FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	: CAM/38UE/PHR/2014/0001 and CAM/38UD/PHB/2014/0001
Property	: Ladycroft Mobile Home Park, Blewbury, Didcot, OX11 9QN
Applicants	: Wyldecrest Parks (Management) Ltd & Shelfside (Holdings) Limited
Represented by	: Jon Payne (Solicitor)
Respondent	: Vale of White Horse District Council ("The Council")
Represented by	: Peter Savill (Counsel)
Type of Applications	: Appeals against 3 compliance notices and against a refusal of the Respondent of an application for the alteration of licence conditions – sections 8, 9A and 9G of the Caravan Sites and Control of Development Act 1960, as amended – ("the Act")
Dates of Applications	: (1) 11th April 2014 , (2) 30th April 2014 (3) 11th July 2014, (4) 25th July 2014
Date of hearing	: 13th November 2014
Date of decision	: 1st December 2014
Tribunal	: David S Brown FRICS (Chair) Helen C Bowers MRICS Adarsh K Kapur

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DECISION

Application 1 - The two compliance notices dated 9th April 2014 are quashed.

Application 3 - The compliance notice dated 24th June 2014 is quashed.

Application 4 - The Tribunal, under the provisions of section 8(2) of the Act, directs the Respondent to amend Condition 3(ii) of the site licence to – "*No caravan or combustible structure shall be*

positioned within 3 metres of the eastern boundary of the site or 1 metre of the northern boundary of the site".

Application 2 was withdrawn.

STATEMENT OF REASONS

The Appeals

1. A site licence was granted to Wyldecrest Properties Limited on 26th April 2010. On 7th November 2011, Wyldecrest Parks Management Limited wrote to the Council requesting that the licence be transferred in to its name, to which it received no response. Four appeals have been made to this Tribunal by Wyldecrest Parks Management Limited, which have been heard together, as follows -

   Application 1 – 11th April 2014. Appeal against two compliance notices dated 9th April 2014.
   Application 2 – 30th April 2014. Appeal against refusal by the Council to make an alteration to the licence conditions requested on 16th April 2014
   Application 3 - 11th July 2014. Appeal against a compliance notice dated 24th June 2014
   Application 4 - 25th July 2014. Appeals by Wyldecrest Parks Management Limited and Shelfside (Holdings) Limited against refusal by the Council to make an alteration to the licence conditions requested on 26th and 30th June 2014.

   At the hearing, the Applicants accepted that their appeal of 30th April 2014 was invalid because it was made by Wyldecrest Parks Management Limited and that company is not the licence holder. In consequence, they withdrew that appeal.

   For the same reason, it was accepted that the appeal of 25th July is only valid in respect of Shelfside (Holdings) Limited.

The Law

2. Section 1(1) of the Act provides that it is an 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, issued under Part 1 of the Act, for the time being in force as respects the land so used. "Occupier" is defined in section 1(3) of the Act as "*the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land*".

3. Under section 3 of the Act, an application for a site licence may be made by the occupier of the land, subject to certain conditions.

4. Section 8 empowers a local authority to alter site licence conditions. Subsection (2) provides that where a licence holder is aggrieved by such an alteration or by the refusal of the local authority to make an alteration for which he has applied, he may, within 28 days of the date of notification of the alteration or refusal, appeal to a First-tier Tribunal, Property Chamber and the tribunal may, if they allow the appeal, give the local authority such directions as may be necessary to give effect to their decision.

5. Where it appears to a local authority that the occupier of land in respect of which they have granted a site licence is failing or has failed to comply with a condition of the licence, they may serve a compliance notice on the occupier under section 9A, requiring the occupier to take such steps as are appropriate to ensure that the condition is complied with. An occupier who has been served with a compliance notice may appeal to a First-tier Tribunal, Property Chamber against the notice within 21 days beginning with the date on which the notice was served. The Tribunal may, on an appeal under section 9A, confirm, vary or quash the compliance notice.

The Inspection

6. We inspected the site on the morning of the hearing. The demarcation of the eastern boundary is a close boarded fence, approximately 2m tall, apart from a wide gap for an access. There is a wide unmetalled highway running alongside the boundary. Along the northern edge of the site is a ditch, with a post and wire fence beyond it and a hedgerow and trees just beyond that; the adjoining land is an open field.

Statements of Case

Applications 1 and 3

7. On 9th April 2014, the Council served on Wyldecrest Parks Management Limited two notices of non-compliance with licence conditions under section 9A of the Act. They refer to conditions 3(i) and 3(ii) of the licence.

8. The first ground of appeal is that Wyldecrest Parks Management Limited is not, and was not at the time of service, the occupier of the site.

9. On 11th April, David Sunderland of Wyldecrest Parks Management Limited emailed Ben Coleman, Environmental Protection Team Leader at the Council,

being the person who signed the compliance notices, pointing out that the licence holder is Wyldecrest Properties Limited but the notices were against Wyldecrest Parks Management Limited and asking, "*Are you able to issue notice of breach of licence against someone who does not hold the licence?*". Mr Coleman replied on the same day, "*Thanks for raising this – I am comfortable with the notices*".

10. In its statement of reply, the Council's response to the ground of appeal is that, "*the circumstances referred to by the Applicant do not justify the Applicant's approach to this matter, which is at odds with its operation of the park and the legal and regulatory responsibilities which sit aside, especially licence conditions*".

11. At the hearing, Mr Savill stated that the Council believed that Wyldecrest Parks Management Limited was the occupier of the site at the date of service of the notices. It assumed so because there had been communications with Wyldecrest Parks Management Limited. Mr Payne replied that Wyldecrest Parks Management Limited wanted to take over management of the site but could not do so because the Council had not actioned its request of November 2011 to transfer the licence into its name. He said section 9 clearly refers to compliance by an occupier with a licence held by him and section 9A must be read in that context. Wyldecrest Parks Management Limited is not an occupier who holds the licence

12. Mr Savill asserted that section 9A is distinguishable from section 9 because it makes no mention of a licence held by the occupier, it simply refers to an occupier and is clear on the face of it; it is a matter of construction. Mr Payne then referred to the definition of "occupier" under section 1(3) and added that by virtue of subsection 3 the licence holder must be the occupier.

13. Mr Coleman was asked if the Council had transferred the licence to the name of Wydecrest Parks Management Limited as requested by them in 2011. He said that it had not.

14. The compliance notice dated 24th June 2014 was similarly served on Wyldecrest Parks Management Limited and the first ground of appeal is in similar terms to that in the appeal against the April notices.

Discussion and decision

15. The licence is in the name of Wyldecrest Properties Limited. The Council did not action the request to transfer the licence in November 2011 and so the licence holder has remained Wyldecrest Properties Limited since the licence was issued.

16. We note that there had been correspondence concerning the site between the Council and Wyldecrest Parks Management Limited, (for example email exchanges on 25th and 26th March 2014 concerning the boundaries) but the definition of "occupier" in section 1(3) is the person who is or would be entitled to possession of the site by virtue of an estate or interest therein and Wyldecrest Parks Management Limited did not hold such an estate or interest. The office copy extract of the registered title shows that the proprietor of the freehold was Shelfside (Holdings) Limited (whose connection with Wyldecrest Properties Limited is discussed below) and not Wyldecrest Parks Management Limited.

17. We have some sympathy with the Council, in that the repeated changes of name of the company are confusing, especially when Mr Sunderland has written letters as Estates Director of "Wyldecrest Parks (Management) Limited and Shelfside (Holdings)" on Wyldecrest Parks Management Ltd letterhead. It would be good practice for the company to notify the Council of any change of name so that the Council's record of the licence holder can be updated and for it not to use a Wyldecrest Parks Management Limited letterhead for correspondence by Shelfside (Holdings) Limited.

18. However, Section 9A is clear; a compliance notice must be served on the occupier, as defined, and the compliance notices were not so served. They are therefore invalid and must be quashed. That being so, we do not need to consider the other grounds of appeal against these two notices.

Application 4

19. This application entails two simultaneous appeals against a refusal of the Council to vary the licence. One appeal is by Shelfside (Holdings) Limited Holdings and the other is by Wyldecrest Parks Management Limited. As indicated in paragraph 1, the latter appeal is invalid because Wyldecrest Parks Management Limited is not the licence holder.

20. Shelfside (Holdings) Limited wrote to the Council on 30th June 2014 requesting a variation of the licence to reduce the clear area inside of the boundaries to 1m. They cannot see why there is any difference in fire risk or privacy between 1m, 2m or 3m or any other reason to keep the distance at 2m or 3m. It also requested that the wording "area shall be kept clear" should be amended as it could include sheds, motor vehicles, garden furniture, or patio slabs; the condition should reflect that no mobile home should be sited within the area.

21. The Council has not made a determination of that application, it has requested a detailed plan and has stated that it will not enter into further discussions until the previous three appeals have been determined.

22. Shelfside (Holdings) Limited has appealed to the Tribunal under section 8(2).

23. In its statement of reply, the Council requests clarification as to why Shelfside (Holdings) Limited is an appellant when it changed its name to Wyldecrest Parks Limited on 2nd June 2014. Mr Payne explained that Wyldecrest Properties Limited had changed its name to Shelfside (Holdings) Limited and subsequently to Wyldecrest Parks Limited. It was the same entity with the same company number, just a change of name. As there was no evidence before us of these name changes, other than a certificate of incorporation on change of name from Shelfside (Holdings) Limited Holdings to Wyldecrest Parks Limited on 2nd June 2014, Mr Sunderland was asked to produce relevant documentary evidence. He was not able to do so at the hearing but had it emailed to the Tribunal office and the Council. We gave the Council a period of 7 working days from the date of its receipt to make any representations to us in writing. No representations have been made.

24. The evidence provided is a Company Report by Experian, generated on 13th November. It shows that Wyldecrest Properties Limited became Shelfside (Holdings) Limited and then Wyldecrest Parks Limited. We therefore accept that Shelfside (Holdings) Limited was entitled to make this application.

25. In its statement of reply to the application, the Council said that initially Wyldecrest Parks Management Limited had said that any homes would be 3m from the boundary but then this application was made to reduce the clear area to 1m. Under the circumstances it is reasonable for the Council to ask for detailed plans. Because the position of the boundaries is in dispute, the Council considered it appropriate to wait until the previous applications have been determined before considering the letters of 26th and 30th June.

26. So far, it said, only a marketing plan has been received and a plan under reference 5814/SG8. The Council has obtained an Ordnance Survey plan. The numbering of the units and the outline of the site is inconsistent between the two plans provided and an area of open space and public highway shown within the site boundaries of Wyldecrest Parks Management Limited plan are not areas that form part of the site. The plans provided are inadequate. The Council can only make a decision to reduce the clear strip if it is clear where the boundary exactly lies.

27. A statement by Ben Coleman refers to the relocated fence on the boundary with Bridus Way not being as far back as was agreed with the Oxfordshire

County Council Highways. At the hearing, he stated that the current line of the eastern fence is now accepted by the Council as the eastern boundary of the site for the purposes of Condition 3(ii) of the licence.

28. There has been correspondence between Mr Coleman and Mr Sunderland about the line of the northern boundary. Mr Coleman says that the current fence encroaches onto the adjoining land, the owner of the adjoining field claims that the northern boundary is the centre line of the former ditch. Statements have been put in from the former owner and the current owner of the adjoining land. Mr Sunderland asserts that the boundary is the line of trees outside the fence.

29. At the hearing, we expressed the view that the evidence produced in this case is inadequate for us to properly determine the correct position of the boundaries. We would at least require a large scale plan cross referenced to the title plan and any other relevant plans and to site features, with appropriate expert evidence. Even then, it seemed to us that the proper forum for deciding boundary disputes was the county court. If the parties insisted that we make a determination we would do so but it would not be satisfactory. In the alternative, we could determine the width of the clear strip and other issues on the basis that our decision would apply to the boundaries wherever it was determined that they lie. The parties were asked to consider these options over lunch and in the afternoon they indicated that they will be content with the second option. We will not therefore make a determination of the correct positions of the eastern and northern boundaries.

30. Mr Savill stated that the Council needs a detailed plan in order to determine how wide the clear strip should be. It needed to consider issues like the density of the site, the context of homes and their inter-relation with the site roadways and distance from the boundary. A plan had initially been promised but was not forthcoming. The matter cannot be assessed by a brief site inspection and the tribunal cannot make a decision on it today without a detailed plan. It is a reasonable request.

31. Mr Payne refuted this and said that the site is what it is. It is not clear what the reasons are for requiring a detailed plan. How does the context of a home on the site relate to the boundary? He asked what the issues of privacy and fire risk are. The site has permission for 60 units and there are currently 56 so density is known. He referred to the comment made by Mr Coleman about the condition for a 3m strip in an email to Mr Sunderland on 27th March 2014 that "*The Council has not, nor does it intend to relax this 3m requirement*".

32. He pointed out that there is no requirement for a fence along the boundaries just that they must be clearly marked by a man made or natural feature. If

privacy was a concern the Council could have stipulated a fence. He suggested that privacy is not an issue. Shelfside (Holdings) Limited considers that a 1m strip would be adequate and that there is no justification for 3m.

33. He said that on the eastern side, there are trees and bushes along the opposite edge of Bridus Way. Units 66 and 67 are only 2.5m from the boundary but the Council has not insisted on them being moved.

34. Mr Coleman stated that there are no concerns about fire risk in respect of the clear strip, it is the issue of privacy. Bridus Way, the unadopted unmetalled highway running along the eastern boundary, is regularly used by dog walkers and horse riders. He agreed that units 66 and 67 are 2.5m from the current boundary fence but said that the Council will not require them to be moved.

35. With regard to the northern boundary, Mr Coleman said the Council wanted 3m there as well. Planning permission has been granted for residential development on the adjoining field and the development plan includes two-storey dwellings close to the boundary.

36. Mr Payne referred to the conditions attached to that planning permission. Condition 5 requires full details of hard and soft landscape works to be subject to prior approval by the Local Planning Authority, including details of new trees and shrubs to be planted. Condition 7 requires the retention of the existing hedgerow/trees along the boundaries of the site, which must be maintained at a height of not less than 1.5 metres, and that any hedgerow shrub or tree that is removed or dies within five years of completion of the development must be replaced during the next planting season. These conditions, Mr Payne asserts, address any privacy issues. A 1m strip is adequate.

37. Mr Payne went on to say that plans have been provided and the Council's refusal to determine the request for alteration of the licence conditions was unreasonable.

38. Mr Savill responded that the plans provided are inconsistent. He queried what the difficulty is in providing a detailed plan. He asserted that there has not been a refusal by the Council of the application for alteration of the conditions, it was simply making a reasonable request to have a detailed plan before it could make its decision. We put it to him that if we find that the request for a detailed plan is unreasonable, failing to make a decision on the basis of that request would amount to a refusal. Mr Savill did not accept that proposition. He said that section 8(2) is clear and that if the Council failed to make a decision, the applicant's recourse was judicial review.

39. We expressed the view that in considering the request for variation of the wording of the clear strip condition, we should have regard to the Model Standards for Caravan Sites in England 2008, issued by Communities and Local Government. These specify that when considering variations to existing site licences or applications for new site licences for existing sites, local authorities should consider whether it is appropriate for these standards to apply. The standards represent good practice and should be applied with due regard to the particular circumstances of the relevant site. Paragraph 1(ii) of the Standards provides –

No caravan or combustible structure shall be positioned within 3 metres of the boundary of the site.

40. Mr Payne agreed that the Standards are relevant and said that the wording of Standard 1(ii) is what is being sought.

Discussion and decisions

41. On the question of whether or not there has been a refusal of the application, we do not accept the proposition by Mr Savill.

42. The Council has refused to make a decision on the application until a detailed plan has been provided. We find that this is an unreasonable request in the context of the application. The width of the clear strip and the nature of the restriction relating to it can be readily determined without a detailed plan. The existing Condition 3(ii) was presumably imposed without a detailed plan, as none has been produced, and all that is being sought is a variation of that condition. The clear strip has to be determined in the context of the properties adjoining the relevant boundaries and the levels of privacy. We accept that the density of the site is a factor which must be taken into account, insofar as it affects the overall levels of privacy of the relevant homes; for example, on a site with lower density the required distance from the site boundary might be more flexible. All of these factors can be easily assessed by a site inspection, without a plan.

43. The precise lines of the northern and eastern boundaries were not known when the application for alteration of the licence conditions was made but whether the true boundaries were on the then existing fence lines or inside them would not alter the width of the clear strip which is required in this case.

44. The Council is entitled to require production of a plan under licence condition 3(ii) on demand and such a demand is reasonable but not as a pre-condition to determining the

application to alter the licence conditions; a detailed plan is not required for that determination.

45. It is therefore our finding that the Council is acting unreasonably in refusing to deal with the application. The Act does not provide any procedure for an application by a licence holder to alter a licence condition and so there is no time limit imposed on the local authority within which it must make a decision. If Mr Savill's proposition were correct, it would be open to a local authority to withhold a decision indefinitely on the basis of an unreasonable request for further information or other precondition and leave the licence holder with no option but to apply to the High Court, a prospect which would seriously deter many licence holders. It was Parliament's intention that issues related to variation of licence conditions should fall within the jurisdiction of this Tribunal.

46. We therefore conclude that withholding a decision without good reason is tantamount to a refusal of the application and that section 8(2) is engaged.

Dealing with each boundary in turn –

47. On the eastern side, pitches are adjacent to a public highway which is used by dog walkers, horse riders and possibly other members of the public just taking a walk. The level of use is likely to increase when the field to the north is developed as the estate design includes access onto Bridus Way. The fact that there is no requirement for the boundary to be fenced exacerbates the potential loss of privacy. If, for example, the current fence were to blow down again, the then site owner might decide to avoid future problems of wind damage by replacing it with a post and wire fence or low hedge or even a kerb, any of which would comply with the licence, but greatly reduce the privacy of adjacent homes.

48. We do not accept the proposition that 3m or 1m makes no difference.
On our inspection, we saw the proximity of the home adjacent to the open access in the fence, how visible the home was from Bridus Way and how easily one could see into the windows and around the pitch. Moving that unit to a distance of 3m would have given it some additional level of privacy.

49. The question of privacy must also, in our opinion be addressed in the context of the overall level of privacy for homes along the boundary. The homes on this site have relatively small pitches. That is not to imply any criticism of the layout, densities vary from site to site, but it does mean that there is limited privacy to these homes from within the site, making privacy on the boundary side of each home even more important.

50. We find that a requirement for a clear strip of 3m along the eastern boundary is reasonable and justified.

51. The northern boundary is a very different proposition. The existing hedgerow and trees provide an effective screen. The open fields currently adjacent to that boundary pose no risk to levels of privacy and when the residential development has been completed, the planning conditions referred to above will ensure that the screening remains for the foreseeable future.

52. We see no justification for a 3m wide clear strip along this boundary and find that a 1m strip is all that is reasonably required.

53. As to the wording of licence condition 3(ii), it is unclear and overly restrictive. The discussion at the hearing as to the meaning of "clear" was a demonstration of the lack of clarity and of the potential that the wording could prevent such items as garden furniture or decking or a patio or even plants being banished from the strip. In terms of protecting privacy, and indeed fire risk, that is clearly way beyond what is reasonably required. In our opinion, the wording of Model Standard Paragraph 1(ii) adequately and reasonably serves the purpose and ought to be applied.

Costs

54. Both parties indicated that they would consider making an application for costs when this decision has been issued. We respectfully remind them of the provisions of Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. We direct that any application for costs must include a detailed schedule of the costs which it is claimed were incurred as a result of any alleged unreasonable behaviour on the part of the other party.

Any party to this Decision may appeal against the Decision with the permission of the Tribunal. The provisions relating to appeals are set out in Part 6 of ***The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013****. An application for permission to appeal must be delivered to the Tribunal within 28 days after the Tribunal sends the Decision to the person making that application.*

D S Brown (Chair)

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