



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

Case Reference : **CHI/43UD/PHS/2016/0004**

Property : **Surrey Hills Park, Guildford Road,
Normandy, Surrey GU3 2AY**

Applicant : **Wyldecrest Parks (Management)
Limited**

Representative : **Mr Jon Payne, Laceys Solicitors**

Respondent : **Guildford Borough Council**

Representative : **Mr Peter Savill, Counsel**

Type of Application : **Appeal against refusal to vary site
licence condition – Section 8 Caravan
Sites and Control of Development Act
1960**

Tribunal Members : **Judge E Morrison
Mr D Lintott FRICS**

**Date and venue of
hearing** : **2 March 2017 at Guildford Law
Courts**

Date of decision : **8 March 2017**

DECISION

The Appeal

1. By an application dated 11 October 2017 the Applicant site owner (“Wyldecrest”) appealed against the refusal of the Respondent licensing authority (“the Council”) to vary condition 3.1 of the Site Licence held for Surrey Hills Park, a “relevant protected site” under the Caravan Sites and Control of Development Act 1960 (“the Act”).

Summary of Decision

2. The appeal is allowed to the extent that Condition 3.1 of the Licence shall be varied to add the following words to the existing condition:

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

The Law and Jurisdiction

3. The relevant statutory provisions in the Act are:

5. Power of local authority to attach conditions to site licence.

(1) A site licence issued by a local authority in respect of any land may be so issued subject to such conditions as the authority may think it necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large; and in particular, but without prejudice to the generality of the foregoing, a site licence may be issued subject to conditions—

(a) for restricting the occasions on which caravans are stationed on the land for the purposes of human habitation, or the total number of caravans which are so stationed at any one time;

(b) for controlling (whether by reference to their size, the state of their repair or, subject to the provisions of subsection (2) of this section, any other feature) the types of caravan which are stationed on the land;

(c) for regulating the positions in which caravans are stationed on the land for the purposes of human habitation and for prohibiting, restricting, or otherwise regulating, the placing or erection on the land, at any time when caravans are so stationed, of structures and vehicles of any description whatsoever and of tents;

(d) for securing the taking of any steps for preserving or enhancing the amenity of the land, including the planting and replanting thereof with trees and bushes;

(e) for securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained;

(f) for securing that adequate sanitary facilities, and such other facilities, services or equipment as may be specified, are provided for the use of persons dwelling on the land in caravans and that, at all times when caravans are stationed thereon for the purposes of human habitation, any facilities and equipment so provided are properly maintained.

(2) No condition shall be attached to a site licence controlling the types of caravans which are stationed on the land by reference to the materials used in their construction.

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

(3) – (4) ...

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

(6) The Minister may from time to time specify for the purposes of this section model standards with respect to the layout of, and the provision of facilities, services and equipment for, caravan sites or particular types of caravan site; and in deciding what (if any) conditions to attach to a site licence, a local authority shall have regard to any standards so specified.

(6A) – (8) ...

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

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

(1A) ...

(1B) ...

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

(3) ...

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

(5) (5A)...

The Inspection

4. Immediately prior to the hearing the Tribunal members visited Surrey Hills, and were shown an area close to the park entrance where, during 2016, a burnt out home and several garages were demolished, two new homes sited, and the roadway altered. The Tribunal were accompanied by Mr Sunderland, Wyldecrest's Estates Director, Mr Jon Payne, Wyldecrest's solicitor, Mr Peter Savill, Counsel for the Council, Mr Stuart Taylor and Ms Trusha Plested, Environmental Health Officers.
5. Surrey Hills is adjacent to two other parks owned by Wyldecrest, namely The Oaks and The Willows. They share a common entrance from the main road and their roadways run into each other. Surrey Hills is the largest of the three.

The Site Licence

6. The current Licence is dated 14 June 2013. Condition 3.1 reads as follows:
No material change to the layout of the site shall be made without the prior written consent of the Head of Community Care. Such consent not to be unreasonably withheld.
7. Wyldecrest referred to a number of other conditions in the course of its submissions, including:
 - Condition 3.2. This requires Wyldecrest to provide a site plan showing specified structures, features and facilities "within a reasonable period from the date of any written request and when there is a material change to the boundaries or layout of the site".

- Conditions 4.1 and 4.2. These require a separation space of 6 metres between homes unless the Council agrees otherwise.

Representation and Evidence

8. The Tribunal was provided with a Bundle that included several witness statements. However it was agreed at the outset of the hearing that the case would be addressed by way of submissions. No oral evidence was received, save that Mr Sunderland and Mr Taylor provided brief responses to questions posed by the Tribunal.
9. Wyldecrest's case was put forward by Mr Payne; Mr Savill represented the Council.

Wyldecrest's submissions

10. The overriding contention was that Condition 3.1 as it stands is unreasonable, unworkable and unduly burdensome. There should be no requirement on Wyldecrest to obtain the Council's approval for alterations to the site layout. Advance notification of proposed alterations should be sufficient.
11. In support of this proposition Wyldecrest submitted:
 - Condition 3.1 was not required to satisfy any of the matters set out at section 5 (1)(a) – (f) of the Act. The conditions at (c) (d) and (e) were relevant to site layout. Any concerns arising could be adequately addressed through other licence conditions, notably condition 3.2, but also conditions 4.1 and 4.2.
 - The Model Standards, to which the Council must have regard under section 5 (6), include requirements for a plan in terms similar to Condition 3.2 “whenever there is a material change to the boundaries or layout of the site ...”. However the Model Standard do not contain any suggestion that prior approval for changes to layout must be obtained.
 - The Best Practice Guide to Enforcement issued by the Government in March 2015, in its section headed “Drafting site licence conditions” states at paragraph 4.8, bullet point 5:
Conditions should include notifying the Local Authority of changes to the site, for example in respect of bringing new homes onto the site or where alterations to the site layout are proposed or made. This allows officers to intervene if necessary and deal with issues at an early stage.
 Wyldecrest submitted this envisaged a process of notification, not approval.

- Condition 3.1. is unduly burdensome because if the Council refuses consent to a proposed change of layout, the only effective appeal process is way of an application for judicial review to the High Court, which is lengthy and expensive. The delay caused would be inconsistent with the period of 6 weeks (or in some cases 2 months) given to the Local Authority under section 3 of the Act to issue a site licence in the case of an entirely new application¹.
- The Act provides for an application for a site licence. It does not provide for an application to vary the site layout. The fundamental concept of a mobile home site is that homes can be moved around. If planning consent is in place, no further approval should be required.
- The current condition imposes no time-limit on the Council, and it may choose to procrastinate. Delays in Council responses have occurred. Minor changes to site layout e.g. a new footpath, changing the alignment of a caravan, often demand prompt action.
- Paragraph 4.13 of the Best Practice Guide notes that cost is a relevant factor when considering the imposition of conditions or their enforcement. There will be additional cost to Wyldecrest if it has to delay works while consent is sought under condition 3.1.
- New wording was proposed for condition 3.1 as follows:

Prior to making any amendments to the layout of the site, the licence holder shall inform the Licensing Authority of the proposals in writing, supported if necessary by a plan showing the changes. In the event that the Licensing Authority does not inform the Licence Holder in writing within 14 days (or such other period as may be agreed) of any reasonable objections, supported with reasons why it is believed the change in layout may breach the conditions of the Site Licence, the proposed amendments may be undertaken.

In response to a Tribunal question, it was asserted that Wyldecrest would be the arbiter of whether an objection made by the Council was reasonable. It was also inherent in this wording that any proper objection could only be based on a perceived breach of another licence condition.

¹ At several points during the hearing Wyldecrest asserted that a local authority has no option but to issue a new license with 6 weeks/two months of application, assuming there is planning consent. Therefore if the Council did not accept changes in layout, Wyldecrest could simply apply for a new licence supported by a revised plan showing the new layout and the Council would have no option but to issue a licence based on that layout. This argument was made for the first time at the hearing, the Council had no notice of it, the Tribunal did not hear full argument, and it is not necessary to decide the point. However the Tribunal refers Wyldecrest to the amendments made to section 3 of the Act in July 2014 which make it clear that, in England, the issue of a licence is discretionary.

- Requiring approval from the Head of Health and Community Care is inappropriate as that person is not directly involved with managing the site licence

The Council's submissions

12. The Council submitted that the wording of condition 3.1. was reasonable and appropriate and required no amendment. In answer to Wyldecrest's arguments it made the following points:

- Section 5(1) of the Act gives the Council a very wide power to impose licence conditions, subject to the constraints of relevance and reasonableness. Subsections (a) – (f) were not intended to be exhaustive of the matters to which conditions should be addressed. Furthermore, regard should be given to the introductory wording which permitted such conditions as the authority “may think it necessary or desirable... in the interests of persons dwelling thereon in caravans, or of any other class of persons, or the public at large”. Thus condition 3.1. was wholly within the permitted ambit of section 5(1).
- Paragraph 3.5 of the Best Practice Guide stated that local authorities should work with site operators in a fair consistent and transparent way, and where possible, an informal approach to enforcement should be taken in the first instance. This supported the principle that there should be a dialogue between Wyldecrest and the Council prior to any material change in the site layout. If Wyldecrest carried out changes to the layout without prior express approval, and the Council objected to those changes, the result might be a Compliance Notice requiring reinstatement. There were obvious practical difficulties of seeking to enforce retrospectively.
- The extract from the Best Practice Guide at paragraph 4.8, bullet point 5 is relied on by the Council. The word “intervene” in that context must envisage that the licensing authority has an opportunity to judge the proposal before it is executed. The wording implicitly contemplates an approval process, not just notification. In any event paragraph 4.9 of the Best Practice Guide states that “Model Standards should not be imported wholesale into site licence conditions. Rather, each park should be considered separately when site licence conditions are to be proposed...”.
- The Council might reasonably require input into a proposed change of layout even when the proposed change did not breach another existing licence condition. For example, an altered road layout might reasonably require a new footpath. In addition, existing conditions may no longer be adequate or enforceable, a situation envisaged at paragraph 4.2. of the Best Practice Guide.

- It was incorrect to say that judicial review was the only remedy available to Wyldecrest in the event that the Council refused consent for a proposed change. If Wyldecrest were confident that the Council had unreasonably withheld consent, it could elect to proceed anyway. The Council would then have to decide whether to take enforcement action by way of compliance notice. If a notice were issued, Wyldecrest could appeal to the Tribunal, a low-level inexpensive remedy.
- Condition 3.1. had two built-in safeguards for the site owner:
 - (1) Any withholding of consent must be reasonable
 - (2) Consent was only required for a *material* change.
- History demonstrates that the existence of condition 3.1 is justified. A previous Tribunal decision in Case Nos. CHI/43UD/PHT/2014/0001-0004 dated 24 September 2015 upheld part of a wide-ranging Compliance Notice, including a breach of condition 3.1.
- The Council’s written statement of case also refers to “a poor history of compliance with the licence conditions” as justifying condition 3.1. Reference is made to works commencing in 2016 without either notification or request for approval.
- The Council denies that there are delays in dealing with requests for approval. There is a standard 10-day response target for correspondence. The previous Tribunal decision noted above stated the Tribunal “was satisfied that the [Council] will take a flexible approach to any variation”. There should be no fixed time-limit imposed on the Council as any individual application may require significant investigation. Wyldecrest may be required to provide more information, and information from third parties may be sought. There is already a procedural safeguard against delay in that a failure to reach a decision within a reasonable time could be regarded as an unreasonable refusal.
- Wyldecrest’s proposed amendment to condition 3.1 is unworkable. 14 days is not a realistic time-frame. Nor can it be right to make Wyldecrest the arbiter of what was a reasonable objection. If the Council considered that works carried out by Wyldecrest were in breach of other conditions, notwithstanding the deemed approval process Wyldecrest proposed, it could still serve a compliance notice, but with all the resulting practical problems of retrospective reinstatement if the notice was upheld.
- Requiring the Head of Health and Community care to give consent is not unreasonable. That post is two levels up from officer level and the holder is responsible for site licensing.
- There is no evidence to support Wyldecrest’s argument that the approval process causes practical difficulties on site.

Other matters in evidence

13. In answer to a Tribunal question, Mr Sunderland said Wyldecrest operates no other sites in England, outside the Respondent's area, where there is a licence condition requiring prior approval for changes in layout. However, none of those licences were in evidence.
14. In answer to a Tribunal question, Mr Taylor told the Tribunal that condition 3.1 is one of the Council's standard conditions and is in most of its site licences.
15. In answer to a Tribunal enquiry as to what work is required when an application for approval for a change in layout is received, Mr Taylor explained that it might be necessary to correspond to clarify matters in the application and to obtain more information, it was fairly likely that a site visit would be required, the implications of the proposal had to be considered, and it might be necessary to consult with third persons such as the Fire Officer, other persons with specific expertise, or individual occupiers who might be affected.

Discussion and determination

16. Underlying this application is Wyldecrest's view that it should have a freer hand when making changes to the site layout. Condition 3.1 places a restriction on that freedom in respect of material changes. Section 5(1) of the Act makes it clear that restrictions contained in licence conditions must be "necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other person, or of the public at large". It is self-evident from the plain language of the section that the particular matters set out at section 5(1)(a) – (f) are non-exhaustive examples of subject areas that conditions may address. Therefore Wyldecrest's argument that other licence conditions address those areas does not mean there cannot be other licence conditions addressing those or different subject areas.
17. The restriction in condition 3.1 only applies to *material* changes. This is a question of fact, subject to common-sense approach. Bringing a new home onto the site, changing the orientation of a home, or altering a road layout are obvious (non-exhaustive) examples of material changes. Moving a home from one base to another existing base of the same size, or moving utility connection points are examples of what are unlikely to be a material changes.
18. As is clear from the plans in the Bundle, the inspection, and the previous Tribunal decision, Surrey Hills is a very well-developed site. It is not self-evident that further material changes to the layout can be effected without a potential impact on "the interests of persons dwelling thereon in caravans", even if they do not breach another

condition of the site licence. None of Wyldecrest's submissions included any consideration of the interests of those actually living on the site.

19. The Tribunal does not accept Wyldecrest's view that its only remedy against what it perceives to be an unreasonable refusal of consent is through judicial review. As Mr Savill pointed out, it may choose to proceed regardless. The reasonableness of the Council's position can then be challenged at Tribunal level, assuming that the Council elects to issue a compliance notice which is then appealed. The Tribunal has wide powers under section 9G of the Act to confirm, vary or quash a compliance notice. A less contentious approach could also be taken, such as discussing with the Council how the proposal might be amended so as to remove any objection.
20. It is however in neither side's interests that compliance notices should be issued, and then appealed, as a common practice. If works have been undertaken which are found by the Tribunal to breach licence conditions, even if only a breach of condition 3.1 (no approval), the required remedy may consist of reinstatement. This poses a practical problem and a financial cost to Wyldecrest. It may also, and no less significantly, cause upheaval, and possible expense (for example if a home had to be moved) to residents.
21. It is our view that a fair prior approval procedure for material changes of layout is a reasonable licence condition because it should promote cooperation and transparency between the parties, and greatly reduce the likelihood of enforcement action with its attendant risks and expense, while ensuring that changes are not made which are in breach of existing conditions and/or are reasonably found to be contrary to the interests of those mentioned in section 5(1) of the Act.
22. The amended wording proposed by Wyldecrest does not afford a fair approval procedure. It provides for a deemed approval if the Council fails, within a default period of just 14 days, to state an objection which Wyldecrest believes is unreasonable. Furthermore any objection can only be based on perceived breach of another existing condition. In the view of the Tribunal a period of 14 days may well be unrealistic, especially if further information is required. Furthermore it is wholly unfair to make Wyldecrest the sole arbiter of what is a reasonable objection, the Council having no means of challenge. Finally, as already explained, it is possible that the Council may have reasonable concerns about a proposal even though it does not involve a breach of an existing licence condition.
23. In our view there is nothing in the Model Standards or the Best Practice Guide which prevent imposition of a fair prior approval procedure for changes in site layout. That is not to say that such a procedure will always be appropriate or deemed necessary. For example, a new site will be developed over a period of time and it may be years before pressures on space make scrutiny of layout changes more important.

Surrey Hills is well-established and there is no obvious unutilised land. Moreover there is a history of non-compliance with site licence conditions, as revealed by the findings of the previous Tribunal, and the correspondence in the Bundle regarding the changes made in 2016 without prior approval. These factors also support the imposition of a fair prior approval procedure.

24. There is no evidence that it is over-burdensome to require that consent be given by the Head of Health and Community Care. The holder of this post within the Council is responsible for the issue of, and signs, site licences. The post is two managerial levels above the level of the officer who will actually deal with the request for approval.
25. Although there is no evidence that the Council has been guilty of delay when dealing with applications under condition 3.1, and no evidence that Wyldecrest has been prejudiced by any such delay, the Tribunal considers that a fair approval process must include a specified time-frame, as a reasonable procedural safeguard which will provide Wyldecrest with some certainty and assist with its forward planning. To that extent it is right that condition 3.1 should be varied.
26. Towards the conclusion of the hearing the Tribunal asked the parties to consider a possible addition to condition 3.1. that imposed such a time - frame. The Council were not altogether opposed to this, but suggested that any time-limit should not start to run until Wyldecrest had provided all information that it reasonably required. Wyldecrest objected to any form of prior approval procedure other than the one it proposed. It also objected to a default time-limit which was as long as 28 days, and to a deemed refusal outcome rather than a deemed approval outcome in the event of the Council failing to meet the time-frame for a decision.
27. Although Wyldecrest referred to possible scenarios where alterations to site layout might have to be made urgently, the Tribunal finds it hard to contemplate situations which both involve a material change, and which would not be subject to forward planning. If a truly urgent situation arose involving a material change that could not have been contemplated, and which could not await the outcome of a request for approval, the degree of necessity/emergency would be such that enforcement action would be a remote possibility.
28. The Tribunal has considered all submissions and the documentary evidence and determines that the appeal should be upheld to the extent that Condition 3.1 of the licence should be varied. The variation suggested by Wyldecrest is not upheld. Instead, the Tribunal directs, pursuant to section 8(2) of the Act, that the following words shall be added to condition 3.1

If a decision whether to grant consent is not made by the expiration of 28 days from the date on which the request for consent is received, the site owner may by written notice require that a decision is made

within a further 14 days from the date of that notice. In default the Head of Health and Community Care shall be deemed to have withheld consent.

29. The effect of this addition is as follows:
- It places a clear expectation on the Council that a decision will normally be made within 28 days, which the Tribunal considers is sufficient time assuming Wyldecrest provides all required information in a timely manner;
 - It provides an incentive for Wyldecrest to ensure any application for consent is accompanied by all relevant information. If information is missing but Wyldecrest forces the Council, by serving a 14 day notice, into an actual or deemed refusal for that reason, it will be the author of its own misfortune;
 - Similarly if the Council reasonably requires more time to reach a decision, it will be unwise for Wyldecrest to risk forcing a refusal by serving a 14 day notice.
30. We conclude that this amendment to condition 3.1 strikes the appropriate balance between the rights of Wyldecrest, the responsibilities of the Council, and the interests of the residents at the site.

Dated: 8 March 2017

Judge E Morrison

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.