



Neutral Citation Number: [2024] UKUT 237 (LC)

Case No: LC-2023-717

IN THE UPPER TRIBUNAL (LANDS CHAMBER)

AN APPEAL AGAINST A DECISION OF THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

FTT REF: BIR/17UB/PHR/2022/0001

Royal Courts of Justice
Strand, London, WC2A 2LL
22 August 2024

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

PARK HOMES – SITE LICENSING – breaches of planning control and tree preservation order – relationship between site licensing and planning enforcement – s.5, Caravan Sites and Control of Development Act 1960 – s.285, Town and Country Planning Act 1990 – appeal allowed

BETWEEN:

AMBER VALLEY BOROUGH COUNCIL

Appellant

-and-

HAYTOP COUNTRY PARK LIMITED

Respondent

**Haytop Country Park,
Whatstandwell,
Derbyshire DE4 5HP**

**Martin Rodger KC,
Deputy Chamber President**

18 June 2024

Richard Kimblin KC, instructed by the Borough Solicitor, Amber Valley Borough Council, for the appellant

Richard Harwood KC, instructed by Apps Legal Limited, for the respondent

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The following cases are referred to in this decision:

Amber Valley Borough Council v Haytop Country Park Ltd [2020] UKUT 68 (LC)

Babbage v North Norfolk District Council (1989) 59 P&CR 248

Esdell Caravan Parks Limited v Hemel Hempstead Rural District Council [1966] 1 QB 895

Gateshead MBC v Secretary of State for the Environment [1995] Env LR 37

Haytop Country Park Ltd v Secretary of State for Housing, Communities and Local Government [2022] EWHC 1848 (Admin)

R (Morge) v Hampshire County Council [2011] UKSC 2

R v Warwickshire County Council ex.p. Powergen plc (1997) 75 P&CR 89

Staffordshire County Council v Challinor [2007] EWCA Civ 864

Introduction

1. Haytop Country Park (the Park) is a caravan site near Whatstandwell in the Derwent Valley in Derbyshire. The whole of the Park and the surrounding area lie within the defined Buffer Zone of the Derwent Mills World Heritage Site, and within a Special Landscape Area, designated in the Amber Valley local plan. The site also adjoins a designated Site of Special Scientific Interest.
2. The respondent acquired the Park in 2016 and wishes to operate it as a site for permanent residential occupation. In furtherance of that ambition it has carried out substantial engineering work including the felling of trees, extensive ground works to level and reprofile parts of the landscape, and the installation of new concrete plinths for permanent twin-unit park homes.
3. When the respondent carried out its development it believed that it was entitled to do so without planning permission under permitted development rights - but it was mistaken. The appellant, which is the local planning authority (the Council), served an enforcement notice requiring the removal of the works, and obtained a tree replacement order. The enforcement notice was confirmed by a planning inspector whose decision was upheld on appeal by the High Court.
4. This appeal is from a decision of the First-tier Tribunal (Property Chamber) (the FTT) on the respondent's appeal to it against conditions imposed by the Council when it determined an application by the respondent for a new site licence under the Caravan Sites and Control of Development Act 1960 (the 1960 Act). The Park has planning permissions (the last granted in 1968) for up to 60 caravans, but the licence granted by the Council limited the number of permanent pitches to only three. The FTT allowed the respondent's appeal and substituted a condition limiting the number of pitches to 18.
5. The issue in the appeal is whether the FTT erred in law in reaching its decision. The Council argues that it did, essentially because it overlooked the effect the licence conditions would have in indirectly legitimising development which was already the subject of the enforcement notice, but without having regard to the planning considerations which underpinned the notice. The respondent argues that the FTT was entitled to make the decision it did and did not fall into error in doing so.
6. At the hearing of the appeal the Council was represented by Mr Richard Kimblin KC and the respondent by Mr Richard Harwood KC. I am grateful to them both for their submissions.

Statutory provisions

7. Section 1 of the Caravan Sites and Control of Development Act 1960 (the 1960 Act) prohibits the operation of a caravan site without a site licence. Section 3(1) of the 1960 Act permits the occupier of land to apply to the appropriate local authority for a site licence in respect of that land, but by section 3(3) the local authority may only issue a site licence in respect of the land if the applicant is entitled to the benefit of a permission for the use of the land as a caravan site issued under Part 3 of the Town and Country

Planning Act 1947 otherwise than by a development order. A valid planning permission is therefore a prerequisite for the issuance of a site licence.

8. Section 5(1) of the 1960 Act empowers a local authority to attach such conditions to a site licence as it may think necessary or desirable in the interests of persons dwelling in caravans on that land, or of any other class of persons, or of the public at large. By section 5(1)(c) and (d) these may include conditions regulating the position of caravans on the land and for securing that steps are taken for preserving or enhancing the amenity of the land, including the planting and replanting of trees.
9. Section 7, 1960 Act provides a right of appeal to the FTT for any person aggrieved by a condition included in a new site licence. If the FTT is satisfied (having regard amongst other things to any standards which may have been specified by the Minister) that the condition is “unduly burdensome”, it may vary or cancel the condition. It may then also attach a new condition to the licence.
10. Part III of the Town and Country Planning Act 1990 is concerned with the control of development. By section 55(1), “development” includes the carrying out of building, engineering, mining or other operations on land, or the making of any material change in the use of land. Carrying out development without planning permission constitutes a breach of planning control (section 171A(1)).
11. Section 172(1), 1990 Act empowers a local planning authority to issue an enforcement notice where it appears to them that there has been a breach of planning control and that it is expedient to do so, having regard to the development plan and other material considerations. There is a right of appeal to the Secretary of State under section 174. If planning permission is granted retrospectively an enforcement notice ceases to have effect so far as it is inconsistent with that permission (section 180(1)).
12. Planning permission may take the form of an express grant of permission following an application under section 62, 1990 Act or it may be granted by a development order which describes classes of development for which permission is granted by the order itself without separate consideration (section 58(1)(a)). The current Order is the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
13. Where a site licence is granted under section 3, 1960 Act development required by the conditions of the licence is permitted development within Class B of Part 5 of Schedule 2 to the GPDO.
14. This appeal concerns the relationship and potential overlap between the 1990 Act and the 1960 Act. In *Babbage v North Norfolk District Council* (1989) 59 P&CR 248 the Court of Appeal confirmed that section 5 of the 1960 Act does not justify the inclusion in a site licence of conditions imposed “for purely planning reasons”. The local planning authority was responsible for planning matters and while conditions limiting the number of caravans on a site could be imposed under section 5 they could only be based on considerations such as public health, traffic management or the amenity of the site and not on planning considerations alone. Thus it had not been lawful for a licensing authority to impose a condition requiring caravans to be removed from the site for part of

the year which had been included solely for the benefit of the visual amenities of the land viewed from other land. As Fox LJ explained, at page 256:

“Nobody suggests that, as a matter of planning law (apart from the licence) it is unlawful for the applicant to keep unoccupied caravans on this site during the winter period. It is difficult to see why the licence should simply expunge that right without compensation.”

15. Finally, it is relevant to refer to the prohibition on challenging an enforcement notice in any proceedings on any ground on which an appeal might be made to the Secretary of State. This is to be found in section 285(1), 1990 Act, which provides:

“The validity of an enforcement notice shall not, except by way of an appeal under Part VII, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.”

16. The prohibition on any challenge to the “validity” of an enforcement notice, other than by an appeal under the 1990 Act, is given a wide meaning and extends to any challenge to the enforceability of the notice on grounds which could have been raised on an appeal i.e. to the merits rather than to the validity (in the strict sense) of the notice. That was explained by Keene LJ in *Staffordshire County Council v Challinor* [2007] EWCA Civ 864, at [37], where he pointed out that the issues which could be raised on an appeal included, in effect, the planning merits of the development enforced against and any existing use rights which are relevant, so the same issues could not be raised in any other forum. Keene LJ also explained, at [52], that an enforcement notice could not take away legally permitted development rights and will be interpreted as not interfering with rights enjoyed under a General Development Order.

The facts

17. The Park has the benefit of two planning permissions. The first, granted in 1952, permits the use of 7.5 acres for the siting of up to 30 touring caravans, while the second, granted in 1966, doubled that number to 60 arranged in groups in accordance with a site plan which has subsequently been lost. In 2021 a Planning Inspector determined that the 60 permitted caravans could be of any variety, including permanent, twin-unit park homes, and were not limited to the towed vehicles mentioned in the 1952 permission. The permissions allow occupation of 30 caravans on a permanent residential basis, with the other 30 being occupied for seasonal holiday use. A condition in the 1966 permission requires that in the interests of visual amenity an area in the centre of the Park be kept free of caravans.
18. Site licences were issued to a previous owner of the Park, Mr W.H. George, in 1961 and in 1968. The 1968 licence authorised 60 caravans, including 30 for permanent occupation, which were to be sited in accordance with a layout plan (it has been assumed that this reflected the site plan referred to in the 1966 planning permission). It is said by the respondent that the required layout was not observed by its predecessors, but that the Council took no steps to enforce it.

19. The Park is on land rising up the side of the Derwent Valley and in part is heavily wooded. The woods form part of the parkland formerly associated with Alderwasley Hall, a listed building, and are included within the Alderwasley Conservation Area. A tree preservation order was made in 1978 designating part of the Park as woodland and prohibiting the felling of any trees in the designated area without the consent of the Council. Individual trees in other parts of the Park were also protected.
20. Photographs of the Park taken prior to its recent development show that it was mainly a woodland area with caravans set amongst trees. The Inspector described it as “nestled in woodland” and “relatively inconspicuous” and the FTT referred to the feeling of being in a wooded setting. The layout required by the 1968 licence had the effect of concealing the groupings of caravans from local roads, a railway line and many vantage points in the surrounding area. Whether the layout was precisely adhered to or not, pitches were less densely sited and haphazardly laid out with caravans simply parked on the grass, rather than standing on concrete bases. There was a mix of towing caravans, tents, and larger caravans. Generally, the pitches were considerably smaller than those constructed later by the respondent.
21. The respondent acquired the Park in 2016 and soon began to modernise it, including undertaking earth moving works to create a series of levelled terraces supported by gabion retaining walls, the laying of concrete bases, wooden decking, and a new internal roadway, the installation of services and CCTV. In all 27 concrete bases for new caravans have been laid, most carved out of the sloping hillside but with a few on level ground. Caravans have been installed on a number of these and one or two have been occupied from time to time. The result, as described by the Inspector, paid little regard to the importance of the Park’s location and the global importance of the World Heritage Site, and created “an incongruous and urbanised development at odds with the otherwise rural relict landscape.”
22. In preparation for its intended engineering works the respondent unlawfully felled 121 trees in the protected woodland zone in March 2017. In August the same year the roots of four protected trees were also damaged by the works. The respondent was subsequently prosecuted by the Council for these breaches of the tree preservation order which resulted in convictions and fines.

The enforcement proceedings

23. On 14 September the Council issued a temporary stop notice requiring the respondent to cease the works which it had commenced on the central green area (in breach of the condition in the 1966 planning consent) and in December 2017 it obtained an injunction in the County Court prohibiting the siting of caravans or preparatory work in this area.
24. The Council also took the view that the stationing of twin-unit static caravans on the Park was a material change of use, and that the scheme of works carried out by the respondent amounted to unlawful development. On 15 March 2019 it issued two enforcement notices. One asserted that there had been a change of use while the other objected to the operational development including, amongst other things, the engineering operations which had re-contoured the Park, the construction of the concrete bases,

retaining walls and service connections, and the installation of raised decking and timber skirting around the caravans which had already been positioned on the Park. The new access road infringes on part of the central green. The operational development notice required that all of these works within an area shown on the notice plan be removed. The plan did not include the whole of the Park, with an area at the northern end and a further smaller area at the southern end lying outside its boundaries.

25. The respondent reacted by appealing against the enforcement notices and by seeking a lawful development certificate which the Council refused and which then became the subject of a further appeal. These appeals were considered together by an Inspector at a hearing lasting seven days in January and February 2021. The Inspector issued her decision on 20 August 2021.
26. The Inspector found in the respondent's favour on the interpretation of the 1966 planning consent and allowed the appeals against the refusal of a certificate of lawful development and against the enforcement notice alleging a change of use of the Park. She dismissed the appeal against the operational development enforcement notice. The only permitted development rights which the respondent enjoyed under Class 5B were those necessary to accommodate the layout permitted by the 1966 planning permission. The operational development conflicted with policies in the development plan intended to protect the sensitive landscape and heritage assets and caused harm to the settings of the World Heritage Site and to Alderwasley Hall, its Conservation Area and the Special Landscape Area. Her decision was then the subject of an appeal to the High Court which was dismissed on 15 July 2022 (*Haytop Country Park Ltd v Secretary of State for Housing, Communities and Local Government* [2022] EWHC 1848 (Admin)).
27. Following the dismissal of the appeal the enforcement notice was due to be complied with by the respondent by 15 January 2023. It has not been complied with.
28. Meanwhile, on 27 January 2021 the Council had served a tree replacement notice on the respondent requiring it to plant 100 replacement trees of specified species and sizes and in positions shown on a plan. The period for compliance with the notice was 12 months, from 25 February 2021. A further appeal to a Planning Inspector followed and by a decision published on 4 March 2024 the Inspector largely upheld the notice while allowing the respondent's appeal on certain points of detail concerning the work to be carried out.

The licence application

29. Alongside the enforcement proceedings the parties have also been engaged in parallel licensing proceedings before the FTT and this Tribunal under the 1960 Act.
30. Initially, an application by the respondent for a transfer of the 1968 site licence was refused by the Council, and on 2 August 2018 it applied under section 3, 1960 Act for a new licence for 30 residential caravans. The application was again refused by the Council which interpreted the 1966 planning consent as limiting the caravans which could be brought on to the site to the smaller touring variety.

31. The respondent appealed the licence refusal to the FTT and on 25 July 2019 it directed that a site licence be issued. On 16 March 2020 this Tribunal (Judge Cooke) allowed the Council's appeal against the FTT's decision on the basis that it was irrational to require a licence to be issued when there was an ongoing dispute on the proper interpretation of the planning permission (*Amber Valley Borough Council v Haytop Country Park Ltd* [2020] UKUT 68 (LC)). Repeated applications for permission to appeal to the Court of Appeal was subsequently refused by the Tribunal and by a single Lord Justice.
32. After the Inspector's decision had resolved the legality of the respondent's intended use of the Park as a site for permanent residential pitches, the application for a site licence was reconsidered by the Council which issued a new licence on 26 April 2022.
33. The new site licence was issued subject to three conditions. The second condition required that the Park should not be occupied by more than three caravans (rather than the previously authorised 60) which were to be located on pitches identified on the licence plan. These locations were selected so as not to interfere with the replanting required by the tree replacement order but Mr Arkle, the Council's officer who signed the licence, later acknowledged to the FTT that they were in positions originally subject to the requirements of the operational development enforcement notice.
34. The third condition in the licence required that the Park be maintained in accordance with standards which were attached to the licence and which dealt in greater detail with the amenity of the Park. Amongst the matters covered by the standards was a requirement that a suitable hardstanding be provided for every caravan, that water and electricity be supplied, and that caravan should be connected by roads and footpaths of specified dimensions.
35. It is common ground that in practice the licence conditions had the effect of relaxing the requirements of the enforcement notice to the extent that they conferred permitted development rights for any development which they required (including the roads, services and hardstandings for the three permitted caravans). Mr Arkle explained to the FTT that he was content for the concrete plinths to remain on each of the three pitches shown on the licence plan because their creation had not involved much or any of the re-profiling which seems to have been his biggest concern.
36. The respondent appealed against the conditions contained in the new site licence, including the limitation to three caravans.

The FTT's decision

37. By a decision issued on 16 May 2023 (subsequently twice corrected and finally reissued in amended form on 6 July 2023) the FTT allowed the appeal and the Council was directed to issue an amended site licence. The amendments permitted the siting of 18 caravans on identified plots and made some other relatively minor variations to the conditions. The 18 pitches were in locations which the FTT was satisfied would not conflict with the replanting required by the tree replacement notice (which was itself the subject of a separate appeal).

38. The respondent's case before the FTT was that the condition restricting the Park to only three caravans could not be justified by reference to the enforcement notice or the tree preservation order. It was an impermissible planning condition, as well as being unduly burdensome duplication of regulatory controls, and, in any event, was misconceived, as it was said that the enforcement notice does not affect the future use of the Site.
39. The FTT considered that limiting the number of pitches to three, where there was planning permission for 60, was unduly burdensome. That conclusion would have been sufficient to justify cancelling the relevant condition but the FTT went on to consider whether it should attach a different condition.
40. In the FTT's view the respondent should be allowed as many pitches as could properly be located on the Site, subject to the constraints of the enforcement notice, the tree replacement notice and the tree preservation order, up to a maximum of sixty.
41. The critical part of the FTT's reasoning occupied paragraphs [140] to [147] of the decision, where it considered the relevance, or "impact" of the enforcement notice (which it referred to as the "ODN", for "operational development notice"), as follows:

“140. [W]e recognise that Mr Arkle is reluctant to determine where pitches might be located until the ODN is complied with. Our difficulty with this approach is that on an application for a site licence, the Council must consider how the Site will operate in the future. It is only when a licence is granted that the operator then has permission to carry out such development (if any is necessary) to operate the Site in accordance with the terms of the Licence. Thus, a licence is essentially a forward-looking document.

141. In contrast, the ODN is dealing with restoration of the Site arising from past illegal operations.

142. Our view is that Mr Arkle would or should have been able to understand how the Site would be configured following compliance with the ODN when assessing how many pitches could be accommodated, and where they should be located. After all, the ODN says clearly what works are required (...).

143. The issue is undoubtedly complicated by the tension between compliance with the ODN and the exercise of [permitted development rights] that will arise on the grant of a site licence. We do not, however, see any provisions in the Act that permit a delay in determining the number of pitches to be permitted, following an application for a licence, just because there are other works that the operator is required to carry out.

144. We are persuaded by the authorities quoted by Mr Harwood and set out at paragraphs 101 to 106 above that the ODN and the [permitted development rights] arising from any licence granted can co-exist, even if the co-existence creates tensions. The tensions will be considerable, because the ODN works require re-profiling of the Site and the removal of the road.

145. Given the history of this case, there is a reasonable likelihood that these tensions will result in more litigation. We hope not. If the parties were willing to co-operate by negotiating an engineering solution to the tensions (so that the ODN requirements were fully met, but the Applicant was still able to

provide the necessary infrastructure to the Site), that would be a much more pragmatic solution. That is not in our hands.

146. Our role is to determine the appeal against the conditions in the Licence under section 7 of the Act. Enforcement of the ODN, and the exercise of [permitted development rights] arising from the grant of a caravan site licence are planning matters, not matters for this Tribunal. We have no role, and no jurisdiction, over the way in which the ODN is complied with. Our view expressed in the preceding paragraph should not be considered as authority for the Applicant to be released in any way from full compliance with the ODN.

147. Our view is therefore that the number of pitches to be allowed in the Licence should not be limited by virtue of the constraints of the ODN.”

42. I should explain that the reference in paragraph [144] of the FTT’s decision to “authorities quoted by Mr Harwood” was to two cases (*Gateshead MBC v Secretary of State for the Environment* [1995] Env LR 37 and *R (Morge) v Hampshire County Council* [2011] UKSC 2) which support the proposition that the duplication of statutory controls by consents or licences under separate statutory regimes should be avoided.
43. In contrast to the approach it took to the operational development, the FTT considered that the location of trees was a matter to which it could legitimately have regard in framing licence conditions because it was within the scope of section 5(1) of the 1960 Act and related to the amenity of residents and the preservation and enhancement of the Park. On that basis it rejected the respondent’s submission that any matters concerning trees should be disregarded and left to the decision of a second Planning Inspector who was due to hear its appeal against the tree replacement notice.
44. The FTT noted that the pitches proposed by the respondent required substantial engineering works, which it was satisfied would not fit in the woodland setting of the Park without damage and disruption to the surrounding trees. The respondent’s arboriculturist had proposed a scheme which amended the planting required by the tree replacement notice and adjusted the positions of some of the hardstandings. It was said that this would enable 28 caravans to be accommodated, but the FTT considered that the protection of the woodland environment was “of pre-eminent importance” and described the tree protection order and the tree replacement order as “not negotiable”. It therefore rejected the suggestion that the tree protection conditions were unduly burdensome and disregarded the respondent’s various compromise solutions.
45. In his evidence, Mr Arkle had accepted that, in addition to the three pitches which he had identified as not being affected by the enforcement notice, a further 15 were not impacted by the tree replacement order. The FTT consider that those pitches should be included in the Licence and that the condition imposed by the Council should be amended to permit up to 18 caravans to be sited on the Park in those locations.

The appeal

46. The Council was granted permission to appeal on grounds that the FTT had erred in reaching its decision. The various ways in which the grounds of appeal were formulated

made essentially the same point, namely, that the FTT had permitted the respondent to site caravans in locations which conflict with the current planning permissions and the enforcement notice. It had, in effect, granted permitted development rights for the road, the terraces and the concrete bases without regard to the relevant planning considerations. That approach involved dealing with the regulatory requirements backwards and rendered the decisions of the Secretary of State and the High Court a pointless waste of time.

47. In support of these points Mr Kimblin KC submitted that the enforcement notice provided what he called the “planning baseline” from which any consideration of the conditions of a site licence should be undertaken. It was irrational for the FTT to disregard its requirements and, while purporting to respect it, to bring about a result which contradicted it. He referred to a decision of the Court of Appeal in a case which he said was analogous, *R v Warwickshire County Council ex.p. Powergen plc* (1997) 75 P&CR 89. In that case an application for planning permission was refused by a District Council on highways grounds (on the advice of the highway authority) but its decision was reversed on appeal to the Secretary of State. When the developer called on the highway authority to enter into an agreement under section 278, Highways Act 1980 to carry out the necessary works, it refused on the grounds of its original objections. On a judicial review the highway authority’s decision was quashed and its subsequent appeal to the Court of Appeal failed. Simon Brown LJ asked whether it was reasonable for a highway authority, whose road safety objections had been fully heard and rejected on appeal, then, quite inconsistently with the Inspector's independent factual judgment on the issue, nevertheless to maintain its own original view? In the absence of any new facts or changed circumstances he concluded that the only possible answer to that question was a categorical “no”.
48. Mr Harwood KC submitted that whether a licence condition was unduly burdensome must be judged against the achievement of legitimate site licensing objectives, not any contribution the condition might make to planning, environmental or other objectives. That was the approach taken by the FTT and it involved no error of law. Additionally, the FTT had been rightly concerned to avoid a duplication of regulatory controls. He disputed the suggestion that there was a conflict between the condition in the site licence and the enforcement notice, suggesting that the enforcement notice was concerned only with the removal of development which had taken place in the past, while the permitted development rights conferred by the licence were prospective. It would be irrational for the Council to enforce against hardstandings and services which could immediately be put back under permitted development rights. That is no doubt correct, as is the proposition which impressed the FTT that the enforcement notice is concerned with past defaults while the permitted development rights are forward looking. But these points serve only to highlight the paradox which has been created in this case by the respondent’s failure to comply with the enforcement notice before its application for a site licence was determined. The paradox, which the respondent seeks to exploit, is that pure planning considerations are said to be irrelevant to the terms on which a licence can be granted, yet the grant of the licence will carry with it permitted development rights without the planning consequences of those rights being assessed as part of the licensing process.

49. Mr Harwood KC suggested that the solution to this paradox had been in the Council's hands. It had at one stage (in April 2022) made a direction under article 4 of the GPDO removing permitted development rights but it had withdrawn the direction before it was confirmed. Be that as it may, there is no doubt in my mind that the difficulty in this case is of the respondent's making. It could have applied for planning permission for the operations necessary to create its preferred layout of the Park or for any other layout which it considered would be consistent with planning constraints. It could have applied for consent to do work to the protected woodland trees. It did neither but proceeded unlawfully without permission. It now seeks a substantial advantage for itself as a consequence of its own illegal actions by securing the existing layout without further scrutiny on planning grounds, and by arguing that it would be pointless to remove what has already been provided when something similar will be required in any event by the conditions of any modern licence. In principle the respondent should not be allowed that advantage.
50. The effect of the FTT's decision is certainly contrary to the position arrived at by the Secretary of State and the High Court. There is force in Mr Kimblin KC's submission that this amounts to an impermissible challenge to the "validity" of the enforcement notice prohibited by section 285, 1990 Act. It is true that the FTT did not purport to examine the planning merits of the layout which its condition required the respondent to adopt, and that it directed itself correctly that it had no jurisdiction to rule on the way in which the enforcement issue should be resolved, but the effect of its decision was that the respondent acquired permitted development rights to the extent necessary to enable the new conditions to be complied with. Those conditions included the installation of hardstandings, a road and services to create and link the 18 pitches on the new licence plan. Yet those are the very features which the enforcement notice requires should be removed.
51. The FTT also reversed the order in which matters ought to have been considered, which logically requires that all major planning issues be resolved before a licence is issued. That logical sequence is reflected in section 3(3) of the 1960 Act which provides that a local authority may only issue a site licence in respect of land if the applicant is entitled to the benefit of a planning permission. Of course, the respondent does have the benefit of the 1952 and 1966 planning permissions and is entitled to use the Park for up to 60 caravans, but the caravans of the 1960s were very different from modern park homes. The re-profiling of the landscape to accommodate the road, terraces, gabion retaining walls and large concrete plinths was dictated by the respondent's preferred style of trading, and it is those engineering works which have caused harm to the setting of the World Heritage Site, its Conservation Area and the Special Landscape Area.
52. This Tribunal's decision on the first appeal also proceeded on the basis that the planning dispute must first be resolved before the terms of a licence could sensibly be formulated. The planning dispute has been resolved but, once again, the resulting baseline is irreconcilable with the conditions now attached to the licence by the FTT and the permitted development rights consequential on those conditions.
53. The FTT consciously avoided facing up to the inconsistency between the enforcement notice and the permitted development rights which would follow from the conditions it imposed. It acknowledged that there would be considerable "tensions" between the two,

which were likely to result in further litigation, but it seems either to have ignored or not to have appreciated that the Council would be unable to insist on full compliance with the notice once permitted development rights had been acquired. That was an error of law.

54. In my judgment the FTT's approach in washing its hands of any consideration of planning matters, and then imposing conditions which undermined the enforcement of planning control by the responsible authority, was irrational. Contrary to its assessment, it was not "unduly burdensome" for the Council to limit the number of caravans which can be positioned on the Park to the number which is consistent with compliance with the enforcement notice and the tree restoration order. The burden which the condition imposed was no greater than necessary to reverse the harm that the unauthorised works were found by the Inspector to have caused to the settings of the World Heritage Site.
55. The fact that those are planning considerations does not seem to me to matter in the context of this case, which is quite unlike *Babbage*. In that case Fox LJ emphasised that there was nothing unlawful in the way in which the site owner wished to manage the site, and which the condition imposed by the licensing authority would have prevented. In that context it was not open to the licensing authority to rely on purely planning considerations to justify licence conditions. But in this case the relevant planning issues have all been considered exhaustively and a definitive understanding of the restrictions on the Park and the obligations of the respondent has been arrived at. It was not legitimate for the FTT to disregard that settled position and make a decision which undermined it. It rightly recognised that it had no jurisdiction to consider purely planning objections; the consequence of that limitation ought to have been a further recognition that nothing which it decided should disturb the settled planning constraints on the operation of the Park.
56. Nor should the FTT have been influenced by the need to avoid delay, if by that it meant that it was necessary to settle the number of pitches which could be created once and for all. It said in paragraph [143] that the 1960 Act did not "permit a delay in determining the number of pitches to be permitted, following an application for a licence, just because there are other works that the operator is required to carry out." Any condition which the FTT imposed could be reconsidered on a future application for a variation, after the enforcement notice had been complied with or agreement had been reached on a layout consistent with the planning constraints imposed by the Park's setting. It was not the Council's case before the FTT that there was no number of caravans greater than three which could lawfully be accommodated on the Park. It recognised that in its written argument when it said that while it was necessary for the respondent to deal with the enforcement notice and the tree replacement notice, "once dealt with, the number and location of caravans, consistent with those constraints, will have to be addressed."
57. The three pitches lying outside the area of enforcement (Nos. 22, 23A and 24A) are not subject to the same objection and no error has been demonstrated in relation to them. Once the FTT had considered the evidence, it was entitled to add those three pitches to the three already covered by the licence condition.

Disposal

58. In my judgment therefore the FTT was not entitled to impose conditions which had the effect of compromising the enforcement notice and which would perpetuate the harm to the landscape and heritage assets identified by the Inspector.
59. For that reason I allow the appeal and set aside the FTT's decision. The FTT should have dismissed the respondent's appeal and confirmed the conditions included in the site licence issued on 26 April 2022 by the Council (subject to the variations to the licence agreed between the parties, the minor amendment recorded in paragraph 166(c)(ii) of the decision, and the addition of pitches No. 22, 23A and 24A). That is the order I now make. The parties should agree a draft licence containing those variations which should then be issued by the Council.

Martin Rodger KC,
Deputy Chamber President

22 August 2024

Right of appeal

Any party has a right of appeal to the Court of Appeal on any point of law arising from this decision. The right of appeal may be exercised only with permission. An application for permission to appeal to the Court of Appeal must be sent or delivered to the Tribunal so that it is received within 1 month after the date on which this decision is sent to the parties (unless an application for costs is made within 14 days of the decision being sent to the parties, in which case an application for permission to appeal must be made within 1 month of the date on which the Tribunal's decision on costs is sent to the parties). An application for permission to appeal must identify the decision of the Tribunal to which it relates, identify the alleged error or errors of law in the decision, and state the result the party making the application is seeking. If the Tribunal refuses permission to appeal a further application may then be made to the Court of Appeal for permission.