UPPER TRIBUNAL (LANDS CHAMBER)

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TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – SITE LICENSING – compliance notices – s. 9A, Caravan Sites and Control of Development Act 1960

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

BETWEEN:

SHELFSIDE (HOLDINGS) LTD

Appellant

and

VALE OF WHITE HORSE DISTRICT COUNCIL

Respondent

Re: Ladycroft Park.
Blewbury
Oxon OX11 9QN

Before: His Honour Judge Bridge
Royal Courts of Justice, Strand, London WC2A 2LL
on
20 June 2016

Mr Jon Payne, solicitor for the Appellant
Mr Peter Savill, counsel for the Respondent

No cases are referred to in this decision.

Introduction

1. This is an appeal from a decision of the First-tier Tribunal (Property Chamber) ('Ft T') dated 6 November 2015 refusing to quash compliance notices served by the respondent local authority the Vale of White Horse District Council ('the council') on the appellant company Shelfside (Holdings) Limited ('Shelfside') pursuant to section 9A of the Caravan Sites and Control of Development Act 1960.

2. Compliance notices are a recent statutory innovation, being introduced by the Mobile Homes Act 2013 with effect from 1 April 2014. In the course of this decision, the Tribunal considers the purpose and effect of compliance notices, the means of enforcement by the relevant authorities, and the role of the Ft T in relation to them.

Statutory regulation of mobile homes

3. There are around 2,000 mobile home sites in England occupied by approximately 85,000 households. The Caravan Sites and Control of Development Act 1960 ('the 1960 Act') makes provision for the licensing of such caravan sites as fall within its ambit, giving powers and duties to local authorities in order to regulate the activities of those managing the sites and to safeguard the interests of home owners. A review by Parliament's Communities and Local Government Select Committee found that the licensing regime was outdated and in need of reform and that local authorities needed better enforcement powers to ensure effective management and maintenance of sites. Parliament enacted in consequence the Mobile Homes Act 2013 which, largely by amendment of the 1960 Act, introduced a new site licensing regime coming into force on 1 April 2014. According to the Best Practice Guide for Local Authorities on Enforcement of the new Site Licensing Regime published in March 2015 by DCLG (at 1.3):

> The new site licensing regime gives local authorities more effective control of conditions on relevant protected sites. In appropriate cases, it provides local authorities with the tools required to take enforcement action including the power to serve compliance notices in relation to breaches of site licence conditions, emergency action powers, and the ability to carry out works in default and recover expenses.

4. The basic structure of the licensing regime is as follows. Under section 1 of the 1960 Act it is a criminal offence for an occupier of land to cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence. Section 3 gives local authorities power to issue such licences and they may (by section 5) impose such conditions as they may think it necessary or desirable to impose on the occupier in the interests of persons dwelling in caravans or any other class of persons or the public at large. Provision is made (by section 7) for any person aggrieved by a condition to appeal to the Ft T which may vary or cancel the condition if satisfied that it is unduly burdensome. Conditions may be altered by the local authority at any time provided that the authority affords the licence holder the opportunity of making representations before it exercises its powers: section 8.

5. Section 9(1) provides that an occupier who fails to comply with a condition in a site licence commits a criminal offence. The penalties on conviction are largely financial penalties, but in the case of an occupier's third such conviction the court may make an order for revocation of the site licence.

6. Section 9A was added by the Mobile Homes Act 2013, s.4(2), with effect from 1 April 2014. It confers power on local authorities to serve compliance notices on occupiers as an alternative to criminal prosecution. It provides as follows:

(1) If it appears to a local authority in England who have issued a site licence in respect of a relevant protected site in their area that the occupier of the land concerned is failing or has failed to comply with a condition for the time being attached to the site licence, they may serve a compliance notice on the occupier.

(2) A compliance notice is a notice which-

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

(3) An occupier of land who has been served with a compliance notice may appeal to the tribunal against that notice…

7. The remainder of section 9A gives the authority power to revoke or vary a compliance notice, making provision for the procedure to be applied in such circumstances. By section 9B, failure to take the steps specified in a compliance notice is made a criminal offence punishable with a fine not exceeding level 5 on the standard scale. The occupier may defend the proceedings on the ground that he had a reasonable excuse for non-compliance within the period specified. The court may revoke the site licence in the event of a third conviction for an offence contrary to section 9B (or for a conviction for such an offence where the occupier has been convicted on at least two previous occasions of an offence contrary to section 9(1).) In the event of a conviction for an offence under section 9B, the local authority may itself take any steps which were required to be taken (but which the occupier has failed to take) and take such further action as it considers appropriate for ensuring that the condition specified in the notice is complied with: section 9D(1). A further notice is required to be served on the occupier should the authority decide to take this latter course: section 9D(2).

8. There are provisions enabling the authority to take emergency action where there is an imminent risk of serious harm to health and safety as a result of non-compliance with a licence condition (see section 9E) and to impose a charge in order to recover their expenses where they have proceeded under section 9D or section 9E (see section 9F and, further, section 9I).

9. Section 9G governs appeals from compliance notices as well as notices served under section 9D or section 9E. In so far as it deals with compliance notices, section 9G provides that an appeal under section 9A must be made before the end of the period of 21 days beginning with the date on which the compliance notice was served, although the tribunal may allow an appeal to be made after the end of that appeal period if it is satisfied that there is a good reason for the delay: section 9G(1)-(3).

10. Section 9G(4) provides that an appeal is to be by way of a rehearing. It may however be determined having regard to matters of which the local authority who made the decision was unaware: section 9G(4). The tribunal may by order on the appeal confirm, vary or quash the compliance notice: section 9G(5). The effect of this provision is that the tribunal is obliged to consider all the circumstances prevailing at the time of the hearing before it and to determine whether it was right and proper to issue the compliance notice in the light of those circumstances. The tribunal is required to put itself in the position of the local authority, as the primary decision maker, and having considered all material factors determine what decision it would have made. In this process, it is not principally concerned with the legality (or otherwise) of the local authority's actions.

Facts

11. Shelfside is the occupier of a caravan site known as the Ladycroft Mobile Home Park, Berry Lane, Blewbury, Didcot, Oxfordshire, OX11 9QN. Shelfside and its predecessors in title (Wyldecrest Properties Ltd and Wyldecrest Parks (Management) Ltd) have been holders of a site licence issued by the council for some years. The current dispute concerns the placing of a caravan or mobile home on plot 61 of this site, a home that is occupied by Mr and Mrs Mesney. The council contends that the caravan is too close to the eastern boundary and that it is too close to another caravan. As such, it claims that Shelfside is in breach of two conditions of the site licence.

12. There have been previous proceedings before the Ft T in which an application was made to vary the Park's then site licence in order to reduce the area left clear inside of the boundaries to 1 metre. On 1 December 2014 the Ft T determined (CAM/38UD/PHB/2014/0001) that there should be a clear strip 3 metres in width along the eastern boundary of the site and that a requirement to such effect was reasonable and justified. On 3 April 2015, an application to appeal the refusal of the council to vary a condition of the licence to allow the home on plot 61 to be 2 metres from that eastern boundary was struck out by the Ft T (CAM/38UE/PHS/2015/0001) on the ground that the case was between the same parties and arose out of facts that were similar or substantially the same as those contained in the previous case. Subsequently the Tribunal refused permission to appeal these decisions.

13. The site licence with which the Ft T was concerned in the current proceedings dates from 18 May 2015. It contains amendments to the previous site licence which were considered and in effect approved in the course of the previous proceedings. The site licence is expressed to be granted subject to the conditions set out in the schedule which is attached

to the licence. The schedule limits the total number of caravans stationed on the site to 60 and stipulates that all caravans shall be maintained in a good state of repair.

14. At paragraph 3 (headed 'The Boundaries and Plan of the Site') a condition is imposed (at (b)):

> (i) No caravan or combustible structure shall be positioned within 3 metres of the eastern or southern boundary of the site.
>
> (ii) No caravan or combustible structure shall be positioned within 2 metres of the western boundary of the site.
>
> (iii) No caravan or combustible structure shall be positioned within 1 metre of the northern boundary of the site.

15. At paragraph 4 ('Density, Spacing and Parking Between Caravans') a condition is imposed (at (a)):

> Except in the case mentioned in sub-paragraph (c) and subject to sub-paragraph (d), every caravan must be spaced at a distance of no less than 6 metres (the separation distance) from any other caravan which is occupied as a separate residence.

16. Although sub-paragraph (d) does not feature in this case, sub-paragraph (c) does. It reads as follows:

> Where a caravan has retrospectively been fitted with cladding from Class 1 fire rated materials to its facing walls, then the separation distance between it and the adjacent caravan may be reduced to a minimum of 5.25 metres.

17. Paragraph 4(e) of the site licence reads:

> The density of caravans on site shall be determined in accordance with relevant health and safety standards and fire risk assessments.

18. On 2 July 2015, the council served two compliance notices on Shelfside. The first such notice, having cited Condition 3(b)(i), stated that

> A new mobile home (unit 61) has been placed too close to the eastern boundary of the site, in the area shown on the attached plan, which is closer to the boundary than is permitted by condition 3(b)(i)
>
> YOU ARE THEREBY HEREBY REQUIRED as the occupier to ensure compliance with this condition by moving or removing the new unit 61 so that it fully complies with all site licence conditions.

19. The second notice cited Condition 4(a) and stated

> A new mobile home (unit 61) has been sited in the area indicated on the attached plan such that the rear of the unit is less than 6 metres from an adjacent unit, in contravention of condition 4(a).
>
> YOU ARE THEREBY HEREBY REQUIRED as the occupier to ensure compliance with this condition by moving or removing unit 61 so that it fully complies with condition 4(a) and all other site licence conditions.

20. Each compliance notice required the occupier to comply within six months of the notice being operative, and informed them that failure to comply was an offence liable on summary conviction to a fine not exceeding level 5 on the standard scale.

21. By notice dated 20 July 2015, Shelfside appealed against both compliance notices. On 28 October 2015, the appeal was heard by the Ft T. On 6 November, the Ft T issued its decision in which it refused to quash the notices but varied them by extending the period for compliance from six to nine months. Having been unsuccessful in its attempt to obtain permission to appeal from the Ft T itself (1 December 2015), Shelfside sought permission to appeal from this Tribunal which was granted by the Deputy President on 12 February 2016 with the following observation:

> The decision of the Ft T appears to be thorough, comprehensive and not obviously flawed, but the issue of enforcement and the proper approach which tribunals should take to appeals against compliance notices are of general importance; the appeal also concerns the entitlement of Mr and Mrs Mesney [the occupiers of unit 61] to continue to occupy their home and raises the issue of what weight, if any, should be given to their views when considering enforcement action.

22. In the course of a hearing before this Tribunal on 20 June 2016, submissions were made on behalf of Shelfside by Mr Payne and on behalf of the council by Mr Savill. Mr and Mrs Mesney did not appear and were not represented.

Decision of Ft T

23. The Ft T inspected the site on the morning of the hearing on 28 October 2015. It described the precise location of Unit 61 as being positioned at an angle to the eastern boundary of the site so that its south eastern corner was closest to that boundary. The Ft T noted that the living room was located in that corner of the accommodation, with a window in the east wall and a bow window in the south wall. A brief inspection of the interior of the living room revealed that it was elevated with the windows looking over the bridleway skirting the eastern boundary of the site. The side window had a net curtain. It was noted that there was a timber picket fence with a vehicular gateway along part of the eastern edge of the garden.

24. The boundary between plots 61 and 58 was marked by a 1.75m tall timber overlap fence. There was a steel storage container in the corner of plot 58 and a polypropylene store

adjacent to the fence, both extending above the top of the fence. Part of the rear wall of the home on plot 58 was directly opposite the part of the home on plot 61; the storage container was not directly between those two parts of the homes. As there was no agreement as to the relevant dimensions of the site and the position of the caravan on plot 61 relative to the boundary and other mobile homes, measurements were taken in the course of the inspection by the Ft T.

25. As the members of the Ft T walked along the bridleway they noticed that the home on plot 61 was clearly visible from the north, in particular the living room east window. From the south, those on the bridleway had a clear view of the front windows of the home on plot 61 for a considerable distance and because of the raised height of the unit those windows were visible over the top of the tall fencing along the eastern edge of the plot to the south of plot 61.

26. The council contended before the Ft T that Shelfside should not have placed the unit where it did (that is on plot 61); but it did so knowing that its actions were in breach of two conditions of its site licence, a site licence which had itself been the subject of consideration by the Ft T less than 12 months earlier; that the occupiers were aware that their home was positioned on a contested plot when they moved in; and that in the circumstances the service of compliance notices was both necessary and proportionate.

27. There was some initial discussion before the Ft T as to whether the two conditions had in fact been broken. However, in the course of the hearing Mr Payne accepted that the unit was within 3m of the eastern boundary and that there was a breach of the boundary condition (that is, condition 3(a)). Mr Payne also accepted that there was a breach of condition in that the distance from the unit to the adjacent caravan (on plot 58) was less than 6m.

28. Initially, the appellant company relied upon five grounds of appeal on its application to the Ft T. However only three were actively pursued: (1) that any non-compliance with the site licence conditions was *de minimis* (in other words, so trivial that it should be ignored); (2) that enforcement had not been undertaken in accordance with the relevant Model Standards issued under section 5 of the 1960 Act; (3) that in so far as there was non-compliance, alternative works could be carried out to achieve compliance.

29. The Ft T rejected Shelfside's arguments that the breaches were *de minimis*. In relation to the boundary distance (condition 3) it found that the encroachment into the 3m boundary space was 1.5m and took the view that at 50% it could not be *de minimis*. It did not feel that there was any need to explain this any further and I agree. In relation to the separation distance, the Ft T found that the breach which at 70cm is over 13% was not *de minimis*. The council had consulted with the Fire and Rescue Service, and the advice received from that service was unequivocal, namely that the 6m separation distance should be adhered to wherever possible. Although it was accepted by the Ft T that the advice received was not specifically referring to the two homes in question, there was no evidence before it which persuaded them that a departure from the 6m separation distance would be acceptable and it concluded that it was right for the council to enforce the separation distance strictly.

30. Shelfside submitted before both the Ft T and this Tribunal that the council could not show that it had acted lawfully in issuing the notices, in particular that it had not followed the appropriate guidance contained in the Model Standards, failing to consult with both Shelfside and the occupiers of the relevant unit before making its decision to issue the compliance notices in this case. As I have already stated in [10] above, the legality of the council's actions is not the principal concern of the Ft T. Its function is to conduct a re-hearing. The fact that the council may have omitted to take account of a relevant consideration or may have taken account of an irrelevant consideration does not in itself take matters any further, or more particularly advance Shelfside's claim.

31. Shelfside has contended that three questions must be asked by a Ft T faced with an application of this kind. They happen to be the three questions addressed by the Ft T in its decision in this case, and I am of the view that they are the appropriate questions to address in the course of the appeal process. They are:

(1) Has there been a breach?

(2) Was the service of the compliance notice(s) justified?

(3) If so, are the remedial works required reasonable and proportional (*sic*) to the nature of the breach?

Breach of conditions

Condition 3(b)(i)

32. Shelfside accepted before the Ft T, as they have accepted before this Tribunal, that the siting of unit 61 was in breach of condition 3(b)(i). That licence condition had itself been the subject of challenge before the Ft T in the earlier proceedings, but the challenge had failed, as has been explained above. The sole issue relating to this breach of condition is whether it justified service of a compliance notice, an issue which will be addressed below.

Condition 4(a)

33. Condition 4(a) is more controversial. Shelfside accepted before the Ft T, and also before this Tribunal, that unit 61 was sited within 6 metres of another caravan which was itself occupied as a separate residence. However, it sought to contend before the Ft T that sub-paragraph (c) was relevant and that a reduced separation distance of 5.25 metres should have been permitted. Sub-paragraph (c) allows for this reduced distance where the caravan 'has retrospectively been fitted with cladding from Class 1 fire rated materials to its facing walls.' No evidence was adduced before the Ft T by Shelfside concerning the application of any such cladding. It seems to have been of the view that a mere assertion that this was a new caravan and that such materials may have been used in its construction was enough to require the council to investigate matters further.

34. I do not accept that the council was under any such obligation. It is clear to me, in applying the ordinary and natural meaning of the licence condition, that once the council was satisfied that a caravan was less than 6 metres from another occupied caravan, it was then for Shelfside to provide evidence that the exterior of the caravan had been fitted with the appropriate cladding retrospectively. The purpose of the saving in sub-paragraph (c) seems to me to make provision for a caravan already sited on a park to be fitted with cladding and in such circumstances to be allowed to remain in its existing position if it is more than 5.25 metres from the closest occupied caravan. The use of the word 'retrospectively' indicates that the cladding is added at some time after the caravan has been constructed. But where a new caravan is placed on the site within the stipulated separation distance the condition is broken whether or not the new caravan has the necessary fire resistance.

35. It is an agreed fact for the purposes of this appeal that 'in respect of the notice served concerning Condition 4 of the Site Licence, Unit 61 has not been retrospectively fitted with cladding from Class 1 fire rated materials since it was located on site.' While it is also agreed that the distance between Unit 61 and the adjacent caravan is 5.3 metres, 'it remains in dispute as to whether the fitting of cladding with Class 1 fire resisting materials to the exterior of the unit will result in this distance being reduced to less than 5.25 metres.' Taken in isolation, this agreed fact tends to conceal the hypothetical nature of the underlying question. However, Shelfside did not place any evidence before the Ft T concerning the fitting of any cladding to Unit 61. In the absence of any such evidence, the Ft T cannot in my judgment be criticised for proceeding on the basis that there was a clear breach of condition 4(a) of the site licence.

Enforcement: was service of the compliance notices justified?

36. The first submission made by Shelfside was a novel one, not apparently advanced before the Ft T. It was to the effect that before the council could proceed to issue and serve a compliance notice it must be satisfied beyond reasonable doubt that there was a failure to comply with the relevant licence condition. This is because, as Mr Payne expressed it in his skeleton argument, 'Adopting a standard of proof on the balance of probabilities or a reversal of the burden on a compliance notice would wrongly provide a local authority with a way of circumventing the criminal standard of proof needed if a section 9 breach of condition prosecution was taken.'

37. I have no difficulty rejecting this ambitious submission. Section 9A(1) is clear. The local authority may serve a compliance notice on the occupier *if it appears* to that local authority that the occupier is failing or has failed to comply with a licence condition. There is no express reference to any standard of proof (criminal or civil) nor should any be implied. The local authority is not acting in a judicial capacity and adjudicating upon evidence adduced before it by parties to litigation. It does not, in serving a compliance notice, circumvent the criminal standard of proof that would have to be satisfied if it decided to prosecute the site occupier under section 9 for breach of condition.

38. The compliance notice procedure is an alternative course of action to commencing a criminal prosecution. It is intended to be more flexible, and it can be adapted to the

circumstances of the particular case; and in the event of the site occupier complying with the notice there will be no need to bring criminal proceedings. Criminal prosecution is punitive rather than remedial, is less nuanced and is likely to be used by local authorities as a last resort where invocation of compliance procedures is inappropriate or has been attempted and has proved to be ineffective. In the event of a criminal prosecution, whether under section 9 (for breach of a licence condition) or under section 9B (for failure to take steps required by a compliance notice), the criminal standard of proof will of course apply.

39. Shelfside's further submissions challenge the council's decision to serve compliance notices, claiming that the council has failed properly to apply the relevant provisions of the Regulators' Code, the Best Practice Guidance, the Model Standards and the principles contained in the European Convention on Human Rights ('ECHR'). Shelfside contends that the Ft T was wrong substantially to uphold the compliance notices.

40. Shelfside referred to the Regulators' Code which was issued by the Department of Business Innovation and Skills in April 2014 pursuant to section 23 of the Legislative Reform Act 2006 and which makes explicit reference to the 1960 Act as one of the provisions regulated by the Code. The Code requires regulators to have regard to the Code when developing policies and operational procedures that guide their regulatory activities, and when setting standards or giving guidance which will guide the regulatory activities of other regulators. Principles of the Code specifically relied upon by Shelfside include the following:

1. Regulators should carry out their activities in a way that supports those they regulate to comply and grow.
2. Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views.
3. Regulators should base their regulatory activities on risk.
6. Regulators should ensure that their approach to their regulatory activities is transparent.

41. Shelfside made reference to the Model Standards 2008 for Caravan Sites in England (issued in April 2008 by the Department for Communities and Local Government pursuant to section 5 of the 1960 Act). These standards are to be considered by local authorities when applying licence conditions to new sites and sites that have been substantially redeveloped, and in considering variations to existing site licences or applications for new licences to existing sites authorities should consider whether it is appropriate for these standards to apply (see para.3). There is, in the current appeal, no challenge to the licence conditions themselves, such action having been exhausted in the course of the earlier proceedings. However, an Annex to the Model Standards provides advice (by way of explanatory notes) on the application and enforcement of the standards, and it is that Annex to which Shelfside has made specific reference.

42. Finally, the Department for Communities and Local Government published a 'Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime' following the enactment of the Mobile Homes Act 2013. Shelfside has contended that the enforcement proceedings initiated by the council do not follow the guidance contained in that publication.

The Model Standards

43. The explanatory notes state (at para.20):

> When considering taking enforcement action local authorities should undertake a risk assessment to take into account all possible factors in relation to the prosecution.

44. The 2008 Standards pre-date the introduction of compliance notices as an alternative to prosecution. That said, there is no explicit requirement that a risk assessment take place before compliance notices are served.

45. The Standards make clear (at para.24) the purpose of a condition such as condition 3(b): it is to ensure privacy 'from whatever is on the other side of the boundary, such as a road, and other developments, such as houses etc.' They explain (at para.26) the purpose of a condition such as condition 4(a) imposing a 6 metre separation distance: it is required for two reasons, being 'health and safety considerations; and privacy from neighbouring caravans.' In a passage headed 'Enforcement' which is within the section titled 'Density, Spacing and Parking between Caravans', there is the following:

> 33. In considering the enforcement of the separation distance the local authority should consult with the local Fire and Rescue Service. It should also seek the views and take account of representations from the site owner and affected residents before taking any steps to enforce this standard, where practicable.
>
> 34. Before the local authority undertakes any enforcement action it should consider the benefit of the works against the potential impact on the residents' enjoyment of their homes and the cost to the site owner.

Best Practice Guide

46. The Best Practice Guide was published in order to provide guidance on best practice 'on how to use the new licensing regime [that is, the regime introduced by the Mobile Homes Act 2013] and powers to best effect'. That is the context to Section 3, headed Enforcement Policy, which commences as follows:

> 3.1 Government does not envisage that local authorities should, from 1 April 2014, rush to serve compliance notices on site operators for breaches of site licence conditions where there is not a significant risk of harm, particularly in the circumstances where the breach has existed for many years. It is expected that local authorities' actions and demands should be reasonable and proportionate.
>
> 3.2 In every case where enforcement action is proposed, the interests of home owners, as well as the site operator, should be considered. Also in the case where a breach of the site licence condition is only impacting on an individual home owner, consideration should be given to the consequential impacts on other home owners. This may mean drawing a line under existing site licence condition breaches, where

there is no risk of significant harm to persons or property, to enable all to move forward in a constructive and positive way.

47. This section then refers to the Regulators' Code, stating that local authorities should ensure efficient and effective approaches to regulatory inspection and enforcement are provided in line with their enforcement policies and that regulatory improvements should be achieved without imposing unnecessary burdens (para.3.4). It states that in carrying out enforcement, local authorities should also be mindful of human rights and ensure any action is legitimate, appropriate and proportionate.

Breach of Condition 3(a)

48. Turning to the enforcement action taken in relation to each breach of condition, I start with Condition 3(a). It is clear from the Model Standards that a condition such as this is to be included in the interests of privacy. This was an issue which was addressed by the council in the course of the earlier proceedings when the Ft T sanctioned the 3 metre spacing from the eastern boundary. It is accepted that the council warned Mr and Mrs Mesney before they moved into their home that its position did not comply with the site licence conditions.

49. The Ft T invited the views of Mr Mesney who stated that he and his wife had had concerns about the proximity of the home to the boundary and that they had got in touch with the council. However, they had been told by Mr Sunderland (on behalf of Shelfside) that there was no need to worry and that everything would be okay. Asked about their personal views, Mr Mesney told the Ft T that they were 'quite happy with the distance from the boundary and the question of privacy never entered their heads.' He said that they would be happy if Shelfside put up a higher fence along the boundary and that as they had invested all their money into the home to move closer to his mother-in-law who had dementia he did not know how they would manage if they had to move. Mr Mesney was asked by the Ft T about the net curtain his wife had put up at the side window (a window which looks out into the site itself rather than in the direction of the boundary) and he said he did not know why she had put it up there rather than at the front window (which looks out over the boundary and onto the bridleway).

50. The licence condition, as the Ft T observed, is designed to protect the privacy of any occupier of the home at any time. The fact that the current occupiers of that home do not appear to have issues with privacy is a relevant but not a decisive consideration. There was evidence before the Ft T that passers-by on the bridleway would be able to see into the home in question.

51. Shelfside suggested, and produced computer generated images to support its case, that wooden screens in the form of fence panels could be erected along the boundary so as to reduce the visibility of the home to those on the bridleway. The Ft T found, and in my judgment they were entitled so to do, that the proposal was not an appropriate remedy. In coming to this conclusion, it is clear from reading the decision as a whole that the Ft T took into account the fact that the 3 metre boundary stipulation had itself been challenged, and upheld, in the course of the previous tribunal proceedings to which reference has been made.

Breach of Condition 4(a)

52. It is clear from the Model Standards that a condition such as this is to be included in the interests of health and safety (and more specifically the danger of fire spreading from one unit to another) and also of privacy.

53. Shelfside's attempt to contend that the separation distance was not necessarily breached in view of the possibility that the home had the requisite fire cladding has already been discussed. There was evidence before the Ft T of a letter to the council from Graham Turner, the Premises Risk and Support Manager of the Oxfordshire County Council Fire and Rescue Service, dated 18 August 2015. He confirmed what is implicit in the Model Standards that the purpose of the minimum separation distance is to reduce the possibility of fire spread is 6 metres, and stated that the Fire Service was strongly of the opinion that this distance should be adhered to wherever possible to reduce the risk of a fire in one unit spreading and affecting an adjacent one.

54. The Ft T took the view that there was no evidence to persuade them that a departure from the 6 metre separation distance would be acceptable. Although Shelfside had pointed out that there was a steel storage container between the two units, the Ft T held (having inspected the site) that it was not located between those parts of the homes which were in breach of the 6 metre distance. In view of the importance of protecting the safety of the occupiers of the homes, the Ft T agreed with the council that the 6 metre spacing should be strictly enforced.

Failure to consult or to carry out a risk assessment

55. Shelfside contended that the council's action in serving compliance notices was premature. It had not consulted the site occupier or the owner of Unit 61 adequately, and it had not carried out a risk assessment, before serving those notices, and if it had done it so it would (or may) have taken a different course.

56. The Ft T found that there was not a formal consultation exercise with Shelfside. There had, however, been 'an exchange of views' prompted in part by the 2014 hearing, during which the council had invited Shelfside to submit alternative proposals for siting the unit and that had been done (see [87]). The council has submitted that the Ft T was correct in finding that it had acted properly prior to serving the compliance notices and that it was perfectly entitled not to consult further in view of the extensive previous dealings with Shelfside in which the company's concerns had been amply communicated to the council. Those previous dealings included, of course, proceedings before the Ft T in which Shelfside had unsuccessfully challenged the imposition of the conditions now being enforced.

57. The Ft T found that there was no consultation with Mr and Mrs Mesney before service of the compliance notices and that as a result the authority had not complied with paragraph 20 of the Model Standards (requiring the authority to take all possible factors into account when considering enforcement action). However, it went on to find (at [88]) that undertaking such consultation 'probably would not and certainly should not have made any difference to the Council's decision to take enforcement action.'

58. The paragraphs which follow explain why the Ft T arrived at the view that consultation with the Mesneys should not have made any difference:

> 89. The chronology of this case, as set out by Mr Saville is important. Mr and Mrs Mesney were warned by the council of the Breach of Licence Condition 3(b)(i) before they moved into the home on plot 61. They did not heed that warning but, instead, relied on assurances given to them by the people who were selling the home to them that everything would be alright. They took a risk (one might say unwisely) and that has resulted in them finding themselves in their current predicament.
>
> 90. For their part, Shelfside knowingly positioned a home on plot 61 in breach of licence conditions. It is inconceivable that an experienced site operator would not carefully measure the relevant spacings before going to the expense of positioning a new home on the Park. Having done so, they assured Mr and Mrs Mesney that there was no need to worry and everything would be alright, an assurance that was unfounded and irresponsible. They have since tried various means to get around the licence competitions without success.
>
> 91. We are very conscious of the hardship, inconvenience and possible financial consequences of the required remedy on Mr and Mrs Mesney and we have carefully considered to what extend these might properly outweigh the grounds for enforcing the conditions. We conclude that they cannot.
>
> 92 If it were to be allowed that a site owner could blatantly and knowingly breach licence conditions, sell the subject home so that it becomes occupied and then successfully argue against enforcement of those conditions by pleading hardship to the occupiers, that would drive a coach and horses through the whole licensing regime. Regulation and enforcement powers would be seriously depleted.

59. These paragraphs summarise the essence of the Ft T decision. Shorn of the detail, the Ft T took the view that, despite being well aware of the concerns of the council, and despite having challenged the licence conditions of the site in an attempt to maximise the number of mobile homes, Shelfside placed a home on a plot in flagrant breach of the site licence agreement, in doing so assuring the owners of that home that all would be well. Those home owners entered the agreement with their eyes open, the council having warned them of the possible consequences. Those being the circumstances, and there is no challenge to the findings of fact in these respects, it is difficult to see how it can be said that the Ft T was wrong to decide that in all the circumstances of the case it was appropriate to serve the compliance notices.

60. It is important to emphasise the function of the Ft T. It is to conduct a re-hearing, as explicitly stated in section 9G(4) of the 1960 Act. Even if there were a breach by the council of the Model Standards or the Best Practice Guide with regard to consultation with those affected, the Ft T gave the occupier and the residents of the home the opportunity to make representations and to have their case heard and their views taken into consideration. Provided that the decision of the Ft T does not itself contain any error of law, there are no grounds upon which this Tribunal can intervene.

Were the remedial works reasonable and proportional to the nature of the breach?

61. The Ft T took the view that the remedial works required by the authority were 'reasonable and proportionate', although it held that the six months given to comply was insufficient for Shelfside, in the event of no agreement being reached with Mr and Mrs Mesney, to serve notice on them and take proceedings in the county court. The time period was therefore extended (without any objection by the council) to nine months, the compliance notices being varied to that extent.

62. There is nothing in the decision of the Ft T in this respect which is open to criticism as being erroneous in point of law or otherwise. It is clear that the Ft T considered all the circumstances of the case and took the view that the authority had, in serving compliance notices, acted reasonably and proportionately. The Ft T varied the notices simply in order to give Shelfside more time in which to implement the requirements it was seeking to enforce. It was a rational decision well within the remit and the legal powers of the Ft T.

Conclusion

63. The history, or more accurately, the chronology of the dispute between the respondent authority and Shelfside illuminates the current proceedings. It was clear to the Ft T, and it is clear to me, that Shelfside has been seeking to revisit issues which were for the most part decided in the previous proceedings. More particularly, the Ft T having decided that it was necessary and reasonable to have a three metre clear strip between the eastern boundary of the site and the nearest caravan, Shelfside defied the Ft T's decision by introducing a caravan onto the site such that it would necessarily contravene the boundary stipulation in the site licence. It then sought to challenge an attempt by the respondent authority to enforce the conditions of the site licence, citing the hardship that will be suffered by the occupiers of the caravan in question should the home have to be moved from the site.

64. In the course of legal argument, somewhat half-hearted reference was made by Mr Payne to the human rights of Mr and Mesney, the occupiers of Unit 61. When I asked him to expand upon his reference to the Convention, he mentioned Article 1 of the First Protocol, although not, perhaps surprisingly, the occupiers' Article 8 rights. I do not think for a moment that there is anything of substance in such an argument. The Mesneys took up occupation with their eyes open to the dispute affecting Unit 61, and to the extent that they were misled, it is clear that that was as a result of the conduct of those representing Shelfside not as a result of anything said or done by the council.

65. The decision of the Ft T is, as the Tribunal expressed it when permission was granted, thorough and comprehensive, and having examined it with the benefit of oral and written submissions, there are no flaws which can conceivably justify its being set aside. The Ft T directed itself properly in law, it took into account relevant considerations and it did not take into account irrelevant ones, and such findings of fact as it made were findings that it was entitled to make. Not only do I consider that the decision of the Ft T is unimpeachable as a matter of law, I am of the view that the decision was the right decision to make. It therefore follows that the current appeal must be dismissed.

His Honour Judge Bridge

8 September 2016

UPPER TRIBUNAL (LANDS CHAMBER)

LRX/136/2015 and LRX/59/2016

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

IN THE MATTER OF AN APPLICATION FOR PERMISSION TO APPEAL AGAINST A DECISION OF THE FIRST TIER TRIBUNAL (PROPERTY CHAMBER) UNDER S.11 OF THE TRIBUNALS COURTS AND ENFORCEMENT ACT 2007

Applicant: Shelfside (Holdings) Ltd

Property: Ladycroft Park, Blewbury, Oxon OX11 9QN

Decision of the First Tier Tribunal (Property Chamber) dated 11 April 2016

Permission to appeal REFUSED and the following observations are added:

1. This is an application for permission to appeal the decision of the Ft T dated 8 January 2016 to strike out part of an appeal by Shelfside Ltd ('Shelfside') against the refusal by Vale of White Horse District Council ('the council') to alter a condition attached to the site licence granted to Shelfside Ltd in relation to its occupation of the Ladycroft Mobile Home Park, Blewbury, Didcot, Oxfordshire, OX11 9QN.

2. The current licence dates from 18 May 2015 although, as has been explained in the decision of this Tribunal [LRX/136/2015], Shelfside and its predecessors in title have been occupiers of this site for a number of years.

3. On 2 October 2015, Shelfside's solicitors proposed an alteration to condition 3(b)(i) of the site licence ('No caravan or combustible structure shall be positioned within 3 metres of the eastern or southern boundary of the site') by the addition of a proviso:

   'unless the boundary of the site adjacent to the caravan or structure is marked by a fence of at least 1.8m in height.'

4. The council having refused to alter this condition, Shelfside applied on 18 November 2015 to the Ft T appealing that refusal pursuant to section 8 of the 1960 Act. The Ft T struck out the application in so far as it relates to condition 3(b)(i) under its Procedure Rules 9(c), (d) and (e).

5. The terms of the condition in issue, as it relates to the eastern boundary, had featured already in three applications to the Ft T, as set out by the Ft T in its Statement of Reasons dated 8 January 2016.

6. On 1 December 2014 the Ft T determined that there should be a clear strip 3 metres wide along the eastern boundary of the site. Permission to appeal that decision was refused by the Tribunal.

7. On 3 April 2015 the Ft T struck out an application to appeal against a refusal by the council to vary this boundary condition so as to allow one home (plot 67) to be within 2.25 metres and another home (plot 61) to be within 2 metres of the boundary. Permission to appeal that decision was also refused by the Tribunal.

8. On 6 November 2015 the Ft T determined appeals against two compliance notices served by the council on Shelfside. It varied the notices so as to give Shelfside a longer time (nine months rather than six) in which to comply with the requirements made, but otherwise it rejected the challenge made by Shelfside. One of those compliance notices required Shelfside to comply with condition 3(b)(i) in relation to the home on plot 61. While permission to appeal that decision was granted by the Tribunal, the appeal was subsequently dismissed.

9. The current appeal to the Ft T against the refusal of the council to vary the boundary condition was made 12 days after the Ft T effectively dismissed the appeals against the compliance notices.

10. The Ft T therefore considered the issue of the distance of homes from the eastern boundary of the site on three occasions within 12 months, and on two of those occasions the precise location of plot 61 was in issue. Each of these decisions has been reviewed by the Tribunal either on an application for permission to appeal or on a substantive appeal.

11. Despite these decisions adverse to the applicant, Shelfside have persisted in seeking to challenge the licence conditions contained in the site licence agreement. Shelfside contends that the current application is substantially different to the previous applications in that the Ft T have not had the opportunity to consider the effect of appropriately placed fencing on the privacy enjoyed by those living in unit 61.

12. The Ft T dealt robustly with the application. In its view, the proposal to vary the conditions raised no new relevant issues to be considered. Moreover, Shelfside had failed to respond to the draft licence in the relevant consultation period, no appeal was lodged against any of the licence conditions within the 28 day period available, and it was only on 2 October 2015, over four months after the licence became operative, that Shelfside's solicitors requested that the licence conditions be amended.

13. In its application for permission to appeal, Shelfside seeks to distance the current application from the three previous applications to the Ft T. However, it is clear that in the course of those proceedings the Ft T has carefully considered the issue of privacy as it affects those living in unit 61 and has come to the conclusion, which it was entitled

to do, that fencing is neither an adequate nor a satisfactory means of dealing with that issue.

14. The Ft T concluded that insofar as the case brought by Shelfside related to licence condition 3(b)(i) it was between the same parties and arose out of facts which were similar or substantially the same as those contained in the previous proceedings. I have no doubt whatsoever that that was not only a decision the Ft T was entitled to make, it was also the correct decision.

15. The Ft T concluded that to raise the issue of the spacing along the eastern boundary 'yet again and within a few months of the issue of the new licence in respect of which it made no comments on the draft and no appeal against the conditions is vexatious and an abuse of process.' The timing of the application, taking account of the proceedings which were already before the Ft T, makes this a conclusion which, again, was one which the Ft T was entitled to draw, and indeed one which I would myself draw in the circumstances of this case.

16. The Ft T concluded, finally, that there was no prospect of this part of the case succeeding. That was in my view an irresistible conclusion considering the factors outlined in the above two paragraphs.

17. Having reached those conclusions, the Ft T struck out the relevant part of Shelfside's application under Procedure Rules 9(c), (d) and (e). In doing so, it acted lawfully and properly. It is difficult to see what else it could have done.

18. It follows that permission to appeal the Ft T's decision to strike out must be refused.

His Honour Judge Bridge

8 September 2016