FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/19UJ/PHN/2020/0001
Property	**:**	9 White Horse Park, Osmington Hill, Preston Road, Weymouth, Dorset, DT3 6ED
Applicants	**:**	Carmen Smith & Garry Smith
Representative	**:**	Matthew Cannings of Counsel instructed by Henriques Griffiths
Respondent	**:**	White Horse Park Ltd
Representative	**:**	Amanda Gourlay of Counsel Instructed by Apps Legal Ltd
Type of Application	**:**	Regulation 10 of the Mobile Homes (Site Rules) (England) (Regulations) 2014
Tribunal Member(s)	**:**	Judge J. Dobson Mr N. Robinson FRICS Mr P. Gammon MBE
Date of Site Visit	**:**	20th October 2020
Date of Hearing	**:**	25th September 2020 and 23rd October 2020
Date of Panel reconvene	**:**	17th November 2020
Date of Decision	**:**	25th January 2021

DECISION

Summary of the Decision

1. **The Respondent's decision to implement rule 18b was not unreasonable.**

2. **The Respondent's decision to implement rule 18c was unreasonable. Principally, and explained fully below, it is not reasonable to propose, to attempt to consult on and to impose a Site Rule referring to fire safety requirements without full knowledge of what such requirements are.**

3. **Rule 18c is quashed.**

Background prior to this application and the Site

4. This case concerns a site for park homes, known as White Horse Park, Osmington Hill, Preston Road, Weymouth ("the Site"). The Site is a protected site to which the Mobile Homes Act 1983 as amended ("the Act") and the Mobile Homes (Site Rules) (England) Regulations 2014 ("the 2014 Regulations") apply. The dispute is about the introduction of site rules ("the Site Rules").

5. It is not in dispute that the site was developed by the Respondent or that Carmen Smith purchased a park home situated on pitch number 9 in November 2018. A written statement of the required information pursuant to section 1 of the Act was provided ("the Written Statement"). Neither is it in dispute that in 2019, a site licence ("the Site Licence") was applied for by the Respondent and granted by Dorset Council ("the Council"). The Site Licence was granted on 21st August 2019- having been applied for back on 1st November 2018 (the Applicant's Counsel has referred in closing submissions to the Licence being granted in September 2019 and the Respondents' Counsel in closing submissions to November 2019 but the document is dated as above and the Tribunal cannot identify grant on any other date). That was subject to conditions as to there being no more than 17 parks homes on the Site (the maximum for which planning permission had been granted) and compliance with the 2008 Model Standards adopted by the Council (referred to below in shorthand as the "Site Licence conditions") in relation to Permanent Residential Mobile Homes, which were attached to the Licence.

6. A formal consultation process (which may or may not have followed an informal one, as to which see below) began on 27th January 2020 in respect of the implementation of a set of Site Rules and pursuant to the Act. Those Site Rules were consequently not in place either at the time of the purchase by the Applicants or at the date of the Site Licence being granted.

7. Only two responses were received by the Respondent, one being that made by the Applicants and provided by email on 19th February 2020, stating that one of the Site Rules was disputed. The email more particularly stated:

"Dispute the site rule 18C. Only one car per home, Due to the following reasons listed below.
We are the only park home amongst 17 homes that have parking issues, all other homes have private driveways and parking for 2 to 4 cars per plot and space for their visitors.
Number 9 does not have any of the above parking facilities."

8. The other response related to storage and is not relevant to this application.

9. The Respondent site owner's response by way of a letter from the Respondent to the residents of the Site ("the Residents" or "Resident" where singular), including the Applicants, was dated 13th March 2020. That enclosed the consultation response document mandatory pursuant to the 2014 Regulations and also enclosed the Site Rules, the latter in the same terms as originally proposed. The Site Rules were therefore to be implemented without modification. The Respondent stated in respect of the dispute by the Applicants as follows:

"The … consultee made representations in connection with proposed rule 18c. The consultee is objecting to the proposed rule on the basis that they do not have facilities for parking as opposed to any objection to the substance of the rule. The rule is for the better management of the site when it comes to parking. Therefore we are not proposing any change to this rule."

The Law

10. The applicable provisions are found in the Act and the 2014 Regulations.

11. Section 2C of the Act reads as follows:

2C Site Rules

(1) In the case of a protected site in England…….. for which there are site rules, each of the rules is to be an express terms of each agreement to which this Act applies that relates to a pitch on the site (including an agreement made before or one made before the making of the rules).
(2) The "site rules" for a protected site are rules made by the owner in accordance with such procedure as may be prescribed which relate to-
(a) the management and conduct of the site, or
(b) such other matters as may be prescribed.
(3) …….
(4) Site rules come into force at the end of such period beginning with the first consultation day as may be prescribed, if a copy of the rules is deposited with the local authority before the end of that period.
……

(7) Regulations may provide that a site rule may not be made, varied or deleted unless a proposal to make, vary or delete the rule is notified to the occupiers of the site in question in accordance with the regulations.

12. In respect of the 2014 Regulations, the relevant parts read:

Matters prescribed for the purpose of section 2C(2)(b)

4. (1) The matters prescribed for the purposes of section 2C(2)(b) are the matters set out in paragraph (2).

(2) A site rule must be necessary-

(a) to ensure that acceptable standards are maintained on the site, which will be of general benefit to occupiers; or

(b) to promote and maintain community cohesion on the site.

Requirement to consult on a proposal

7. An owner must, in relation to the protected site concerned, consult-

(a) every occupier; and

(b) any qualifying resident's association,

on a proposal in accordance with regulations 8 and 9.

Notification of proposal

8. (1) The owner must notify each consultee of a proposal, by issuing a proposal notice ("the proposal notice")

(2) The proposal notice must-

(a) clearly set out a proposal;

(b) contain a statement of the owner's reasons for making a proposal;

(c) .....

(d) Contain a list of the matters prescribed by regulations 4 and 5 and statement confirming that a proposal complies with the requirements of these provisions;

Owner's response to the consultation

9. (1) Within 21 days of the last consultation day, the owner, having taken into account any representations received from the consultees, must-

(a) decide whether to implement the proposal (with or without modification) ("the decision"); and

(b) send a document, to be known as "the consultation response document", to each consultee, notifying them of that decision.

(1) The consultation response document must also-

(a) Give details of the consultation carried out under regulations 7 and 8, including the first consultation day;

(b) give details of the representations received, the owner's response to the representations and such modifications as were made to the proposal (if any) as a result of the consultation;

Right to appeal to tribunal in relation to the owner's decision

10. (1) Within 21 days of receipt of the consultation response document a consultee may appeal to a tribunal on one or more of the grounds specified in paragraph (2).

(2) The grounds are that-
(a) site rule makes provision in relation to any of the prescribed matters set out in Schedule 5.
(b) the owner has not complied with a procedural requirement imposed by regulation 7 to 9 of these Regulations
(c) the owner's decision was unreasonable having regard, in particular to-
(i) the proposal or the representations received in response to the consultation
(ii) the size, layout, character, services, or amenities on the site; or
(iii) the terms of any planning permission or conditions of the site licence

Appeal procedure

11. On determining an appeal under regulation 10 the tribunal may-
(a) Confirm the owner's decision;
(b) Quash or modify the owner's decision;
(c) Substitute the owner's decision with its own decision; or
(d) Where the owner has failed to comply with the procedure set out in regulations 7 to 9, order the owner to comply with regulations 7 to 9 (as appropriate), within such time as may be specified by the tribunal.

13. In relation to relevant caselaw, both parties referred to the decision of the Upper Tribunal in *White v Simpson* [2019] UK UT 0210 (LC). In addition, the Respondent relied on *BP Shipping Ltd V Braganza* [2015] 1 WLR 1661. Those case authorities and the impact on the Decision in this case are discussed below.

The Site Licence conditions

14. The model standards subject to which the Site Licence has been granted sets out various relevant conditions. Those are particular to the Council, although there are also the Model Standards 2008 for Caravan Sites in England issued by the Department for Communities and Local Government ("DCLG") on which councils, in the Tribunal's experience, base their individual documents. The Council's document is more fully headed and the relevant conditions, as specifically identified by the parties, read as follows:

"**DORSET COUNCIL**
CARAVAN SITES AND CONTROL OF DEVELOPMENT ACT, 1960
SECTION 5

MODEL STANDARDS 2008: RESIDENTIAL CARAVAN SITES"

2. Density, Spacing and Parking Between Caravans

(i) Except in the case mentioned in sub paragraph (iii) and subject to sub paragraph (iv), every caravan must where practicable

be spaced at a distance of no less than 6 metres (the separation distance) from any other caravan which is occupied as a separate residence.

(ii) ....

(iii) Where a caravan has retrospectively been fitted with cladding from Class 1 fire rated materials to its facing walls, then the separation distance between it and an adjacent caravan may be reduced to a minimum of 5.25 metres.

(iv) In any case mentioned in subparagraph (i) or (iii):

.....

(g) Private cars may be parked within the separation distance provided that they do not obstruct entrances to caravans access around them and they are a minimum of 3 metres from an adjacent caravan.

3. Road, Gateways and Overhead Cables

(i) Roads shall be designed to provide adequate access for emergency vehicles and routes within the site for such vehicles must be kept clear of obstruction at all times.

.....

(iv) New two way roads shall not be less than 3.7 metres wide.....

13. Communal vehicle parking

Suitably surfaced parking spaces shall be provided to meet the requirement of residents and their visitors.

15. The DCLG document contains the exact same provisions 3 (i) and 3(iv). It refers in explanatory notes to roads requiring enough clearance to allow safe entry for emergency vehicles and new units on lorries, adding that the width is based on the maximum sizes of emergency vehicles that may regularly attend incidents on sites. Albeit that the explanatory notes are not part of the Council's model conditions, the Council was obliged to have regard to the DCLG document, and the above indicates the reason for provisions in the DCLG's model at least. The Council's application of the same wording indicates, the Tribunal considers, the intended link between the two matters.

16. It is not apparent that any provision in respect of the planning permission granted for the Site, save that it permits the number of park homes actually sited, is relevant. It should be noted that breach of the Site Licence conditions can cause the site owner to be fined and two convictions can lead to an application for the Licence to be revoked.

<u>The Site Rules</u>

17. The Site Rules the subject of challenge in this application read as follows:

18b All vehicles must be driven carefully on the park not exceeding the displayed speed limit. Parking is not permitted on roads or grass verges.

18c One car per park home, registered to the address for your park home is permitted. This car should be parked on the driveway of your pitch unless the driveway can accommodate a second car and the parking of this vehicle (also registered to the address for your park home) does not contravene the park's site licence conditions and fire safety requirements.

18. The Tribunal observes at this point that 18c is, at best, badly expressed. If, as the Tribunal understands the Respondent's case to be, it intends to say that a Resident can have two cars parked on the pitch, provided that can be done complying with the Site Licence conditions and fire safety requirements, it fails to do so. The Tribunal is unable to find a way to read the words of the rule to that effect and would need to either add several words, or perhaps remove certain words, to achieve it.

19. Instead, the rule as drafted addresses two things:

i) How many cars a park home may a pitch owner have? Answer- one.
ii) Where that car can be parked? Answer- on the driveway, unless the driveway can also accommodate the parking of a second car- in which event the rule does not say where the one car can be parked.

20. This rule as written does not say that if the driveway can accommodate the parking of two cars then two cars can be parked on it, but rather does not permit the parking of two cars at all. Somewhat nonsensically, it reads as if one car can be parked on the pitch if that is the most that the pitch can accommodate: it reads that even one car cannot be parked on the pitch if the pitch could accommodate more.

21. "This vehicle" refers to a second one, given that "also registered" indicates a vehicle other than the "one car" registered but the term "this car" refers to the first car and a second one is referred to as "a second car", so that does not assist. In any event, the second sentence does not in any clear terms, if at all, qualify the number of cars "permitted". Whilst it mentions the ability of the driveway to accommodate a second car, it does not as written permit such second car.

22. It should be said that no such confusion arises with rule 18b.

The earlier part of the history of the case

23. The Applicants appealed the Respondent site owner's decision. The appeal was submitted in time and just after the commencement of the first lockdown caused by the Covid-19 pandemic, although even that submission was not without problems, as later became apparent.

24. The application has then had an unusually involved history. Several sets of Directions have been given. The parties originally agreed to the application being dealt with on paper, at a time when the matter must presumably have seemed considerably simpler than it has since become. However, in the event, Judge Dobson considered that the matter could not be dealt with on paper because of the nature of the dispute and relevant evidence.

25. Judge Dobson did identify the considerable effort spent by the parties on arguing in statements of case whether the Respondent was correctly identified, giving an interim decision finding that the Respondent named in the application contained in the bundle was the correct one. It later transpired that reflected the correct version of the application having been included in the determination bundle, whereas an incorrect draft one had also been received by the Tribunal and had been sent out when Directions were first given. That incorrect draft application was apparently treated by both sides as being the relevant one, albeit that the correct one was then placed in the bundle and the bundle contents agreed by the solicitors for both sides (in the case of the Applicants that is different solicitors to those who represented in the later stages of the application).

26. It merits mention that aside from naming the wrong respondent, the application the parties had incorrectly thought to be the one issued differed, less significantly substantively, by being on an old version of the form and, more significantly, by having ticked all three particular sets of factors to which regard must be had in respect of the third potential ground for challenging the site owner's decision, namely that the owner's decision was unreasonable (see further below) as identified in 10(2)(c) of the 2014 Regulations. The parties must have been content for the Tribunal to determine the application on paper based on the contents of incorrect draft application about which they had provided lengthy comments, had that been placed in the bundle. The parties may have received a determination based on that application and the submissions and evidence advanced in relation to and included in the bundle for that paper determination but for such approach not being considered appropriate.

27. Further directions were subsequently given, applications were made, a case management hearing was held, permission to appeal the interim decision was was filed with this Tribunal and the interim decision was set aside (with observation as to the apparent lack of purpose served by the appeal) essentially as the decision was no longer relevant because of subsequent developments which led to the correct Respondent remaining as respondent in any event (and produced the lack of purpose).

Hearing on 25th September 2020

28. The application was listed for final hearing on 25th September 2020. At that hearing, Mr Cannings of Counsel for the Applicants and Ms Gourlay of Counsel for the Respondent appeared; together with Mr Mayer and Ms Apps as the solicitors for the parties; Mr Smith, Mr Simmons and Ms Moss

as the witnesses and Mrs Smith as a party only. The hearing was conducted as video proceedings and recorded.

29. Skeleton Arguments had helpfully been prepared by each Counsel in respect of that hearing, 10 pages long for the Applicant and 9 for the Respondent (although the latter was referred to as Opening Submissions). Those are referred to below where appropriate.

30. Mr Smith was permitted at the hearing on 25th September 2020 to give evidence in chief in respect of matters which were altered from those set out in his statement, in consequence of a fire risk assessment report ("fire report", or "fire reports" where plural) which had been produced on behalf of the Respondent and which the Applicants wished to rely on as being relevant. The Tribunal permitted reliance on that report, and also, in principle, allowed evidence in chief from Mr Simmons to the extent required to address matters arising in respect of the report, although the hearing did not proceed that far on that date.

31. The hearing was in the event adjourned part- heard because of issues with the Mr Smith's oral evidence given as compared to the Applicant's written case. The point was reached during the morning that it was apparent that because of the change to the Applicants' position in consequence of the fire report obtained by the Respondent, the evidence that Mr Smith was likely to give and the Applicant's pleaded case would not be consistent, the pleaded case no longer accurately representing the Applicant's position. It was also apparent that other issues may arise. The hearing was stood down until the afternoon, with the intention that the Applicants could amend their case and other directions be given. Any relevant aspects of such evidence as was given by Mr Smith are included in the Evidence and Findings of Fact below insofar as the evidence is relevant to those findings.

32. When the hearing was recalled in the afternoon, before Judge Dobson alone, leave for the Applicants to amend their statements of case was granted and Directions were made towards an adjourned remainder of the final hearing. Brief submissions were made as to whether the Applicants could challenge both site rules 18b and 18c or only the latter, despite not having raised the former in responding to the consultation. Brief submissions were also made as to whether the Applicants could rely on the third set of factors to have particular regard to as to whether the site owner's decision was unreasonable pursuant to regulation 10(2)(c).

33. The Applicants were given permission to amend their statement of case in respect of site rule 18b, where the Respondent could respond asserting that the Applicant was limited to matters raised in the consultation process if so advised, and in respect of matters arising from the fire report relied on and also to adduce evidence in support of the amendments, with consequential amendments to the Respondent's case also being permitted. The Reply to the Applicants' Amended and Amalgamated Statement of Case by the Respondent dated 13th October 2020 stated that the Applicants had not sought permission to dispute 18b but was incorrect in doing so. No permission was at that time given for amendment in respect of the third

set of factors to have particular regard to in relation to the ground of appeal that the site owner's decision was unreasonable or for other amendments.

34. It should also be noted that at the start of the hearing, the Tribunal specifically invited submissions from Counsel in respect of four specific questions, as follows:

    a) What is the meaning of management and conduct for the purpose of s 2C(2)(a) of the Act?
    b) Is the Tribunal required to make a decision as to the reasonableness of the process or only the reasonableness of the outcome?
    c) What are the matters about which the Tribunal should make factual findings?
    d) If the Tribunal determines that the Site Rules should be modified, what should such modifications be?

35. Those matters were, inevitably, not addressed at the hearing in the event but were subsequently and are dealt with within the Evidence and Findings of Fact and the Consideration sections of this Decision.

The later history of the case

36. Further paper applications were subsequently received, most notably by the Applicant to further amend to rely on that third set of particular factors, opposed by the Respondent. That application was granted. The case management decision granting that application was the subject of an application for permission to appeal, dismissed by this Tribunal and the Upper Tribunal, although with potential to further pursue one element subsequently if relevant after the final hearing. That element was that there was a substantial procedural irregularity in that the Tribunal exceeded the reasonable limits of its case management discretion. It will be a matter for the Respondent to pursue that point, or not, in due course. That has no bearing on this Decision. Similarly, it is not appropriate in this Decision to revisit that previous case management decision**.**

37. During the same few days, a site inspection was undertaken, which the Tribunal found of assistance- see below. Various measurements were taken by the parties and provided to the Tribunal on site.

The Site Inspection

38. The site inspection was held on Tuesday 20th October 2020 and was able to be undertaken because of being a solely external inspection. There was no need to enter any of the park homes and the Tribunal did not do so. Social distancing was able to be maintained. The matters seen at the site inspection are identified within this section, save where a specific dispute arose in respect of which a finding of fact was required.

39. The Tribunal was shown round the Applicant's pitch- number 9- including the asserted single parking space ("the Parking Space"), the adjacent

pitches, the roadway through the Site ("the Roadway"), the intended position of the two visitor parking spaces to be provided on the Site and the remainder of the Site from the entrance to the newer part more generally. The site inspection was attended by the parties, by Mr Mayer and Ms Apps and also by Ms Gourlay.

40. It was agreed and apparent that the development of the Site had taken place in two stages, pitch 9 forming part of the earlier stage. It was also apparent that a number of the park homes situated on the newer part of the site were as yet unoccupied and indeed the newer part of the site was apparently not entirely completed. It appears to be agreed that 11 pitches are occupied of the 17 and no specific finding is required in determining this application. The Roadway climbs from Preston Road through the older portion of the Site (9 pitches), including pitch 9 and then through part of the newer portion of the Site (8 pitches) to the fence at the top of the Site, then turning right to the other pitches at the top of the Site. The result is that the Roadway is- as the Site is more generally- roughly L-shaped. The Roadway was said by Mr Simmons, and otherwise appeared from the inspection, not to have its final surface.

41. There were pitches on both sides of the Roadway as it climbed through the site to the top. At the point at which the Roadway turns to make the smaller limb of the L, there are pitches to one side only plus one in front of the end of the limb and so those are at or slightly below the height of the Roadway. To the other side of the Roadway is only the fence and a very thin grassed area between the kerb and the fence. It was not apparent that should be regarded as a grass verges. To the other side of the fence are fields.

42. The site appears to have been levelled out somewhat at the higher part and by the shorter limb of the L, and so within the newer portion, in order to create the newer pitches in that area. A stone retaining wall runs to the side of those pitches, specifically pitch 14, where what at brief glance appeared to be a fairly flat pitch, is above the level of the Roadway as that climbs up the slope. There is also a marked height differential between the rear edge of those pitches and the closest of the older pitches, pitch 5.

43. Pitch 9 is situated in the older part of the Site. It was not in dispute, and it was clear from the inspection, that pitch 9 is unique on the Site in that it is the only one with a single parking space ("the Parking Space") and without a driveway parallel with the length of the park home placed on the given pitch. The Parking Space, rather than being to one side of the park home, is instead in front of it and between the park home and the Roadway. For the avoidance of doubt, the Tribunal acknowledges that the Applicants do not accept the space to properly be described as a parking space but that name enables the area to be clearly termed. The dispute as to the space is discussed below.

44. Block plans of the Site from A1 Architectural Design, dated 9th October 2020, were distributed during the course of the site inspection on behalf of the Respondent and without objections on behalf of the Applicant,

demonstrating the layout of the Site. Those were subsequently available for the hearing on 23rd October 2020. Not all of the measurements shown were agreed, as addressed further below.

45. Mr Smith had hired a Transit van or equivalent, which he had parked somewhat on the Parking Space and somewhat on the Roadway. A bicycle had been chained to the railing by the Parking Space, separating the Space from the path around the park home, and was situated on the Parking Space, inevitably taking up a portion of that. The Tribunal asked for the van to be moved.

46. Parking to the driveway of the adjacent pitches was first unintentionally demonstrated by the Resident of number 8 returning and parking his car, with no regard to the relevance of his parking position to this case. The Respondent asked the Resident to move the car closer to his home on pitch 8, the original position of the car being closer to the Applicant's home than fire safety requirements allowed.

47. In addition, Ms Apps kindly demonstrated the parking available on pitch 10, to the other side of pitch 9. That showed that there were places on the pitch where it appeared at first blush reasonable to park but where parking would be within three metres (see below) of the Applicants' park home.

48. None of the pitches on which any of the park homes on the Site were situated included any marked parking spaces indicative of there only being particular places on the pitch that a car could be parked, or alternatively indicated places where a car should not be parked.

49. The pitches- at least 8, 9 and 10- included steps from the path (in the case of pitch 9) or driveway (in the case of the others) to a raised flat area outside of the entrance door along the side of each park home. The entrance to the Applicants' park home faced the entrance to the park home on pitch 10. There are consequently two sets of steps and raised areas between the homes on pitches 9 and 10.

50. The presence of those steps and raised areas inevitably reduced the width of the driveway on pitches, save pitch 9 of course, available for parking vehicles.

51. The position of the intended visitor parking spaces had been temporarily marked on the Roadway for the purpose of the site inspection. They were situated to the right- hand side as viewed from the entrance and looking into the Site, within the newer portion of the site- therefore further into the Site and higher up than pitch 9- and by the retaining wall, after which wall the Roadway turns to the right as mentioned above.

52. Notices were displayed on a noticeboard near to the entrance to the Site. There are no amenities provided on the Site. The Tribunal understands it to be agreed that utilities are supplied to the park homes but was not shown anything specific in relation to that.

53. Measurements were taken at the site inspection.

54. The measurement of the Parking Space was 2.28 metres at its narrowest depth. The depth includes what is notionally the kerb, itself measured at 0.3 metres. The depth of the Parking Space could be seen to increase gradually from the edge of pitch 9 with pitch 8 to the edge of pitch 9 with pitch 10. For example, by the edge of the park home itself nearest to pitch 8, the parking space is close to 2.3 metres deep. By the edge of the pitch with pitch 10, the depth is 2.6 metres. It goes below 2.4 metres depth approximately- but not precisely- 40% of the way along the width of the park home itself- from the direction of pitch 8 towards pitch 10. The Tribunal has another measurement recorded at the site inspection of 2.53 metres marked somewhat roughly a little way along that width of the park home from the corner closest to pitch 10.

55. There is also the pathway by the railings mentioned between the front of the Applicant's park home and the Parking Space that is 0.83 metres depth, reduced to 0.58 metres where the bay window protrudes.

56. The pitch was 6.85 metres wide all told, including the width of the retaining walls. The park home itself was 4 metres wide. Other pitches were different sizes but the Applicant were anxious to demonstrate the width of pitch 12 in particular. That was 9.5 metres wide.

57. There is a 6- metre distance from the park home on pitch 8 to that on pitch 9. There is a 6- metre distance from the other edge of the Applicants' park home to the park home on pitch 10. The Respondent has, it should be noted, pleaded that the first distance is 5.99 metres and not 6 metres but the measurement taken was 6 metres and the Tribunal accepts it.

58. The narrowest width of the driveway to pitch 10 is 3 metres, being that between the retaining wall by the steps to pitch 9 and that by the steps to pitch 10. When Ms Apps parked her car in that area, it was approximately 2.2 metres away from the Applicants' park home.

59. No car was parked between the retaining wall by the steps to pitch 8 and that to pitch 9. However, it was abundantly clear that a car parked there would be within 3 metres of the Applicants' park home.

60. The site inspection demonstrated that cars can only be parked on the driveways of 8 and 10 and be more than 3 metres away from the Applicants' park home on pitch 9 if parked either closer to the Roadway than the steps or deeper into the pitch than the steps. Where so parked, a part of the width of the car would have to be directly in front of or behind such steps.

61. The Roadway was indicated by the block plan to be just under 3.7 metres wide at its narrowest point, by the lowest edge of the visitors' parking spaces if they are placed exactly where temporarily marked. It is in the region of 5.5 metres wide at its widest point as it rises along the longer limb of the L, ignoring any of the Roadway in the area of the visitors'

parking spaces and the width that there would be if those visitors' parking spaces were removed- see below.

The Hearing on 23rd October 2020

62. The application proceeded to the remainder of the final hearing on 23rd October 2020. Attendance was the same as at the previous hearing and the hearing was again conducted as video proceedings and recorded. In addition to the oral evidence received, it should be mentioned that the Tribunal also received unchallenged written evidence from Mr Wyllie and Mr Stephenson.

63. The bundle had grown to some 716 pages long. The limited references below to specific page numbers are to pages of that bundle. Further Skeleton Arguments were filed, now 14 pages long for the Applicants and 13 pages long for the Respondent. The bundle excluded a further 25 pages received the day before the hearing date- comprising a further fire report, plans and photographs- mostly agreed although with a degree of issue taken by the Applicants' solicitors about the further fire report, not specifically pursued at the hearing.

64. All oral evidence was heard, although insufficient time was available for closing submissions, which was not unexpected. Written closing submissions were received from each Counsel by 7th November 2020. As might be expected, those adopted a similar approach to the issues as set out in Counsel's Skeleton Arguments, with additional references to the evidence given. The submissions were detailed, that by Mr Cannings being 14 pages long and Ms Gourlay's being 21 pages long (but incorporating matters within her Opening Submissions document).

65. The contents of the closing submissions are not set out here, save to mention briefly two specific points. The first is that Mr Cannings, in reference to the Respondent's Reply to the Applicants' Amended and Amalgamated Statement of Case suggesting that permission had not been given for the Applicant to challenge rule 18b, noted that the application form in respect of such proceedings does not ask which rule or rules are the subject of challenge and so there was nothing within the application precluding a challenge to 18b. That is plainly correct, so too is the fact that permission was granted at the late point in proceedings that challenge to 18b was specifically raised. The second is that Ms Gourlay made reference to compliance notices issued by the Council and that the matters within those were effectively sub judice. Judge Dobson should record being aware that matters have moved on such that the notices have been withdrawn. No consideration has been given to the matters to which they referred in any event.

66. Reference is made to the relevant elements of the submissions as appropriate in relation to the Tribunal's findings of fact and its consideration of the issues in light of those findings as set out below.

67. For completeness, it is recorded that following receipt of those written submissions, the Tribunal re- convened on 17th November 2020 to consider the evidence and the written closing submissions and to make its decision. This is that Decision, delayed by the Christmas and New Year period and subsequent developments.

Evidence and Findings of Fact

68. The third question asked by the Tribunal of Counsel at the hearing on 24th September 2020 was as to the factual findings required. The Tribunal is grateful to Counsel for their assistance in that regard. The Tribunal has not, however, confined itself to those matters suggested by Counsel but rather has made additional findings of fact as considered appropriate on the evidence received and as relevant to determinations to make.

69. The size of the Site is fairly small, having only 17 pitches. The layout of the Site has been addressed in relation to the site inspection, so too services and amenities. The Site is a residential one.

70. The Tribunal does not make any finding as to what may or may not have been agreed with the Respondent prior to or at the time of the purchase of their park home by the Applicants as to parking, in particular whether the pitch ought to have had the benefit of any driveway. Such matters fall outside of the jurisdiction of the Tribunal in respect of this application. The Tribunal similarly does not make any finding as to whether or not there may ever have been a plan for the driveway of pitch 10 to instead be the driveway for pitch 9 and for the driveway of pitch 10 to be situated to the other side of the park home on that pitch. The Tribunal has noted the suggestion in that regard by Mr Smith and the response of Mr Simmons but considers that the evidence before it as to the issue is limited, that nothing turns on the issue in this case and that any determination of the issue is better dealt with on another occasion, if relevant.

71. The Tribunal does find that there is physically the one Parking Space for pitch 9, being that in front of the park home, in front of the railings and by the Roadway.

72. The Tribunal finds that the Parking Space is just that. The Tribunal finds that there is nothing of significance about the kerb, that being more of a design aspect than having any practical significance and that it is appropriate to include the depth of the kerbstones as part of the Parking Space. The Tribunal finds the size to be sufficient to properly be regarded as a parking space.

73. No evidence was presented that the size must be different on any given type of road surface, in the event of any given level of incline or for any other reason.

74. The Tribunal has considered carefully the parties' positions but notes that neither has been able to point to any absolute requirement as to size for a parking space. However, the Tribunal has had careful regard to the

Bournemouth, Poole and Dorset Residential Car Parking Study included in the bundle and where the findings and guidance have not been challenged by either side. Those included the size that each space should measure in relation to parallel parking spaces. That indicates that for a parking space between other vehicles also parallel parked, the recommended length is 6 metres, allowing for space for entry and exit, between that and the next parallel parking space. Further, the recommended width is 2.4 metres.

75. The Tribunal has had regard to the depth of pitch 9 being 12cm less wide at its narrowest point than the guidance provides for in respect of parallel parking spaces. However, that is more than 6 metres away from the widest depth. Whilst no specific measurement was taken at exactly 6 metres along from the edge of the pitch by pitch 10, the 2.3 metre measurement is thereabouts at that point. The Tribunal adds that the bundle (page 278) includes a block plan numbered 1912-06, which shows a measurement of 2.477 metres at or about the same point. However, that measurement is taken at an angle as opposed to straight across the depth and so the Tribunal prefers the measurement taken at the site inspection, rejecting the Respondent's pleaded case of (all of) the depth of the Parking Space being over 2.4 metres.

76. The Tribunal accepts that the photographs relied on by the Respondent as demonstrating that the Applicant could park their Citroen Picasso vehicle owned at the time of the photograph on the parking space, do indeed demonstrate exactly that. Two photographs merit comment. The first (at page 381 of the bundle) shows the Picasso parked on the Parking Space and the Applicant's other car parked on the Roadway. That is despite the Picasso appearing to be parked towards the end of the Parking Space nearest to pitch 8 and so the narrower part.

77. The second (at page 382) shows the Picasso, with its passenger door apparently fully open, parked partly on the road, albeit with a small-ish gap between the door and the railings found between the park home and the Parking Space. It appears to seek to demonstrate that to open the Picasso door more than a certain distance for entry and exit, the Picasso will not fit on the Parking Space. However, the parking is again to the narrower end of the Space with quite a gap between the front of the Picasso and pitch 10, the location of the widest part of the space. The Tribunal finds that the photograph does not demonstrate the inability to park on the Parking Space and to enter and exit the car if it is parked on the wider part of the Space.

78. The Tribunal finds that such a space- at least 6 metres long- is plainly expected to be capable of being entered and exited where vehicles are parked in the adjacent spaces and without the need to enter into those spaces. In a similar vein, there should be no need for the Applicants to drive across the adjacent pitches in order to park in the Parking Space (leaving aside the question of any entitlement to do so).

79. It is plain that the Parking Space is not generous and that the part nearer to pitch 8 is less deep than the guidelines provide for. It is equally

abundantly clear that the Parking Space is a fraction of the size of the driveways of the other pitches. However, having considered the Parking Spa and the Site at the inspection and generally having considered the status of the guidelines, the Tribunal has found that the Parking Space is sufficient in size to properly be regarded as a parking space.

80. The Tribunal is mindful that Mr Smith gave oral evidence that he had experienced difficulties with parking in the Parking Space and that he cannot do so without driving over the driveways of one or other of the adjacent pitches. The Tribunal has no reason to disbelieve Mr Smith but can identify no reason why there ought to be such difficulty.

81. The Tribunal finds that to the extent that the Applicants' case altered from there only being one usable parking space to there being none in light of the contents of the fire report available ahead of the hearing on 24th September 2020, that is factually wrong. The Applicant's change of position was based on an asserted inability to enter and exit the Parking Space if the residents of the adjacent park home parked their cars to the front of their pitches, as the Applicant asserted they would have to do in order to comply with fire safety requirements. However, the Tribunal finds that in principle it matters not where the Residents of the adjacent park homes park on their pitches for the purpose of access and egress from the Parking Space, because the Applicants ought to be able to achieve such access and egress irrespective of that, given that the Applicants do not, or should not, need to cross the adjacent pitches. The Tribunal finds that - and the Tribunal notes that the Applicant does not in Mr Cannings' submissions accept this- that cars can be parked between units 9 and 10 without blocking access to the Parking Space.

82. The Tribunal finds on Mr Smith's evidence, which there is no reason to doubt, that the Applicants owned one car at the time of purchase of their park home: the Tribunal finds that a second car was bought after the date of that purchase.

83. In relation to the pitches adjacent to the Applicants' pitch, it was demonstrated at the site inspection that it was possible to park cars on the driveways at least 3 metres away from the Applicants' park home and the Tribunal consequently finds that it is. That finding does not equate to a finding that is what actually happens in practice. Indeed, the Tribunal finds quite the opposite. i.e. that Residents do not, at least always, park 3 metres away from park homes on adjacent pitches.

84. The Tribunal finds that the Residents regard the entire paved area of their pitches as being parking areas. Given the lack of any marking to suggest that parking has to be in a given position or one of a number of specific positions, that is understandable. The Tribunal had particular regard to the matters shown to the Tribunal at the site inspection and the parking revealed, which the attendees all saw.

85. Equally, the Tribunal finds that the Residents have not parked and do not park being mindful of limitations placed on where they can do so because

of the requirements of fire safety. The Tribunal finds that reflects them having not had sight of any fire report prior to purchase of their pitches, or it seems at all at least until the later stages of this application if at all, which might have imposed such limitations and caused them to consider their parking positions on their pitches. The Tribunal finds it to further reflect the lack of any markings on the flagged areas of the pitches to indicate that parking should be in any given place or places, as opposed to wherever the Resident chooses.

86. The Tribunal finds that the block plan dated 9th October 2020 was, rather obviously, not prepared for the purpose of the decision to implement the Site Rules or provided to the Residents at the time of the consultation which took place months earlier than the block plan existed, but rather for the purpose of the hearing. To that extent the fact that there are rectangles within which drawings of cars are placed, is detail which did not previously exist and Residents had not been made aware of. It is also detail not known to the Respondent at the time of the consultation or any relevant decision.

87. The Tribunal does not attempt to make any finding as to where such Residents would need to park in order to comply with fire safety requirements. If the Tribunal did need to, it would be a difficult task, given the two different fire reports in existence and the lack of any oral evidence from the author of either which might assist in determining which is correct.

88. The Tribunal accordingly finds that there is one parking space, the same as there has been from the outset, on pitch 9 and that the Parking Space is a sufficient space to be properly regarded as a parking space and to be accessible, irrespective of where the Residents with adjacent pitches park their own vehicles.

89. The Tribunal finds that the Parking Space is not sufficiently large for a Transit van or equivalent of the sort that Mr Smith stated he needs for his work, the evidence from the inspection and a further photograph produced indicating it to be too wide, ignoring the space taken up by the bicycle. No specific measurements were taken of the van. The Tribunal treats the statement as to the sort of vehicle Mr Smith needs as correct, without making any finding, insofar as it is necessary to consider it.

90. The Tribunal finds that the Applicants cannot park on the Roadway outside their pitch without causing a breach of the Site Licence and otherwise of fire safety. In the event that the Applicants were to do so, not only would they breach the proposed rule 18b which precludes such parking, but also more generally there would be insufficient remaining width of the Roadway to enable access by appropriate fire or similar emergency vehicles.

91. The Tribunal finds, on the evidence of the Applicants and the photographs, that the Applicants have previously parked on the Roadway, also noting Mr Smith's evidence that such car has previously been hit by another vehicle while so parked. That all appears uncontroversial. The Tribunal finds on

the oral evidence, including that of Mr Simmons, that visitors to the site also park on the road. The Tribunal considers the assertion in correspondence from the Applicants' then solicitors dated 26th March 2020 that Mr Smith's car is the only car at the Site parked on the Roadway is not accurate generally, although on the evidence received it would be correct if limited to Residents' cars. In any event, any such cars reduce and have reduced the useable width of the Roadway. Given that the width of the Roadway by the edge of the Applicants' pitch nearest to pitch 8 is 5.12m and even though the Roadway is wider by the edge of the pitch by pitch 10, the Tribunal finds that a vehicle could not be parked on the Roadway outside of the Applicants' pitch and still leave sufficient usable width.

92. The Tribunal finds that the visitors' parking spaces are, if laid out in the manner they were at the site inspection, on the Roadway. The Tribunal rejects the submission to the contrary. For the avoidance of doubt, the Tribunal does not find the intended visitors' parking spaces, at least as marked out at the site inspection, to be separate to the Roadway. The Tribunal finds as a fact that they would therefore, if laid out in the same manner, also be in breach of rule 18b. The intended visitor's spaces would not be in breach of the Site Licence conditions or otherwise of fire safety requirements. The Tribunal finds that allowing for the width of the intended spaces as marked, the remaining width of roadway can be 3.7 metres or over.

93. It may well be possible to provide the spaces so that they do not form part of the roadway. The Tribunal accepts that only temporary marking indicating an intended location of the visitors' parking spaces was seen at the inspection.

94. The Tribunal finds that in addition to the distance between the Applicants' park home and those on pitches 8 and 10 being 6 metres, the distance between all other park homes is at least 5.25 metres. The evidence in support of that is somewhat limited but the letter from the Council to the Respondent's agent Mr Eisner dated 9th April 2020 refers to certain distances being under 5.75 metres, although no problem arises if suitable cladding has been used. The Tribunal finds on the evidence presented that it has. There is no suggestion of distance under 5.25 metres, where the Tribunal has little doubt reference would have been made if relevant.

95. The Tribunal accepts that the Respondent owns other sites and that Mr Simmons has experience of developing and running park home sites.

96. The Tribunal finds that the Respondent proposed identical site rules around the same time and at two quite different sites. The Tribunal does not fully accept Mr Simmons evidence that the Respondent goes through its proposed rules carefully in relation to each individual site. The Tribunal finds that the Respondent was aware of the types of matters that the Site Rules would need to cover and that those will be similar in each case. The Tribunal finds that the Respondent did not consider the size and nature of the site and the site layout specifically, there being no evidence of the

Respondent having done so. The same applies in respect of the specific fire safety requirements of this Site in particular.

97. The Tribunal finds that the Respondent must have considered the general adequacy of parking on the Site prior to the decision to introduce the rules in issue to at least some extent. There was, the Tribunal finds, always an intention to provide parking space for visitors away from the pitches, which indicates an appreciation of the need for such spaces. There was insufficient evidence received for the Tribunal to make any more precise finding, in particular about any specific consideration of the extent of parking provision on the pitches.

98. The Tribunal accepts that the Respondent, through Mr Simmons, had some knowledge of fire safety requirements and that in general terms the Site was developed mindful of those. The Tribunal finds that the park homes were class 1 fire rated (of relevance to distances), that the pitches are flagged in sandstone and that sheds are metal. The Respondent asserted that pitches are spaced in accordance with government guidelines, which the Tribunal accepts. The Tribunal also finds that the Respondent knew the content of the Council's published Model Standards applicable to sites and the provisions about spacing of park homes and the parking of vehicles as referred to in them. The Council's Model Standards are publicly available and will reasonably be known to site owners. The Tribunal has no difficulty accepting that the Respondent was aware of them.

99. In respect of the specific submission of Ms Gourlay that Mr Simmons was able to anticipate that, for example, vehicles must be parked a three- metre distance from adjacent homes, the Tribunal did not receive specific evidence of that. It is not mentioned in any of the 16 pages of his 2 witness statements. The Tribunal finds there to be a distinct lack of evidence that Mr Simmons so anticipated, so rejects the assertion that he did and finds on the evidence that was received by it that he did not.

100. The Tribunal more significantly rejects the oral evidence of Mr Simmons that he had then applied such knowledge as the Respondent had and considered fire safety requirements in relation to the making of the particular proposed site rules challenged, which is to say those related to the parking of vehicles, prior to the consultation. The Tribunal further rejects the Respondents implicit case that Mr Simmons had done so in a sufficient manner and that he was capable of sufficiently doing so. In rejecting that evidence, the Tribunal noted that Mr Simmons first gave such evidence orally, that he did not do so convincingly and significantly that at no time in the prior history of the case had such evidence been set out. Only in the statement of case dated 13th October 2020 was it first even hinted at, despite the instruction of solicitors throughout.

101. No written record of any informal fire assessment existed and no clear information was presented as to when such assessment may have been undertaken that might have even started to allay the Tribunal's concern as to Mr Simmons' evidence on the matter. Whilst the Respondent's pleading that the statutory consultation procedure did not require disclosure of

documents, assessment or reports supporting the proposed rules is correct, that is both an unappealing stance and one which has not been followed by disclosure in these proceedings either, where sensibly there would have been such disclosure if such documents existed. The Respondent can hardly complain if, in the absence of any disclosure, the Tribunal finds there to be no document and finds that lack of documents to support no assessment having on balance taken place. The Tribunal does so find.

102. The evidence from Mr Simmons was first given in response to cross examination about the consultation and the lack of a fire report at that time. The Tribunal does not accept it.

103. The Tribunal finds that the Respondent had not carried out a fire risk assessment or other fire safety assessment. The Tribunal finds that there was nothing on which it could have found that Mr Simmons was able to undertake an acceptable fire risk assessment or other fire safety requirements assessment even if it had found that he had in fact attempted to do so. His asserted knowledge of such matters was general at best- going only as far as to suggest he had a good idea about it- and far from obviously sufficient. Mr Simmons possesses no relevant qualifications, or at least none about he gave evidence, and demonstrated no other basis for being capable of carrying out an acceptable assessment. The Tribunal finds it unlikely that the situation would not have been acceptable to a fire authority if the Respondent's approach had been challenged.

104. Consequently, the Tribunal finds that whilst the Respondent had some knowledge of general fire safety requirements, it did not know about ones specific to the particular pitches on this Site as laid out and how requirements needed to be applied in relation to them. The Tribunal finds that the Respondent did not consider those matters.

105. The Respondent was not in receipt of any fire report at that time or until after 30th June 2020. The Tribunal finds that the Respondent did not, and could not, know what the contents would turn out to be of a fire report that did not exist. The Respondent did not seek a fire report until after the commencement of this application. The Tribunal finds that the Respondent could not formulate the Site Rules to permit parking on pitches to accord with fire safety requirements which the Respondent did not know.

106. The Tribunal should record, some credit for Mr Simmons that he conceded that the lack of a report was "a good point".

107. The Tribunal has no difficulty accepting that the Respondent was aware that the Roadway would need to be have 3.7 metres usable. The Tribunal does not, however, find that Mr Simmons ability to refer in response to questions that the width required for emergency vehicles is 3.7 metres, amply covered in documents within the case, demonstrates any more detailed knowledge of fire safety requirements and nearly as much as Ms Gourlay submitted

108. The Tribunal finds that the Respondent did not, and could not, know on or before 16th August 2019- the date of the letters said to have been sent out to the Residents- for certain what the contents would turn out to be of Site Licence conditions that, it is not in dispute, did not exis- the Site Licence not being granted until later that month. The Respondent could not make the Site Rules to necessarily accord with Site Licence conditions which the Respondent did not know.

109. The Tribunal accepts that the Respondent may well have had a very good idea of what the Site Licence Conditions would be likely to say, having found that the Respondent knew the content of the Council's published Model Standards. The Respondent could draft Site Rules to accord with its expectations.

110. However, knowledge of the Model Conditions and their likely incorporation is not the same as specific knowledge of Site Licence conditions not yet in existence, in relation to the proposal of rules explicitly citing them.

111. The Residents would also not have had knowledge, although that aspect has rather less significance given that the Residents did not receive any copy of the proposed Site Rules until 2020- see below.

112. The Tribunal accordingly finds that the Respondent did not know what the requirements of the Site Licence conditions, for certain, and particularly fire safety requirements would be in August 2019 and so could not propose the Site Rules such as to specifically refer them knowing what those requirements would be.

113. The Tribunal finds that the letters believed by Ms Moss to have been sent by her in August 2019, were not received by the Residents.

114. The Applicants deny receipt, Mr Wyllie and Mr Stevenson have also indicated no receipt by them- in unchallenged written evidence- and the Respondent was unable to demonstrate receipt of any acknowledgements or replies from any Residents that would have demonstrated any Resident having received the letter. The weight of evidence is firmly against receipt and that must cast some doubt on whether the letters were in fact posted and properly stamped and addressed. The Tribunal adds that Ms Moss said in evidence that notwithstanding her witness statement, she did not think that Carol Orchard had received the letter either. All else aside, the Tribunal finds it implausible that the Applicants would have ignored the proposed Site Rules had they received them.

115. Ms Moss was firm that she had sent the letters out, or at least that she genuinely believed that she had done so. The Tribunal accepts the genuineness of her belief and so that there was at least an intention to informally consult at that time. That has relevance as explained below.

116. The net effect is that the Tribunal rejects the Respondent's assertion that an informal consultation process was carried out, although accepts one to have been intended. It necessarily follows that the Tribunal finds there were draft site rules in existence as at August 2019, which were intended to be sent out to the Residents with the letters.

117. The Tribunal finds that no subsequent mention of the Site Rules proposed was made by the Respondent to the Residents until 27th January 2020. The Tribunal does not consider that any finding of fact is required in relation to the consultation process, the history of events set out above not being in dispute.

118. The Tribunal finds that the Respondent still did not know what fire safety requirements would be as at January 2020 and could not formally propose the Site Rules which would require Residents to meet them.

119. The Tribunal also finds that as there was still no fire safety report or assessment prior to the formal consultation process the Residents, the consultees, received no such report or assessment. The Tribunal finds that the Residents could not respond to the consultation with knowledge of what fire safety requirements were and what the effects would be.

120. The Tribunal further finds that the requirements of the Site Rules did, as a matter of fact, affect the Applicants more than the other Residents, to the extent that the Applicants then owned two cars and the Site Rules prevented them from parking one of those cars on the Roadway or elsewhere, such that they had only one usable place to park, and as compared to other Residents who also owned two cars.

121. However, the Tribunal does not find the imposition of the Site Rules to be what Ms Gourlay has termed, in submitting it was not such, "a charade". The Tribunal does not find on the evidence that the Site Rules were introduced with the design of inconveniencing the Applicants because the Respondent regarded them as troublesome.

122. The Tribunal finds that the Respondent, being required to obtain a Site Licence, having applied for one some months earlier, and being aware of the need to ensure that the requirements of the pending Site Licence could be adhered to- having a very good idea of what they would require, albeit without certainty- decided to introduce Site Rules aiming to achieve that. The Tribunal considers that the anticipated completion of construction of the newer part of the Site was also relevant.

123. The timing of the decision and of issues arising between the parties as to the lack of parking for two cars for the Applicants does provide evidence in support of the Applicants' case. That Mr Smith's car was collided with in July 2019 when parked on the Roadway and caused the Applicant to raise such parking issues is of note. However, the Tribunal considers that it is at least as likely that the Respondent was caused to address the need to attend to matters such as Site Rules.

124. If the Tribunal had rejected the evidence of Ms Moss and found that the intention to introduce the Site Rules was only formed in or about early 2020, there may have been a stronger argument that the consultation was designed to introduce rules which would prejudice the Applicants. However, in contrast, the finding that the introduction of the Site Rules was considered after the application for the Licence and when the grant of that was pending weakens that argument considerably, removing any specific evidence supporting it, save for the Applicant's own opinion that the Respondent acted in bad faith in introducing the Site Rules. The Tribunal does not find that the Respondent did so.

125. Despite the obviously poor relations between the parties, the Tribunal cannot go so far as to find that the Applicant did not take any account at all of the Applicant's response. However, the Tribunal is troubled by the lack of any documented consideration of the consultation response other than the short response itself- the Tribunal need not make any finding, there having been no assertion of any such document. Most significantly, the Tribunal finds that there has been nothing specific presented to demonstrate a careful, as opposed to cursory, consideration, such that the evidence supports only a cursory consideration.

126. The consultation response itself was short and not complex and so the particular fact that the private Respondent did not specifically and separately document its consideration of it should not alone, the Tribunal finds, be taken to demonstrate a lack of consideration to a sufficient extent. Other evidence does nevertheless demonstrate that.

127. There has been nothing to demonstrate how the Applicants' response was considered, against what information or criteria it was assessed and against what other factors it was weighed. There was specifically, nothing in relation to particular fire safety requirements against which it could assessed. The Tribunal finds that the Respondent could not consider the Applicants' response to the consultation taking into account fire safety requirements, even if it had attempted to carefully do so, without knowing what those were.

128. The finding that the Tribunal considers the only one it can make, and does make, is that the Respondent had no process to enable it to properly consider responses and that it did not give proper consideration to the response. The Tribunal refers to its observations in paragraph 101.

129. The reason given for rejecting the Applicant's objection to the imposition of the Site Rules as set out in the response to the consultation was short and might have more usefully been more fulsome.

130. The Tribunal records that Ms Gourlay asserted in her closing submissions that most residents only have one car. The Tribunal received no specific evidence as to that at the final hearings and is unable to make any such finding from its site inspection, when the matter was not raised with the Tribunal.

131. Nevertheless, the Tribunal does not find that the Applicant demonstrated that there is inadequate parking on the Site overall, excepting the particular situation of the Applicants, or at least that there will be once the visitors' parking spaces are properly created.

Fire Safety reports

132. The Tribunal considers it appropriate to specifically make limited reference to the two reports in respect of fire safety commissioned by the Respondent (referred to in this Decision as "fire reports" or "fire report" where singular).

133. The first report was obtained by the Respondent prior to the hearing in September, which the Applicants sought to rely on and which lead to their change in position and the need to adjourn. That was prepared by Mr Charles Morgan of Fire Consulting and dated 30th June 2020. No specific reason has been given for that being sought but its timing suggests a response to the requirement from the Council by letter dated 9th April 2020 for "the latest version of the fire risk assessment carried out".

134. The second one was obtained subsequently and was the one on which the Respondent then placed reliance, insofar as it did so. That was prepared by Mr Peter Thomas of Park Fire Safety and dated 19th October 2020, just a few days before the hearing. .

135. The Applicants sought to rely on Mr Morgan's report demonstrating limits to where Residents could park on their pitches and in particular the Applicants' assertion that the need for the Residents of the adjacent pitches to park on the start of their driveways near the Roadway, prevented the Applicants being able to access the Parking Space by driving across those adjacent pitches (assuming of course the Applicants were permitted to and otherwise physically able to in any event). The Tribunal's findings of fact remove the relevance in terms of access to the Parking Space.

136. The Applicants are understandably dubious about the reason for the second report and about the Respondent's motives. In effect, the Respondent is accused of report- shopping- as the first report was not to its liking, it obtained another. The Respondent says that it attempted to contact Mr Morgan in relation to queries about the report but was unable to obtain any response. No clear evidence was adduced to demonstrate the extent of the efforts to contact Mr Morgan.

137. However, the most important point is that both reports post-date the consultation process and decision to implement the Site Rules. For the reasons explained below, the Tribunal makes no findings on anything contained within them.

138. The Tribunal does not know what was said about the contents of one or other or both of the fire reports when the Respondent commissioned the block plan numbered 1912- 06 but perceives that at least some instruction must have been given in light of specifically identified parking positions.

Consideration of whether 18(b) and 18c are site rules for the purposes of the Act

139. The Tribunal sought confirmation from Counsel as to this matter as its first specific question in the hearing on 25th September 2020. The relevant point is that in order for a rule to be a site rule for the purpose of the Act, it must relate to one of the two groups in s2C(2)(a) and (b). More particularly, the Tribunal sought confirmation that the rules relate to management and conduct pursuant to s2C(2)(a).

140. The Tribunal can deal with this aspect in short terms. Both Counsel agree that rules relating to parking are rules which relates to the management and conduct of the site and so are site rules for the purpose of the Act. The Tribunal accepts that.

141. The Tribunal also respectfully notes and follows the finding of the Deputy President in *White v Simpson* at paragraph 65 that:

> "Rules having to do with the physical environment of the site such as parking restrictions, separation distances ……. fall within this limited class."

142. Nothing more need be said on this point.

Consideration of unreasonableness

Should the Tribunal consider the matters known to the Respondent at the time of implementation of the Site Rules or also the matters known subsequently

143. The Applicant argues that matters that have come to light- most notably the fire safety requirements indicated by the first of the fire safety reports -since the decision was taken by the Respondent to implement the Site Rules are relevant to the consideration of this matter by the Tribunal. Mr Cannings submits that the Tribunal should consider such matters in order to have the full picture as to the realities of the situation.

144. The Respondent argued through Ms Gourlay that the Tribunal should not take account of the information said by the Applicant to be now known. She made specific reference to such information not being fact. Firstly, that is because the content of the first fire report has not been agreed by a second fire report: secondly, because the allegations made by the Council are disputed. The Tribunal has already explained its position in respect of that second element above.

145. The Tribunal has little difficulty with this issue, considering that the Respondent can only have regard to what it knows: the Respondent cannot properly be expected to have regard to matters that did not exist at the time of the decision to implement the Site Rules.

146. Consequently, when considering the reasonableness of the Respondent's decision, the Tribunal must limit itself to such matters as were known at the time that decision was taken. The Tribunal must assess the reasonableness of the decision in light of such matters.

147. Therefore, whilst the Tribunal has recorded its findings of fact and those findings include findings as to matters that may have only come to light since the Respondent made its decision to implement the Site Rules, the Tribunal has not taken account of such matters in reaching its Decision. The findings have been recorded in case it may subsequently be held that the Tribunal was wrong to so limit its consideration of factual matters and such findings are relevant to a later decision of another body.

148. However, the Tribunal considers that when taking account of the matters known to the Respondent, the Tribunal must take account of the matters that the Respondent knew it did not know about, of the information the Respondent knew it did not have and of the documents which the Respondent knew were not available. Hence, taking account of the limits of the basis of the Respondent's consideration and decision and the matters to which the Respondent could not properly give consideration, in the absence of being in receipt of information or documentation about such matters.

149. For example, in respect of the fire reports subsequently obtained, the Respondent could not know what the contents of such reports would turn out to be. As such the Tribunal considers that it cannot take account of the specific findings and recommendations contained within those fire reports when those were produced. The Tribunal sets out for the avoidance of doubt that it has not in the circumstances considered the obtaining of a second report by the Respondent specifically. The Tribunal does not consider that that aspect assists in considering the Respondent's consideration of matters more generally.

150. However, the Tribunal considers that it can and should take account of, and what is highly relevant to this application, is that it was known to the Respondent that it did not have a fire safety report- and necessarily the Respondent knew that it did not know what a fire report would contain once it was received. The relevant point is not therefore that the Respondent should have had regard to any specific contents of any report but rather that the Respondent knew that it was unaware of what such contents might be.

151. In the absence of knowledge of any such contents, the Respondent necessarily could not take account of them or how such contents ought to be weighed in reaching a decision as to appropriate Site Rules.

152. In a similar vein, and insofar as relevant, the Respondent knew in early August 2019 that there was no Site Licence and so no Site Licence conditions and the Respondent knew that it was unaware of exactly what such conditions would be (although in relation to Site Licence conditions,

the Tribunal accepts that the Respondent's experience would have given it a good indication of what they would likely be).

What test should be applied to consideration of reasonableness?

153. This question was not explicitly asked of Counsel at the hearing 25th September 2020, having already been addressed by Counsel in their Skeleton Arguments. However, it overlaps with the second question that was asked namely, does reasonableness require consideration of the process, the outcome or both?

154. Ms Gourlay suggests whether a decision is reasonable to be "that most flexible of statutory provisions". The Tribunal need not debate whether "the most" is putting matters slightly too high or not; suffice to say that there is considerable flexibility. However, it is vital to identify the appropriate test to apply.

155. Ms Gourlay refers at some length to *BP Shipping Ltd v Braganza* ("Braganza") and the consideration by the Supreme Court of the exercise of a discretion provided for in the contract between the parties, the Court applying public law reasonableness to that. The elements of the decision quoted by Ms Gourlay merit setting out in full, all statements being found in the judgment of Baroness Hale:

> "19. There is an obvious parallel between cases where a contract assigns a decision-making function to one of the parties and cases where a statute…. assigns a decision- making function to a public authority. In neither case is the court the primary decision-maker. The primary decision-maker is the contracting party or the public authority. It is right, therefore, that the standard of review generally adopted by the courts to the decisions of a contracting party should be no more demanding than the standard of review adopted in the judicial review of administration. The question is whether it should be any less demanding.
>
> 24. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or conversely, have refused to take into account, or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may still be possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it…….. The first limb focuses on the decision-making process- whether the right matters have been taken into account in reaching the decision. The second focuses on its outcome, whether even though the right things have been taken into account, the result is so outrageous that no reasonable decisionmaker could have reached it. The latter is often used as a shorthand for the Wednesbury principle, but without necessarily excluding the former.
>
> 30…… include both limbs of the Wednesbury formulation in the rationality test…..

I would add to that Mocatta J's observation in the Vainqueur Jose [1979] 1 Lloyd's Rep 337, 577:

> It would be a mistake to expect [of a lay body] the same expert professional and almost microscopic investigation of the problems, both factual and legal, that is demanded of a suit in a court of law

Nor would "some slight misdirection" matter, at least if it were clear that, had the legal position been properly appreciated, the decision would have been the same. It may very well be that the same high standards of decision- making ought not to be expected of most contractual decision- makers as are expected of the modern state.

156. The court in Braganza also addressed the potential for conflict of interest where the decision would affect the rights of the decision maker as well as the other contracting party, being a reason for adopting an approach akin to that taken in relation to decisions of public authorities.

157. Reference as made to the rationality of the decision, rationality being preferred as a term to unreasonableness. Baroness Hale addressed that, expressing the same essential point as in paragraph 24 of the judgement, quoted above, and saying:

"If it is a part of a rational decision-making process to exclude extraneous considerations, it is in my view also part of a rational decision-making process to take into account those considerations which are obviously relevant to the decision in question. It is of the essence of "*Wednesbury* reasonableness" (or "*GCHQ* rationality") to consider the rationaility of the decision-making process rather than concentrate on the outcome. Concentrating on the outcome runs the risk that the the court will substitute its own decision for that of the primary decision- maker."

158. Ms Gourlay and Mr Cannings referred to the decision of the Upper Tribunal (Lands Chamber) in *White v Simpson*, a case relating to just the sort of decision made in this case, that is to say a case in which the site owner had, amongst other elements of the case, exercised discretion in a decision to introduce site rules.

159. Ms Gourlay stated in her submission that Counsel for the site owner in *White* had submitted that the appeal in that case was, in effect, on grounds of rationality akin to a challenge to a decision of a public body on the principles set out in the, well-known, case of *Associated Provincial Picture House Ltd v Wednesbury Corporation* [1948] 1KB 223. It is that case from which the "Wednesbury principle" referred to by Baroness Hale derives.

160. Ms Gourlay and Mr Cannings also set out the observations of the Martin Rodger QC, the Deputy President, in paragraph 42 of his judgement, although Mr Cannings also set out the contents of the previous in his Skeleton Argument. The most pertinent extracts from paragraphs 41 and then paragraph 42 read as follows:

"41. ……. Mr Gunstone's submitted [as Counsel for the site owner] that the right of appeal was, in effect, on grounds of rationality akin to a challenge to a decision of a public body on Wednesbury principles……
42. ……I see force in [the] submission that the role of the FTT is to review the reasonableness of the decision of the site owner, rather than to consider whether it would have introduced the same rule if the decision had been left to it……There is a strong argument that the question for the FTT on an appeal under regulation 10(2)(c) is not what rule it would make to deal with the contentious issue, or indeed whether it would have made any rule at all, but instead is whether the decision of the site owner was one which a reasonable owner would have made in the circumstances. In answering that question it would be necessary for the reasonable owner to take into account all relevant matters in particular those matters referred to in regulation 10(2)(c)."

161. In the event that the Upper Tribunal had given judgment on the particular point, that would bind this Tribunal. However, the Upper Tribunal declined to determine the point because the decision reached on another point was dispositive of the appeal. There is no therefore no binding authority on the application of a test of the nature of that in *Wednesbury* or in *Braganza* to the decision of a site owner to the particular situation of the introduction of site rules, or at least none that been identified to the Tribunal.

162. The Tribunal must therefore reach its own decision. In doing so, the Tribunal takes careful and respectful note of the observations of Martin Rodger QC, although the Tribunal must be mindful both that only one party appearing before him was represented and that contrary arguments might have been advanced by an advocate for the other party, had there been one and also that an actual decision, if such had been required, may not necessarily have been in the same terms as the observations.

163. In the Tribunal's judgment, neither *Wednesbury* in respect of decisions of public bodies or *Braganza* in respect of contractual provisions, is entirely on all fours with this case. In this instance, the decision made was by a private company but not under any contractual provision. However, statute and a statutory instrument has assigned a decision-making function to the primary decision-maker, simply to a private body in this instance, rather than to a public one. It is apparent that the Supreme Court considered it appropriate that the exercise of discretion by a private body in *Braganza* should have applied to the same principle as applied to public bodies, with small modification.

164. The Tribunal is unable to identify any difference in principle between the manner in which a private company applies its discretion under a statutory provision as opposed to the manner in which a public body does so. The Tribunal is similarly unable to identify any difference in principle between how a private company exercises its discretion under a contract as opposed to applying its discretion under a statutory regulation. The exercise of a statutory discretion by a private company fills a gap between the decision-making addressed in *Wednesbury* and in *Braganza*. Indeed, it may be better to describe a Venn diagram, with such exercise of

discretion under a statutory provision but by a private body straddling both circles.

165. Accordingly, in the Tribunal's judgment, it can only be correct to apply the same test, albeit with the modest allowance for standards of private decision making allowed for in *Braganza*. That is at least in the absence of specific provision in the contract or statutory document that constrains the manner in which the discretion must be exercised or some other matter which differentiates the particular exercise of discretion in that instance from a more general exercise. There is none in this case and so that last point need not be dwelt on.

166. The Act refers to whether the decision of the site owner was unreasonable and not whether it was rational. However, the Tribunal considers that produces no difference in the test to be applied, although reference is made below to unreasonableness, as opposed to rationality, to reflect the statutory wording.

167. The test includes, the Tribunal considers- accepting Ms Gourlay's submission on the point- that "some slight misdirection" being permissible and falling within the realms of not expecting such high standards of private decision-makers. However, the Tribunal considers that the use by Baroness Hale of the word "slight" is indicative that the standard of decision- making cannot be significantly lower without then falling outside of being reasonable.

168. The Tribunal has carefully considered against the above background the representations of both parties as to whether reasonableness involves avoiding an unreasonable outcome only or both a reasonable process and avoiding an unreasonable outcome. Both Counsel referred in relation to this aspect of the matter to caselaw, as identified above. It is therefore necessary to address that and the approach taken by the Tribunal to it.

169. The Tribunal additionally notes that the Deputy President made no specific reference to whether reasonableness was a matter of outcome- that the end result was a reasonable one- or also of process- that "in the circumstances" and "to take into account all relevant matters" related to the approach taken and not just the outcome.

170. In the Tribunal's judgement, both elements are required. That is to say the process must also have been a reasonable one, the site owner having taken into account the relevant considerations and not having taken into account irrelevant ones. The end result must also then not be an unreasonable one.

171. The Tribunal has had particular regard to paragraphs 24 and 29 of the judgment of Baroness Hale in *Braganza,* which includes the decision-making process and potential consideration of irrelevant factors and the failure to consider relevant ones as part of the overall reasonableness. The Tribunal has also had regard to what was said in *White*, namely that the reasonable owner shall take into account all relevant matters, a state of

affairs that the Tribunal considers must inevitably flow from application of *Wednesbury* and *Braganza*. That relates to the process.

172. The Tribunal considers that in order to make a reasonable decision, the site owner must sufficiently and properly consider all of the relevant information and must ensure that it is able to do so. In particular- and significantly in this case- if a decision is said to be made for given reasons, it must be demonstrable that it is. It must be demonstrable that the site owner considered those given matters and did so properly based on sufficient and appropriate information such as to enable it to do so. That proper consideration will of its nature require such consideration to be fair and not partial and to be otherwise reasonable. Any interest that the site owner may have in making rules of any given manner will need to be considered. The specifics may vary from one case to the next but will not require an approach or assessment that the Tribunal is unfamiliar with.

173. In addition, in the Tribunal's judgment where a decision is made following a consultation, that must have been an effective and meaningful consultation. The Tribunal considers that during the consultation process, the information provided to the consultees must address the reasons identifiable for the decision proposed to be made, such that the consultees are properly able to respond to the consultation. The Tribunal considers that only then is the consultation a meaningful and reasonable one.

174. Mr Cannings submitted in his Skeleton Argument that the responses must be considered thoroughly and fairly. The Tribunal endorses the second of those: it is less clear what thoroughly refers to in particular and where the submission was not expanded on. The Tribunal prefers to express the matter as requiring that the site owner must give proper consideration to the representations made in the consultation, where that will vary dependent upon the extent and mature of those. The proper consideration will again need to be, and will be, considered in the same manner as above.

175. The Tribunal considers that it is particularly important in that regard that there is a statutory process to be followed for the introduction of site rules and that statutory process requires consultation with the residents of the Site. That process and the consultation element of it is a fundamental protection given to the residents. The Tribunal further considers that the presence or absence of a reasonable consultation process, with the appropriate information having been given to the consultees for them to understand the proposed decision, is a very relevant factor to be considered by the decision-maker.

176. In contrast, a decision taken without having followed a reasonable process is open to be demonstrated to be an unreasonable one and be found to be an unreasonable one even if, as luck would have it, following a reasonable process and taking a decision following that on a reasonable basis would have produced the same substantive outcome.

177. Further, the residents should be able to understand, the site owner having demonstrated it, the account taken of any objections and the factors considered by the site owner in reaching the decision then reached, including the consideration given to the particular factors identified in section 10(2)(c).

178. If, having followed a reasonable process, the site owner makes a decision that the Tribunal considers is one of the range of decisions a reasonable site owner could make having followed that reasonable process and so has not been proved to be unreasonable, the Tribunal agrees that such a decision should not be interfered with. The Tribunal agrees that the role of the Tribunal is indeed to undertake a review, akin to judicial review of the decision of a public body but as modified by Braganza to decisions of private bodies. The Tribunal is mindful that it is for the Respondent to make the decisions about how to deal with the implementation of the Site Rules and for the Tribunal to consider that against the background of the Act, the 2014 Regulations and other appropriate matters, not to make any primary decisions.

179. Accordingly, the Tribunal should not, provided that the decision is not unreasonable, substitute its own decision. A degree of difference in this instance as compared to most situations is that the Tribunal is given the specific power to modify a site rule or provide its own, if appropriate and in addition to the power to confirm or quash, as to which see below. However, those powers only arise if the decision to implement the site rule has been found unreasonable.

180. Consequently, in the Tribunal's judgment, a reasonable decision in relation to the implementation of site rules requires:

i) the site owner to have properly considered the rules appropriate to the site, taking account of all relevant circumstances, including but not limited to the three sets of factors to have particular regard to set out in regulation 10(2)(c) before proposing such rules;
ii) the site owner to have embarked on a reasonable consultation process, including providing to the residents such information as may be appropriate information as to the basis of the site owner's consideration of matters and any documents that have been or ought to have been taken account of;
iii) once the residents have been able to properly engage in the consultation with the benefit of all the appropriate information, the site owner to take appropriate account of the responses received and to again give appropriate consideration to- and there ought to be evidence of it- all of the relevant matters- of which the consultation responses are one relevant factor.

181. Element ii) relates to the process, the following of which the facilitates element iii), the final decision itself, although there will necessarily have also been a decision at i) and the consultation will inevitably occur against the background of the Site Rules proposed. For the avoidance of doubt the

Tribunal does not consider that such requirements are overly or otherwise inappropriately demanding of the site owner.

Was the decision to implement the challenged Site Rules reasonable, having regard to any relevant factors?

i) 18c

182. The Tribunal takes the specific Site Rules disputed out of alphabetical order and because greater issues arise in respect of 18c. The Tribunal determines that the Applicant has proved its case that the Respondent did not carry out a reasonable process in respect of 18c and the decision was unreasonable in light of the each of the three sets of factors to have particular regard to under regulation 10(2)(c). The Tribunal applies the above test.

183. Ms Gourlay submits that the rule does not prohibit the Applicants from parking two cars as such, provided that could be done in compliance with the provisions of the rule, but observes that parking a second car is simply not possible. The Tribunal has identified that the rule as written does not allow any Resident to park a second car, much as that was plainly the intention. The Tribunal undertakes its determination in the context of the understood intention of the rule, namely that two cars belonging to Residents can be parked on the pitch if that possible whilst in compliance with the Site Licence conditions and fire safety. That is rather than the effect of the actual wording that if the pitch accommodates two cars even one cannot be parked there. Given that the rule as expressed does not obviously make sense, is not even that which the Respondent apparently intended and would not have the intended effect, it must be highly unlikely that it could be considered reasonable. If the Tribunal were to consider matters solely on the wording, it may be that much of the discussion that follows could therefore be avoided and the point dealt with briefly. Despite obvious attraction of that in a long Decision, the Tribunal does not regard that approach as appropriate.

184. The Tribunal has reminded itself how the objection was stated during the consultation process. However, consistent with the approach taken to permitting the Applicants to challenge 18b, the Tribunal does not consider that the Act or the 2014 Regulations proscribe the nature of the application that can be made to this Tribunal such that the Applicant must be limited to such matters as were raised in the response to the consultation. In a similar vein- and sensibly the same treatment must apply to the cases of both sides- the Respondent is not limited to the wording of the consultation response document either. Rather, the Tribunal must consider the bases for the appeal to the Tribunal as advanced at the time of the application made, plus the factors which the Applicant was permitted to seek the Tribunal to have regard to by way of the case management decision mentioned above.

185. Mr Cannings is, somewhat inevitably critical of the process. Ms Gourlay rather optimistically submits that there is no evidence of any failings. However eloquently put, such an argument cannot stand against the facts.

The initial decision-i)

186. In respect of the initial decision to propose the Site Rules, that was taken prior to August 2019, albeit formally put to the Residents and found to have been first received by the Residents in January 2020.

187. Mr Cannings highlights that Mr Simmons accepted, he says, that it could be said that the decision to implement this rule was unreasonable given the lack of a fire risk assessment and therefore the inability of the Respondent to consider the full parameters of the rule. That is the "good point" that Mr Simmons is recorded above to have accepted. The Tribunal has already referred to the fact that in the Reply to the Applicant's Amended and Amalgamated Statement of Case, dated 13th October 2020, the Respondent states (page 226):

"In March 2020, it was impossible for the Respondent to take into account a fire risk assessment that had not yet been prepared……."

188. The Tribunal has found that the Respondent did not know and could not know what the impact of the Site Licence conditions or a fire risk assessment and report would be in August 2019 when the Respondent is said to have first considered the site rules and intended to send those out for informal consultation, irrespective of whether the residents received them or not. Ms Gourlay argues that the fact that the Site Licence was only granted later then the informal consultation letters does not undermine the process because of Mr Simmons' previous experience. The Tribunal does not consider that an answer in respect of this rule.

189. The Tribunal has determined that it is not without significance that the rules were the same terms as the rules implemented at another site owned by the Respondent and found that, in spite of the submissions of Ms Gourlay to the contrary, the Respondent produced the rule without considering the size and nature of the site, the site layout and also actual terms of the Site Licence and fire safety requirements of this Site in particular. Whilst it is not impossible that two sites with different characteristics, including different sizes and layout, of pitches and generally, may both result in the same rule being appropriate, it would not be unreasonable to expect an explanation to be given as to how they were appropriate in one and in the other. None has been forthcoming, whether by way of any assessment process and criteria or otherwise in respect of a rule specifically referring to Site Licence conditions and fire safety. The Tribunal has found that did not occur in this instance.

190. The Tribunal found the informal process not in practice to have been undertaken because the residents did not receive the relevant correspondence but did find that the draft site rules were prepared before that time, so before 16th August 2019. 18c referred to fire safety

requirements and also referred to the requirements of the Site Licence. The Tribunal has found the requirements of fire safety and the Site Licence could not be known, albeit that the Respondent had a good idea of the likely Site Licence conditions and had some knowledge of general fire safety requirement, but not specific ones.

191. The Tribunal considers that the drafting of the proposed Site Rules most particularly cannot have taken proper account of the impact of a Fire Report on parking on the pitches because there was no such report in existence at the time. The Tribunal re-iterates that it does not take account of the specific contents of either of the reports which have been obtained, or the block plan dated 9th October 2020, but rather that there was no report and that any places where parking could take occur on the pitches were not identified. The Tribunal has found an informal assessment by a site owner to be inadequate in any event, rather a formal assessment and report by someone properly qualified is required. The Tribunal has of course also found as a fact that Mr Simmons did not carry out such an informal assessment.

192. Plainly the Site Licence was granted by the time of the formal consultation and the conditions of that Licence were known. By the time of the consultation, the Respondent was able to consider any impact of the conditions and, importantly, Residents were in a position to respond to the consultation in the knowledge of Site Licence conditions applicable. Therefore, the known Site Licence conditions are less significant in respect of this rule than the lack of a fire report and the unknown fire safety requirements in relation to parking on the pitches.

193. Most significantly, the Tribunal has found that the Respondent did not know and could not know what the impact of a fire report would be in either January 2020 or March 2020 on where parking of cars on the pitches could take place for the Respondent or the Residents to understand the practical effect of the proposed rule. The Tribunal considers that highly significant where 18c explicitly states fire safety requirements to be one of the reasons for its introduction and the Residents received a proposed rule in such terms.

194. The lack of a fire report and of knowledge of fire safety requirements feeds into consideration of the particular factors, and any others, to have regard to pursuant to regulation 10(2)(c) and means that the decision was not reasonable having regard to those factors, where the impact of fire safety on those matters could not be known.

195. In relation to consideration of the size and layout of the site, as identified, this is a small site, with only seventeen pitches and no off-pitch parking, and with no other amenities. The Applicant argues Mr Cannings' submissions that "there is simply not enough space on the site", by which the Tribunal understands- as the Site cannot be simply be willed to be larger- that he refers to space other than that taken up by the park homes themselves. Therefore, he is effectively arguing that the Site should contain

fewer park homes, so that there is more space between the pitches. He asserts that lack of space to be relevant to the decision.

196. The Tribunal considers that it is practically impossible to address asserted unreasonableness of the Respondent's decision having regard to the particular factors of the size and layout of the Site without simultaneously considering the planning permission and Site Licence conditions, which provide for the maximum number of park homes on the Site and provide for minimum distances between them. In general, the Tribunal does not consider the particular factors in 10(2)(c)(iii)- and especially the terms of the planning permission- adds much to the others in relation to 18c, although the Tribunal in taking account of those in this specific instance rejects Mr Cannings' above point. There are seventeen park homes on the Site, as the planning permission allows.

197. The size and layout also includes the spacing between the pitches and the way that the pitches are arranged as between the space for the park homes and the paths, driveways, foliage and anything else on the pitches. The Applicant relies on the lack of a separation distance of 6 metres, it is said in relation to seven of the park homes. However, the Tribunal refers to its above finding as to cladding. The Tribunal notes that the Site Licence conditions provide at condition 2(iii) that the distance must be 5.25 metres- the condition refers to retrospective fitting of "cladding from Class 1 fire rated materials to its facing walls" but the Tribunal understands the condition to mean retrospective if not fitted at the outset. The Tribunal has not received evidence as to all individual distances between park home and so has not made a finding about all distances, but, in the circumstances, does not consider that the absence of 6 metres separation in particular takes the Applicant anywhere. In relation to pitches 8, 9 and 10, the measurements taken at the site inspection demonstrated a 6- metre gap between each of those park homes, as noted above.

198. The important point in relation to size and layout and the Site Licence conditions relates to the impact on the parking of vehicles on pitches and in relation to the constraints on that imposed by fire safety requirements. The rule of course permits parking on the pitches only to the extent compliance with fire safety requirements can be achieved.

199. In terms of the Site Licence conditions, the specific relevant matter is that cars may be parked within the separation distance (of at least 5.25 metres) provided that they do not obstruct entrances to caravans access around them and they are at least 3 metres from a park home on an adjacent pitch. The Site Licence condition identifies a fire safety requirement, although it does not say so in terms, where the Tribunal must necessarily consider the reasonableness of the rule in relation to such requirements given the specific reference of the rule to them.

200. The Site Licence conditions in terms of parking on the pitches impose a requirement which in the Tribunal's experience is found in the Site Licence conditions of many, perhaps all, councils. The 3- metre requirement is a longstanding and accepted one, applicable not only to cars but in relation

to other combustible materials. Even if the Site Licence conditions did not make specific reference to it, the Tribunal considers that any consideration of fire safety requirements would sensibly be against the background of that longstanding and accepted distance. Irrespective of any differences in specific findings and conclusions in the fire reports, it appears to be beyond argument that fire safety requirements do not allow parking within 3 metres of a park home on an adjacent pitch.

201. The findings made by the Tribunal that it is possible to park and to do so at least 3 metres from the Applicants park home is relevant, but so too are the related findings that, firstly, there is nothing on the driveways to indicate where such parking should or should not take place. Further, that it is plain that there are places where it is physically possible to park on the driveways without being far enough away from park homes on adjacent pitches and that the Residents do not know where they can park in practice in compliance with the rule because there is nothing to indicate what compliance with fire safety permits.

202. The Tribunal finds that it is the layout of the pitches which is the point of most import, rather than their size as such. In particular, it is that the layout results in areas in which parking is physically possible, nothing physically preventing it, and appears permissible, nothing visibly precluding it, but where it is not apparent that parking can take place compliant with the requirements of fire safety.

203. The rule proposed by the Respondent is said to allow a certain level of parking provided that does not contravene (the park's Site Licence conditions and) fire safety requirements. The Tribunal does not adopt Mr Cannings term assertion that it is "ridiculous" that Residents cannot park on the entirety of their driveways- that goes too far and the Respondent's decision is not unreasonable for that reason. However, the size and layout of the Site, in particular the pitches on the Site, did not enable the Residents to know whether they would comply with the rule or not.

204. The Respondent did not know either. The effect of fire safety requirements in the context of the size and layout, and in that context the Site Licence conditions, on parking on the pitches was not known.

205. In relation specifically to 10(2)(c)(ii), the Tribunal considers that the extent to which parking is provided other than on pitches is an amenity and the presence or lack of it forms part of the amenities to be considered. It should be said that the Tribunal was not referred to any specific authority or document in that regard and so has relied on its own expertise. The Tribunal considers that when considering the amenities, it is appropriate to take account of their absence as well as their presence. There is in this instance no parking facility off the pitches save for the intended two visitors' parking spaces, and so for visitors and not as additional parking for Residents.

206. Mr Cannings submits that the rule- and indeed 18b- were not implemented as result of reasonable decision because the lack of parking

facilities on the site as whole renders the rule unreasonable. However, whilst it may be argued that there would be an extra reason to limit parking on pitches if there was the relevant amenity of sufficiently large usable car park on the Site, the Tribunal does not consider that the lack of such Resident (or additional visitor) parking facilities carries significant weight in this instance.

207. There are no other amenities on site, but there is nothing in respect of other amenities, or lack of, that the Tribunal finds of weight. Likewise, any services or lack of them.

208. If the Tribunal had been wrong to allow the Applicant to challenge the decision to implement 18c on the basis of it being unreasonable because of 10(2)(c)(iii)- the Planning Permission and Site Licence conditions- and even if consideration of fire safety requirements did not fall into consideration of the particular factors in 10(2)(c)(ii), the Tribunal could scarcely have failed to consider fire safety requirements as a relevant factor other than the ones to have particular regard to. The explicit reference to fire safety would have still necessitated the weight given to be heavy and would not have altered the decision reached as to unreasonableness. The Tribunal also observes that whilst matters relevant to fire safety are dealt with in the Site Licence conditions, those conditions are not the only source of the Respondent's obligation to comply with fire safety requirements, which would exist whether the specific Site Licence referred to such matters or not.

209. The net effect of the above is that the Respondent did not take a reasonable decision prior to the consultation and with regard to the proposal or the other relevant factors, failing most notably to properly take account of an obviously relevant consideration, namely the fact that fire safety requirements were not known and their impact was not known but the rule required compliance with them.

The consultation- ii)

210. As the Tribunal has found, not only can the Respondent not have considered the contents of a non-existent report prior to consulting but the consultees could not respond to the consultation taking account of the contents of a non-existent report. Rather they were faced with proposed Site Rules said to be require them to comply with fire safety but with no more information as to the effect of that than the fact that the Rules referred to it and that the Respondent apparently considered that fire safety requirements were relevant to the Rules.

211. The Residents are very likely to have assumed that the Respondent would have greater knowledge of such matters as the operator of the Site and that the Rules reflected that. The Residents were given no information on which they could otherwise consider the fire safety requirements in question or any effects of that. It is also clear, and of no little note, from the site inspection alone that the Residents still did not know at that stage

what fire safety required of them in relation to the parking of vehicles and consequently whether or not they were complying with the Site Rules.

212. The Tribunal considers that not only the specific content of any actual responses but also the background to those responses, including the information provided to the consultees, and the impact of that on the nature and extent of their being responses should all be considered in relation to 10(2)(c)(i). The Tribunal considers that limits on the relevant information provided to consultees- and known about so as to be able to provide it- are part of the proposal.

213. The Tribunal further considers that if it is wrong to regard the limits of the consultation process, including lack of knowledge of fire safety requirements, to be a factor rendering the Respondent's decision unreasonable having regard to 10(2)(c)(i) and that the regulation relates only to the actual proposal made and actual responses, that does not mean that those limits are irrelevant. Rather, the Tribunal is entitled to consider the limits as being a factor to which regard can be had other than the three particular sets identified in (i) to (iii).

214. It follows that there was not a reasonable consultation. The nature of the consultation and the impact on the responses was a very relevant matter to take account of.

215. For completeness, the Respondent asserted in its Additional Response dated 24th July 2020 that a challenge in relation to the consultation process must rely on a breach of regulation 9(1). That was not repeated in the Skeleton Arguments or written submissions and the Tribunal considers sensibly so. The provision simply provides a timescale for the site owner to decide and send the consultation response document, no more.

<u>The final decision- iii)</u>

216. The Tribunal has found that the Respondent did not and could not consider the responses to consultation, in the event only that of the Applicants, in the context of a fire report informing the Respondent as to fire safety requirements, there being no such report. The Tribunal accepts that in general regard could be had to the size, layout, character, services and amenities and the terms of planning permission and the Site Licence when considering the responses. The Tribunal determines that it was impossible for the Respondent to consider the position of the Applicants in replying to the consultation against fire safety requirements where the Respondent did not know what those were. The point is relevant to considering reasonableness albeit that the specific objection made by the Applicants may well not have affected fire safety matters.

217. The Respondent gave as its reason for leaving the Site Rules unchanged after the consultation response that the rule is for the better management of the Site. However, that specific comment does not address the lack of a fire report and the issues arising from that and does not overcome the failings in the process and the failure to consider relevant matters.

218. It equally follows, somewhat inevitably from i) and ii), that the Respondent does not meet element iii) either. Having failed to meet the elements relating to the initial decision and consultation, the Tribunal determines that it was impossible for the Respondent to meet element iii).

Conclusion

219. Having taken account of the factors and the elements of the decision-making process, the Tribunal determines that the Respondent's decision to implement site rule 18c failed to take account of very relevant factors, most particularly the obviously relevant lack of knowledge of fire safety requirements, and in doing so was unreasonable. As such that the ground advanced by the Applicants has been made out.

220. The Tribunal reiterates that it is the decision being unreasonable that is the ground and that the three set of particular sets of factors (or elements or any similar term, but where the Tribunal will use the term factors) to consider are just that. The Respondent's Counsel refers to there being three unreasonableness grounds. Judge Dobson has previously in this case set out that in his judgment the three sets of matters listed are not grounds but rather are particular, but not exclusive, factors to be taken account of in considering whether the single ground of unreasonableness has been made out.

221. The Tribunal also re-iterates that determination, considering that there are also three grounds, of which one is that the decision to implement the Site Rules was unreasonable. The Tribunal must determine that question in respect of that ground by taking account of the circumstances of the case, including any relevant factors in relation to which the decision may or may not be unreasonable, but must take account of the three sets of particular factors set out in 10(2)(c). Those three sets of particular factors are not the only ones that may be considered- the Regulations do not state that the Tribunal can only have regard to those three sets of factors. In the Tribunal's judgment, the Tribunal can therefore take account of any factors that it considers appropriate applying its expertise and in considering the reasonableness or otherwise of the approach taken by the Respondent.

222. The fact that reference is made to considering the three sets of factors in particular indicates that those must be considered and that relevant ones of them cannot be ignored. However, the form of words does not preclude consideration of other factors, provided that the ones to which particular consideration must be given are given such appropriate consideration.

223. The Tribunal considers that the particular factors to be considered must be given more weight than any other factors. The particular factors must be given a seat at the top table**.** However, that does not mean that other factors should not be given appropriate weight and that such weight may not be substantial on the particular facts of the case. In the Tribunal's

judgment, any and all relevant factors can and should be considered in determining whether or not the ground is made out.

224. It should be said that neither party has identified any additional factors other than those discussed above to which consideration should be given.

225. For the avoidance of doubt, the Tribunal does not consider the failings on the part of the Respondent to amount to "a slight misdirection" and that they could have been saved within that.

226. There was not proper consideration of the rules appropriate to the Site or a reasonable consultation process, including providing to the Residents the appropriate information in relation to requirements they would need to meet and any documents or appropriate account taken of responses received following that. The Respondent was not able to demonstrate the consideration given to and the account taken of all of the relevant matters.

ii) 18b

227. The Tribunal concludes that the Respondent did not, on balance, reach an unreasonable decision, sufficient to meet the test laid out.

228. It is notable that the rule is, unlike 18c, expressed in simple terms and does not make specific reference to what were as at August 2019 non-existent Site Licence conditions or unknown fire safety requirements. The effect of the rule is not hard to identify: compliance with the rule, or lack of it, can easily be demonstrated. It can be dealt with in this Decision in significantly shorter terms than 18c.

229. The Applicants did not challenge this rule in their response to the consultation. Neither was there any challenge to it until 24th September 2020. Whilst the Tribunal allowed a challenge to it to be argued on the basis of Counsel's submissions, no point raised has then been strong.

<u>The initial decision- i)</u>

230. The first question is whether the Respondent failed to properly consider whether the rule was appropriate. The submissions of Counsel as referred to above in relation to rule 18c were largely also made about this rule.

231. The Tribunal is mindful that there are again no demonstrable assessment criteria against which the Respondent considered the reasonableness of implementing 18b. There is also no documented consideration given to any relevant matters.

232. The Tribunal reminds itself that it has found that the Respondent could not know what the impact of the Site Licence conditions or indeed a fire report would be in August 2019 when the Respondent is said to have first considered the site rules. Whilst fire safety is not explicitly referred to in the rule itself in the manner that it was for rule 18c and so is somewhat less

front and centre, it inevitably had some relevance in relation to, for example, the pertinent Site Licence conditions and layout.

233. However, the Tribunal significantly has found that although the Site Licence conditions were not known at or before 16th August 2019, the Respondent would have been aware of what they were likely to be. By the time that the formal consultation took place, the Site Licence conditions were known.

234. The Tribunal considers the rule is one reasonable, and indeed probably the only practicable, way of dealing with the Site Licence conditions, in particular 3(iv), and in providing acceptable access given the site size and layout. The Tribunal is therefore considering whether the decision during the period August 2019 to January 2020 was unreasonable in the context of the substantive decision being considered to be well within a reasonable range of decisions.

235. The Site Licence conditions do not prohibit parking on the Roadway and do not specifically say in terms that roads must have no parking on them. However, they specifically refer to the route for emergency vehicles being kept clear of obstruction. It is amply clear that the usable road must be 3.7 metres wide, that being the accepted requirement for passage of emergency vehicles, where the Roadway is only road on the Site.

236. It is apparent that, save where the two visitor's spaces are to be situated, and perhaps a small area further along the road than that, no parking of even a very small or "city" car could take place on the Roadway and maintain a usable road width of 3.7 metres. Whilst Mr Cannings in his Skeleton Argument submitted that the Applicant's parking a Smart car immediately outside of the Parking Space and on the Roadway caused no obstruction, the Tribunal has rejected that assertion- absent an ability to pass through the car, it inevitably causes an obstruction.

237. 18b is therefore effectively a necessity for the Respondent to be able to comply with the Site Licence conditions. It may be that there is another way of meeting the condition, although not one that the Tribunal can identify. In any event, 18b is decidedly not an unreasonable way of ensuring the condition is met. The Tribunal notes the minimum width of the Roadway identified at the site inspection was 3.78 metres away from the visitor's parking spaces and just 3.7 metres by the lower corner of those spaces, where the Roadway would, but for the visitors' spaces, be at its widest at that point.

238. The Tribunal has noted the Site's layout, with there being one road, the widths of the Roadway and inevitable impact if the Residents are allowed to park on the Roadway that the usable width of the Roadway is reduced, even ignoring the Site Licence conditions. The Tribunal has taken account of the fact access to and egress from the pitches by car must necessarily be along the Roadway.

239. Accordingly, and to a somewhat lesser relevant extent, the Tribunal considers that 18b is also reasonable having regard to the size, layout, character, services and amenities. Whilst Mr Cannings argues that the decision to implement the rule is unreasonable with regard to the particular factors of the size, layout, character, services and amenities, given the lack of off-road parking, the Tribunal does not accept that.

240. He also raised a point about both rules that the Respondent had not, carried out any investigation into the adequacy of parking on the site. Hence it was submitted that the decision to introduce both of the rules was unreasonable for that reason. The Tribunal did not consider it necessary to address that in relation to 18c, given the more significant points arising.

241. The Tribunal considers that in light of the access requirements necessary along the Roadway, no investigation into parking on the Site generally and no potential outcome of such could have led to a rule permitting parking on the Roadway.

242. Whilst the Tribunal had allowed the Applicants to argue that the decision was unreasonable in light of the Planning Permission and Site Licence conditions, when that argument falls to be considered, it cannot succeed. Indeed, in considering the Site Licence conditions, the Tribunal finds substantial support for the rule.

243. Hence, whilst the Tribunal has found a lack of documentary or other evidence to demonstrate the consideration given to the proposal of the rule and has been critical of that in respect of rule 18c, as the decision is considered by the Tribunal to be simple one and as the standards expected of private companies, in which documentation and processes are a part, are not as high as for public bodies, the Tribunal has determined that there is sufficient to find the decision one which was reasonable in spite of the obvious failings in documentation to demonstrate how factors were considered. The decision very close to the line.

<u>The consultation process- ii)</u>

244. The Applicants did not explicitly challenge this rule in their response to the consultation. Neither was there any challenge to it in terms until 24th September 2020. Whilst the Tribunal allowed a challenge to it to be argued on the basis of Counsel's submissions, no point raised has then been strong.

245. In terms of the process, the rule does not include anything that the Respondent did not know and could not know. The consultees were not presented with a rule proposed to be introduced because of matters that could not be known to require it. There is no reference to Site Licence conditions, which were in any event known in January 2020: more importantly, there is no reference to fire safety requirements.

246. It may have been helpful for the Respondent to have explained the reason for the rule when consulting on it. However, as the rule is simple on

its face and easy for the Residents to understand, the Tribunal cannot find that any lack of a specific explanation goes far enough so as to render the consultation process unreasonable.

The final decision- iii)

247. The Tribunal has found that the Respondent did not have a process for considering consultation responses, although the particular fact that the private Respondent did not specifically and separately document its consideration of response should not alone be taken to demonstrate a lack of consideration to a sufficient extent.

248. In respect of this rule, whilst there ought again to have been documentation to demonstrate consideration of the position following consultation, even if only that there was no new information to consider, the Tribunal views reasonableness in the context of there being no consultation response which mentioned parking on the Roadway.

249. The Tribunal has concluded that it is within the bounds of being reasonable for there not to be documentation where the consultation process produced nothing new to specifically consider. If there had been anything raised in response to consultation which referred to the inability to park on the Roadway, the Tribunal considers it unlikely that the final decision would have been found to have been reasonable and to have considered all relevant factors- and hence the 10(2)(c) decision would have been unreasonable- where there were no evidence of such and where the matters raised in response should have been addressed. There would have to have been consideration of the response and evidence of that.

250. No issue arises as to the genuine or other nature of the Respondent's consideration of the Applicant's response to the consultation because nothing was said by the Applicants about 18b. No specific issue arises in respect of criteria adopted for assessing responses to the consultation in relation to this rule, given that there were no such responses.

Conclusion

251. The process, as presented, was far from perfect, as identified. If the rule had related to a matter where the Tribunal considered that there likely to be alternative approaches available and or otherwise a finer balance as to whether decision did or did not fall within a reasonable range, the Tribunal may have been particularly troubled and the lack of demonstrable assessment may very well have titled the balance towards the decision being unreasonable. The Tribunal has concluded by a narrow margin that the decision to implement rule 18b was not unreasonable despite factors pointing against that, because of the lack of any other conclusion to which the Respondent could obviously have come and that the obviousness of the outcome just justifies the limited discernible consideration of the matter.

252. In this instance, and specifically in relation to 18b, in spite of the consideration of the matter not being demonstrable by any

contemporaneous evidence, the Applicant has not proved that relevant factors were omitted or irrelevant ones included in such consideration as took place or that reasonableness required more consideration than there was.

253. Overall, whilst the Tribunal has concern about the fact that the same rule was introduced on two different sites around the same time and whether the rule was therefore sufficiently considered in relation to the Site, given the nature of the Site Licence conditions applied by the Council and in the absence of anything identifiable said to be relevant about which incomplete and inadequate information was known, the Tribunal is not persuaded by the Applicant that the process did not take account of the appropriate factors or the decision itself was not reasonable

254. In the circumstances, the findings that, at least as demonstrated, the visitors' parking spaces would be on part of the Roadway is not determinative of anything. The ability to design the spaces so as not to form part of the Roadway when they are permanently created and the fact that there were only temporary markings, are such that the Applicants' assertion that the spaces are part of the Roadway is not, at least as yet, made out. Accordingly, Mr Cannings' submission that the visitor spaces constitute a breach of rule 18b is not accepted. Whilst he is correct to submit that there is a blanket ban on parking on the Roadway, it is not yet apparent whether the visitors' spaces will be provided in a manner breaching that ban.

255. The Tribunal considers that the rule is not undermined or breached by the provision of the two parking spaces for visitors where those may be provided so as not to form part of the Roadway. The Tribunal does observe that unless the spaces are sufficiently separated from the Roadway, there is a danger of them encouraging parking on other parts of the Roadway but that they need not offer such encouragement if the spaces provided in a manner that does sufficiently separate them. Hence, they do not render the decision to implement rule 18b unreasonable.

256. Mr Cannings raised a wider point about this rule that the Tribunal should consider the asserted inevitability of the rule being breached as relevant. The Tribunal considers it inevitable that there will be parking on the road without the rule. There may be parking on the road despite the rule but that can be acted on.

257. For the avoidance of doubt, whilst there was some debate about whether, or not, there ought to be a turning circle for emergency vehicles before the start of the shorter limb of the roadway is not considered by the Tribunal to have any bearing on the matter.

Other observations

258. The Tribunal considers that the consequence of the Site Rules that the Applicants can only park one car on the Site does not render 18b or 18c unreasonable in themselves or the process unreasonable for producing that

outcome. Whilst there is- on the face of matters and assuming the other residents could park more than one car whilst complying with the Site Rules on their driveways and 18c or a replacement were properly expressed to allow that- a greater impact on the Applicants than on the other residents, that is the effect of the Applicants' park home being situated on a pitch with one parking space and them subsequently buying a second car.

259. Unless resolved in their favour in a separate case mentioned and which may or may not be pursued, the fact that the Applicants have bought a second car since purchase of the Park Home is of no relevance to the amount of parking that the pitch provides and imposes no obligation on the Respondent to provide them with a second parking space. The Tribunal does not seek to express any view on any other disputes between the parties.

260. It merits briefly noting that the comment in the Applicant's consultation response to the other residents being able to park two to four cars on their pitches was wrong in the context of the terms of the Site Rules. Whilst it may be physically possible to park up to four cars on some pitches, the Site Rules intended would prevent more than two being parked, even assuming more could be whilst meeting any other requirements.

261. The fact that the Tribunal has found the Parking Space does not accommodate a large van is neither here nor there. The Site Rules separately preclude the parking of a commercial vehicle on a pitch- and that has not been challenged.

262. The Tribunal does not consider that the Applicants parking a car on the Parking Space contravenes condition 2(iv)(g) of the Site Licence conditions as has been asserted. The reference to adjacent caravan means a park home situated on one of the adjacent pitches and not the park home situated on the particular pitch.

263. The Tribunal does not consider the requirement of Site Licence condition 13 takes matters further in respect of this application. The requirement for suitably surfaced parking spaces to meet the requirement of residents and their visitors is somewhat imprecise. However, the Tribunal considers that the matter of relevance is that is that the provision for visitor parking should provide 1 such space per 10 pitches, as set out in an email from the Council to Ben Eiser, the Respondent's agent, pursuant to Dorset local planning guidance. Accordingly, two visitors' parking spaces is sufficient to meet that.

264. The Tribunal does not consider that the condition requires the provision of other communal parking for residents before limits can be placed on the parking on pitches, provided those are acceptably dealt with, or before the Residents can be prevented from parking on roadways and that the decision in relation to either of 18b or 18c is undermined by a lack of that. The condition says nothing the need for a sufficient route for

emergency vehicles being affected in any way by the presence or absence of such communal parking.

265. The determination made by the Tribunal do not, it must be emphasised, mean that a proper assessment of the site rules appropriate following a reasonable consideration of the fire reports and an appropriate consultation will necessarily result in different rules being proposed from the 18c than the Respondent apparently intended (but did not on the wording propose). The Tribunal accepts the submission of Ms Gourlay that the Tribunal cannot modify fire safety requirements or the Site Licence conditions and that the Site Rules must have proper regard to those at least insofar as relevant and in the context of both the other relevant factors to which particular regard must be had and any additional ones.

266. However, such further rule would need to be proposed following a proper consideration of those factors and a proper consultation process where the consultees are also able to properly respond. The Tribunal does not seek to predict the outcome of that. It cannot be known what issues may be raised when a further consultation is undertaken with the fire reports and other relevant information in respect of the proposed rule 18c known to the Respondent and the Residents and what outcomes there may be that cannot be considered unreasonable.

What ought the Tribunal to do in light of the conclusion reached as to reasonableness?

267. Having found that the Respondent did not undertake a reasonable consultation process in respect of rule 18c and the decision was unreasonable, the Tribunal must decide the approach to take to the Site Rule challenged and where that challenge has been upheld. The Tribunal has not found that a simple matter.

268. Plainly, in the absence of Site Rules dealing with the matters sought to be addressed in 18c, there will be no enforceable restriction on parking on the pitches on the Site. Residents and visitors will be able to park in such a manner as to breach the Site Licence requirements and fire safety requirements if they choose to do so.

269. However, the Tribunal has identified that the apparent purpose of the Site Rules- to permit a second car where it can be parked on the pitch in compliance with fire safety and the Site Licence conditions- is not reflected in the wording of 18c. The Tribunal has commented on the wording of 18c. Whilst is has been submitted that the rule permits two cars on the pitch, the Tribunal repeats its determination that it does not. Rather it allows one. The rule does not achieve that which it is said to be aimed to.

270. Secondly, it is not apparent what fire safety requires. In relation to fire safety, there are now two reports, which the evidence and representations received indicate do not agree. There is no indication as to how the Respondent might seek to weigh the comments and conclusions of one as against the other, nor what the residents might accept or challenge. There

is nothing on the ground to indicate what the effect of either one or other, or any appropriate combination of the two, might result in.

271. Ms Gourlay submits that there should be no modification of the particular rule and that the Applicants have not proposed any. Mr Cannings has submitted it should simply be quashed.

272. The Tribunal has reminded itself that it can confirm the site rule, that it can quash it, that it can modify the rule and that it can provide its own rule. The Tribunal has considered all of those possibilities.

273. The Tribunal considers that it may be that a more restrictive site rule- at least than that intended by the Respondent albeit not expressed by the Respondent- is required in relation to the parking by residents and their visitors on the resident' pitches in order to ensure that such parking does not breach fire safety requirements. It may be that needs to specify where Residents can park, in which event the Tribunal envisages a need to identify such locations on the pitches and to distinguish those locations from the remainder of the flagged areas. However, the Tribunal does not consider it appropriate to modify 18c to impose such a more restrictive rule, not least where two fire risk reports have been produced, which do not fully agree and where there has been no clear identification of where on the pitches the residents and their visitors would need to park in order to meet fire safety requirements, if indeed there would be only certain positions possible. Given the restrictions which might arise, the Tribunal is particularly mindful that the matter has not been presented to the Residents for them to provide any responses.

274. Neither does the Tribunal consider it appropriate to impose any other rule in place of the particular Site Rule 18c for the same reasons.

275. As it is not currently clear to the Tribunal- and it is not apparent that it could be clear to the residents and their visitors- where parking on the pitches can properly take place in order to comply with fire safety requirements and for how many cars, the Tribunal does not consider that an appropriate rule 18c, or equivalent, can be formulated.

276. It necessarily follows from all of the above that the Tribunal cannot confirm the rule as it stands. That leaves the Tribunal only with one course left, namely to quash rule 18c. The Respondent will need to reasonably deal with the introduction of an appropriate replacement rule in light of all of the relevant circumstances and factors, including a new consultation.

Decision

277. The Respondent did undertake a reasonable process including consultation, although somewhat less than ideal, and it was not unreasonable in the circumstances to implement the Site Rule 18b, having regard to the particular factors to which regard must be had and any other relevant factors pursuant to the 2014 Regulations.

278. The Respondent did not undertake a reasonable consultation and it was unreasonable in the circumstances to implement the Site Rule 18c, having regard to the particular factors to which regard must be had and any other relevant factors. That one of the Site Rules the subject of challenge is quashed.

279. A proper assessment of the rule or rules appropriate to meet any fire safety requirements which have been appropriately identified and the relevant Site Licence conditions and the drafting of rules to meet those is required. The Applicant should carefully consider in a realistic manner the size, layout and character of the Site and the Site Licence conditions and established fire safety requirements, particularly if those will remain relevant to the parking permitted. There must then be a proper consultation including sufficiently explaining to the Residents the relevant fire safety and other requirements- in light of the fire report or reports appropriate-, and how the Site Rules seek to meet those, now that fire reports are available. The consultation must include the Residents having the ability to make appropriate representations in light of such reports and information and the Respondent demonstrably giving proper consideration to those representations.

280. It will be for the Respondent to consider whether the rule should, or need not, differ from that sought to be implemented in March 2020- although it appears to the Tribunal that it will need to be differently expressed if it is to have the effect apparently intended. The Respondent should sensibly record how it has taken account of the contents of the two fire reports received by it, the differences between those and on what basis any given element of one report has preferred to the other. Hence, how it has taken account of the evidence and how it has reached any decision. The Residents should be made aware of those matters.

281. The rule(s) to be implemented in place of 18c following consultation and consideration will be a matter for the Respondent, provided the decision is not one no reasonable decision-maker could reach.

Costs

282. In the event that any party wishes to apply for any costs to be awarded to in respect of any aspect of this application or the application generally and to pursuant to the provisions of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, such party shall do so by 18th February 2021. Any previous Direction in respect of costs is varied by this Decision. Such application shall comprise written submissions as to the award of such costs in principle only. Any statement of costs relevant to specific sums claimed shall be directed to be provided in respect of any costs awarded in principle in due course.

283. In the event that any party makes such an application for an award of costs, the other party may make representations opposing such application by 2nd March 2021. The Tribunal will determine any application(s) for costs (or give further directions if appropriate) thereafter.

Rights of Appeal

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.

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

3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.