UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES -- site licensing – Caravan Sites and Control of Development Act 1960 ss. 5, 7 and 8 – site owner's appeal against retention in a site licence of a condition preventing any material change to the layout of the site without prior written consent of the local authority – whether the imposition of such a condition ultra vires – whether the imposition of such a condition unduly burdensome

IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

BETWEEN:

WYLDECREST PARKS (MANAGEMENT) LTD

Appellant

and

GUILDFORD BOROUGH COUNCIL

Respondent

Re: Surrey Hills Park,
Guildford Road,
Normandy,
Surrey.
GU3 2AZ

His Honour Judge Huskinson

Royal Courts of Justice, Strand, London WC2A 2LL
31 October 2017

Jon Payne, instructed by LSL solicitors for the appellant
Peter Savill, instructed by Guildford Borough Council for the respondent

The following cases are referred to in this decision:

Worcestershire County Council v Tongue [2004] EWCA Civ 140
Guildford Borough Council v Hein [2005] EWCA Civ 979
Shelfside (Holdings) Limited v Vale of White Horse District Council [2016] UKUT 0400 (LC)

DECISION

Introduction

1. This is an appeal from the decision of the First-Tier Tribunal Property Chamber (Residential Property) (the F-TT) dated 8 March 2017 in which the F-TT considered an appeal brought by the appellant to vary a site licence condition under section 8 of the Caravan Sites and Control of Development Act 1960. The F-TT rejected the appellant's argument that the condition in dispute (condition 3.1 of the site licence) was ultra vires. The F-TT also decided that condition 3.1 should not be amended in the manner contended for by the appellant, but instead concluded that the condition could remain as drafted (and as contended for by the respondent) provided that certain words were added thereto.

2. The site licence in question is a licence which has been issued under the 1960 Act by the respondent to the appellant in respect of the site known as Surrey Hills Park, Normandy, Guildford GU3 2AZ. I understand the licence was issued (including the disputed condition 3.1) in about 2013 and no appeal was made against the condition at that stage. However in 2016 the appellant applied to the respondent for the deletion or amendment of condition 3.1 and (the respondent having refused such deletion or amendment) the appellant on 11 October 2016 appealed to the F-TT pursuant to section 8 of the 1960 Act against the respondent's refusal.

3. Condition 3.1 is in the following terms:

> "3.1 No material change to the layout of the site shall be made without the prior written consent of the Head of Health and Community Care. Such consent will not be unreasonably withheld."

4. The substance of the appellant's case before the F-TT was that this condition was (a) ultra vires alternatively (b) unduly burdensome within the meaning of section 7 (1) of the 1960 Act and in consequence could not be allowed to remain in the site licence.

5. The F-TT inspected the site immediately prior to the hearing. They then conducted a hearing at which no oral evidence was received, but certain written evidence was before the F-TT. The matter was then dealt with by way of submissions on the basis of that evidence.

6. In summary the F-TT reached the following conclusions:

> (1) Section 5 (1) of the 1960 Act makes it clear that restrictions contained in licence conditions must be necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other person, or of the public at large. The subsection then goes on to list certain

particular matters in paragraphs (a) to (f), but those were non-exhaustive examples of subject areas that conditions may address.

(2) The site was a very well-developed site such that it was not self-evident that further material changes to the layout could be effected without a potential impact on "the interests of persons dwelling thereon in caravans", even if they do not breach another condition of the site licence.

(3) The F-TT could not accept the appellant's argument that, in the event that the appellant considered consent was being unreasonably withheld to a proposed material change in the layout of the site, the only remedy for the appellant would be by way of judicial review. The F-TT considered circumstances which could enable the respondent's position to be challenged at tribunal level (assuming the respondent elected to issue a compliance notice which was appealed rather than moving straight to a prosecution).

(4) In paragraphs 20 and 21 of their decision the F-TT said as follows:

> "20. It is however in neither side's interests that compliance notices should be issued, and then appealed, as a common practice. If works have been undertaken which are found by the Tribunal to breach licence conditions, even if only a breach of condition 3.1 (no approval), the required remedy may consist of reinstatement. This poses a practical problem and a financial cost to Wyldecrest. It may also, and no less significantly, cause upheaval and possible expense (for example if a home had to be moved) to residents.
>
> 21. It is our view that a fair prior approval procedure for material changes of layout is a reasonable licence condition because it should promote cooperation and transparency between the parties, and greatly reduce the likelihood of enforcement action with its attendant risks and expense, while ensuring that changes are not made which are in breach of existing conditions and/or are reasonably found to be contrary to the interests of those mentioned in section 5(1) of the Act."

(5) There was nothing in the Model Standards or the Best Practice Guide which prevented imposition of a fair prior approval procedure for changes in site layout, although such a procedure would not always be appropriate or deemed necessary.

(6) In the present case at the Surrey Hills site there is a well-established site and no obvious unutilised land. Also there was a history of non-compliance with site licence conditions, as revealed by the findings of a previous Tribunal and by the correspondence before the F-TT regarding certain changes made in 2016 without prior approval. Those factors supported the imposition of a fair prior approval procedure.

(7) There was no evidence that it would be over-burdensome to require that consent be given by the Head of Health and Community Care (it was observed that the post was two managerial levels above the level of the officer who would actually deal with the request for approval).

(8) There was no evidence that the respondent had been guilty of delay when dealing with applications under condition 3.1 or that the appellant had been prejudiced by any such delay. However the F-TT considered that a fair approval process must include a specific time-frame, as a reasonable procedural safeguard, which would provide the appellant with some certainty and assist with its forward planning. For that reason the F-TT concluded that condition 3.1 should be varied.

7. For those reasons the F-TT concluded that condition 3.1 should remain in the site licence but should be varied by the addition of the following words:

> "If a decision whether to grant consent is not made by the expiration of 28 days from the date on which the request for consent is received, the site owner may by written notice require that a decision is made within a further 14 days from the date of that notice. In default the Head of Health and Community Care shall be deemed to have withheld consent."

8. The F-TT concluded that the effect of this addition to clause 3.1 would place a clear expectation on the respondent that a decision will normally be made within 28 days; it would provide an incentive for the appellant to ensure that any application for consent was accompanied by all relevant information; and it would strike the appropriate balance between the rights of the appellant and the responsibilities of the respondent and the interests of the residents at the site.

The legislative provisions

9. Sections 5, 7 and 8 of the Caravan Sites and Control of Development Act 1960 as amended, so far as presently relevant, provide as follows:

> **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.

(2A) Where the Regulatory Reform (Fire Safety) Order 2005 applies to the land, no condition is to be attached to a site licence in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order.

(3) ……
(3A) ….
(3B) ….
(3C) …..
(4) …..

5) For the avoidance of doubt, it is hereby declared that a condition attached to a site licence shall be valid notwithstanding that it can be complied with only by the carrying out of works which the holder of the site licence is not entitled to carry out as of right.

(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.

(6A) ….
(7) ……
(8) ….

7.— Appeal to magistrates' court against conditions attached to site licence.

(1) Any person aggrieved by any condition (other than the condition referred to in subsection (3) of section five of this Act) subject to which a site licence has been issued to him in respect of any land may, within twenty-eight days of the date on which the licence was so issued, appeal to a magistrates' court or, in a case relating to land in England, to [the tribunal]; and the court or tribunal, if satisfied (having regard amongst other things to any standards which may have been specified by the Minister under subsection (6) of the said section five) that the condition is unduly burdensome, may vary or cancel the condition.

(1A) In a case where [the tribunal] varies or cancels a condition under subsection (1), it may also attach a new condition to the licence in question.
(2) …..

8.— Power of local authority to alter conditions attached to site licences.

(1) The conditions attached to a site licence may be altered at any time (whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods) by the local authority, but before exercising their powers under this subsection the local authority shall afford to the holder of the licence an opportunity of making representations.

(1A) ….
(1B) …..

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

(3) ….

(4) In exercising the powers conferred upon them by subsection (1) and subsection (2) of this section respectively, a local authority [, a magistrates' court and [the tribunal] shall have regard amongst other things to any standards which may have been specified by the Minister under subsection (6) of section five of this Act.

(5) …..
(5A) ….

10. Model standards have been issued under section 5(6) in respect of caravan sites in England entitled Model Standards 1989: Permanent Residential Mobile Home Sites. The introduction makes it clear that in deciding what (if any) conditions to attach to a site licence the local authority shall have regard to any standard so

specified; that the model standards represent those standards normally to be expected as a matter of good practice on caravan sites; and that they should 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.

11. The model standards are contained within 18 numbered paragraphs and deal with the boundaries and plan of the site; density spacing and parking between caravans; roads gateways and overhead cables; footpaths and pavements; lighting; bases; maintenance of common areas including grass vegetation and trees; supply and storage of gas et cetera; electrical installation; water supply; drainage and sanitation; domestic refuse storage and disposal; communal vehicular parking; communal recreation space; notices and information; flooding; and various standards dealing with matters relating to fire.

12. There is not contained within the model standards a condition in the form of paragraph 3.1 in the present site licence. There is one model standard which contains provision contemplating the obtaining of an approval from the local authority, namely standard 11 (ii) which provides:

> "There shall be satisfactory provision for foul and wastewater drainage either by connection to a public sewer or sewage treatment works or by discharge to a properly constructed septic tank or cesspool approved by the local authority."

The appellant's submissions

13. On behalf of the appellant Mr Payne advanced the following submissions.

14. Condition 3.1 as originally appearing in the site licence (and in its form as amended by the F-TT) is ultra vires, unreasonable, disproportionate and unduly burdensome.

15. These arguments could be separated into the following two points, namely

(i) The respondent did not have power to impose condition 3.1 (in its original or amended form) within the site licence having regard to the proper construction of the statutory provisions. It necessarily followed that the F-TT could not properly uphold such a condition. The imposition of such a condition was ultra vires and the Upper Tribunal, upon so finding, must strike out the condition from the site licence.

(ii) Alternatively if point (i) is wrong such that there is power to impose such a condition in the site licence, the imposition of such a condition is unduly burdensome unreasonable and disproportionate and therefore the condition should not have been imposed by the respondent and should have been removed by the F-TT.

16. As regards point (i), namely ultra vires, the statute and the model standards did not envisage any process requiring the application for and obtaining of any consent as part of the site licence conditions. They do not contemplate any route of appeal against a refusal of permission. It is not satisfactory to argue that the appellant, if refused permission for a proposed material change of layout, could carry on regardless and await a compliance notice against which it could appeal. If the appellant so acted it would be facing the possibility of immediate prosecution under section 9 (i.e. without there first being a compliance notice).

17. As regards paragraph 11(ii) of the model standards (see paragraph 12 above) Mr Payne accepted that that did make reference to an approval of "the local authority" but he submitted that that was a reference not to the licensing local authority (namely the respondent) but somebody responsible for drainage/sewerage matters such as Ofwat or the Environment Agency.

18. Accordingly the imposition of such a condition, requiring the application for and obtaining of consent, constitutes an attempt by the respondent to extend the law beyond that which was envisaged by Parliament. Reference was made to *Worcestershire County Council v Tongue* [2004] EWCA Civ 140 and *Guildford Borough Council v Hein* [2005] EWCA Civ 979.

19. Mr Payne drew attention to the final bullet point in paragraph 4.8 (which deals with drafting site licence conditions) in the best practice guide issued in March 2015 which reads:

> "Conditions should include notifying the local authority of changes to the site, for example in respect of bringing new homes onto the site or where alterations to the site layout are proposed or made. This allows officers to intervene if necessary and deal with issues at an early stage."

What therefore was contemplated was a condition requiring notification (thereby allowing intervention if necessary) rather than the obtaining of a consent before any action could properly be taken at all by the site owner. Throughout the best practice guide there were various provisions contemplating notification to the local authority of certain matters, rather than an application for consent.

20. As all that was contemplated in the model standards and best practice guide was notification, it was ultra vires for the respondent to introduce a requirement for application for prior consent before any material change of layout was made. There was a concern also that (in times where finances were tight) a local authority might introduce a charge for the making of such an application for consent.

21. In summary the respondent, as a local authority, is a creature of statute and cannot (as Mr Payne put it) make up new rules as it goes along. The imposition of a condition must be for one of the purposes recognised in section 5, for instance for protection of the interests of persons dwelling on the site in caravans, rather than for the convenience of the respondent as local authority.

22. As regards point (ii) above (unduly burdensome et cetera) Mr Payne submitted that a condition which was unreasonable or disproportionate could properly be described as unduly burdensome. He called attention to the other extensive conditions contained in the site licence. In summary he submitted that as regards any hypothetical proposed material change of layout at the site either:

> (1) such a change would contravene one of the other conditions in the site licence – in which case condition 3.1 is not needed and the burden thereby imposed is therefore an undue one and the condition cannot reasonably be included; or
>
> (2) such a change would not contravene one of the other conditions in the site licence – in which case once again condition 3.1 is not needed (because the proposed change of layout is unobjectionable) and the burden thereby imposed is therefore an undue one and the condition cannot reasonably be included.

23. Mr Payne submitted that, if an application for consent to a material change of layout was made and was refused (or not granted) in circumstances where the appellant considered consent could not reasonably be withheld, then the only realistic remedy for the appellant would be by way of judicial review proceedings which would be expensive and lengthy. Alternatively if the matter proceeded to a prosecution in the magistrates court (or was in some way made the subject of a dispute before the F-TT) then once again substantial costs might be incurred which it would be very difficult for the appellant to recover. There was a further potential course of action for the site owner, namely to apply for a fresh site licence, but this would be unduly burdensome and expensive and could create an accumulation in the number of licences that were in force for the site thereby creating confusion in compliance and enforcement.

24. The potential delays and expenses for the appellant caused by condition 3.1 (in its original or amended form) constituted a substantial burden for the appellant and produced no significant benefit. The condition was unduly burdensome.

25. As regards the F-TT's observation that the site at Surrey Hills Park was well developed, Mr Payne accepted that this was so. As regards the F-TT's observation regarding a perceived history of non-compliance by the appellant with licence conditions at the site, Mr Payne recognised that there had been a previous case in 2016 before the F-TT. However he submitted that any history of non-compliance was irrelevant. He also pointed out that when the disputed condition 3.1 was originally imposed, namely in 2013, this was before the non-compliance issues in 2016.

26. Mr Payne made reference to Hansard recording the statement made in Parliament by Mr Brooke, Minister of Housing and Local Government including the observation that: "If, therefore, the site operator considers that the local authority has departed unreasonably from the model code, it will be a ground of appeal to the court that the authority has failed to have regard to the standards". The standards were the model standards to be specified under the Act.

27. The appellant holds 58 licences for sites throughout the country. A condition in the form of the present condition 3.1 does not appear on any other licence issued to the appellant outside the respondent's district (save for one licence which is the subject of consultation for removal).

28. Mr Payne suggested that to make condition 3.1 compliant with the model standards and guidance the following wording should be substituted for condition 3.1 namely:

> "No material change to the layout of the site shall be made without at least 21 days prior written notification being given to the local authority"

This would enable the respondent to be kept up to date with changes that might occur on the site and would be consistent with the scheme envisaged for conditions by the statute and the model standards and guidance issued thereunder.

The respondent's submissions

29. On behalf of the respondent Mr Savill advanced the following arguments.

30. As regards the appellant's contention that the imposition of condition 3.1 was ultra vires, he submitted that section 5 of the 1960 Act gave a very wide discretion to local authorities as to the nature of conditions that may be imposed upon site licenses, subject to the local authority thinking it necessary or desirable to impose such a condition on the occupier of the land in the interests of persons dwelling thereon in caravans, or any other class of persons (which Mr Savill submitted could include the respondent as local authority), or of the public at large. The areas which are focused on within subparagraph (a) to (f) were merely illustrative not exhaustive.

31. The respondent (and the Tribunal) must have regard to the model standards, but the absence of a parallel condition in those standards was in no way determinative of the question of vires.

32. It can in any event been noted that one of the standards set forth, namely that in paragraph 11(ii) (see paragraph 12 above) contemplated the giving of an approval by the local authority in the event that the relevant drainage was to be connected not to a public sewer or sewage treatment works but instead to a properly constructed septic tank or cesspool "approved by the local authority".

33. There is nothing in the model standards or the statute to prohibit a condition in the form of condition 3.1 (in its original or amended form). It is clear from the introduction to the model standards that the standards are matters to which the local authority should have regard when deciding upon site licence conditions, but they are not required to follow them. Paragraph 15 in the explanatory notes makes clear that the standards are not intended to be the "ideal" and that local authorities may in the circumstances set more demanding ones if that can be justified.

34. Many of the paragraphs in the model standards referred to certain items being required to be suitable or in good condition et cetera. This shows an objective standard which is required to be met throughout the conditions. There may be a disagreement between the site owner and the local authority as to whether they are met. There is therefore always potential for a factual dispute between the parties. There is nothing unlawful requiring not merely notification of a proposed material change of layout but also the prior obtaining of approval.

35. Accordingly the imposition of condition 3.1 is not ultra vires.

36. As regards the appellant's argument that the condition should be struck out from the site licence as being unduly burdensome it was necessary to notice first the way in which this challenge was being raised before the Upper Tribunal. The present appeal was proceeding by way of review. It was not for the Upper Tribunal to start afresh and to consider for itself whether on the merits condition 3.1 was unduly burdensome or was for some other reason (apart from ultra vires) objectionable. Instead it was for the Upper Tribunal to consider the F-TT's decision and to examine whether the F-TT had gone wrong in principle or left material factors out of account or taken into account irrelevant factors or whether its balancing of material factors led it to a result which was clearly wrong. The Upper Tribunal was invited to agree with the F-TT upon the merits of condition 3.1, but even if it did not agree it should not substitute its own decision for that of the F-TT unless the challenge could be brought within the foregoing principles.

37. The history of the site and the level to which it was developed and the fact there had been prior breaches were relevant to the determination of the present case. The F-TT had correctly taken them into consideration. Paragraphs 20 and 21 of the F-TT's decision were important as they recognise that it is in nobody's interest (site owner, local authority or caravan occupier) for matters to get to the stage of a compliance notice or a prosecution. The decision of the F-TT was (correctly) fact specific.

38. It is in everyone's interest that there should be a condition which prevents an impermissible material change in the layout being made in the first place rather than conditions only being in place which seek to undo any mischief after it has occurred. The purpose of condition 3.1 is to enable the respondent to focus on what is to be done before it is done so as to enable it to intervene earlier if appropriate, rather than merely prosecute/unscramble the position ex post facto. Difficulties can arise for a

local authority when trying to reinstate a site after a breach as there may be challenges brought to its actions, see for instance *Shelfside (Holdings) Limited v Vale of White Horse District Council* [2016] UKUT 0400 (LC) at paragraph 63.

39. There was in fact little difference in substance between a prior notification requirement for material changes of layout and the prior approval requirement for such changes.

40. As regards the appellant's anxiety that, if consent to a proposed material change of layout was refused, the appellant's only remedy would be by way of judicial review Mr Savill said that an alternative approach for the appellant could be as follows. The appellant could apply to the respondent for an amendment to the terms of the licence to introduce a proviso into condition 3.1 to the effect that the proposed change of layout (for instance as per a specified plan) was for the avoidance of doubt permitted. If such a proposed change was refused (as presumably it would be because the respondent would be contending it was reasonably withholding its consent to the proposed change of layout) then the appellant could appeal to the F-TT under section 8(2) of the Act and thereby invoke the comparatively swift and inexpensive remedy of challenging the matter in that forum.

41. The F-TT had reached a decision which it was entitled to reach for the reasons it gave. Its decision should not be changed by the Upper Tribunal.

Discussion

42. I consider first the appellant's argument that the respondent acted ultra vires in imposing condition 3.1 and that the F-TT in consequence was bound to strike that condition out of the site licence.

43. Section 5 of the 1960 Act provides that a site licence issued by a local authority may be 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". There was no evidence before the F-TT to suggest that the respondent did not think it necessary or desirable to impose conditions which included condition 3.1 in the interests of the class of persons et cetera there specified. This is not a case where it has been suggested that there is evidence that the condition was imposed for some improper motive, such as purely for the respondent's own administrative convenience or as a potential money raising scheme for the local authority rather than in the interests of the persons contemplated in section 5(1).

44. The question therefore arises as to whether it was within the powers of the respondent to think that condition 3.1 was necessary or desirable to be imposed in the interests of the persons contemplated in section 5(1) and for the respondent in consequence to impose that condition.

45. The opening words of section 5(1) are wide. That is made all the clearer by the fact that subparagraphs (a) to (f) are introduced by the words "but without prejudice to the generality of the foregoing" – and there then follows a list of topics in respect of which it is contemplated that conditions may be imposed. (It may be noted that paragraph (c) contemplates conditions for regulating the positions in which caravans are stationed, which if anything points away from rather than towards condition 3.1 being ultra vires). Also section 5(6) provides that, if model standards are specified, a local authority shall "have regard to any standards so specified". This further emphasises the width of the local authority's powers as regards the imposition of conditions. It may further be noted that section 5 specifies certain types of condition which are not permitted to be imposed, see for instance section 5(2). This express prohibition on certain types of condition points against the argument raised by the appellant that it should be inferred from the legislation that a condition such as condition 3.1 (requiring an application for consent from the local authority) is impermissible.

46. Model standards have been specified pursuant to the statute. These model standards include paragraph 11(ii) which is set out in paragraph 12 above. If it was ultra vires to impose a condition that required any approval of the local authority then this model condition as contemplated in paragraph 11(ii) would also presumably be ultra vires. That would be a surprising situation. I am unable to accept Mr Payne's argument that the reference in paragraph 11 (ii) to the septic tank or cesspool being approved "by the local authority" is a reference to an approval from somebody specifically responsible for sewerage/drainage/water matters (Mr Payne suggested Ofwat or the Environment Agency). I consider the expression "the local authority" in this paragraph bears the same meaning as the same words do when they appear elsewhere in the standards, for instance in paragraph 1 (iii), which is plainly a reference to the local authority responsible for granting the licence (here the respondent).

47. It may further be noted that the statute provides for a method of challenge by a site owner in respect of a condition, being a challenge on the merits which can be raised first with the local authority and then on appeal to the F-TT. The presence of this method of challenge in my view points against any justification for construing the condition making power in section 5 narrowly so as to disentitle a local authority from imposing any condition which gave it some extra control over the relevant site (i.e. extra control by requiring an application for consent to do something before it was done). The scheme of the statute enables any such condition to be challenged on the merits.

48. I do not consider there is any relevance to the present case in the two decisions referred to by Mr Payne (see paragraph 18 above). Those cases are concerned with the extent to which the civil courts, upon an application by a local authority, can assist in the enforcement of the criminal law. They are not concerned with (and have no relevance to) the powers of a local authority when deciding upon licence conditions under the 1960 Act.

49. I reject Mr Payne's argument that the imposition of condition 3.1 was ultra vires the respondent.

50. I turn now to the appeal against the F-TT's decision upon the merits in respect of condition 3.1.

51. Section 7 of the Act deals with an appeal against a condition in a site licence which can be made within 28 days of the date when the licence was issued. This section does not apply in the present case because the licence was issued in 2013. It may however be noted that on an appeal under section 7 the F-TT, if satisfied (having regard amongst other things to any model standards) that the condition is "unduly burdensome", may vary or cancel the condition.

52. The present case concerns section 8 which applies (so far as presently relevant) because the holder of the site licence, namely the appellant, being aggrieved by the refusal of the respondent of an application for alteration of the site licence conditions (by the deletion of condition 3.1) is given the right under section 8(2) to appeal to the F-TT. The F-TT on such an appeal is required to have regard amongst other things to any model standards which have been specified. The statute provides that the F-TT may, if it allows the appeal, give to the local authority such directions as may be necessary to give effect to its decision. It may be noted that, in contrast to section 7, section 8 does not make reference to the F-TT having power to allow the appeal if satisfied "that the condition is unduly burdensome". However in the present case both parties have proceeded upon the basis that on an appeal under section 8 this question of "unduly burdensome" is equally a question as it is under section 7. I agree that the parties are correct in proceeding on this basis. Were that not so the following strange position could be reached, namely if a licence was issued subject to a condition which the site owner objected to they could appeal to the F-TT under section 7 and the test would be "unduly burdensome". Supposing this challenge failed. There would then be the possibility of a subsequent application under section 8 for an alteration of the conditions so as to remove the relevant condition. It would be remarkable if a different test was to be relevant upon this subsequent challenge as compared with the test which was relevant upon the original challenge.

53. The F-TT considered whether the condition was unduly burdensome (in fact the expression used was "over-burdensome") and decided that it was not.

54. The present appeal to the Upper Tribunal is an appeal by way of review. I agree the appropriate approach for this Tribunal to adopt is that argued for by Mr Savill (see paragraph 36 above). My task is to review the decision of the F-TT rather than seek to come to a completely fresh decision of my own.

55. The F-TT was required, upon this appeal under section 8, to have regard amongst other things to the model standards. The F-TT did so.

56. The F-TT was entitled to conclude that there were other avenues open to the appellant, if consent was refused under condition 3.1, apart from judicial review. The F-TT correctly observed that if the appellant considered the respondent was unreasonably withholding consent to a proposed material change of layout then the appellant had the option of going ahead anyway. It is well-established in landlord and tenant law that where there is a covenant against doing something (for instance assigning a lease) without consent where such consent is not unreasonably to be withheld, then if the circumstances are that consent is being unreasonably withheld the tenant is allowed to assign such lease without consent. Similarly here. If the respondent was unreasonably withholding consent for a proposed material change of layout there would be no breach of the site licence if the appellant went ahead and made the material change of layout without the respondent's consent. There is a further reason why the appellant is incorrect in saying that, in the event of refusal of consent, its only remedy would be by way of judicial review. I do not make any finding as to whether judicial review would be open to the appellant. I do however conclude that the appellant could bring the matter before the F-TT in the manner described in paragraph 40 above.

57. The most powerful point advanced by Mr Payne was his two-pronged argument as described in paragraph 22 above. However this argument was answered by Mr Savill through his reference to the F-TT's decision in paragraphs 21 and 22 which he adopted and commended to me. He submitted the F-TT was entitled to conclude it was much better for everyone (site owner, local authority and especially the occupier of a caravan) that any problem regarding whether a proposed material change of layout should be permitted was sorted out in advance, rather than the respondent having to seek to undo a change which had already been made. The F-TT was entitled so to conclude in these paragraphs.

58. The F-TT correctly concluded that a condition in the form of condition 3.1 would not always be necessary. The F-TT was also correct in concluding that the respondent as local authority (and the F-TT on appeal) could and should take into consideration the particular facts of the case. In the present case the F-TT inspected the site, observed that it was very well developed such that it was not self-evident that further material changes to the layout could be effected without a potential impact on the interests of persons dwelling on the site in caravans, and referred to the history of non-compliance with site licence conditions that had occurred on this site. The F-TT was entitled to take these matters into consideration when deciding whether condition 3.1 could properly be retained in the site licence.

59. I can see no objection to the F-TT deciding that the additional wording which it proposed should be added to condition 3.1.

60. I conclude that the F-TT was entitled to reach the conclusions it did for the reasons it gave. It is not for me sitting in the Upper Tribunal to substitute my own views for those of the F-TT. However for the avoidance of doubt I agree with the F-TT's decision.

61. I did not find any assistance in Mr Payne's reference to Hansard or his reference to the possibility of some completely new site licence being applied for by the appellant.

Conclusion

62. The appellant's appeal is dismissed.

His Honour Judge Huskinson

6 November 2017