

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

Case reference : **LON/00AR/PHS/2021/0001**

Property : **Lakeview Park, Cummings Hall
Lane, Noak Hill, Romford, Essex
RM3 7LE**

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

Representative : **Mr Payne of LSL Solicitors**

Respondents : **London Borough of Havering**

Representative : **Mr Matthias QC**

Type of application : **Appeal against the variation of
licence conditions**

Tribunal members : **Ms H C Bowers MRICS
Mr I Holdsworth FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of directions : **27 September 2021**

DECISION:

For the reasons set out below the Tribunal confirms the following conditions not to be unduly burdensome:

Condition 2(v):- The density of caravans on a site shall be determined in accordance with relevant health and safety standards and fire risk assessments but should not exceed 135 in number.

Condition 2(vi):- The car park area located to the left hand side of Cummings Hall Lane must not be used for the permanent stationing of caravans with the exception of any existing caravan that is sited in this area.

Condition 4(b):- Ensure that Cummings Hall Lane, being the only access road to the Site from the public highway for vehicles

including emergency vehicles, is kept in good repair and condition.

Condition 10:- DRAINAGE AND SANITATION

(i) Surface water drainage shall be provided where appropriate to prevent significant standing pools of water within the common areas of the site.

(ii) There shall be satisfactory provision for foul and waste water drainage either by connection to a public sewer or sewage treatment works or by discharge to a properly constructed septic tank or cesspool approved by the local authority.

(iii) All drainage and sanitation provision shall be in accordance with all current legislation and British or European Standards.

(iv) Work on drains and sewers shall be carried out only by a competent person in accordance with appropriate statutory requirements.

Condition 11 (ii) – No refuse may be tipped or otherwise disposed of on the site by or on the behalf of the site owner.

REASONS:

The Application:

1. The Tribunal received an application dated 11 May 2021 from the Applicant, Wyldecrest Parks (Management) Limited (WP(M)L). The application seeks a determination by the Tribunal under sections 7 and 8 of the Caravan Sites and Control of Development Act 1960 (as amended) (“the 1960 Act”). The application is in relation to conditions attached to a licence and the alteration of conditions attached to a licence made by the London Borough of Havering (“Havering”). The Notice of Variation of Caravan Site Licence Conditions is dated 27 April 2021 and relates to Lakeview Park, Cummings Hall Lane, Noak Hill, Romford, Essex RM3 7LE (“the Site”).
2. The Tribunal issued Directions on 2 June 2021 that set out the timetable for case preparation and listed this case for a hearing on 2 September 2021.
3. In these reasons the reference to any document is labelled [Px] to refer to the specific document in the bundle.

Inspection:

4. The Tribunal made its inspection of the subject property on the morning of 2 September 2021. In attendance at the inspection was Mr Sunderland from the Applicant, WP(M)L and the Applicant’s representative, Mr Payne of LSL Solicitors. On behalf of Havering was Ms Laybourn and Ms Pink and accompanied by counsel, Mr Matthias.
5. The site is accessed from Cummings Hall Lane, an unadopted road that leads from Noak Hill. At the top of the lane is an area to the left-hand

side which is open and used as a car park. We also observed a compound area that was enclosed by metal fencing upon which was erected a no entry sign. The Tribunal were told the car park provided spaces for approximately 90 cars. Outside the hatched area on the plans provided and opposite a public footpath was one park home pitch with a park home in place.

6. In respect of Cummings Hall Lane the Tribunal observed an uneven roadway with several large pot hole areas. It was clear that the road was in need of repair. During the inspection the Tribunal observed that there were contractors on Cummings Hall Lane that appeared to be carrying out works on the access road. We noted that kerb stones had recently been renewed and that there was some aggregate infill in some areas of the road. The work was being carried out to parts of the road that were clearly demised to WP(M)L and to land that was retained by Best Holdings (UK) Limited [“BH(UK)L”].
7. The Tribunal were told by Mr Sunderland that 134 park homes were situated on the site at Lakeview Park with approximately 30 of these homes afforded parking spaces within the pitch. The site was densely occupied with park homes, with numerous pitches only accessible by footpaths from the service road. There was a road system around the site and in general this was quite narrow although in a very small area there was some space for additional parking, possibly for 5 - 7 cars.
8. There was some evidence of a reconfiguration of the road layout particularly close to the park entrance. Some areas of the road were in poor repair with some partially completed road repairs works outstanding. There is some provision of street lighting on the main part of the site. There are no communal facilities for residents at the site including etc. Mr Sunderland explained to the Tribunal that additional pitches had recently been established at the site.

Hearing:

9. A face to face hearing was held at 10 Alfred Place, London, WC1 E 7LR. In attendance were Mr Sunderland from the Applicant, WP(M)L and the Applicant’s representative, Mr Payne. On behalf of Havering was Ms Laybourn and Mr Matthias, counsel for Havering. Also present was Mr Punj from Havering, attending as an observer.
10. The Tribunal confirmed that they had the main bundle of 101 pages an additional single page extract from the 1963 Site Licence and skeleton arguments from both parties. Mr Matthias also provided a supplemental bundle that included upto date copies from Companies House; a full copy of the 1963 Site Licence, the 1960 Act, relevant case law and the Model Standards 2008 for Caravan Sites in England (the “Model Standards”). The Applicant was content for all these documents to be admitted other than the Companies House extracts. It opposed those documents being admitted at the last minute as it was stated that it was an attempt to “pierce the corporate veil” and that the documents were irrelevant to the current case. The Tribunal agreed to allow those documents to be

admitted on the basis that they may constitute relevant evidence material to the Respondent's position in respect of some the disputed conditions. The supplemental information taken from Companies House was concise and in the public domain.

Law:

11. The relevant sections of the Caravan Sites and Control of Development Act 1960 are included in an Appendix to this decision.
12. However, of particular relevance is the test that is set out in section 7 as to when the Tribunal is satisfied that a condition is 'unduly burdensome', then the Tribunal may vary or cancel the condition. In Llanfyllin Rural District Council v Holland [1965] 16 P & CR 140 ("Llanfyllin") it was held that '*No doubt any condition is burdensome, and 'unduly burdensome' merely means burdensome in a respect which is unnecessary or unreasonable in all the circumstances of the case*'.
13. This was considered in the decision in Wyldecrest Parks (Management) Limited v Vale of White Horse District Council [CAM/38UE/PHR/2016/0001] ("Vale of White Horse") and this set out that a condition would be unduly burdensome if:
 - a. *It is not necessary or serves no useful purpose, having regard to paragraphs 3 and 4 of the Model Standards and section 5 of the Caravan Sites and Control of Development Act 1980, or*
 - b. *The cost or the amount of work required to comply with the condition is excessive in comparison with the benefit it achieves, or*
 - c. *It is not possible for the site owner to achieve compliance with it".*
14. The Applicant's position is that the 1960 Act may lead to the conclusion that no Licence conditions are necessary in certain circumstances. They suggested that the Tribunal need to consider whether 'each and every condition appealed is 'proportionate'. Reference was made to three decisions from EU law as to the meaning of proportionality. This is further adapted to state that a local authority must not act in a way that is incompatible with a right under the European Convention of Human Rights and particularly Article 1 that gives the right to peaceful enjoyment of possessions but allows for legislation to control the use of property. It is stated that the Article 1 rights apply both in relation to the Applicant but also the owner of Cummings Hall Lane. Because the ECHR is invoked then the issue of proportionality arises and from R v Secretary of State for the Home Department, ex parte Brind [1991] 1 AC 696, that proportionality is a consideration of the Wednesbury principle of unreasonableness.
15. The Respondent's position is that the Applicant's submission that the Tribunal should consider proportionality is misconceived and that proportionality is an issue that arises when domestic law involves an

implementation or reliance on EU law. The 1960 Act does not rely nor implement any EU law.

16. In deciding what conditions should be included within a Site Licence, consideration must be given to the Model Standards. Further Guidance is provided by the DCLG in a 2015 document entitled ‘Advice to local authorities on the new regime for applications for the grant or transfer of a site licence’ (the “Guidance”).
17. The Guidance acknowledges ‘*that not all sites will easily be able to meet the Model Standards in every case, due to their particular characteristics*’. Also, that a condition should not be imposed which would be more appropriate as a planning condition. In respect of the extent that the Model Standards may give guidance, paragraph 3 states ‘*Where it is appropriate to apply the new standard to a condition the local authority should be able to justify its reasons for doing so, having regard to all the relevant circumstances of the site. In deciding whether to apply a new standard the local authority must have regard to the benefit that the standard will achieve and the interest of both residents and site owners (including the cost of complying with the new or altered condition)*’.
18. Section 5(1) of the 1960 Act sets out that a site licence may be issued subject to ‘*such conditions as the authority may think it necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans ...*’

Background

19. A full history of this site was not provided and indeed is not necessary. However, in 1963 Albert John Carter was given a Site Licence (the “1963 Site Licence”). In 2002 a Site Licence was granted to Wyldecrest Properties Limited (WPL). The 2002 Site Licence included a site plan that showed the site, the car park, Cummings Hall Lane and potentially the compound area cross hatched [P65]. Mr Sunderland stated that at that time WPL owned the freehold interest of two parcels of land under title number EGL163673 and EGL180999. The first title relates to land that extends beyond the main park homes site and the second title relates to the whole of Cummings Hall Lane.
20. In 2014 the freehold of the two parcels of land was transferred from WPL to BH(UK)L. The Applicant WP(M)L holds a lease of the site from BH(UK)L that is dated 13 May 2017. The Tribunal were informed that the plan that related to the lease is the plan at [P16], that plan shows an area beyond the main site and an area beyond the car park, the compound and approximately 1/6 of Cummings Hall Lane. The lease has not been provided other than the front page that shows that the lease was granted on 13 May 2017 and the identity of the parties [P69 & P70].

21. An application was made in 2011 for a transfer of the Site Licence from WPL to WP(M)L. Havering agreed to transfer the Site Licence to the Applicant in January 2021. Once the licence was transferred Havering then reviewed the conditions in the licence and consulted with WP(M)L by sending a proposed Notice of Variations of Caravan Site Licence Conditions, pursuant to section 8 of the 1980 Act on 8 March 2021. WP(M)L responded on 12 March and the Site Licence with revised conditions was sent on 27 April 2021. The current Site Licence is at **[P33]** with the plan at **[P39]**.

The Issues - Evidence, Submissions and Discussion:

22. It was only at the inspection that the issue of whether the compound area is included in the Site Licence area arose. There was also some acknowledgement of the need to address the position in relation to the park home pitch adjacent to the car park. Both parties indicated that they did not want the Tribunal to address these aspects of the Site Licence plan. Indeed, the Tribunal hopes that the parties can have a useful dialogue and agree any outstanding issues themselves. However, both parties agreed that the Tribunal was required to determine whether the Site Licence plan should include Cummings Hall Lane. We will address this point later in these reasons.

Condition 2(v)

23. In respect of condition 2(v), WP(M)L's position is that the specific number of caravans on the park, limited to 135, should be removed. In the alternative that the number should be set at 150 units. As section 5(1) of the 1960 Act does not make a reference to a specific number there is no need for a number to be adopted. There is reference in the Site Licence to the spacing requirements to deal with health and safety and privacy issues. The Applicant claims these would be sufficient to calculate the capacity of the site. The restriction by a specific number would be unduly burdensome as it restricts the Applicant's ability to maximise profit. The site has capacity for additional units and the restriction will impact on its ability to negotiate with residents and reconfigure the site.
24. Recently there has been a trend for double units, but this may be reversed with future demand for single units. The Applicant considers that it should have the ability to re-configure the pitches to allow an increase in numbers, whilst maintaining appropriate standards.
25. The 1963 licence had a limit of either 170 or 179 pitches and the Applicant had approached Havering with a proposal to increase the number to 150 but had received no response. It was acknowledged that the Model Standards anticipated a restriction on the numbers but Mr Payne pointed out that there were no restrictions on site numbers contained within the planning permission.
26. The Applicant accepted there were no leisure or communal amenity areas, but there was no requirement for the provision of those facilities

and the site was located in an area with easy access to open areas and walks.

27. There was an acknowledgement that an increase in the number of pitches will affect the pitch holders' amenity of the site but that there were needs to be balanced. Although Ms Laybourn makes reference to pressure being put on residents to release garden land situated within pitches, there is no specific evidence of this.
28. It was claimed by Ms Laybourn that some residents had complained they had no written agreements. Mr Payne responded that any lack of a written agreement can be addressed by the provisions of the Mobile Homes Act 1983.
29. The Applicant submits that as the whole of the licence was reviewed by the Respondent, then it is entitled to appeal all the clauses. It is stated that the Applicant acquired the lease and the site licence in the expectation that the site could be developed. And that to amend the conditions would impact upon the Applicant's possession and could impact on the value of the site.
30. Ms Laybourn explained that whilst she has only had a professional responsibility for the site over the last couple of years, it is a site that she knows well from her previous duties over 15 years in the Private Sector Housing Team of Havering. She has also known the site since the 1980s. She said that originally the caravans were quite close together and provided with small gardens. There has been an improvement to the amenity of the site since her first knowledge of the site.
31. Ms Laybourn has received complaints from residents about bullying and pressure to give up garden areas. In her opinion the 'squeezing in' of additional pitches will be detrimental to the amenity of the residents. Several residents do not have agreements and so have no clear definition of their plots. Inspections are carried out of the site by Council staff but only following complaints from the residents. She stated that Havering has not been provided with a revised pitch layout plan of the site following recent changes.
32. The Respondent submits that the limit of 135 caravans was a condition that was present in the 2002 Site Licence and therefore is not a new condition. In considering earlier licences, there has been a trend for larger units, with double units becoming more common. The condition is neither unnecessary nor unreasonable given it is in the interests of the residents' amenity that the density be managed. It prevents overcrowding which could also impact on the health and safety of residents.
33. Section 5(1)(a) of the 1960 Act allows for a numerical limit on the number of caravans and 5(1)(d) allows steps to be taken to protect the amenity of the site. From our inspection we had an opportunity to assess the density of current use and appraise whether additional park homes

in the site would be materially detrimental to the amenity of the residents.

34. There has not been a change in the number of caravans allowed on the site from the 2002 licence to the current licence. The Tribunal notes that section 5(1)(a) of the 1960 Act does make provision for conditions for the *'total number of caravans which are stationed at any one time'*. Indeed, the Applicant first opposed any limitation on the use of the site by a specified maximum number of homes and then in the alternative suggested a limit should be 150 should be applied rather than the current 135.
35. The Tribunal does not consider that the imposition of a numeric limit of caravans would be unreasonable in all the circumstances so is not unduly burdensome. We determine that the limit of 135 is reasonable and not unduly burdensome. As such we confirm the condition should apply.
36. It may be that there are other measures in place to assist in the calculation of the capacity of the site. However, we have come to this conclusion having inspected the site and observed the current density.
37. The site area where the homes are located is densely occupied and a number of homes having no direct vehicular access. The roads around the site are narrow. Additional units will place more pressure on the facilities such as the road network. There is no amenity land on the site, although we appreciate that there are areas beyond the site that can be used for amenity and therefore protecting the density is an important aspect in preserving the amenity for the residents. The use of a numeric limit will aid Havering to monitor the site and prevent the arduous task of policing the spacing requirements. We find that to increase the capacity at the current time will impact on the amenity of the residents.
38. Considering the test as set out in the Vale of White Horse, we find that the condition is necessary as it protects the interest of the residents. As to the second strand, whilst there would be no expenditure to comply with this condition, the opportunity cost for the Applicant must be considered. We find that the benefits to the residents in maintaining the current density outweighs the likely financial benefit to the Applicant. In considering this we comment that no doubt that when the Applicant acquired the lease, it was aware of the condition in the 2002 licence that limited the number of homes to 135. The Tribunal conclude it is disingenuous to say that the retention of a limit to the number of homes on the site is an amendment. Finally, the Tribunal concludes that it does not foresee any difficulty posed for the Applicant being able to comply with the condition.
39. We come to this conclusion on the basis of the site we were asked to consider. That is with or without the inclusion of Cummings Hall Lane, but having no regard to the compound land or to the area south of the car parking area.

Condition 2(vi)

40. Condition 2(vi) states *'The car park area located to the left hand side of Cummings Hall Lane must not be used for the permanent stationing of caravans with the exception of any existing caravan that is sited in this area'*.
41. It is the Applicant's position that this condition should be removed in its entirety. Whilst the Applicant has no immediate plans to develop the area the Applicant wants to keep its options open and considers that it should decide on where the parking should be provided, rather than the Local Authority. It is acknowledged that there is a requirement for parking at a ratio of one space per pitch plus visitors' spaces on a ratio of one visitor space per 20 pitches.
42. It was proposed that to ensure sufficient parking, a condition allowing for adequate provision could be substituted. Mr Payne suggest condition 12 should be altered so as to provide residents' parking at a ratio of no less than one space per pitch and a ratio of one visitor parking space per twenty homes. This would give a requirement of 135 spaces plus 7 visitor spaces. It was put to Mr Payne that the reduction of visitors' spaces from one in ten to one in twenty would impact on amenity. He claimed there is no evidence that an alternative parking solution would cause difficulties.
43. Mr Sunderland explained that the site was close to a large bus terminus and that currently there is a weekly bus that comes onto the site provide access to Tesco's. He said there are currently thirty pitches on the main site that have parking and that residents see a value of having parking on their pitch. It was stated that the compound area has the capacity for 60 additional car spaces.
44. A condition in the Site Licence at 2(iv)(f) **[P34]** set out the requirements of the proximity of any car space from a caravan. It is said that the condition is unduly burdensome as it is unnecessary to deal with the parking provision in this way and that having provision for 'adequate parking' would be a less restrictive. As with the submissions made in regard to clause 2(v), the Applicant has acquired the lease on the site with the expectation that the site could be developed. The condition would limit that potential and as such impact on the site value.
45. The Respondent's position is that the current arrangement is workable and that by allowing pitches on the car parking area would reduce the parking that is available and reduce the amenity for the whole site. Mr Matthias suggested that the proposed alteration to condition 12 would be to discard an arrangement that is currently working. The condition is neither unnecessary nor unreasonable. The preservation of the current car parking area will ensure parking is available for residents, visitors and emergency services and therefore protects the amenity of the site. The condition accords with standard 13 of the Model Standards.
46. Ms Laybourn stated in her witness statement that historically there had been some enforcement issues with the site owner. This presumably was

WPL, rather than the current Applicant, WP(M)L. New park home bases had been constructed without planning permission and there are concerns that without some control of the parking area that there may be other such breaches.

47. The Tribunal finds that the condition is not unduly burdensome and as such confirms the condition. All parties agree with the principle that car parking should be provided on a ratio of one space per pitch. Given the very narrow access roads on the main part of the site and that the provision of any more car spaces on the pitches would put pressure on that part of the site and detract from the garden areas that all residents benefit from, then the loss of the communal parking would adversely impact on the amenity of the site. The condition serves a very useful purpose and is necessary to ensure sufficient parking is made available without recourse to any further 'on pitch' parking. There is no cost involved for the Applicant to retain the carparking arrangements as currently laid out. Any opportunity cost for the loss of any development potential is outweighed by the benefits to the residents to retain the current arrangements and the protection of the amenity. As the parking is in place, there are no practical problems for this condition to be achieved.
48. As mentioned above, we have made this decision on the basis of the site extents submitted to us. This may or may not include Cummings Hall Lane, but having no regard to the compound land or to the area south of the car parking area.

Condition 4(b)

49. Condition 4(b) states '*Ensure that Cummings Hall Lane, being the only access road to the Site from the public highway for vehicles including emergency vehicles, is kept in good repair and condition*'.
50. The Applicant seeks to remove this condition to the extent that it relates to an area that is outside the roadway that is demised to the Applicant. The roadway that is south of the footpath, is not in the ownership of/demised to the Applicant and therefore the Applicant cannot comply with the condition. It is suggested that if there are issues about the Applicant's compliance, then the Local Authority could carry out the work in default. However, if the Respondent did carry out such works to the roadway that was not demised to the Applicant then they would be causing a trespass. Mr Payne suggested that the test was whether the Local Authority could carry out the work in the event of non-compliance. Whilst the maintenance of the roadway was desirable, it is stated to be unreasonable and therefore unduly burdensome.
51. The lease between WP(M)L and BJ(UK)L was for a term of six years. When asked about the provisions under the lease, the Applicant stated that access to the site was via the roadway as a 'public accessway'. But no details were provided of what and where the rights were. As to how the accessway could be maintained, the Applicant stated that the lease contained a rolling break clause. The lease had been provided to the

Local Authority about four years ago and although the copy could not be found, the Applicant was not willing to provide another copy. The advice had been that it was not necessary to provide the lease as it was a commercially sensitive document and even a redacted copy of the lease would expose the Applicant to commercial risks. In relation to an Upper Tribunal decision that a lease may not be disclosed, Mr Payne acknowledged that was not in respect of this site and this lease, but he gave no details of that case. It is stated that the lease details provided are sufficient and that the lease does not provide any rights of occupation or repair of the roadway.

52. Mr Sunderland then stated that previously WPL had not own Cummings Hall Lane, but when it was pointed out that this was in contradiction to his earlier position and also did not seem to be supported by the Land Registry entries, he accepted that he was now mistaken.
53. Mr Sunderland stated that in the lease there were no obligations on the lessor to maintain the road.
54. In respect of the linkages between the companies, Mr Payne argued that the control flows down and not up and WP(M)L cannot make demands on the upper structure. It is not appropriate to pierce the corporate veil and any condition must be capable of compliance, and if not, then the condition will be unduly burdensome. A revised Site Licence plan had been submitted that shows the site without Cummings Hall Lane [P67]. It is suggested that section 5(1) relates to the site itself and no other areas and to include other areas would impose conditions on a Licence Holder that they could not satisfy.
55. Mr Matthias stated that it was not acceptable for Mr Sunderland to state what were the terms of the lease, when no copy had been provided. He then went on to explain that when WPL had the Site Licence it also held the legal interests in the main site and Cummings Hall Lane. There was the transfer of both estates to BH(UK)L in 2014 but then in 2017 the lease to WP(M)L allowed for the separation of the estates.
56. From the supplemental bundle the Tribunal had the current entries from Companies House. These showed that WP(M)L had two directors, Alfred William Best and David Paul Sunderland and that active person with significant control, having 75% or more of the shares, of WP(M)L is Uk Properties Management Limited (UPML). The three directors of UPML are Ian Michael Farr, Alfred William Best and Waseem Hanif and that active person with significant control of UPML is Best Holdings (Uk) Limited (BH(UK)L). The three directors of BH(UK)L are Ian Michael Farr, Alfred William Best and Waseem Hanif and that the active person with significant control of BH(UK)L is Best Holdings Group Limited (BHGL) and that the single director of BHGL is Alfred William Best with the active person having significant control is Alfred William Best.
57. Given the nexus between the companies, it is suggested that there is no reason that BH(UK)L cannot maintain the roadway. Otherwise the

structure of the companies would be a mechanism to evade responsibility. The condition is required to ensure the amenity of the site is maintained for the residents and in particular in respect of the elderly residents and for issues sure as fire safety. Without the condition, there would be nothing to protect the residents. It is argued that section 5(5) is the statutory mechanism that gives a Licence Holder the responsibility for a condition, even if the it does not have the obligation. Where a condition is necessary and impacts on the amenity of residents, then a Licence Holder cannot evade the obligation by saying that it does not have the right to carry out works. The burden is on WP(M)L to take steps to ensure compliance with the condition. The mechanism would apply even if there was no connection between the various organisations. But in this case, there is a link between WP(M)L and BH(UK)L and that means that it would not be unreasonable to impose this condition.

58. We do not agree with Mr Payne that the test for this issue is whether the Local Authority can enter onto the land to carry out works in default of non-compliance of the conditions by the Licence Holder. The test remains as set out in Llanfyllin and expanded by the Vale of White Horse. However, the tribunal accepts that section 5(5) of the 1960 Act also needs to be considered.
59. The Tribunal determines that the condition is necessary and serves a useful purpose as it ensures that the amenity of the residents is protected by having safe access over the roadway. This position was acknowledged by the Applicant. We also consider that the cost or the amount of work required to comply with the condition is not excessive in comparison with the benefit it achieves. The safe access over the roadway is of immense benefit to the residents and the costs of maintaining the roadway would be proportionate to that benefit.
60. The more difficult issue is the third strand of the test as set out in the Vale of White Horse case. Namely whether it is possible for the site owner to achieve compliance.
61. Although the Applicant says that it has no rights to maintain the road, we have not been provided with the relevant parts of the lease. Although it is stated that there the lease 'does not afford any rights of occupation or repair of the roadway', we do not have any details of what the lease does contain and any obligations on the lessor. It seems incomprehensible that a commercial organisation such as WP(M)L would enter into a lease without securing proper rights of access and likewise ensuring that there are obligations on the lessor to maintain the road. Given the refusal to provide a meaningful copy of the lease, the Applicant has not persuaded the Tribunal that it is not practicable for it to comply with the condition. We do not think it an attractive proposition that a Licence Holder can enter into an arrangement so as to avoid responsibilities.
62. However, we have also had consideration of section 5(5) of the 1960 Act. That provision seems to envisage exactly the situation we have in this case, namely that a condition can be imposed even if the Licence Holder

is not entitled to carry it out as of right. This seems, amongst other matters, to be a statutory protection against any anti-avoidance steps that a Licence Holder may take. A Licence Holder should not be able to benefit from an arrangement that would allow it to avoid its obligations. There are duties on the Licence Holder to ensure that the amenity to the residents is protected and as such we consider that the condition for the access road to be maintained is not unreasonable and not unduly burdensome. Therefore, we confirm the wording of condition 4(b).

63. We would comment that on a practical basis, given the relationships between the companies we do not think that there will be a barrier to the compliance of the condition.

Condition 10

64. Condition 10 sets out various conditions about the drainage arrangements on the site. Condition 10(i) was not disputed. Condition 10(iv) was agreed at the hearing as *'(iv) Work on drains and sewers shall be accrued out only by a competent person in accordance with appropriate statutory requirements'*. Condition 10(ii) and 10(iii) remained in dispute. Although the wording reflected the wording in the Model Standards, Mr Payne indicated that he had been involved with the drafting to the Model Standards but considered there were some flaws in the wording
65. Condition 10 (ii) states *'There shall be satisfactory provision for foul and waste water drainage either by connection to a public sewer or sewage treatment works or by discharge to a properly constructed septic tank or cesspool approved by the local authority'*.
66. Mr Payne stated that there would be additional level of approval and it is unclear who would give the approval. As there is already statutory provision then the condition is unnecessary.
67. Ms Laybourn confirmed that this is a not a planning control issue but would be overseen by building control. The condition is taken from the Model Standards and allows Havering to take enforcement action against the Applicant if problems arise.
68. Condition 10(iii) states *'All drainage and sanitation provision shall be in accordance with all current legislation and British or European Standards'*.
69. Mr Payne stated that the reference to legislative provisions was a duplication and unnecessary as there is already statutory standards that could be used for enforcement.
70. For the Respondent Mr Matthias, submitted that if there was a duplication in the Model Standards, this shows the importance of the provision. By including a condition in the Site Licence, then this would enable the Local Authority to intervene if any problems arise.

71. The Tribunal accepts the submissions made by the Respondent. Whilst there may be statutory requirements the inclusion of the conditions in the Site Licence allows the Local Authority to have more of a monitoring role and this will allow for early engagement if problems arise at the site.
72. As such conditions 10(ii) and (iii) serve a useful purpose in ensuring that the site is properly monitored and managed. There is no excessive cost to the Applicant given the benefits that will be derived for the residents of having a properly maintain site. Finally, there are no practical impediments for the Applicant complying with the condition. In the circumstances we do not find that conditions 10(ii) and 10 (iii) are unduly burdensome and we confirm those conditions.

Condition 11(ii)

73. Condition 11 (ii) The proposal was “*Proper facilities shall be afforded for refuse to be collected by the Council of the London Borough of Havering. No refuse may be tipped or otherwise disposed of on the site*”.
74. At the hearing the parties agreed that the alternative wording for 11(ii) should be “*No refuse may be tipped or otherwise disposed of on the site by or on the behalf of the site owner*”.

Site Licence Plan

75. Given our findings in paragraph 43, we consider that the Site Licence plan should include Cummings Hall Lane. The site plan attached to the 2002 Site Licence to WPL [p65] is confirmed as the relevant Site Plan.

Chair: Ms H C Bowers

Date: 27 September 2021

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix

Caravan Sites and Control of Development act 1980

Section 5.— Power of local authority to attach conditions to site licences.

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

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

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

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

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

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

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

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

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

(3) A site licence issued in respect of any land shall, unless it is issued subject to a condition restricting to three or less the total number of caravans which may be stationed on the land at any one time, contain an express condition that, at all times when caravans are stationed on the land for the purposes of human habitation, a copy of the licence as for the time being in force shall be displayed on the land in some conspicuous place.

(3A) The local authority shall consult the fire and rescue authority as to the extent to which any model standards relating to fire precautions which have been specified under subsection (6) of this section are appropriate to the land.

(3B) If—

(a) no such standards have been specified; or

(b) any standard that has been specified appears to the fire and rescue authority to be inappropriate to the land,

the local authority shall consult the fire and rescue authority as to what conditions relating to fire precautions ought to be attached to the site licence instead.

(3C) Subsections (3A) and (3B) of this section do not apply where the Regulatory Reform (Fire Safety) Order 2005 applies to the land.

(4) A condition attached to a site licence may, if it requires the carrying out of any works on the land in respect of which the licence is issued, prohibit or restrict the bringing of caravans on to the land for the purposes of human habitation until such time as the local authority have certified in writing that the works have been completed to their satisfaction; and where the land to which the site licence relates is at the time in use as a caravan site, the condition may, whether or not it contains any such prohibition or restriction as aforesaid, require the works to be completed to the satisfaction of the authority within a stated period.

(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) No model standards may be specified under subsection (6) of this section in relation to land to which the Regulatory Reform (Fire Safety) Order 2005 applies in so far as the standards relate to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order.

(7) The duty imposed on a local authority by subsection (6) of this section to have regard to standards specified under that subsection is to be construed, as regards standards relating to fire precautions which are so specified, as a duty to have regard to them subject to any advice given by the fire and rescue authority under subsection (3A) or (3B) of this section.

(8) In this section "*fire precautions*" means precautions to be taken for any of the purposes specified in paragraph (e) of subsection (1) of this section for which conditions may be imposed by virtue of [this section] .

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

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

(1A) In a case where [the tribunal]⁴ varies or cancels a condition under subsection (1), it may also attach a new condition to the licence in question.

(2) In so far as the effect of a condition (in whatever words expressed) subject to which a site licence is issued in respect of any land is to require the carrying

out on the land of any works, the condition shall not have effect during the period within which the person to whom the site licence is issued is entitled by virtue of the foregoing subsection to appeal against the condition nor, thereafter, whilst an appeal against the condition is pending.
England

Section 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) Where the Regulatory Reform (Fire Safety) Order 2005 applies to the land to which the site licence relates, no condition may be attached to a site licence under subsection (1) of this section 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.

(1B) A local authority in England may require an application by the holder of a site licence in respect of a relevant protected site in their area for the alteration of the conditions attached to the site licence to be accompanied by a fee fixed by the local authority.

(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 [...]²[or, in a case relating to land in England, to [the tribunal]ᶻ ; and the court or tribunal]ᶞ may, if they allow the appeal, give to the local authority such directions as may be necessary to give effect to their decision.

(3) The alteration by a local authority of the conditions attached to any site licence shall not have effect until written notification thereof has been received by the holder of the licence, and in so far as any such alteration imposes a requirement on the holder of the licence to carry out on the land to which the licence relates any works which he would not otherwise be required to carry out, the alteration shall not have effect during the period within which the said holder is entitled by virtue of the last foregoing subsection to appeal against the alteration nor, thereafter, whilst an appeal against the alteration is pending.

(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]ᶞ]ᶞ 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) The local authority shall consult the fire and rescue authority before exercising the powers conferred upon them by subsection (1) of this section in relation to a condition attached to a site licence for the purposes set out in section 5(1)(e) of this Act.

(5A) Subsection (5) of this section does not apply where the Regulatory Reform (Fire Safety) Order 2005 applies to the land.