. An enforcement notice also on the 15 March 2019 ("the Operational Development Notice"), requiring the Applicant to:

        i. Re-profile the Site to restore it to its previous level and condition;

        ii. Remove all concrete bases, hardstandings, gabion retaining walls, service connections and lighting columns from the Site;

        iii. Remove the roadway (identified by a hatched area on the attached plan) from the Site;

        iv. Remove all raised wooden decking structures and brick skirtings from the Site.

43. The enforcement notices were considered at a planning enquiry held in January and February 2021. The inspector's decision was issued on 20 August 2021. She found in favour of the Applicant on the Use Notice appeal. Her decision was that

the Site has planning permission for "30 static caravans for permanent residential occupation and 30 static caravans for 12 month holiday occupation".

44. The inspector found against the Applicant on the Operational Development Notice (hereafter "the ODN") appeal. The Applicant appealed to the High Court, which issued its decision on the appeal on 15 July 2022. The Court found against the Applicant. The ODN therefore remained valid. The time for compliance with the ODN expired on 15 Jan 2023. It had not, at the time of our inspection, been complied with.

Evidence

45. The Tribunal heard oral evidence from Mr Anthony Barney and Mr Brian Wallis for the Applicant, and from Mr David Arkle and Mr Fergus McArthur, standing in for Mr Peter White, for the Council.

46. A written statement from Mr Philip Thompson, a planning enforcement officer employed by the Council was accepted as agreed evidence.

47. We summarise the key elements of the evidence in the following paragraphs.

Mr Barney

48. Mr Barney is a director and shareholder in the Applicant. It is part of a larger group called Countrywide Park Homes and Holiday Lodges, which has 18 caravan sites, 12 of which are residential. He has been involved in the running of caravan sites for 50 years.

49. Mr Barney provided information in his witness statement regarding the history of the Site. Prior to its purchase by the Applicant, it had been in the ownership of the George family, who had operated it as a mixed site for static and touring caravans and tents, with 64 pitches being shown on a plan dated February 2015. He rehearsed the history of the Site purchase by the Applicant, the development of the Site in 2017 and 2018 to create the pitches now on the Site, and the tree felling difficulties. He stated that he had never known a council to impose the conditions imposed in the Licence, particularly with regard to the protection of trees, and that he did not believe caravans could cause damage to trees which could make the Site less safe for occupants.

50. Mr Barney believed that the imposition of the ODN meant existing services and structures would need to be removed, only for them to have to be put back so that the three pitches permitted by the Licence could be serviced. One pitch is already occupied, so the works required would impact that occupier greatly.

51. The reduction of 60 pitches (allowed by the planning consents) to 3, permitted by the Licence, was, he said, unreasonable, and greatly impacts the value of the Site. He felt the Council were taking all the steps they possibly could to limit the number of caravans to be stationed on the Site.

52. Mr Barney was cross-examined by Mr Kimblin. He adopted a somewhat aggressive demeanour. He felt he had been led up the garden path by the Council

in connection with what he described as their requirement that he move caravans after his purchase of the Site. He felt that Council had no right to issue a Licence limited to 3 pitches, and they had not followed the Model Conditions. He felt the Council just did not want to issue a licence, and their actions were destroying people's lives. They had no respect for humanity.

53. During the course of the cross-examination, Mr Barney confirmed that the TPO was paramount and must be respected. However, his view was that when considering replacement of trees under the TRN, where the position of a previous tree interfered with a proposed location of a pitch, the tree should be moved rather than the pitch.

54. His view was that trees are not relevant to the site licence. The difficulty, he said was that the trees are being used to control the development of the caravan site. He said that if he had to plant or retain trees, there would be no caravans.

55. On the question of the size of the pitches, Mr Barney accepted that his pitches were a lot bigger than the previous pitches, but he took the view that the size of the pitch made no difference.

56. Photographs of the site prior to any development activity by the Applicant were included in the hearing bundle. The majority of the photographs were taken by Ms Kirstie Apps, the Applicant's solicitor. They show:

    a. The Site was mainly a woodland area. The common green had no trees and was laid to grass;

    b. The caravan pitches were less densely sited. On the eastern part of the southern section of the Site, around 6 caravans were sited, as opposed to the 14 proposed by the Applicant;

    c. In the northern section of the Site, and in the part leading down to the River Derwent, the caravan pitches were haphazardly laid out;

    d. The caravans were simply parked on the grass, rather than being on specially constructed concrete hardstandings;

    e. There was a mix of towing caravans, tents, and larger caravans. Generally, the areas taken up by the caravans (i.e. the pitch sizes) were considerably smaller than those constructed by the Applicant;

    f. Many of the caravans were located close to trees, creating a feel of them being in a wooded setting.

Mr Wallis

57. Mr Wallis is a Chartered Forester, Chartered Environmentalist, Fellow of the Arboricultural Association, and holds the Professional Diplomas in Arboriculture. The Tribunal had the benefit of his witness statement, dated 11 November 2022.

58. In his statement, Mr Wallis identifies that the Site has two clear sections, a more open southerly section, and a more wooded northern section with a sloping steep section descending to the river Derwent. The southern section has been designated as Woodpasture and Parkland on the DEFRA Multi-Agency Geographic Information for the Countryside Interactive Map, with the northern section designated as Deciduous Woodland.

59. A history of tree management on the Site both prior to and following the Applicant's purchase of the Site is provided. Mr Wallis acknowledges the illegal works to the trees during the installation of roads and hard surfaces. He states that a draft Woodland Management Plan, dated November 2018 was produced and was sent to the Council for discussion, but dialogue ceased in March 2019 and those discussions did not progress.

60. Mr Wallis explained that in his view a Woodland TPO is made to protect all trees in the woodland as a whole, but the making of the order should not hinder beneficial woodland management (source – www.gov.uk – Guidance – Tree Preservation Orders and Trees in Conservation Areas). The difficulty of management and enforcement of a Woodland TPO in a caravan site, which requires access roads, bases, buildings, and services is acknowledged as being "extremely difficult". For that reason, Mr Wallis suggested that the TPO should be re-assessed in view of the difficulties of enforcing the TPO.

61. Mr Wallis goes on to discuss the difficulties that will arise in implementing the TRN. His view is that the work required on the southern section will not be possible until the ODN work is complete. He also suggests that some of the locations of the new trees required in the TRN are impractical, in that some trees are required under overhead power lines, some in compacted ground, and some within the canopies of existing trees. Trees require space and light to establish and grow, and his concern is that replanting trees in these locations will result in the failure of the trees. That is why, in his draft Woodland Management Plan submitted to the Council in November 2018, he has proposed alternative locations for the replanting of the trees in the TRN which reduce the risk of failure of the re-planted trees.

62. Mr Wallis believes that where there may be a conflict between any engineering works required to construct a caravan pitch and the continuing viability of trees in that area, engineering solutions can be employed to mitigate the risk of damage to trees. He cited Arboricultural Practice Note 12 Through the Trees to Development and a more recent guidance note 12: The Use of Cellular Confinement Systems Near Trees. He also pointed out that the then Council tree officer had approved such methodologies already in relation to the Site in 2018.

63. Turning to the wording of standard 3 sought by the Council, Mr Wallis made these points:

    a. Standard 3(i) already applied as the Site had been used as a caravan site for many years and had always been subject to the restrictions contained in the TPO;

b. The second sentence in standard 3(i) already applied by virtue of the duty of care imposed by the Occupiers Liability Acts of 1954 and 1987;

c. Standard 3(i) was therefore unnecessary;

d. Mr Wallis considered there was no need for standard 3(ii) as constructing a hardstanding in a position that compromised the integrity of the TPO would be illegal in any event. He referred to discussions with the Council's previous tree office when the operational development works were being carried out which had resulted in an agreed engineering solution to protect the TRA.

e. Regarding standard 3(iii) Mr Wallis's identifies that the minimum planting distances set out are taken from BS 5837:2012. There are, he says, a number of difficulties in using this standard:

   i. Firstly, it is guidance only, not a rule or a specification.

   ii. Secondly, it is up for review and "current thinking" has progressed in that the management of trees set in hard landscapes had been reviewed by a group known as the Trees and Design Action Group, resulting in a number of successful examples of trees being adequately protected when planted in a hard landscaped environment.

   iii. Thirdly, tree stem distances in BS 5837:12 are by reference to trees with a maximum stem diameter of 600mm at 1.5 metres above ground at maturity. Trees which do not grow that size and not considered as covered by the standard. In Mr Wallis's view, only 46 out of the 100 trees required by the TRN would fall within the standard.

   iv. Fourthly, the Council's own TRN does not comply with the requirements of standard 3(iii).

Mr Arkle

64. Mr Arkle is Head of Housing and Growth for the Council and is a Chartered Environmental Health Practitioner. He has been involved with the licensing of caravan sites since 2007, and has led on the licensing aspects of the Site since it was purchased by the Applicant.

65. In his written evidence, Mr Arkle points out that the Site is subject to the County Court injunction over the central green area, the ODN, the Tree Preservation Order, and the TRN. It is also located within the World Heritage Buffer Zone. In considering the conditions he imposed on the Licence, he said that he had used the Council's Model Conditions as a starting point, and then imposed additional conditions which he considered were appropriate and necessary given the individual features of the Site. Those additional conditions needed to take account of the restrictions identified above.

66. On the question of the impact of the ODN on plot locations, Mr Arkle said that if caravans were sited on the area impacted by the ODN, that would expose purchasers of those pitches to enforcement action under the ODN, and should not be permitted. He saw it as his responsibility, when considering what conditions to impose on a caravan site, to protect the interests of the prospective purchasers of pitches by ensuring that they were not exposed to local authority enforcement action arising from the ODN or the TRN.

67. So far as trees were concerned, Mr Arkle's view is that no plots should be located which are in direct conflict with the TRN. He considered that he had statutory authority, through section 5 of the Act, to impose conditions that achieved this outcome. He also pointed out the existence of the TPO, and explained that the TPO also imposed considerable restraint upon the location of pitches, and he was concerned to protect the whole woodland eco-system.

68. Mr Arkle also pointed out that the caravans previously sited on the Site had been single static and touring caravans which took up only one quarter of the space that the hard-standings constructed on the Site by the Applicant now occupied. His view is that the consequence of the larger plot size required for the Applicant's permitted type of caravan, and the constraints of the ODN and the TRN, the Site is extremely unlikely to be able to accommodate as many pitches on it as the Applicant would wish, with particular difficulties locating plots within the more wooded areas of the Site. He believed that if smaller units were proposed, it would be easier to locate them in those areas.

69. Mr Arkle explained that when issuing the Licence, and in the absence of an accurate plan, he had to assess which plots could be permitted under the Licence that did not conflict with the TRN or the works that would be required to comply with the ODN. With these constraints, he was only able to identify three plots (being those identified on the Licence) that he could approve as suitable as pitches. That did not mean he would not permit more than three plots; it meant that the Applicant would need to show that additional plots would not be impacted by the TRN or the ODN. The way he put this point in his statement is:

> "Permitted development rights afforded would have to be exercised in a manner which also secured compliance with the [ODN] and the TRN. The site is only useable in accordance with the enforcement constraints on the site."

70. He pointed out that the TRN cannot be complied with in full until after the ODN works have been completed, adding a further constraint upon his ability to authorise pitches in any area affected by the ODN.

71. Mr Arkle wished to ensure that future purchasers of pitches should not be in any doubt about their legal position should their pitch be located in an area subject to potential enforcement action by the Council. For that reason he wished to impose a condition that required the Council to approve the exact location of pitches. In oral evidence, he re-emphasised this point. In imposing the conditions he had, he was adopting the principle of prevention by making it clear through the conditions what would be required to minimise the risk of future disputes and to protect purchasers of what would be likely to be expensive homes.

72. He wished to impose conditions (i.e. the standards set out in condition 3 of the Licence) to ensure that the layout, construction and management of the safety of the Site safeguarded all occupants and visitors, and to bring to the attention of future owners the significance and importance of the Site.

73. On cross-examination, Mr Arkle accepted that the three plots allowed to remain in the Licence were on land subject to the ODN. He thought it was reasonable for those plots to remain, as he thought re-profiling of the Site as required by the ODN would not in fact affect those plots. On being asked which other plots would not be affected by re-profiling, he accepted that plots 2, 12, 13, 14, and 22 would also not be affected.

74. Mr Arkle was also questioned on which plots were in his view not affected by the TRN. He confirmed that in his view plots 2, 32, 31, 28, 24A, 23A, 12, 13, 14, and 22 were not so affected.

75. However he was not willing to consent to grant a licence for any plots not affected by both the ODN and TRN at this stage because there remained significant uncertainly about the legal position and until the Applicant complied with the ODN it would not be possible to remove that uncertainty. When the uncertainty was removed, the conditions on the licence would be re-assessed.

76. On re-examination, Mr Arkle explained that his concern about uncertainty whilst the ODN compliance works remained uncompleted arose because the ODN requires the removal of the roadway around the edge of the central green, which is the accessway for the plots unaffected by either the ODN, the TRN, or both.

Mr McArthur

77. Mr McArthur is the Council's Trees and Conservation Officer. His assistant Trees and Conservation Officer is Mr Peter White. The Council's witness evidence in the hearing bundle was prepared by Mr White, and the Council intended that Mr White speak to his written evidence at the hearing. However, he was ill, and Mr Kimblin therefore called Mr McArthur who would be able to confirm the expert evidence Mr White offered, and to expand and comment on it in cross-examination. Mr Harwood did not object and the Tribunal was content with this process.

78. However, when commencing his cross-examination, Mr Harwood began by suggesting that as Mr McArthur lived in the nearby village of Whatstandwell, he might have an apparent bias against any development of a caravan site which would be visible from his house or its near environs. Mr Harwood was also concerned that Mr McArthur might have advised local groups opposed to the caravan site and therefore also have a conflict that prevented him from giving truly independent expert evidence.

79. The Tribunal asked Mr Kimblin to explore these issues with Mr McArthur as part of his evidence in chief. Mr McArthur told us that he had lived in Whatstandwell most of his life. The Site is visible across the valley from the village, but he only has an obscured view of it from his own house.

80. Prior to being employed by the Council, Mr McArthur said he had worked for Derbyshire Wildlife Trust. He commenced work for the Council around three years before the hearing, and he had been Acting Trees and Conservation Officer for 18 months, and he was then appointed as the Trees and Conservation Officer about 18 months ago. He had no involvement with any local group opposed to the caravan site. However, he recalled a conversation with a local resident who asked him who the best person to contact was regarding the work being carried out by the Applicant at the Site. Mr McArthur passed on the name of someone at Derbyshire Wildlife Trust.

81. Strictly, Mr White is his deputy, but when the application was made appealing against the conditions on the Licence, he had a conversation with the Council's Legal Officer about whether he should advise the Council. The upshot of the advice was that it would be better for Mr White to deal with the case. Mr White lived out of the area and therefore could not be tainted with the suggestion of apparent bias arising from living locally. Mr McArthur accepted that advice.

82. Thereafter, this was Mr White's case. Mr McArthur had a small role in supporting Mr White. It is Council policy not to attend external meetings alone, and he had attended site on two occasions in a supporting role. He also had a technical role in assisting with the plotting of the location of the trees for the purpose of preparing the TRN.

83. Mr McArthur explained that he had to make objective decisions on behalf of the Council all the time in the course of his employment. He accepted his responsibilities as an expert and believed that he was able to discharge his duties entirely properly, free of any conflict or actual bias.

84. On his qualifications as an expert witness, Mr McArthur confirmed that he held a BSc degree and was a professional member of the Arboricultural Association. He confirmed that he had read Mr White's witness statement and he agreed with it.

85. Mr White's evidence was that he had 10 years of experience working in local authority tree management roles. He has an NCFE qualification from Riseholme College, Lincoln, an HND from Bangor University, has engaged in professional development activity since obtaining these qualifications.

86. In his written evidence, Mr White asserts that the location of the existing hardstandings on the Site is in conflict with many of the proposed tree planting locations required in the TRN, there being only three hardstandings that are not affected by the TRN. In his view, it will not be possible for the Applicant to restore the protected woodland through the TRN if caravans are permitted on the newly constructed hardstandings. He has exhibited photographs to his report which show reduction in the woodland canopy in the W1 area of the Site which he attributes to the illegal felling.

87. Mr White's written statement explains the rationale for the imposition of standard 3(ii), which seeks to protect the integrity of the Woodland TPO. He draws attention to the statement of reasons for the TPO, identifying that "*the*

trees form an important component of the high quality landscape of this part of the Derwent Valley and effectively conceal a long established use of the central part of the woodland as a caravan site. This area of attractive woodland which is included as a Special Landscape Area in the Draft Derbyshire Structure Plan, is clearly visible from the A6 trunk road, residential areas of Whatstandwell and Crich Carr and a number of footpaths of considerable recreational importance."

88. The point Mr White makes is that positioning caravans and any associated hardstandings within the woodland may cause damage to trees replanted under the TRN but also may damage natural regeneration of the woodland. Creating large areas of hardstanding will prevent the formation of a woodland canopy, restrict the environment of newly planted trees, prevent natural regeneration within the woodland, and create an area with individual trees placed around caravans that is not in keeping with the character and appearance of the area.

89. Due to these concerns, Mr White's view is that it is necessary to impose standards in order to protect the trees via the imposition of a Root Protection Area ("RPA"), as has been defined in BS5837:2012 (BSI, 2012), which Mr White says is the industry accepted way of protecting trees. He says that many areas around the Site exist where RPA's no longer extend, because of the illegal felling. It is his view that removing the standards set out in paragraph 3 "threatens the restoration of lost amenity value following the illegal felling of protected trees within the site. Without these conditions the longevity, growth potential and amenity value provision are all threatened by the installation of infrastructure within the site".

90. Mr McArthur confirmed that he agreed with Mr White's evidence.

91. On cross-examination, Mr McArthur was asked about the suitability of adopting BS5837:2012 to restrict positioning of pitches. He accepted it is general guidance only, but he said it was the only guidance available, and he felt it was suitable guidance for the purpose intended.

92. On the question of whether engineering solutions can be employed to allow pitches close to trees, with specific reference to proximity to the young trees that would need to be planted under the TRN, Mr McArthur said that technical solutions may be appropriate in urban environments, and indeed are generally designed for that environment, but they are a compromise. They would reduce the chance of successfully restoring the amenity on the Site provided by trees. His view was that the crucial elements were that there be adequate soil volumes and distance between trees to allow their full potential to be reached. He supported the separation distances proposed by Mr White in standard 3.

Mr Thompson

93. Mr Thompson's agreed evidence covered the Site history which has already been rehearsed in paragraphs 35 – 44 above.

The Appellant's case

94. In its Statement of Case, the Appellant argued (in summary) that the Council's restriction in condition 2, to 3 caravans, is not justified by reason of the ODN or the TPO. That reason is, firstly, a legally irrelevant planning condition, secondly, an unduly burdensome attempt to duplicate controls, and thirdly, entirely misconceived, as the ODN does not affect the future use of the Site.

95. The TPO is a planning consideration and essentially can look after itself. Any damage to tree roots would be dealt with under that regime. The Council should not seek to use the licensing regime to impose controls that derive from other regulatory sources.

96. So far as the restrictions imposed by standard 3 of condition 3 are concerned, the appellant's case is that they:

    a. Do not comply with the national Model Standards or the Council's own Model Standards;

    b. Standard 3(i) is vague, imprecise, subjective and arbitrary;

    c. It is inappropriate to impose standard 3(iii) as a condition as its purpose in the British Standard is for general guidance only, the Council has chosen the maximum distances only, it ignores the fact that in real life trees and hard landscaping can co-exist, with problems occurring only rarely.

97. These arguments were developed in Mr Harwood's skeleton argument and his opening as stated or summarised below.

General principles

98. Conditions may only be attached to a site licence for site licensing purposes and not solely for planning purposes; unlawful conditions would include any designed solely to benefit the visual amenity of other land.

99. 'Unduly burdensome' in an appeal is to be judged against the condition's achievement of site licensing objectives, not any contribution which it makes to planning, environmental or other objectives.

100. A site licence condition may only limit or restrict the PDR under planning law for caravan site licensing objectives, and if those objectives could not be achieved in a way which did not limit or restrict the lawful permitted use rights.

101. Nullifying a planning permission by dramatically reducing the number of caravans is unlawful (see *Esdell Caravan Parks Limited v Hemel Hempstead Rural District Council* [1966] 1 QB 895 ("Esdell")). On the facts of this case, for a site which has planning permission for 60 caravans to be given a licence for only 3, is ridiculous. It was held in Esdell that to restrict a site which could accommodate 78 pitches to a 24-pitch site was unduly burdensome. The same applied in this case.

Duplication of controls

102. Generally, duplication of statutory controls is unnecessarily burdensome. If one regime applies, there is no need for the licensing regime to do so as well. The Site is recognised to be affected by the ODN but it's enforcement does not need to be bolstered by site licence conditions.

103. The approach of the courts and of government policy generally is to discourage the duplication of controls. In *Gateshead MBC v Secretary of State for the Environment* [1995] Env LR 37 Glidewell LJ said that government policy that 'It is not the job of the planning system to duplicate controls which are the statutory responsibility of other bodies' was 'common sense'. *R (Morge) v Hampshire County Council* considered the relationship between the responsibility of a planning authority to have regard to the requirements of the Habitats Directive on species protection and Natural England's role in granting species licences. Lord Brown of Eaton-under-Heywood JSC said at para 29:

> "it was wrong in principle, when Natural England have the primary responsibility for ensuring compliance with the Directive, also to place a substantial burden on the planning authority in effect to police the fulfilment of Natural England's own duty"

104. The National Planning Policy Framework (2021) at paragraph 188 says that planning decisions should not control processes or emissions subject to other regimes and:

> "Equally, where a planning decision has been made on a particular development, the planning issues should not be revisited through the permitting regimes operated by pollution control authorities."

105. The National Planning Practice Guidance advises on planning conditions (ref ID: 21a- 005-20190723):

> *"Conditions requiring compliance with other regulatory requirements (eg Building Regulations, Environmental Protection Act):*
>
> Conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning."

106. Duplication risks inconsistent decisions or approaches, requires an operator to deal with the same matter twice and consents to be amended to catch up with each other. It is also unnecessary: if planning or tree protection addresses a matter it is unnecessary for site licensing to do so for the same reasons or to the same ends. Duplication of controls is unduly burdensome.

Inter-relationship between the ODN, the Licence conditions, and PDR

107. On the question of the inter-relationship between the ODN and PDR, an enforcement notice does not remove permitted development rights for future development. In *Duguid v Secretary of State for the Environment, Transport and the Regions* (2001) 82 P & CR 6, the Court of Appeal held that an enforcement notice which prohibited markets and car parking on land did not need to specifically safeguard the permitted development rights to use the land

for markets on up to 14 days a year. There was no need to specifically preserve the rights in the notice. Keene LJ said in *Challinor v Staffordshire County Council* [2007] EWCA Civ 864, [2008] JPL 392 at para 52:

> "what this line of cases indicates is that an enforcement notice will be interpreted so as not to interfere with permitted development rights under the General Development Permitted Order"

108. The enforcement notice does not remove the ability to carry out development on the site in the future under permitted development rights. In particular works may be carried out in the future which are required by conditions on this site licence, whether in its present or any future amended form.

109. The issue was mentioned but not resolved in *Harrogate Borough Council v Crossland*. The decisive issues in that case were whether a barn was reasonably necessary for the purposes of agriculture (and so within permitted development rights) and whether prior approval under permitted development rights had been granted by default, both issues being resolved against the defendant developer. An enforcement notice had previously taken effect against an earlier barn. The Court considered whether the notice would bite against the subsequent barn even if it had planning permission, thought the position was unclear, but did not need to resolve it (para 49). The issue arose because section 181 of the Town and Country Planning Act 1990 says, in part:

> "(1) Compliance with an enforcement notice, whether in respect of—
>
> (a) the completion, removal or alteration of any buildings or works;
>
> (b) the discontinuance of any use of land; or
>
> (c) any other requirements contained in the notice,
>
> shall not discharge the notice.
>
> (3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4), the provisions of section 178(1) and (2) shall apply accordingly."

110. The point raised being that s 181(3) does not refer to the future development being carried on without planning permission.

111. An enforcement notice does not prohibit development from being carried on at a later time with planning permission:

(i) An enforcement notice is directed against unauthorised development or breaches of condition, not authorised development (which can only be removed by a discontinuance order under s 102 and the payment of compensation);

(ii) The TCPA sets aside an enforcement notice if retrospective planning permission is granted for development carried out whether before or after the issue of the notice (s 180);

(iii) It would be absurd if planning permission granted prospectively was nullified by an enforcement notice whilst retrospective permission was not;

(iv) Section 181(5) creates a summary criminal offence of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, but only if that is done 'without planning permission'. If the notice continued in effect against new development carried out with planning permission then either no offence would be committed but the notice would still be breached, or the more serious either way offence under s 179(2) would be committed by a development with planning permission. Either outcome would be absurd;

(v) Whilst a local planning authority ought to withdraw or relax the requirements of an enforcement notice which is inconsistent with a later planning permission (see *Harrogate* at para 47, 48), that does not resolve the issue. Planning permission might be granted without the authority's agreement, for example on appeal by the Secretary of State or by permitted development rights. If the enforcement notice was still in force regardless, the authority could block development which the Minister had approved. The reference in *Harrogate* to applying for a lawful development certificate (para 48) makes little sense: the outcome still turns on the effect of the notice;

(vi) Consistent with the TCPA as a whole, an enforcement notice is to be interpreted as not preventing development from being carried out in the future in accordance with planning permission.

112. In any event it would be irrational for the Council not to relax the enforcement notice, if required, to enable the carrying out of development which was permitted development due to the caravan site licence.

The conditions imposed in the Licence

<u>Condition 2</u>

113. The imposition of a limit of three caravans is unlawful and unduly burdensome. The Council have confused what is there on Site at present and has to be removed, with what can be provided in the future.

114. Furthermore, requiring a layout to be approved by the Council does not comply with the Model Conditions, which anticipate that it is for the Site operator to determine the positions of the pitches in compliance with the conditions regarding such matters as separation distances, and then to provide the Council with a copy of the plan. Requiring approval in effect duplicates planning controls.

That process is used because if prior approval is required, the operator has no appeal process should it disagree with a decision not to approve a pitch location. It also adds complexity as there is no direct appeal should the Council not give approval. Rather, the Appellant would have to apply for a variation of the condition under section 8 of the Act, creating further proceedings and appeals.

115. It is evident, by reference to the Plan, that in addition to the three plots permitted in the Licence, plots 2, 8, 9, 10, 11, 12, 13, 14, 22, 23A, 28, 30, 31, and 32 could be located on the Site.

Condition 3 Standard 3(i)

116. This does not accord with the Model Standards or the Council's own Model standards.

117. Reference to the TPO in the Licence demonstrates an improper purpose as it is a planning reason. It is also duplication of controls. Safety can be dealt with under the Occupiers Liability Acts. The standard is vague and imprecise. The requirement is arbitrary. Caravans do not damage trees. The requirement is unlawful and unduly burdensome.

Condition 3 Standard 3(ii)

118. Again, this does not comply with the Model Standards. There is no reason for this requirement. The TPO has its own enforcement procedures.

Condition 3 Standard 3(iii)

119. This does not comply with the Model Standards. The table does not reflect real life. Most street trees would be removed or omitted if it did.

120. The table is based on the British Standard, but in that context it is offered as general advice. Here, the Council have gone beyond the purpose of the table and incorrectly applied guidance as if it were a rule. The Appellant is also not aware of it ever being used before as a regulatory standard.

121. The Council have chosen the widest separation distances applying to trees with a stem diameter of over 60cm at 1.5 metres above ground level at maturity.

Conclusion

122. The appeal should be allowed, with the conditions of the Licence being those contended for at paragraph 32 above.

Compensation

123. In neither his skeleton argument, nor in the hearing, did Mr Harwood advance any argument in support of the Appellant's claim for compensation based on breach of the European Convention of Human Rights.

The Respondent's legal argument

124. Mr Kimblin argued that the Council has a wide discretion in relation to conditions, including the power to regulate the position of caravans on the Site. It exercises its discretion in the interests of the public at large. It can take into account the amenity of the Site, both in relation to its preservation and its enhancement. That can include views into the site from elsewhere. It can also take into account the positioning of trees.

125. The inter-relationship between the ODN and PDR has been considered relatively recently in *R (Shave) v. Maidstone Borough Council* [2020] EWHC 1895 where on this topic Holgate J held [53- 54]:

> "*53. Mr. Atkinson referred to Esdell Caravan Parks Limited v Hemel Hempstead Rural District Council [1966] 1 QB 895 for the analysis by the Court of Appeal of the overlapping nature of the controls available under planning legislation and the 1960 Act. But there is no authority, nor is there anything in the legislation, to support the proposition that design (other than overall dimensions) cannot be taken into account and controlled when determining an application for planning permission to allow land to be used for the stationing of "caravans", whether by refusing it or by granting it subject to the imposition of conditions on the permission.*
>
> *54. Although the powers under the two statutory codes overlap to some extent, it is necessary for an authority to be careful about assuming that any aspect of design which could be controlled under planning legislation can or should be left to the 1960 Act. First, as we have seen, s.5(2) of that Act excludes control over the materials used in the construction of a caravan, or in this case holiday lodge. Second, conditions may only be imposed on a site licence within the parameters set by s.5(1) of the 1960 Act. Third, a condition may not be imposed on a site licence purely for planning reasons, for example solely for the benefit of the visual amenities of other land (Babbage v North Norfolk District Council [1990] 59 P & CR 248, 255). Similarly, planning policies would appear to be immaterial to the licensing function under the 1960 Act.*"

126. This highlights that the two codes overlap, but that purely planning matters cannot be controlled by condition on a licence.

127. In *Shave*, the Court was referred to a case called *Esdell*, for which the summary and abstract are as follows:

> "*Summary*
> *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.*
>
> *Abstract*
> *A local authority cancelled the site licence of a caravan site which was an "existing site" within the Caravan Sites and Control of Development Act 1960*

s.13, and granted a new licence which, like the old, limited the maximum number of caravans to twenty-four. The lessee of the site, wishing to accommodate seventy-eight, complained to the justices that the condition was unduly burdensome. The justices dismissed the application on the grounds that it was socially desirable to preserve a balance between permanent houses and caravans, that the area was green belt, the nearest primary school was overcrowded, the nearest shopping centres two miles away, public transport limited, and that more caravans would mean more cars, increased traffic dangers, damage to amenities and noise and make the site more obtrusive. On appeal, held that the question was one of fact for the justices and not of law, and they were right to consider all the above, which were site considerations as well as planning considerations, except the question of the green belt, which was a pure planning consideration and should have been disregarded. The matter was therefore remitted with a direction to disregard it.

Per curiam: Section 5 of the Act enables the local authority to take into account all considerations relevant to the site, its occupants and neighbours, whether or not they are also planning considerations, but no pure planning matters.

Per Lord Denning MR: The planning authority should concern itself with matters of outline only, leaving the rest to the licensing authority. It is doubtful whether an increase from twenty-four to seventy-eight caravans could take place without planning consent, as it might well amount to a change of use. (Hartnell v Minister of Housing and Local Government [1965] A.C. 1134, [1965] 2 WLUK 14 distinguished; James v Secretary of State for Wales [1966] 1 W.L.R. 135, [1965] 7 WLUK 31 considered)."

128. This case points out that there are some matters which are both relevant to licensing and also relevant to planning. The case also holds that any matter which is a pure planning consideration cannot be the subject of a condition on a licence.

129. The siting of caravans on the Site will require operational development and also the protection of amenity and trees, and the safety and welfare of current and future occupants and the public at large. These are licensing considerations and can be regulated and controlled by conditions. A condition may not have a pure planning purpose (for example the protection of the green belt), but there are a wide variety of matters which overlap two regimes. The Appellant's argument that a licence for a site which has planning consent may have nothing to say on matters which go to the number and location of caravans, amenity considerations, and the interaction of the trees with the built infrastructure, is misconceived.

130. Furthermore, the Council is entitled to be particularly careful in the drafting of the Licence having regard to the history of the Appellant's actions.

Discussion

131. Firstly, we deal with the issue of whether there is any bias on the part of Mr McArthur, such that we should regard his evidence with suspicion. We considered that Mr McArthur was an impressive witness, giving clear and lucid

answers to the questions he was asked. He was clearly knowledgeable about his subject. We had no reason to consider that his evidence was anything other than objective. As the Council's tree officer, it was unsurprising that his evidence supported the proposition that the protection of the woodland environment was of critical importance. We have not considered Mr McArthur's evidence to be biased.

132. Secondly, we deal with the Applicant's compensation claim. The Directions envisaged that the principle of payability should be determined at the hearing, with any assessment of quantum to follow. As it turns out, Mr Harwood did not pursue any argument to justify the award of compensation in principle, and accordingly, we make no determination on it. If the Applicant does in fact consider that it is entitled to compensation, we suggest it applies for that issue to be determined within these proceedings within 28 days of this decision, accompanied by an explanation of why the determination sought was not pursued at the hearing.

133. Turning now to the substance of the application to this Tribunal, the issue we have to decide boils down to the number and location of pitches that the Licence should allow.

134. By way of a preliminary point, we firstly consider whether the Council should have sought to fix the position of the pitches in the Licence at all. The Applicant says not; it is abnormal and not in accordance with the Model Conditions.

135. We consider that the Council was entitled to require the precise location of the pitches to be set out in the Licence. Our view is that the Site is a highly sensitive site in an important woodland setting, where the location of pitches within the Site prospectively had a significant impact on the amenity for Site users, and the protection of the environment of the Site. The Council was dealing with an operator with a history of flouting legal constraints, arising from breach of planning consents, breach of planning law on development, and the flouting of laws to protect trees. It is also dealing with an operator who has some difficulties accepting enforcement by the Council of the Applicant's statutory responsibilities, whose relationship with the Council is poor.

136. Our view is that the Council's decision to require the location of pitches to be incorporated into the conditions on the Licence is reasonable, and justifies a decision not to follow the approach in the Model Conditions, because of the particular circumstances appertaining to the Site.

137. So, how many pitches should the Licence permit? In our view, to limit the number of pitches on the Site, which has planning permission for sixty caravans, to three, is an unduly burdensome condition. Our view is that the Applicant should be allowed as many pitches as can properly be located on the Site, up to a maximum of sixty.

138. Under this formulation, the question we then have to focus on is how many pitches can properly be accommodated on the Site given its particular constraints.

139. We accept and agree that there are two significant constraints that we must consider:

    a. The impact of the ODN; and

    b. The impact of the TRN and the TPO.

The impact of the ODN

140. On the first of these constraints, we recognise that Mr Arkle is reluctant to determine where pitches might be located until the ODN is complied with. Our difficulty with this approach is that on an application for a site licence, the Council must consider how the Site will operate in the future. It is only when a licence is granted that the operator then has permission to carry out such development (if any is necessary) to operate the Site in accordance with the terms of the Licence. Thus, a licence is essentially a forward-looking document.

141. In contrast, the ODN is dealing with restoration of the Site arising from past illegal operations.

142. Our view is that Mr Arkle would or should have been able to understand how the Site would be configured following compliance with the ODN when assessing how many pitches could be accommodated, and where they should be located. After all, the ODN says clearly what works are required (see paragraph 36 above).

143. The issue is undoubtedly complicated by the tension between compliance with the ODN and the exercise of PDR that will arise on the grant of a site licence. We do not, however, see any provisions in the Act that permit a delay in determining the number of pitches to be permitted, following an application for a licence, just because there are other works that the operator is required to carry out.

144. We are persuaded by the authorities quoted by Mr Harwood and set out in paragraphs 101 to 106 above that the ODN and the PDR arising from any licence granted can co-exist, even if the co-existence creates tensions. The tensions will be considerable, because the ODN works require re-profiling of the Site and the removal of the road.

145. Given the history of this case, there is a reasonable likelihood that these tensions will result in more litigation. We hope not. If the parties were willing to co-operate by negotiating an engineering solution to the tensions (so that the ODN requirements were fully met, but the Applicant was still able to provide the necessary infrastructure to the Site), that would be a much more pragmatic solution. That is not in our hands.

146. Our role is to determine the appeal against the conditions in the Licence under section 7 of the Act. Enforcement of the ODN, and the exercise of PDR arising from the grant of a caravan site licence are planning matters, not matters for this Tribunal. We have no role, and no jurisdiction, over the way in which the ODN is complied with. Our view expressed in the preceding paragraph should not be considered as authority for the Applicant to be released in any way from full compliance with the ODN.

147. Our view is therefore that the number of pitches to be allowed in the Licence should not be limited by virtue of the constraints of the ODN.

The impact of the TRN and the TPO

148. We turn to consideration of the impact of the TRN and the TPO on the siting of pitches.

149. Our first issue is to address Mr Harwood's submissions concerning duplication of controls. So far as the ODN is concerned, we agree. Our decision above on that element is that the Council, in exercising its controls over the Site through the Licence, does not need to, and should not, be concerned to enforce the ODN. That is a matter for the planning system.

150. We do not agree however in relation to the TPO and the TRN. What the Council has to do, under the Act, is consider what conditions are "necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large."

151. In particular, the Council may impose conditions "for regulating the positions in which caravans are stationed on the land for the purposes of human habitation" and "for securing the taking of any steps for preserving or enhancing the amenity of the land, including the planting and replanting thereof with trees and bushes".

152. These statutory responsibilities are, in our view, not duplications of other controls arising under the legislation governing the protection of trees; they are stand-alone duties upon the Council in determining what conditions to impose on a caravan site licence. It is the Council which has the primary responsibility for protecting the interests of occupiers of the Site, any other persons, and the public at large by imposing conditions on a site licence that preserve and enhance the amenity of the Site. Nobody else has that statutory responsibility. We do not regard the exercise of that oversight by the Council as a duplication of other organisations responsibilities.

153. This being the case, how were the Council to assess the impact of the TPO and the TRN on the location of a pitch, and was it unduly burdensome for it to impose conditions that would require approval for a pitch location?

154. The pitches proposed by the Applicant require substantial engineering works, the installation of a concrete base measuring up to 86sqm and accompanying hard standing. The simple fact is that pitches of that size will not fit in the woodland setting at the Site without damage and disruption to the trees surrounding them.

155. The TPO and the TRN (in whatever form it is finally determined) are not negotiable. We consider that the protection of the woodland environment is of pre-eminent importance. We do not consider that the purposes of the TPO and the TRN can be compromised due to the Applicant's desire to operate a different type of caravan park from that previously run at the Site. We therefore do not agree that it is unduly burdensome for the Council to reject tree protection solutions such as those proposed by Mr Wallis, referred to in paragraph 62 above.

Trees in this woodland setting should be permitted to thrive in their natural habitat without engineering interference with that habitat.

156. The Council has decided that it is necessary or desirable to impose conditions on the Licence to regulate the positions of the caravans and to require for the purposes of preserving or enhancing the amenity of the land (including the planting or replanting of trees). In principle, we agree that the imposition of conditions for these purposes is appropriate and reasonable. It is therefore not unduly burdensome for the Council to do so.

157. The devil is in the detail, though, so we now need to consider whether it was appropriate for the Council to restrict the number of caravans to three. In our view (see paragraph 137 above) it was not appropriate (and was therefore unduly burdensome) to prevent pitches being located in positions where they were not likely to cause damage to the trees or to restrict or prevent the planting and flourishing of the new trees required by the TRN.

158. In his evidence, Mr Arkle accepted that, in addition to the pitches already permitted on the Licence (1, 23, and 24), pitches 23A, 24A, 28, 30, 31, 32, 2, 12, 13, 14, 10, 11, 12 and 22 were not impacted by the TRN. We consider that these pitches should be included in the Licence.

159. We determine that it was unduly burdensome to restrict the Licence to three pitches. We determine that it should be varied so that condition 2 reads:

> "The license site shall be occupied by not more than ~~17 (SEVENTEEN)~~ 18 (EIGHTEEN) caravans shown hatched and black on the site plan"

160. A new site plan will be required showing the ~~17~~ 18 pitches, as numbered on the Plan.

161. The next issue is to consider paragraph 3 of the standards. Mr Wallis (see paragraph 63 above) criticised the inclusion of this standard. However, we do not consider it is unduly burdensome for the Council to impose fairly prescriptive conditions on location and positioning of the pitches in the circumstances of this case, bearing in mind the Applicants history of compliance with legal requirements and the poor relationship that exists between it and the Council.

162. We do not regard the enforceability of the TPO in the normal way as preventative of the inclusion of a condition in the Licence designed to condition the position of caravans, hardstandings, bases, roads, and other infrastructure, and the location of trees, as is set out in standard "3 -Woodland Setting". As previously mentioned, our view is that site licensing enforcement and enforcement of the TPO operate under two different regimes, and different criteria for and consequences of enforcement can apply. We do not consider it is unduly burdensome for the Council to impose a condition that the Applicant accepts it is effectively bound to comply with in any event.

163. We do have a minor issue with standard 3(iii). To the extent that this is based on BS5837:12, we accept some of Mr Wallis's criticisms to the extent that this is only guidance, prospectively subject to review, and that the Council have adopted the

most restrictive interpretation of the table in the standard. On the other hand, we accept Mr McArthur's wish to include a standard and that paragraph 3(iii) is based upon the best available industry wide standard. The Tribunal members are not tree experts and do not intend to redraft paragraph 3(iii), except to the extent that we will vary that paragraph so that the opening three lines read:

> "(iii) To ensure the prevention of damage to hardstanding, bases, roads and infrastructure the following minimum distances for the planting of trees shall normally be applied ..."

164. The point of the amendment is to provide some opportunity for the Applicant to present an argument to the Council on RPA distances based on the particular circumstances of the case at the time.

165. Mr Wallis pointed out that standard 3(iii) could impact the Applicant's compliance with the TRN. Clearly, it is not the intention of the Council that there should be any fetter on full compliance with the TRN. The purpose of limiting the permitted pitches to those that Mr Arkle accepted were not affected by the TRN was to avoid any difficulty when the TRN is complied with. We therefore do not regard this as a risk.

Summary

166. Our determination is that the Licence dated 26 April 2022 be varied, pursuant to section 7 of the Act as follows:

    a. Paragraph 2 is to read:

       "The license site shall be occupied by not more than ~~17 16 (SEVENTEEN SIXTEEN)~~ **18 (EIGHTEEN)** caravans shown hatched and black on the site plan."

    b. The site plan is to be amended so that pitches ~~1, 2, 23, 24, 23A, 24A, 28, 30, 31, 32, 12, 13, 14, 10, 11, 12 and 22~~ **1, 2, 8, 9, 10, 11, 12, 13, 14, 22, 23, 23A, 24, 24A, 28, 30, 31, and 32** shown on the Plan are shown hatched black on the site plan referred to.

    c. The standards referred to in condition 3 shall be varied:

       i. To take into account the amendments agreed between the parties prior to and at the hearing as referred to in this Decision; and

       ii. Shall include standard "3 – Woodland setting" but varied to include the word "normally" between the words "shall" and "be" in line 3 of condition 3(iii).

Appeal

167. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of

issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)

Appendix – The Plan

OS GRID NORTH

Deciduous Woodland

Deciduous Woodland

Mill House

Ancient and Semi Natural Woodland

Ancient and Semi Natural Woodland

Deciduous Woodland

Key

● T1 Tree Position From Tree Replacement Notice (with TRN Number)

24 Possible Caravan Position with Number

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Notes

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Project: Site Condition Appeal

Title: Tribunal Analysis Plan

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