



Neutral Citation Number: [2021] EWHC 666 (QB)

Case No: QB-2020-3729

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
S.222 LOCAL GOVERNMENT ACT 1972

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22/03/2021

Before :

MICHAEL KENT QC
(Sitting as a Judge of the High Court)

Between :

CHELMSFORD CITY COUNCIL
- and -
(1) LEISURE PARKS REAL ESTATE
(HOLDINGS) LTD
(2) LEISURE PARKS REAL ESTATE LTD
(3) JAMES ROBERT CRICKMORE
(4) COLIN CRICKMORE
(5) MAURICE SINES
(6) PERSONS UNKNOWN

Claimant

Defendants

Mr Josef Cannon (instructed by **Sharpe Pritchard LLP**) for the **Claimant**
Mr Michael Rudd (instructed by **Apps Legal Ltd Solicitors**) for the **Defendants**

Hearing dates: 16 February 2021

Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 22 March 2021.

Michael Kent QC :

Introduction

1. The Claimant Council brings proceedings under section 222 of the Local Government Act 1972 (“LGA”) seeking an injunction to restrain what they say are anticipated breaches of conditions contained in a site licence issued by them under the Caravan Sites and Control of Development Act 1960 (“the 1960 Act”) to Leisure Parks Real Estate Ltd as occupiers of a caravan site known as Hayes Country Park, Battlesbridge near Wickford in Essex.
2. The proceedings were started by Part 8 claim form issued on 23 October 2020 naming that company as First Defendant, a holding company as Second Defendant and three individuals said to be concerned in the management of the First Defendant. These Defendants are jointly represented in these proceedings and although there is an issue as to whether the Second Defendant should have been joined, being said to be neither an owner or occupier of the site or its operator, there is no need at present for me to decide whether that is correct. Where I refer to “the Defendants” I am not to be taken to be deciding that any of them, other than the First Defendant, is subject to the relevant conditions of the site licence.
3. The Council obtained an interim injunction from May J on 27 October and this was continued, with some modification, until trial or further order by Ellenbogen J on 5 November. This is my judgment following trial of the claim for a final injunction.

The background

4. A caravan park has existed at the site since the 1950s. Originally planning permission was for seasonal holiday occupancy only but following a series of amendments and fresh permissions, by March 2015 the whole site had full planning permission for use of the land as a residential caravan park on a year round basis.
5. Site licences under the 1960 Act had been issued by the Claimant from time to time but, following the planning permission in respect of the whole site granted in 2015 which replaced separate permissions for parts of the site, the First Defendant, which had owned the land between 2007 and 2013 before transferring it to the Second Defendant, applied for and was granted, on 19 August 2015, a fresh site licence, number 14/00044/CVAN. This licence permits the placing of up to 390 permanent residential mobile homes on the Hayes Country Park site. Currently there are some 307 caravans in the Park. The expressions “caravan” and “mobile home” have been used in the planning permission and site licence documents but it is common ground that these cover what might also be referred to as static units, park homes and touring caravans. In some places they are referred to as “units”. I will refer to them without distinction as caravans. They each belong to the residents who are permitted under a contractual licence with the First Defendant to place their caravans and ancillary structures on a pitch provided by the site owner. Because it is not limited to holiday or seasonal use it counts as a “relevant protected site” which gives some additional protection to the residents under the Mobile Homes Act 1983.

6. It is one of the conditions attached to that licence which has given rise to the dispute in this case. The council were alerted to what they say were breaches of that condition by reports to them by residents of the site starting in May 2020 about works being carried out on an area of land adjoining part of the site known as The Oaks and to the south of caravans at numbers 4 to 15 The Oaks which themselves had first been occupied between 2013 and 2015. Concrete hardstanding for 11 new caravans had been, or were being, laid in this area of land between The Oaks and the River Crouch and some residents considered that they would be too close to the existing caravans. There were concerns about fire safety issues and it appears that, to some extent at least, these complaints were prompted by the loss of a view over farmland to the river. There was also a suggestion, which turned out to be incorrect, that the development may have been extending beyond the boundaries of the land for which the First Defendant had both planning permission and a site licence.
7. The Claimant accepts that the residents have no right to a view and make it clear that these proceedings are not intended to secure any such right, though they do say that the condition which it is said the Defendants threatened to breach was partly imposed for reasons of the privacy of occupants of caravans and to that extent the complaints are relevant to what I have to determine. They led to a request by email on 19 May 2020 to the Defendant's site manager Michelle Rider for details of the proposed new development. The Council having received no response a follow-up email was sent on 22 May stating that a site visit would be made the following week by the Council's housing standards lead officer Karen Martin accompanied by the housing standards officer, Gemma Dudley. Ms Rider responded asking for 24 hours' notice of such a visit and this was given. The site visit took place on 28 May when Ms Rider and someone overseeing the works were spoken to. Photographs and some measurements were taken. Ms Dudley then wrote a letter to the Defendants on 3 June, which included the following:

“Your site licence states that ‘every caravan should not be less than 6 metres away from any other caravan which is occupied separately and not less than 2 metres from a road’ and, where there are ramps for the disabled, verandas and stairs extending from the unit, there should be a 4.5 metre clear space between these and other caravans. It also states that it is recommended that a 3-metre-wide area is kept clear within the inside of all boundaries. The new development does not appear to meet these conditions and may be in breach of your caravan site licence.

You are therefore urged to cease all works until you have entered into proper consultation with ourselves as the Licensing Authority and can evidence how the development will comply with your site licence.

As discussed on site, you should submit a scaled plan of the proposed area, showing all relevant structures including roads and boundaries and details of the types of units to be sited (and their construction materials) along with any other supporting information so that we can consider this and its impact in terms of compliance with the existing site licence and proximity to existing homes.

...

Concern has been raised that in order to comply with the 4.5m spacing between verandas and the new bases, residents of The Oaks will have their existing decking removed or reduced in size. This is not an acceptable solution to ensure compliance with your site licence and any such action may be deemed as harassment.” [emphasis in the original]

8. It is apparent that at the site visit there was some discussion as to whether the separation distance between caravans required by the site licence was 6 metres or 5.25 metres, the latter being said to be the applicable separation if the caravans met certain fire safety requirements. It is clear that a separation distance of at least 5.25m with careful placing of caravans on the new hardstandings could be maintained between caravans if structures, generally referred to as sundecks, attached to several of the caravans already present at The Oaks were ignored. The reference in the Council’s letter of 3 June to *“ramps for the disabled, verandas and stairs”* and a requirement of a 4.5 metre clear space between these and other caravans is to these sundecks and to the Council’s reading of part of the site licence condition the meaning of which is the subject of the dispute in these proceedings. However at that time the Defendants were not taking any point about the Council’s reading of the site licence condition as applied to sundecks but were indicating that the problem would be solved by removing or reducing the size of the sundecks attached to existing caravans. Hence the reference in the Council’s letter to the possibility that this would amount to harassment.
9. On 5 June Ms Rider sent a plan of the proposed development in the vicinity of the Oaks showing ten new bases and a new access road but not showing the existing structures attached to several of the caravans at The Oaks. The Council continued to receive expressions of concern by existing residents and decided on a further site visit which took place on 30 June when Ms Martin and Ms Dudley attended accompanied by two individuals from a firm of surveyors to take measurements. They were met by the third and fourth Defendants, the latter of whom it is said became hostile during the meeting stating that the development was compliant. Further photographs and measurements were taken. I have been shown the scaled plan drawn up by the surveyors which shows the existing caravans together with sundecks labelled on the plan as *“verandahs”* and the 10 new concrete bases that had been laid. These measurements show that in a number of cases the *“verandahs”* would be very much closer than 4.5 metres from any caravan placed on new bases if (as is generally the case) the new caravan is large enough to occupy most of the concrete pad.
10. On 9 July the Defendants stated they would maintain a separation distance of 6 metres between homes *“to save upset and to comply with the current site licence”*. That disposed of the dispute as to whether a separation distance of only 5.25 metres applied but not as to the alleged need to keep the new homes at least 4.5 metres from structures such as sundecks attached to existing homes. This led to a letter to the Defendants from a senior lawyer for the Council dated 14 July setting out what were said to be a number of apprehended breaches of condition 2 of the site licence in this respect. These related to seven sundecks and one awning associated with existing homes in The Oaks and also, on the assumption that sundecks were to be attached to the new caravans, to those sundecks as they themselves would then be within 4.5 metres of another caravan. An

undertaking was requested that changes would be made to avoid these breaches occurring.

11. Correspondence with the Defendants' solicitor ensued and this resulted on 20 July in a written form of undertaking being provided relating to land at The Oaks "*not to move and locate any mobile homes on the land in breach of the site licence conditions dated 19 August 2015 as to density and space between caravans (condition 2)*". This was expressed to continue until 8 September.
12. As that deadline approached the Council invited the Defendants' solicitor to continue the undertaking beyond that date, failing which an application to the Court for an injunction would be made. On 3 September the Defendant's solicitor, while objecting that the threat to obtain an injunction was improper given the remedies and procedures available to the Council under the 1960 Act, did provide a form of undertaking which continued the previous one in the same terms but without a time limit. However the point was then raised for the first time that condition 2 of the site licence might not require a separation of 4.5 metres between sundecks and adjacent caravans, a point which the Defendants' solicitor said she was going to investigate. After a chasing letter from the Council the Defendants' solicitor wrote on 16 October contending that the Council's interpretation of condition 2 in relation to the 4.5 metre distance rule was misconceived and incorrect. I do not need to set out at this stage the reasoning in support of this argument because it is the same as the argument that has been put before me which I will come to but, following that letter, the Council received further complaints from residents at the site that caravans were now being placed on the new hard standings and this led to a further site visit on 21 October, this time by Jane Smith the Council's business compliance manager, accompanied by Joanne Grimley an environmental health officer. They spoke to the third and fourth Defendants. Three new caravans were in position. Photographs were taken and the distances between the new caravans and structures associated with existing caravans at The Oaks were measured, revealing that one new home was 1.2 metres and another 2.54 metres from the sundeck of number 12 The Oaks, while another new home was 2.6 metres from the sundeck of number 10 The Oaks. The third new home was not closer than 4.5 m to any such structure. The fourth Defendant was asked if homes were to be placed on the other still empty concrete bases that had recently been constructed and he replied "of course".
13. Within days the Council had issued these proceedings and obtained an interim injunction from May J. This interim order was prohibitive and not mandatory and therefore did not require the removal of caravans or structures which were already on the site, but merely restrained the Defendants from bringing onto the site further caravans (or structures) that would result in any attached veranda or sundeck being within 4.5 metres of an adjacent caravan or that adjacent caravan's own veranda or sundeck. There was also a prohibition on the residential occupation of any caravan that had been brought onto the land on or after 16 October 2020.
14. Subsequently there was another site visit on 3 November by Ms Grimley and Ms Dudley accompanied by surveyors. This revealed that by then there were a total of nine caravans on the new pitches though none were occupied. However the sundecks of numbers 6, 10 and 12 of The Oaks had been reduced in size as had a patio outside number 11. This meant that, despite the new caravans being brought on site, there was no breach of the interim injunction and because of the reduction in size of existing

sundecks there was no breach of condition 2 of the site licence as interpreted by the Council in relation to the three new caravans that were seen on 21 October.

15. To complete the history Ellenbogen J, on 5 November on the Claimant's application for continuation of May J's order which had been time-limited, did continue the interim injunction subject to a variation which restricted its effect to the part of the overall site where the new hard standings were being placed south of The Oaks. The relevance of this reduction in the area affected by the order is that, while some of the modifications made to sundecks attached to homes in The Oaks arguably resulted in a breach of condition 2 (possibly even on the Defendant's interpretation of it), those were outside the area now subject to the injunction.

A threshold objection

16. I have provided the history in some detail because it may become relevant to the question whether, if the Claimant's argument as to the proper interpretation of the disputed site licence condition is correct, a final injunction is an appropriate remedy. First however I need to consider a threshold objection made by Mr Rudd on behalf the Defendants namely that use by the Council of powers given to them by section 222 LGA in respect of the dispute in this case is improper and this Court should not entertain the claim at all. Section 222 (1) provides:

“Power of local authorities to prosecute or defend legal proceedings.

(1) Where a local authority consider it expedient for the promotion or protection of the interests of the inhabitants of their area—

(a) they may prosecute or defend or appear in any legal proceedings and, in the case of civil proceedings, may institute them in their own name, and

(b) they may, in their own name, make representations in the interests of the inhabitants at any public inquiry held by or

on behalf of any Minister or public body under any enactment.”

17. This is not strictly an objection that the issue of these proceedings goes beyond the power granted by section 222 let alone one going to the Court's jurisdiction. It is accepted that the terms of section 222 are wide enough to cover these proceedings. Rather it is submitted that it is contrary to principle to use this power in circumstances where there are adequate statutory powers available to the Council which would enable them to enforce what they say are actual or apprehended breaches of licence conditions in the detailed statutory machinery provided for in the 1960 Act. In circumstances therefore where the Claimant comes to this Court seeking a discretionary remedy the Court can and should dismiss the claim without considering the merits of the underlying dispute for that reason.

18. In support of this argument Mr Rudd cites *Birmingham City Council v Shafi and another* [2008] EWCA Civ 1186; [2009] 1 W.L.R. 1961. That was a case in which a local authority, relying upon section 222, sought injunctions prohibiting the defendants, who were alleged to be gang members, from entering the city centre, associating with individuals and wearing certain clothing, in order to prevent or reduce the risk of serious crime involving gangs. The Court of Appeal held that it was wrong in principle for the Council to use the power under section 222 to obtain an injunction when Parliament had enacted a detailed statutory scheme in the Crime and Disorder Act 1998 which could have been used to address the problem.
19. I will return to the details of that statutory scheme but Mr Rudd referred me to a number of provisions in the 1960 Act which he said would have enabled the Council to achieve directly or indirectly precisely what they seek to achieve in these proceedings. First he relied upon section 9A which applies to relevant protected sites such as this and enables the Council to issue a compliance notice. Subsection (1) provides:

“(1) If it appears to a local authority in England who have issued a site licence in respect of a relevant protected site in their area that the occupier of the land concerned is failing or has failed to comply with a condition for the time being attached to the site licence, they may serve a compliance notice on the occupier.”
20. Under subsection (2) such a compliance notice is required to: set out the relevant condition and the details of the failure to comply with it, require the occupier to take specified steps to ensure compliance within a specified period and explain the right of appeal provided by subsection (3). If a notice “*which has become operative*” is not complied with the occupier of the land who has been served with it commits an offence: section 9B (1).
21. The occupier may appeal against the notice to a tribunal, in practice the First Tier Tribunal (Property Chamber), and this is regulated by section 9G which requires an appeal to be made within 21 days of service of the compliance notice. The tribunal can then confirm, vary or quash the notice. Mr Rudd also notes that under section 9E the Council have power to take emergency action in relation to a failure to comply with a condition in a site licence. Before doing so the local authority must serve a notice in order to give the occupier of the land reasonable notice of the intended entry. However this power is confined to cases where “*there is an imminent risk of serious harm to the health or safety of any person who is or maybe on the land*” and the action that may be taken is limited to such as appears to the authority to be necessary to remove that imminent risk. There is a right of appeal by the occupier against such action though only after it has been taken.
22. Mr Rudd also points to the power under section 8 given to the local authority to alter conditions attached to site licences. This can be done at any time subject to giving the holder of a licence an opportunity to make representations. If, despite such representations, the alteration is made the holder of the site licence has a right of appeal to the tribunal within 28 days. The point here being made by Mr Rudd is that if a local authority and the occupier of a site disagree as to the meaning of a site licence condition the local authority can propose an alteration which removes any ambiguity and reflects in clear terms their interpretation. In fact it appears from the wording of section 8 (2) that the holder of the site licence can himself propose an alteration of conditions and, if

that proposal is refused by the local authority, he may pursue the matter by way of appeal to the tribunal. Finally Mr Rudd refers me to section 11 which requires a licence holder to surrender his licence for alteration of the conditions or other terms of the licence made in pursuance of that Part of the 1960 Act which will include alterations made under section 8.

23. Mr Cannon counters this argument by contending that what his client seeks in these proceedings finds no precise or even broadly comparable counterpart within the powers contained in the 1960 Act. As far as a compliance notice under section 9A is concerned, that can only relate to established breaches and this claim is explicitly aimed at a remedy which prevents future breaches. Nor would such a process directly assist in resolving a dispute as to what the licence condition meant. The site owner would have to comply with the notice whatever his view as to the correctness of the Council's interpretation of the condition. It is true that the site the site owner could appeal by virtue of section 9A (3) and then the tribunal would have to decide whether the compliance notice should have been issued which would involve deciding the true meaning of the condition. However in the meantime the compliance notice does not become operative (section 9H (4)) until the appeal is determined by the tribunal. Therefore, although the dispute about the meaning of the condition could by that means be brought before a tribunal, there would be no sanction for non-compliance in the meantime.
24. In my judgment Mr Cannon is right to submit that the processes laid down in the 1960 Act do not replicate in every respect the remedies available to a local authority issuing proceedings under 222 LGA. Further I do not see that the local authority can be required to issue a compliance notice, with the potential criminal penalties for failure to obey, in preference to bringing the matter before the Court, which might be for a remedy such as a declaration which would not, even indirectly, create a risk of penal consequences.
25. The wording of section 9A (1) ("*is failing or has failed to comply with the condition*") might be wide enough to cover a historic failure as well as a continuing breach of condition. If so a compliance notice could in this case have been issued based upon the breaches occurring, on the Council's interpretation of the licence condition, by the placing of two of the three new caravans seen on the site on 21 October. However as those breaches (if that is what they were) were quickly rectified, it is impossible to see what would have been contained in a compliance notice as the steps required to be taken by the occupier to remedy the breach. That might suggest that section 9A must be read as allowing compliance notices only in respect of continuing breaches.
26. The power to take emergency action under section 9E was clearly not available in this case where it has not been suggested that there is any imminent risk of serious harm to the health and safety of any person resulting from the alleged breach and, in any event, that could only be used in relation to continuing breaches. As for the Claimant proposing an amendment to the licence conditions to remove ambiguity, while that in theory could have been done, in my judgment the existence of that power cannot be used by a site owner who (possibly disingenuously) takes issue with a reading of a condition by the local authority to force the council to vary the conditions thereby giving the site owner not merely the opportunity to argue before a tribunal as to what an existing condition means but also to seek to persuade the tribunal not to introduce the new condition at all. If the existence of this power is taken to prevent a local authority from bringing before this Court the dispute as to what a condition means, it would enable any site owner or licensee to delay enforcement by the simple expedient

of saying that he does not agree with the council's interpretation of the condition and requiring it to propose new wording which could then be subject to an appeal.

27. In contrast in the *Birmingham City* case (*supra*) as analysed in the judgment of the Master of the Rolls it was apparent that under the legislation which enabled the local authority to obtain antisocial behaviour orders from a Magistrates Court, precisely the same restrictions on the movements and associations of the defendants could have been obtained from the magistrates, with additional procedural safeguards to protect the defendants that would not be available in civil proceedings for an injunction.
28. However Mr Rudd has an additional point namely that the very fact that Parliament did not provide express machinery in Part I of the 1960 Act for dealing with apprehended breaches of conditions amounts itself to an indication that Parliament did not intend that it would ever be appropriate to seek a Court order to prevent such breaches occurring. It would have been perfectly possible to devise machinery for that purpose (which might have involved a Magistrates' Court or a tribunal) but Parliament has chosen not to do so. Paradoxically of course this is precisely the argument Mr Cannon relies upon as supporting his contention that the detailed provisions of the 1960 Act provide no reason why, as a matter of principle, his client should not resort to powers under section 222 to seek an injunction in a case such as this to restrain anticipated breaches.
29. Connected with this objection is an assertion by Mr Rudd that the dispute here as to the meaning of the licence condition should be resolved by what he describes as a "specialist tribunal" (namely the Property Chamber of the first-tier Tribunal) and this is what Parliament intended by laying down detailed statutory procedures designed to bring the matter before such a tribunal, the argument being that Parliament could not have intended the Courts to have a concurrent role to play in resolving such matters. He bolsters that argument by saying that if the matter went before a tribunal his client would be able to deploy expert evidence on the meaning of this disputed condition as well as on surrounding matters such as the fire risk presented by these sundecks. In my view that is a misconceived argument. Apart from the need for clear words in a statute ousting the jurisdiction of the High Court (as I have said Mr Rudd does not assert that the court has no jurisdiction in the narrow sense), it is quite wrong to suggest that the meaning of the condition in this case can only be resolved by a specialist tribunal or that the tribunal would have any specialist knowledge to do so or that expert evidence could be deployed. Very occasionally courts will allow expert evidence to assist in the interpretation of the statutory provision but only where it is apparent that words have been used in the provision in question in a highly technical sense the limits of which may not be apparent to the layman: see *London and North Eastern Railway Co v Berriman* [1946] AC 278, at 305-6, per Lord Porter. Though this site licence condition is not strictly a statutory provision it is made under statutory powers and indeed is based upon model wording issued by the government which the Council was required to pay regard to. In my view Lord Porter's observations apply as much to this case as to the construction of a statute. While there is some dispute as to what the word "Veranda" means in the disputed condition which I will come to, it is otherwise expressed in ordinary words of the English language and is therefore a provision the meaning of which any court or tribunal will decide applying the usual canons of construction. The true meaning of the condition is not a matter of choice or discretion (if it was a specialist tribunal might indeed be in a better position to exercise it). The meaning of the condition

is an objective one on which expert evidence would not be permitted. Nor is it relevant what fire risks may be presented by the structures currently on site because the site licence condition in dispute is not qualified by reference to particular types of construction and, unless it is suggested that no sundeck of whatever construction could ever present a fire risk (which unsurprisingly is not suggested), it would simply be irrelevant that some breaches of the condition as interpreted by the Council might be harmless in one respect.

30. In my judgment Mr Cannon is right. There may be cases where a legislative scheme appears to be so comprehensive in relation to a specialist area for it to be treated as the only means available for achieving compliance even in respect of matters that are not dealt with but they will be very rare and certainly this is not such a case in my view. I cannot read from the fact that detailed provision is made for appeals against compliance notices or proposals to vary conditions to a tribunal that Parliament has thereby intended to leave a gap in respect of anticipated breaches of condition.
31. Mr Rudd also objects to the Court proceeding to a judgment in this case on the basis that it is clearly not a case for a final injunction. The only remedy the Claimant is seeking (apart from costs) is an injunction. The Court can only grant such relief if it is "*just and convenient to do so*": section 37 (1) of the Senior Courts Act 1981. He submits that that threshold requirement cannot be satisfied in this case whatever the true meaning of the disputed condition. If there is no possibility of an injunction the Court should simply dismiss the claim without considering the true meaning of the disputed condition. This objection is based in part on the point I have already considered, namely the availability of possible remedies using the machinery of the 1960 Act, but additionally on the proposition that the evidential basis for a *quia timet* injunction is not present. Although the Claimant could have sought, either instead of or in addition to the injunction, a declaration as to the meaning of the disputed condition, that is also a discretionary remedy and if that had been sought Mr Rudd would have had the same objection.
32. However he acknowledged that his clients, as much as the Claimant, need this dispute resolved. In my view it would not be right for me simply to dismiss this claim without resolving the dispute as to the meaning of the condition and it seems to me that I should do that whether or not, if I were to accept the Claimant's interpretation, the remedy of a final injunction in any form would be appropriate. In my judgment it would serve no useful purpose for me simply to dismiss the claim leaving the dispute as to meaning unresolved. Either the Defendants would have to proceed on the pragmatic basis that the Claimant's contention was correct so as to avoid the risk of enforcement proceedings being taken and the expense that might be associated with that if they sought to challenge them in a tribunal; or alternatively, once the interim injunctions are discharged, they could test the water by placing caravans or structures in positions which they consider are compliant with the condition as they interpreted (but in defiance of the Claimant's interpretation) when enforcement proceedings would inevitably follow.
33. In my judgment, far from justifying dismissing the claim without deciding the point if I took the view that the remedy of a final injunction would in any event be inappropriate, the circumstances call for the point to be resolved here and now.

The meaning of the site licence condition

34. I therefore turn belatedly to the point of construction which divides the parties. Condition 2 of site licence, number 14/00044/CVAN provides as follows (I have set out the disputed part in bold):

“Density and space between caravans

Subject to the following variations, every caravan should not be less than 6 metres away from any other caravan which is occupied separately and not less than 2 metres from a road. The point of measurement for porches, awnings etc. is the exterior cladding of the caravan.

- Porches may protrude 1m into the 6m and should be the open type.

- Where awnings are used the distance between any part of the awning and an adjoining caravan should be not less than 3 metres. They should not be of the type which incorporates sleeping accommodation and they should not face each other or touch.

- Eaves, drainpipes and bay windows may extend into the 6 metre space

provided total distance between the extremities of two adjacent units is not less than 5.25 metres.

- Where there are ramps for the disabled, verandas and stairs extending from the unit, there should be a 4.5 metre clear space between them and such items should not face each other in any space. If they are enclosed, they may need to be considered as part of the unit and, as such, should not intrude into the 6 metre space.

- A garage, shed or a covered storage space should be permitted between units only if it is of non-combustible construction (including non-combustible roof) and sufficient space is maintained around each unit so as not to prejudice means of escape in case of fire. Windows in such structures should not face.”

35. I will refer to the disputed part as “condition 2/4”. As I have said this is not something on which expert evidence would be admissible nor of course are the various expressions of opinion offered by witnesses in the statements before me as to what the condition means relevant or admissible. However I do need to take account of both the statutory context and the surrounding circumstances relating to this particular site. I am not interpreting a contract, let alone one arrived at following negotiations between parties with equal bargaining power. On the other hand I am not interpreting a statute but a condition contained in a document prepared by a licensing authority under statutory

powers. It is common ground that the principles of interpretation of such a public document are found in the Scottish case of *Trump International Golf Club Ltd v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85 (applied also in England in *London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government* [2019] UKSC 33 [2019] 1 WLR 4317). In the *Trump* case, which concerned the meaning of a condition in a statutory authorisation for an offshore wind farm, Lord Hodge said at [34]:

“When the court is concerned with the interpretation of words in a condition in a public document such as a section 36 consent, it asks itself what a reasonable reader would understand the words to mean when reading the condition in the context of the other conditions and of the consent as a whole. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the overall purpose of the consent, any other conditions which cast light on the purpose of the relevant words, and common sense.”

36. I am required to interpret a condition which, at least indirectly, can give rise to criminal sanctions for breach. That in itself, submits Mr Rudd, justifies a narrow interpretation so as to limit the circumstances in which the Defendants might find themselves in breach. In my view that carries comparatively little weight. This is not the same as a statutory provision which directly creates a criminal offence because there is no possibility of an offence being committed unless a compliance notice is first issued and then not complied with. Even in those circumstances there is an appeal mechanism which suspends the effect of the notice. It follows that a licensed occupier of a caravan site need never find himself in the position of facing criminal penalties merely because he has a different view as to what a licence condition means.
37. Because condition 2/4 twice refers to “*the unit*” in the singular and the 4.5 metre clear space is to be “*between them*”, apparently referring to the ramps etc the only literal meaning seems to be that ramps etc attached to a single unit cannot be closer than 4.5 metres to other ramps etc also attached the same unit (nor can they face each other).
38. Mr Cannon submits that such a literal reading would lead to absurdity and must be set aside in favour of a reading which gives effect to the clear purpose of condition 2 generally. Taken in its proper context, he submits that it is perfectly clear that the intention is to keep structures away from other caravans by a minimum distance and, for these purposes, instead of the 6 metre separation required between caravans themselves, the distance is reduced to 4.5 metres. He points out that this is part of a condition dealing with “*Density and space between caravans*”. It is therefore concerned with the location of caravans and structures belonging to them in relation to other caravans on the site and the “*variations*” pursue the same purpose. They do so for reasons of privacy and possibly reduction in the risk of spread of fire. It is true that on his interpretation the structures from adjoining caravans can be as close to each other as anyone wishes, as long as they maintain the 4.5 metre distance from the neighbouring caravan. However in such a circumstance it is not the case that the structures will be ones where anyone is sleeping and the second rule that such structures shall not face each other, which he also invites the court to read as meaning structures belonging to separate caravans, in addition to partly addressing this fire spread risk also addresses

the possible invasion of privacy that, for example, sundecks on adjoining caravans facing each other might give rise to.

39. There is no doubt that the wording used here is (with one very slight and immaterial difference) taken from a set of model standard licence conditions issued by the Secretary of State in 1989. These are model standards to which licensing authorities are required to have regard: section 5 (6) of the 1960 Act. It is to say the least surprising that a set of model standard conditions was issued containing wording which, if taken literally, imposes a requirement which serves no apparent purpose while failing to deal with an obvious potential aspect of density and spacing. It is almost as if some words have by mistake been omitted from the printed version. This is not the only unsatisfactory aspect of the wording of condition 2. The opening words (“*Subject to the following variations*”) imply that the rules against the five bullet points that follow are modifications of the primary rule about distances between caravans whereas four of them at least are requirements for the positioning of other structures.
40. Mr Cannon also placed some reliance on the wording of the model standard conditions issued in 2008 where a condition in very similar terms is used but, in relation to the aspects apparently covered by condition 2/4 in the 1989 model conditions, the wording has been changed so as to make it quite clear that what is required. The equivalent 2008 provision is:
- “Any structure including steps, ramps, etc (except a garage or car port), which extends more than 1 metre into the separation distance shall be of non-combustible construction. There should be a 4.5 metre clear distance between any such structure and any adjacent caravan.”*
41. The reason this model standard was not used when the site licence was issued in 2015 despite the requirement in section 5 (6) of the 1960 Act that “*a local authority shall have regard to any standards so specified*” was apparently because the 2008 standard itself discouraged use of the new model conditions in cases where existing conditions were merely being varied. Here there were already conditions in place under the old site licences issued for the various separate parts of the site. Mr Cannon accepts that a subsequently drafted model condition cannot be an aid to interpretation of the earlier version but he submits that it sheds light on what must always have been the purpose behind condition 2/4. I am wary of following him down that route because it comes close to allowing an ambiguity in the wording of the document to be clarified by a change made not by both parties to the dispute but by those in a government department who may be wanting to change the meaning as much as to clarify it.
42. One outcome, which Mr Rudd does not shy away from, is that I could conclude that condition 2/4 has no discernible meaning and is therefore a nullity. That would of course not only have the effect that the Council’s interpretation is rejected but it would mean that there would be no control over the distance between an ancillary structure associated with one caravan and either another caravan or a structure associated with another caravan. That would be such an unsatisfactory outcome that in my view it is one that should be avoided if possible —a meaning was clearly intended and it is necessary to find out what it was. Mr Rudd submits that, if the court is compelled to attach a meaning to this condition, there are two possible readings of it which he says are more obvious than the Claimant’s proposed reading, even though one reading

requires some departure from the literal words. His first reading is a literal one: the word “*them*” in the requirement that “*there should be a 4.5 metre clear space between them*” refers back to “*ramps for the disabled, verandas and stairs extending from the unit*”. It is therefore concerned with structures attached to a single caravan that must be kept apart by 4.5 metres. Similarly the requirement that structures should not face each other refers only to structures attached to a single caravan. His alternative meaning is that word the word “*them*” should be read as referring to the distance between such structures attached to neighbouring caravans. This he accepts is not a literal meaning but it more closely aligns with the apparent purpose. On either construction structures such as sundecks can be placed right up against adjoining caravans.

43. In my view neither of Mr Rudd’s alternatives can be the intended meaning. The first would apply to a single caravan even if there was no other caravan anywhere near it. It is almost impossible to imagine a situation where a condition read in that way would have any practical application or to discern what purpose it would serve: it certainly cannot be relevant to issues of risk of fire spread or privacy and it may not be within any of the listed purposes for which conditions may be imposed in section 5 (1) of the 1960 Act.
44. It is also clear from the side heading and from the other requirements laid down in condition 2 generally that condition 2/4 is concerned with structures attached to one caravan being kept away from other caravans. It might be read as meaning that such structures should be kept 4.5 metres away from similar structures attached to other caravans (either in addition to requiring a minimum distance from other caravans or, as in Mr Rudd’s alternative interpretation, without any restriction on how close such structures can be to a neighbouring caravan itself). The Claimant’s interpretation does not require the structures to be 4.5 metres away from similar structures on other caravans but Mr Cannon explained why that interpretation has not been pursued: the combination of the rule that structures must be kept away from adjoining caravans and the requirement that they (i.e. structures attached to adjoining caravans) should not face each other does adequately address the issues of fire safety and privacy. It may also be noted that the words at the end of condition 2/4 (“*If they are enclosed, they may need to be considered as part of the unit and, as such, should not intrude into the 6 metre space.*”) would address the danger from the risk of spread of fire and possibly privacy issues because people may be sleeping in such enclosed structures. The reference there to “*the 6 metre space*” supports the Claimant’s contention that condition 2/4 is dealing with distances between structures and adjoining caravans.
45. Initially on behalf of the Defendant it was submitted that the word “*veranda*” in condition 2/4 was not wide enough to cover sundecks of the type seen in the photographs. It was submitted that verandas are commonly understood to be semi-enclosed structures. However, rightly in my view, that objection was not pressed at the hearing. While no doubt in origin the word veranda comes from the Indian subcontinent where it referred to an open-sided structure with a roof, it would not seem likely that such structures would lend themselves to being attached to residential caravans and it would make little sense to provide a rule which applied only to outside sitting space which happened to have a roof. Equally the objection that in practice the sundecks at Hayes Country Park were of a steel construction (at any rate below the level of the decking) could not assist in the interpretation of condition 2/4 which says nothing about the materials used in the construction of such structures and if (insofar as fire risk was

a reason for it) steel structures were to be exempted from the condition, that would have had to have been spelt out.

46. There was also an argument, not in the end pressed far, that condition 2/4 is in any event expressed only as guidance and not as a mandatory provision. This argument relied upon use of the word “should” rather than “shall”. There is nothing in this argument as it is obvious that condition 2 generally is laying down mandatory rules about distance and spacing: a licence condition is clearly not the same as mere guidance.
47. Finally there was an objection that the Claimant’s interpretation would, if accepted, mean that the condition went beyond the powers given to a local authority by section 5 of the 1960 Act. The argument was that insofar as the purpose was to provide protection in relation to fire, such powers were limited by section 5 (2A) which provides:

“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.”

48. However I have not been taken to any part of the 2005 Order which contained requirements or prohibitions that either were or could be imposed under that Order which were duplicated in condition 2/4. Moreover it seems that the 2005 Order does not apply to “domestic premises”, an expression which would cover the residential caravans at Hayes Country Park. In any event it is clear that issues of privacy are also addressed by the density and spacing requirements in Condition 2 generally.
49. For all those reasons therefore in my judgment the Claimant’s interpretation of condition 2/4 is correct: under it sundecks and similar above-ground structures extending from a caravan must be kept at least 4.5 metres from any other caravan. They can be closer than that to similar structures extending from another caravan but must not face each other (in relation to sundecks I take that to mean that they can be oriented in the same direction, e.g. side-by-side).

Remedy

50. That leaves the question of remedy. The Claimants do not seek a declaration. Little purpose would probably be served by the conclusion I have just come to being restated as a formal declaration to be embodied in an Order. But the Claimant does seek a permanent injunction.
51. As a discretionary remedy under section 37(1) of the Senior Courts Act such an order can only be made “*in cases in which it appears to the court to be just and convenient to do so*”. There is guidance in the authorities on the use of this remedy in relation to anticipated breaches. I was referred to the summary by Marcus Smith J of the principles relating to the grant of a *quia timet* injunction in *Vastint Leeds BV v Persons unknown* [2018] EWHC 2456 (Ch) [2019] 4 W.L.R. 2 at [31]. For present purposes it is relevant that a final prohibitory injunction will more readily be granted than a final mandatory injunction. The former only is sought here and on behalf of the Claimant it is submitted that the injunction sought merely obliges the Defendants to comply with the site licence conditions. When considering whether to grant a *quia timet* injunction a two-stage test must be followed: first, is there a strong probability that, unless restrained by injunction,

the Defendants will act in breach of the Claimant's rights? Secondly, if they did so, would the harm resulting be so grave and irreparable that a remedy in damages would be inadequate? In my judgment the first test is not satisfied here. It does not follow from the fact that in the past the Defendants had taken steps which were preparatory to arrangements which, on my finding as to the meaning of condition 2/4, would have put them in breach that it remains their intention to do so. It is one thing for a defendant to have acted deliberately in defiance of the rights of a claimant (or as here the rights of those whose interests the Claimant represents, the local residents). That can be taken as some evidence of intention to continue the invasion of those rights unless restrained by injunction. It is quite another where the steps taken were done in good faith on the basis of a genuine belief that the defendant was entitled to take them. The Court will presume that, once a defendant's misapprehension about his legal rights has been corrected by the Court's ruling, he will abide by it.

52. Here there is little to show that the Defendants had no belief in their right to place caravans within 4.5 metres of existing structures. They provided undertakings when asked for them and have not breached the interlocutory injunctions that have been in place since October last year. It may of course be that they were cynically testing the water and backing off when threatened with proceedings. But if so that merely casts doubt on whether they would be prepared to defy this ruling and start placing caravans or structures on the site in breach of the site conditions when they would immediately face a further application for an interim injunction no doubt at their expense.
53. As already mentioned the Council in their letter to the Defendants of 3 June said it may be deemed to be harassment if existing residents were required to remove or reduce the size of their sundecks in order to allow the new caravans to be put where the Defendants wished them to be. It later turned out that doing just that was the way in which the interim injunction of May J was complied with while still enabling new caravans to be brought onto the site. However I have been told that the residents of those caravans on The Oaks whose sundecks were reduced in size or moved were suitably compensated for this change. While they may not have felt they had much choice in the matter there is no evidence before me on which I could conclude that the Defendants had behaved oppressively in relation to existing residents or in breach of the licence agreements they have with them and I cannot take that into account in deciding whether there is a probability of the Defendants, unless restrained, taking action that would amount to breach of condition 2/4 of the site licence.
54. As for whether there would be irreparable harm that could not be remedied in damages if no injunction was granted and the Defendants proceeded to place caravans or structures in breach of site licence conditions that is more problematic. As the Claimant is a local authority acting to protect the interests of a section of the public rather than in respect of its own private law interests, it may be appropriate to regard this second stage test as less significant. Those immediately affected would be other residents of the site rather than the Claimant. However as the first stage is not satisfied the remedy of a final injunction is refused at this stage but I will allow the parties to make submissions in writing as to whether it is appropriate to incorporate in the order consequential on this judgment a provision giving the Claimant liberty to apply for a final injunction to avoid the need for fresh proceedings.