



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/43UE/PHT/2023/0007/AW

Property : Holly Lodge Mobile Home Site

Applicant : Holly Lodge (Kingswood) Limited

Representative : Mr J Clements, solicitor of IBB Law LLP

Respondent : Reigate & Banstead Borough Council

Representative : Ms Pattni of counsel

Type of Application : Appeal against a compliance notice served by a Local Authority under section 9A of the Caravan Sites and Control of Development Act 1960

Tribunal members : Regional Judge Whitney
Mr C Davis FRICS
Mr D Ashby FRICS

Date of hearing : 19 February 2024

Date of decision : 13 May 2024

DECISION

Background

1. The Applicant wishes to appeal against a compliance notice issued by the Respondent dated 10 November 2023. The application was received by the Tribunal on 28 November 2023. The Compliance Notice identifies that the Applicant has failed to comply with Condition 2 (iv)(f) which relates to the heights of fences and hedges which form boundaries between adjacent caravans.
2. Directions were issued on 15 December 2023. Subsequently on 9th January 2024 an application was made to amend the grounds of the appeal and also to appeal the issue of a new site licence dated 14th November 2023. That application was allowed.
3. The parties have substantially complied with the directions and the Tribunal was provided with an electronic hearing bundle consisting of 571 pdf pages. References in [] are to pages within that bundle.

Inspection

4. The Tribunal inspected the site immediately prior to the hearing. Mr Clement and Mr Sargeant attended for the Applicant. Ms Pattni attended with her pupil together with Mesdames Webb, Jackson and Newton from the Respondent council.
5. The site was well established with homes of differing ages. The overall impression was of a well maintained and pleasant site. The entrance was off the A217 Brighton Road. There was a central spinal road with roadways leading off. The Eastern boundary of the site was adjacent to the main road with other boundaries opening on to fields which we were told belonged to Mr Sargeant. We noted that many of the homes were separated by well established hedges and shrubs, some of substantial height. However not all homes had such boundaries. We noted that there were three fire hydrants.

Hearing

6. All parties who attended the Inspection attended at the hearing at Crawley Magistrates Court immediately following the inspection. The hearing was recorded and we set out only the most salient points below.
7. The Tribunal had received skeleton arguments and authorities from both parties representatives.

8. Mr Clement explained that the item at issue was the condition 2(iv)(f) of the site licence dated 1 November 2023 (“the 2023 Licence”) was unduly burdensome in that it required all hedges forming the boundary between pitches should not exceed 1 metre in height. Mr Clement accepted there should be some limit on the height and his client proposed that the height should be said to be not more than 1.8 metres high.
9. Mr Clements took the Tribunal through the statutory provisions and suggested it was open to us to confirm, vary or quash the compliance notice and the conditions to the 2023 Licence. He suggested the site had been in operation for about 70 years. Prior to the licence issued in November 2022 there had been no specific condition attached to hedge heights.
10. Mr Clements sought to rely upon statement of Mr Sargeant [19-24] & [530-532]. Ms Pattni confirmed she accepted these statements.
11. Mr Clement accepted that the Model Standards (see [266]) at 2(iv)(f) provided that hedges forming the boundary should not exceed 1 metre. He suggested this was a significant change and there needed to be a balancing act carried out by the Respondent and they were allowed to depart from the Model Standards. It is for this reason he accepted that there should be some condition attached to the licence.
12. He suggested that there was no evidence that the Respondent had carried out a proper risk assessment. He suggested the Respondent had no regard to the views of the residents on the site and he suggested 100 of the site residents object to the condition being imposed.
13. Mr Clements suggested it was not the local fire service which was driving the change but the respondent council. He referred to an email from the Fire Officer to Laura Webb of the Respondent [306] in which Mr Siddell (the fire officer) simply suggested he had “....no problem...” with the wording of the proposed condition. Mr Clement suggests this is different from the fire officer requiring the same.
14. Mr Clement suggested that such condition was not required given there was in his submission better than average access around the site. He referred to the Fire Risk Assessment dated 23 January 2024 [533] and suggested the site was assessed as the second lowest risk category of “tolerable”. He suggested there was no evidence to support cutting back hedges in place to 1 metre in height.
15. He suggests all the hedges are on residents pitches and so would cause considerable inconvenience to ensure compliance. He suggests that many of the hedges which currently offend this

condition provide privacy between pitches. Further very high costs would be incurred in cutting back such hedges and he referred to an estimate of £65,000 plus vat [203]. Further the contractor suggested that such extensive cutting back should not be undertaken as there is a high risk it will lead to the hedges dying.

16. In conclusion Mr Clements contended that a height condition of 1.8 metres would be reasonable.
17. Ms Pattni called Laura Webb. She confirmed her statement was true and accurate [241- 528].
18. Mr Clement cross examined Ms Webb.
19. She was asked about 3 Arches, a site where this condition was not applied. She explained it was smaller only having 25 homes and had very few conifers being mostly concrete.
20. Ms Webb agreed the email from Mr Siddell contained nothing suggesting such a condition [254].
21. Ms Webb suggested that in 2022 the respondent undertook a review of all old conditions. Given no specific height is currently referred to in the conditions the Council sought to apply fair conditions on all their sites.
22. Ms Pattni confirmed the only issue was as to the condition relating to height. Further the Respondent accepted this was an appeal of a new licence as well as in connection with the compliance notice .
23. Ms Pattni submitted that the burden of proof was on the Applicant to show that the condition was unduly burdensome. She suggested that what the fire officer had said in his emails was sufficient to justify the condition. Further in her submissions it was not mandatory for the Council to consult with all residents over such a change.
24. The Council had looked at the specific site and its facts. She suggested there was no sound evidential basis for departing from the Model Standards. Further the fact that Mr Siddell had not gone into detail was neither here nor there. Further she suggested there was an absence of evidence that a height of 1.8 metres would be safe and the fire safety assessments do not in her submission help.
25. Further Ms Pattni referred to the fact that not all homes were separated by high hedges. Also on the costings it was not clear how much of the cost related to ensuring that hedges were not reducing the agreed gap with the homes. Mr Sargeant had produced one quote only. In her submission the costs are not relevant.

26. In response Mr Clements submitted that the height was not recommended by Mr Siddell. It was simply presented to him and he said this would be acceptable to him. He submitted there had been no previous complaint and the Fire Risk Assessments for the site did not raise the height of hedges as a concern.

Decision

27. We thank all parties for their helpful submissions and evidence. We have considered and taken account of both skeleton arguments and the authorities referred to together with the bundle of documents.
28. Before addressing the matter before us we must express our frustration at the redaction of documents by the Respondent. Generally speaking if a Council is relying on documents they should not be redacted. By way of example the emails from Mr Sidell have his name redacted from his emails and yet we are told they are from him. This is nonsensical and does not assist the Tribunal in properly understanding evidence before it and could be to the detriment of the Council's case. In this case little turned on it as it was clear whom emails etc were from but it is an unwelcome practice that should not be encouraged.
29. It is unfortunate that Mr Sargeant failed to appeal the licence when first issued on November 2022. We are satisfied this was sent to him and it is for Mr Sargeant and the Applicant Company to ensure they have in place systems for dealing with the same.
30. This being said all parties appeared to accept we could and should consider the appeal of the condition on the basis of the 2023 Licence and also in so far the Compliance Notice dated 10th November 2023 was relevant.
31. A single issue existed which was whether we should accept the height referred to within Condition 2(iv)(f) of the 2023 Licence should state 1 metre or whether we should submit a different height, the Applicant proposing 1.8 metres.
32. Ms Webb explained the background to the Respondent looking at the terms of licences on sites within the Borough. It certainly seems that these had remained the same for some years and had not taken account of developments over the years and the Model Standards (copies of which were within the bundle).
33. Ms Webb had visited the sites with Mr Siddell a fire officer. We note Mr Siddell stated [254] *"That if I was scoring was the best...."* In relation to his assessment of Holly Lodge as a site. This accords with the Tribunals observations of the site at the Inspection.

34. Ms Webb suggested it was Mr Siddell who had wanted the height restriction to be included. We find as a matter of fact that no evidence of such was before us. Mr Siddell was happy to accept the condition but he did not suggest the same.
35. It appears the condition has been used simply because it is within the Model Conditions. We do accept the evidence of Mr Sargeant that if he was required or he was forced to require home owners to reduce hedge height to 1 metre that many of the larger hedges and dividing plants around the site would be adversely affected. This is supported by his contractor and in our expert judgment is a matter of commonsense. Potentially reducing long established hedges and conifers by half of their existing height or more would have a detrimental effect.
36. This is a long established site that is in our judgment well cared for and maintained. That was apparent from the inspection. It is clear many of the hedges, conifers and shrubs we observed will have been in situ for very many years. Whilst we had no evidence as to causes and effects reduction in height may cause we are satisfied that significant reductions in height as envisaged by the condition may have a negative impact on those occupying the pitches.
37. We note the degree of separation from the home is not challenged. This would of itself assist in helping to reduce the spread of fire. We have also considered carefully the fire risk assessments.
38. Overall we find that the condition requiring all hedges to not exceed 1 metre in height is overly burdensome upon the site owner.
39. We have considered whether we should impose a condition. All parties agreed the imposition of a height condition was reasonable. We are satisfied that the condition should be varied so that the height is 1.8metres and not 1 metre.
40. What follows is we find the Compliance Notice should be revoked and the Licence condition amended a set out in paragraph 39 above.

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 by email 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.