FIRST TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**: CAM/38UE/PHT/2015/0001**
Property	**: Ladycroft Park, Berry Lane, Blewbury, Didcot, OX11 9QN**
Applicant	**: Shelfside (Holdings) Ltd**
Representative	**: Jon Payne of Horsey Lightly Fynn**
Respondent	**: Vale of White Horse District Council ("the Council")**
Represented by	**: Peter Savill of Counsel**
Date of Applications	**: 22nd July 2015**
Type of Applications	**: Appeals against Section 9A Compliance Notices – section 9G of the Caravan Sites and Control of Development Act 1960 as amended)**
Tribunal Members	**: David S Brown FRICS (Chair) Helen Bowers MRICS Adarsh Kapur**
Date and venue of Hearing	**: 28th October at The Royal British Legion, Westfield, Harwell, OX11 0LG**
Date of Decision	**: 6th November 2015**

DECISION

The Tribunal orders that the two Compliance Notices shall be varied to extend the period for compliance with the requirements of each Notice to nine months.

STATEMENT OF REASONS

The Application

1. The Applicant ("Shelfside") is appealing against two Compliance Notices, dated 2nd July 2015, in respect of Conditions 3(b)(i) and 4(a), respectively, of the site licence. As both Notices refer to the issue of the position of the same mobile home, the Tribunal directed that they should be dealt with together.

2. The site licence was issued on 18th May 2015. Condition 3(b)(i) stipulates that "*No caravan or combustible structure shall be positioned within 3 metres of the eastern or southern boundary of the site*."

3. The Compliance Notice in respect of this Condition states that a new mobile home (unit 61) has been placed too close to the eastern boundary of the site and requires the recipient to move or remove the unit so that it fully complies with all site licence conditions. The period for compliance is six months.

4. Condition 4(a) provides that "*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*." Sub paragraph (c) does not apply in this case. Sub paragraph (d) deals with extension into the separation distance of parts of a caravan, such as porches, eaves, drainpipes etc. and also fences and parking.

5. The Compliance Notice in respect of this Condition states that a new mobile home (unit 61) has been sited such that the rear of the unit is less than 6 metres from an adjacent unit and requires the recipient to comply with Condition 4(a) by moving or removing the unit. The period for compliance is six months.

The Law

6. Section 9A of the Caravan Sites and Control of Development Act 1960 empowers a local authority to serve a compliance notice on the occupier of a relevant protected site if it appears to the authority that the occupier has failed or is failing to comply with a condition for the time being attached to the site licence. An occupier of land who has been served with a compliance notice may appeal to a First-tier Tribunal (Property Chamber) (Residential Property) against that notice.

7. The appeal process is set out in section 9G. An appeal must be made within 21 days of the compliance notice being served. It is to be by way of a re-hearing but the Tribunal may have regard to matters of which the local authority were unaware. The Tribunal may, by order, confirm, vary or quash the compliance notice.

The Background and History

8. On 1st December 2014, this Tribunal determined that the clear strip along the eastern boundary of the site shall be 3 metres wide (CAM/38UD/PHB/2014/0001). On 3rd April, we struck out an application to appeal against a refusal by the local authority to vary a condition of the licence to allow the home on plot 67 to be located within 2.25 metres of the boundary and plot 61 to be 2 metres from the boundary (CAM/38UE/PHS/2015/0001). The strike out was under Rule 9(3)(c) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 on the ground that the case was between the same parties and arose out of facts which were similar or substantially the same as those contained in the previous case.

9. Subsequently the Upper Tribunal (Lands Chamber) refused permission to appeal against both of those decisions. In respect of the appeal against the first decision the Upper Tribunal stated "*the First-tier Tribunal's decision, reached after an inspection of the site, was fully and properly reasoned and there is no realistic prospect of a successful appeal*" and in the second it stated that the appeal was doomed to failure.

10. Shelfside requested the Upper Tribunal to reconsider its second decision and this was refused on 11th August 2015.

The Inspection

11. We inspected unit 61 and its surroundings on the morning of the hearing. Present at the inspection, and the subsequent hearing, were –

For Shelfside

David Sunderland
Jon Payne, Solicitor

For the Council

Ben Coleman
Peter Savill of Counsel

Susan Green, solicitor with the Council, and Mr Mesney, the occupier of plot 61, also attended the hearing.

12. The relevant part of the Park remains largely as we described it in our 2014 decision. The home at unit 61 is positioned at an angle to the eastern boundary, so that its south-eastern corner is closest to that boundary. The living room is located in that corner of the accommodation, with a window in the east (side) wall and a bow window in the south (front) wall. We made a brief inspection of the interior of the living room and noted that it is elevated with the windows looking down on the bridleway; there was a net curtain at the side window.

13. There is a timber picket fence, with a vehicular gateway, along part of the eastern edge of the garden. The north-eastern edge runs parallel to the site roadway and is unfenced. That roadway joins the bridleway adjacent to the garden edge. There is a sheltered area of garden on the west side of the home.

14. On the boundary between plots 61 and 58 is a 1.75m tall timber overlap fence. There is a steel storage container in the corner of plot 58 and a polypropylene store adjacent to the fence; both extend above the top of the fence. Part of the rear wall of the home on plot 58 is directly opposite part of the home on plot 61; the storage container is not directly between these two parts of the homes.

15. The parties were not agreed as to the relevant dimensions and so measurements were taken on site, as follows:-

From the south-east corner of the home to	(a) the side fence 1.5m (b) the kerb 2m
From the living room side window to	(a) the side fence 2.35m (b) the kerb 3.1m
From the living room front window to	(a) the side fence 1.85m (b) the kerb 2.45m

The height of the living room front window from the ground 1.65m
The height of the living room floor from the ground approximately 90cm.

From the home on plot 61 to the home on plot 58 5.3m
The height of the fence between plots 61 and 58 1.75m
The height of the steel container on plot 58 above the fence 73cm
The height of the polypropylene store on plot 58 above the fence 38cm

16. We walked along the bridleway. The home on plot 61 is clearly visible from the north. The living room east window is clearly visible from the bridleway. From the south, passers by have 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, they are visible over the top of the tall fencing along the eastern edge of the plots to the south of plot 61.

The Applicant's Case

17. The grounds of appeal cited by Shelfside on the application form are:-
    1. There is no non-compliance with Condition 4(a) and/or 3(b)(i) and/or
    2. The matter of non-compliance, if it exists, is the subject of an ongoing appeal which is pertinent to the matter and/or
    3. The matter of non-compliance, if it exists, is de minimis and/or
    4. Enforcement has not been undertaken in accordance with the provisions contained in the Model Standards issued under s.5 of the Caravan Sites and Control of Development Act 1960 and/or
    5. Alternative works could be carried out to achieve compliance if there were non-compliance.

The Respondent's Case

18. In its statement in response, the Council refers to the reasons given by this Tribunal for its decision in December 2014. It then refers to each of the grounds of appeal.

19. On ground 2, it points out that permission to appeal has been refused.

20. On grounds 1 and 3, it states that the unit on plot 61 is 1.5 metres from the eastern boundary. The bridleway along that boundary is used by dog walkers and horse riders and the planning permission for development of the land to the north means that significant increase of usage is likely. The Council has considered fencing and other forms of screening to address privacy but does not consider them to be appropriate solutions.

21. The Council also states that the unit is less than 6 metres from an adjoining unit and this does not comply with fire separation distances and poses a fire safety risk.

22. It asserts that the non compliance is not de minimis.

23. On ground 4, the Council says that it needs to know what enforcement the Applicant is referring to and how it does not accord with the standards.

24. On ground 5, it points out that the time for compliance is six months. It wrote to David Sunderland of the Applicant company on 10th February 2015 stating that it was keen to work with the site owner to minimise disruption to the occupier of number 61 and welcomed any proposals the site owner had to resite the unit. Had any proposals been received further discussion could have taken place. In their absence, six months was considered to be reasonable. If the Applicant now has any proposals to make this plot compliant they can be discussed.

25. The Council submits a witness statement from Ben Coleman, an Environment Protection Team Leader. He also refers to the 2014 decision and the fact that fencing and other forms of screening were considered in February but not found to be satisfactory. He states that Mr Sunderland was then informed that the home on plot 61 could not remain in its current position but that the Council would welcome any proposals to resite the unit. No such proposals had been received.

26. He states that a revised licence was drafted to comply with the 2014 decision and sent to the Applicant on 9th April 2015. No comments were received and so the licence was issued on 18th May 2015.

27. Mr Coleman visited the site on 24th July and measured the spacing. The unit on plot 61 was approximately 6 metres from two other units and 5.45 metres from a third unit to the west. The corner of number 61 was 1.5 metres from the eastern boundary fence.

28. Mr Coleman exhibits a letter, dated 18th August 2015, from Graham Turner, Premises Risk and Support Manager for Oxfordshire County Council Fire and Rescue Service. In the letter, Mr Turner confirms that the minimum separation distance to reduce the possibility of fire spread is 6 metres. The Service is strongly of the opinion that this distance should be adhered to

wherever possible to reduce the risk of fire in one unit spreading and affecting an adjacent unit (and the occupants). He refers to experiments carried out by the British Research Establishment in 1991 which confirmed this recommended distance in relation to Permanent Residence Mobile Home Sites and, whilst these recommendations are now somewhat old, reference is made to them in the DCLG Guide "Sleeping Accommodation" which was one of the guidance documents produced to assist with compliance with the Regulatory reform (Fire Safety) Order 2015.

The Applicant's Response

29. Shelfside has submitted a written response to the Council's statement, referring to each of the grounds of appeal.

30. It says that the standard of fire resistance of the unit on plot 61 and the infrastructure between the homes is sufficient to address the fire risk.

31. On ground 2, it replies that at the time of this appeal it had lodged an application for permission to appeal the Tribunal's previous decision relating to spacing and it is shortly to be the subject of an application for judicial review and so it may be appropriate for a stay of the current proceedings.

32. With regard to its de minimis ground, it asks the Council to demonstrate what specific harm is caused by the failure to comply with the spacing from the boundary. Even if there were a deficit of 1.5 metres the harm caused would not be sufficient to justify the upheaval and relocation of the home, particularly in view of its orientation. It acknowledges that there may be additional footfall past the site in the future but this should have been taken into account when the planning application on the land to the north was considered.

33. The Applicant maintains that the approach to enforcement in the Model Standards and the Best Practice on Enforcement has not been followed, not least in the approach to consultation with the site owner and affected residents, but still does not specify in what way

34. With regard to ground 5, the Applicant asserts that alternative works have already been proposed in general terms and a more detailed proposal will follow. It exhibits its letter to the Council of 4th September 2015 which refers to the fact that the occupier of number 61 has no issue with privacy and adds that privacy could be resolved by erection of two fence panels and the boundary would be more than 3 metres from the windows.

35. In that letter, it points out that there is a steel structure between 61 and the home to the west and 61 is a new home, built to the latest standards of Class 1 fire retarding.

36. Correspondence it has had with the Council has revealed that within the Council's district and the shared area of South Oxfordshire, five sites have homes that are spaced at 5.5 metres or less from each other, one of those sites is currently the subject of enforcement action and one has been in the last two years.

37. In a supporting witness statement by Mr and Mrs Mesney, the occupiers of number 61, they state that they were aware of the proximity of the home to the boundary when they purchased and were not concerned over any aspect of privacy. They erected a low fence and then added trellis to prevent their dog from jumping over. They have not put curtains or blinds in the windows facing the lane as they enjoy watching passers by, particularly horses that often use this route. They do not feel that their privacy is compromised by the proximity of their home to the lane.

The Hearing

38. It was confirmed by Mr Sunderland that Mr and Mrs Mesney moved into plot 61 in July 2014 and the unit would have been put onto the plot shortly before that.

39. We dealt with the alleged breach of the 3m boundary spacing first and then the separation spacing, and we invited the parties to address us on each ground in turn.

The 3m boundary spacing

40. Mr Payne asserted that the eastern boundary is the kerb not the fence. We pointed out that this issue had arisen during the 2014 hearing where Ben Coleman stated that the current line of the eastern fence was accepted by the Council as the eastern boundary of the site for the purposes of Condition 3(ii) of the then current licence. There was no disagreement with that position then by Shelfside and no evidence of any since then. No steps have been taken to clarify the position of that boundary since that hearing.

41. Mr Payne accepted that members of the public have a right of access up to the fence but reiterated Shelfside's position that the actual bridleway ends at the kerb. There is no evidence to support that proposition and no basis on which we consider we should depart from the Council's position that the boundary is the fence line. In any event, the 3m spacing is breached whichever boundary line one adopts.

42. Mr Payne accepted that there was a breach and withdrew this ground. We can see no basis on which it was put forward in the first place.

43. With regard to Ground 2, Mr Payne explained that when this application was submitted there was ongoing correspondence with the Upper Tribunal about its decision to refuse permission to appeal the two earlier decisions of this Tribunal. He accepted that this ground no longer applies and withdrew it. We note that the Upper Tribunal's decision not to review its refusal of permission to appeal was issued on 28th July, after the date of this application.

44. On Ground 3, Mr Payne repeated the assertion that the breach is de minimis; he said that the breach was of a trifling nature which should not be the subject of enforcement.

45. Mr Savill referred to paragraphs 47 to 50 of our 2014 decision and, in particular, paragraph 48, in which we stated, "*We do not accept the proposition that 3m or 1m makes no difference*." He asserted that the de

minimis argument is an attempt to revisit that point. He added that as common sense the breach is no de minimis, it is half of the distance.

46. Referring to the statement by Mr and Mrs Mesney, Mr Savill argued that as a general principle, it cannot be right that enforceability depended upon the wholly subjective view of any occupier at any given time; that would make enforcement impossible. This Tribunal's findings in its previous decision were clearly that privacy is impacted in a significant way.

47. Mr Savill pointed out that Mr and Mrs Mesney were warned by the Council that there was an issue regarding the boundary spacing before they moved into the home. He acknowledged that they would suffer upheaval but that is not a reason to depart from the licence condition in this case.

48. At this stage it was agreed that it would be helpful to hear from Mr Mesney. Asked if he and his wife had had any concerns about the proximity of the home to the boundary, he said they had and he got in touch with the Council but Mr Sunderland told them there was no need to worry and everything would be okay. They were quite happy with the distance from the boundary and the question of privacy never entered their heads. He said the bridleway is so little used, they do not feel that their privacy has been affected. He said that no-one from the Council had approached them to ask them about their privacy.

49. Mr Mesney added that the situation has to be looked at from their perspective as well. They would be happy for Shelfside to put a higher fence along the boundary. They have invested all of their saving into that home. They moved to be nearer his wife's mother who has dementia. If they have to move they don't know how they will manage.

50. In reply to questions from the tribunal, Mr Mesney said he did not know why his wife had put a net curtain at the side window but not the front one; it was her idea. He accepted that this shows that where one person is not concerned about privacy another might be. He confirmed that some residents from the site used the roadway to the north east of their home to leave the site via the bridleway but said that it was only a few who did so.

51. Turning to Ground 4, Mr Payne referred to paragraphs 33 and 34 of the Model Standards 2008 For Caravan Sites in England, relating to consultation with the Fire and Rescue Service when considering enforcement of the separation distance, seeking the views of the site owners and affected residents and considering the benefits of the works against the potential impact on the residents' enjoyment of their homes and the cost to the site owner.

52. It was pointed out that these paragraphs were under the heading "Density, Spacing and Parking Between Caravans" and so had no relevance to the boundary spacing, and that there is no similar recommendation under the preceding heading, "The Boundaries and Plan of the Site". He insisted that the paragraphs were relevant to consideration of the boundary spacing. The Council had not taken representations from the occupiers. There had been an exchange of views with Shelfside but no formal consultation. Mr and Mrs

Mesney fear that they will have to move off the site as the only option is to remove the home or replace it with a smaller home.

53. Mr Payne then referred to paragraphs 4.17 onwards of the Best Practice Guide for Local Authorities on Enforcement of the New Site Licensing Regime. Paragraph 4.17 states that "*In deciding the best way forward, a balance needs to be made between the need to upgrade conditions and the extent of any negative impact that enforcement may have on existing home owners….*" Paragraph 4.18 goes on to refer to drawing a line in the sand and accepting existing contraventions. Mr Payne asserted that it is appropriate in this case to consider the effect on the occupiers, especially as the situation is not detrimental to them.

54. Mr Payne then referred to paragraphs 5.11 onwards under the heading A Staged Approach to Enforcement. He pointed out that there has not been an assessment of the costs involved or disturbance that would ensue from removal of the home. Shelfside had proposed erecting two new fence panels, one screening the unit from the bridleway and one from the site road. On 5th October Shelfside had submitted an application to vary the site conditions accordingly.

55. He pointed out that paragraph 5.12 of the Best Practice Guide recommends that remedial works should be reasonable and proportionate. With regard to the reference to alternative works in paragraph 5.13, he said that Shelfside's proposal is an alternative remedy and the extra fence panels would have a better effect than just a separation distance.

56. Mr Savill rejected the view that paragraphs 33 and 34 of the Model Standards have any application to the boundary spacing, they clearly refer to the spacing between homes and the reference to the fire and rescue service shows that the issue is fire separation.

57. He reminded us of the chronology. The licence was issued in 2010. An application to vary was refused and the appeal in 2014 saw the issue being fully ventilated, as set out in the Tribunal's decision. A further application to vary the licence conditions was rejected and appeal disallowed by the Upper Tribunal. It cannot be said that the views of the site owner have not been considered, there was no need for further consultation.

58. With regard to the disruption and cost of moving the home, the difficulty is that the Council's position has been clear since 2010. The Council gave a warning to Mr and Mrs Mesney. The site owner has located the home in breach of the condition, sold it to the occupiers and told them that everything will be alright and now argues inconvenience and cost to uphold the position. The blame does not lie at the door of the Council.

59. Mr Coleman added that the Council has considered the proposed fence panels and does not consider large fences around already small plots is the answer. Anyway, the fence panels would not prevent horse riders from looking into the home.

60. We then turned to Ground 5, the time period. Mr Sunderland pointed out that if the home had to be removed it would require litigation against the occupiers

and six months would not be long enough. They would have to be given 28 days notice and then application would have to be made to the county court and that could take four to six months if unopposed. He suggested that nine months would not be sufficient. The Council indicated that it would not object to a longer time period for compliance.

61. Mr Payne contended that horse riders make no difference, the provision of the fence panels would be sufficient to comply with the intent behind the condition.

The Separation Distance

62. With regard to Ground 1, Mr Payne referred to the fact that whilst licence condition 4(a) stipulates a minimum separation distance of 6m, this is subject to 4(c) which provides for a minimum distance of 5.25m where a caravan has been retrospectively fitted with cladding from Class 1 fire rated materials to its facing walls. He accepted that the homes on plots 61 and 58 had not been retrospectively fitted with such cladding and said that Shelfside does not know if either of those homes was constructed with Class 1 materials externally. It had tried to find out from the manufacturers but has not yet obtained the information. He asserted that it is for the Council to show that there is non compliance with condition 4(c).

63. Mr Payne accepted that ground 2 is not applicable to this issue.

64. With regard to ground 3, he argued that the breach is de minimis because of the layout. There is a relatively short span where the separation distance is 5.3m and no facing windows and, in addition, there is the steel container in the corner of number 58. The non compliance is minor.

65. Mr Savill pointed out that there is no retrospectively fitted cladding to either of the homes and asserted that there is a clear distinction between conditions 4(a) and 4(c). He referred to paragraph 26 of the Model Standards which states that the 6m separation distance is "required", and to Mr Turner's letter which referred to it as a minimum separation distance, which his Service was strongly of the opinion should be adhered to wherever possible to reduce the risk of fire spreading. The underlying principle is safety and anything less than 6m cannot be de minimis. The shortfall in this case certainly cannot be de minimis, it is an incremental eating away of the conditions. This is a home that should not have been put where it is.

66. Mr Payne responded that Mr Turner is not present to give evidence. His letter does not refer to this site or this home, it is a policy letter.

67. On Ground 4, Mr Payne said his arguments are similar to those previously expressed but paragraph 33 of the Model Standards clearly applies here and paragraph 4.18 of the Best Practice Guide. We asked him if that paragraph is predicated by the first sentence of paragraph 4.16 which refers to historical spacing issues, he accepted that this is not a historic situation but asserted that the fire risk is low enough to allow less space in some cases.

68. Mr Savill expressed the view that paragraphs 4.16 to 4.18 clearly relate to historical issues.

69. Mr Payne stated that Shelfside's case on Ground 5 was the same as for the boundary spacing. Mr Savill's response was also the same.

70. Neither party felt the need to make a closing statement as the evidence had been aired clearly and fully. Mr Payne suggested that the question to be asked by the Tribunal is whether we would have served those notices and whether the remedial works are reasonable. Mr Savill accepted that this is a re-hearing but argued that the Tribunal must recognise that there is a range of responses.

Discussion and Conclusions

71. The wording in section 9G of the Act indicates that our approach should not be as suggested by Mr Payne. This is an appeal against two compliance notices and our jurisdiction is to confirm, vary or quash those notices. It follows that there are three questions that we have to address –

    Has there been a breach of the licence conditions?
    If so,
    Was service of these compliance notices justified?
    If so,
    Are the remedial works required, and the time allowed, reasonable?

    Subject to the proviso that we can take into account matters which were not before the Council when it issued the licence.

<u>The 3m boundary spacing</u>

72. In the case which we decided on 1st December 2014, after due consideration of all of the relevant factors, we determined that the clear strip along the eastern boundary should be 3 metres wide. That decision was endorsed by the Upper Tribunal when refusing permission to appeal. The grounds cited by the Applicant must be considered in that context. For completeness, what we said was:-

> *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.

73. It is not for the Council to show what specific harm is caused by the breach. The overall question of harm was addressed by us in the above paragraphs. There has been no change in the material factors since then. Mr Payne referred to the decision to grant planning permission on the land to the north but it is reasonable to assume that if the Planning Committee did consider the effect of increased traffic on the bridleway, it would have done so in the light of the current licence condition.

74. We accept Mr Savill's assertion that the fact that Mr and Mrs Mesney profess to have no issue with privacy is not the point, the licence condition is designed to protect the privacy of any occupier at any time. In fact, it appears from the evidence that Mrs Mesney, at least, has some issue with privacy because she has hung a net curtain at the living room east window. It is also pertinent to note that if Mr and Mrs Mesney can watch passers by on the bridleway from their living room, passers by can see into that room.

75. The erection of two fence panels as proposed by Shelfside would reduce the visibility of the home by pedestrians on the bridleway but not by horse riders and, in any event, the issue of privacy has to be viewed in a wider context, as we set out in 2014. We do not find that this proposal is an appropriate remedy.

76. The encroachment into the 3m boundary space, at 1.5m which is 50%, is certainly not de minimis. We cannot see that any further explanation of this point is required.

77. Paragraphs 33 and 34 of the Model Standards do not apply to boundary spaces. They appear under the heading "Density, Spacing and Parking Between Caravans", which is separate from the section headed "The Boundaries and Plan of the Site". In any event, the Council has consulted with the Fire and Rescue Service.

78. Paragraphs 4.17 and 4.18 of the Best Practice Guide are clearly predicated by paragraph 4.16, the first sentence of which is, "*Historical spacing issues cannot usually be resolved quickly or easily*". This is a guide to local authorities on "enforcement of the new site licensing regime". Paragraph 3.2 refers to "*drawing a line under existing site licence condition breaches*". In this context, 'existing' means existing at the time of the commencement of the new regime. The general tone of the relevant parts of the guidance is to

encourage local authorities to avoid a heavy handed approach when dealing with situations which arose before 1st April 2014. It would be nonsensical if that guidance were to be read as referring to breaches committed after that date but 'existing' at the time when enforcement action was taken.

79. Paragraph 5.11 of the Guidance indicates that formal action should only be considered when the informal process has failed to achieve the necessary outcome. The only outcome of the informal process is the proposal for two fence panels and the procedure has to be viewed in the light of our 2014 decision and the subsequent refusal of permission to appeal.

80. Paragraph 5.12 requires the enforcement action to be reasonable and proportionate "*to ensure compliance with the licence condition*". The proposed fence panels would not ensure compliance. We accept that compliance can only be achieved by removal of this home from the plot.

The Separation Distance

81. We find that there is a breach of licence condition 4(a). Licence condition 4(c) specifically relates to homes which have been retrospectively fitted with cladding from Class 1 rated materials. There is no evidence that the homes on plot 61 or plot 58 have been so fitted. There is not even evidence that either home incorporates the equivalent Class 1 rated materials. The separation distance between those two homes is governed by condition 4(a) and that condition is breached.
82. The breach, at 70cm which is over 13%, is not de minimis and even if it was, we do not consider that this would be grounds for not enforcing the condition. Paragraph 4.21 of the Best Practice Guide requires the local authority to consult with the Fire and Rescue Service. The advice that the Council has received from Graham Turner, the Premises Risk and Business Support Manager of the Fire and Rescue Service, is unequivocal, the 6m separation distance should be adhered to wherever possible. For the Council, or us, to ignore that advice would be reprehensible.

83. We accept that Mr Turner was not specifically referring to these homes in his letter but there is no evidence before us which persuades us that a departure from a 6m separation would be acceptable. The steel storage container is not located between those parts of the homes which are in breach of the 6m distance. Common sense dictates that a fire in the north end of the home on plot 61 or the west end of the home on plot 58 could spread to the rest of the structure and thence bridge an inadequate space between the two homes. Protecting the safety of occupiers is even more important than protecting their privacy and we conclude that the 6m spacing should be strictly enforced.

84. Paragraph 26 of the Model Standards explains that the 6m separation distance is required not just for health and safety considerations but also for privacy from neighbouring caravans. In our 2014 decision we referred to the limited privacy from within the site. This reinforces the need to maintain a 6m space.

Enforcement

85. We therefore find that both licence conditions have been breached and that service of the compliance notices was justified. We now turn to the remedial works.

86. Shelfside's ground of objection to both notices in relation to enforcement is that the Model Standards and Best Practice Guide have not been complied with. Specifically, they have referred to a lack of consultation by the Council with Shelfside and with Mr and Mrs Mesney, as the occupiers.

87. We accept that there has not been a formal consultation exercise, as such, with Shelfside. However, the general issues were fully aired at the 2014 hearing and the Council's position has been very clear all along. There has been an exchange of views between the two; the Council has invited Shelfside to submit alternative proposals and Shelfside has done just that. We find not fault with the Council's procedure in this respect.

88. There is an obligation upon the Council to consult with the occupiers, under paragraph 3.2 of the Best Practice Guide, even though that paragraph goes on to refer to existing breaches. Also, paragraph 20 of the Model Standards requires the local authority to take into account all possible factors when considering taking enforcement action. We find that the Council has failed to comply with these requirements by not undertaking consultation with Mr and Mrs Mesney. However, for the reasons outlined below, we consider that undertaking such consultation probably would not and certainly should not have made any difference to the Council's decision to take enforcement action.

89. The chronology of this case, as set out by Mr Savill, 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 round the licence conditions 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 extent 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 for the occupiers, that would drive a coach and horses through the whole licensing regime. Regulation and enforcement powers

would be seriously depleted. Taking all of the factors into account, we find that the remedial works required in this case are reasonable and proportionate.

93. The remedial works in each notice are to "move or remove the unit" so that it complies with the site licence conditions. Shelfside's case has centred around removal and we presume that this is because it is not possible to relocate this unit on this plot to comply with the licence conditions.

94. We accept Shelfside's argument that six months would be insufficient time to serve notice on Mr and Mrs Mesney and take relevant proceedings in the county court. That assumes, of course, that following this decision, they and Mr and Mrs Mesney cannot reach agreement on an appropriate course of action. The Council has indicated that it would not object to an extended time period. It seems to us that it ought to be possible to complete the relevant procedures within nine months and so we will vary the notices to that effect. This extended period will take effect in accordance with section 9(H) of the Act.

D S Brown FRICS (Chair)

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.

3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.