Neutral Citation Number: [2025] EWCA Civ 1442

Case No: CA-2025-000342

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE UPPER TRIBUNAL (LANDS CHAMBER)
Upper Tribunal Judge Martin Rodger KC
[2024] UKUT 237 (LC)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12/11/2025

Before :

LORD JUSTICE MOYLAN
LORD JUSTICE NUGEE
and
LORD JUSTICE HOLGATE

- -

Between :

HAYTOP COUNTRY PARK LIMITED	**Appellant**
- and -	
AMBER VALLEY BOROUGH COUNCIL	**Respondent**

- -
- -

Richard Harwood KC (instructed by **Apps Legal**) for the **Appellant**
Richard Kimblin KC and Anna Stein (instructed by the **Assistant Director of Governance and Democracy, Gedling Borough Council**) for the **Respondent**

Hearing date : 8 October 2025

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Approved Judgment

This judgment was handed down remotely at 12 noon on 12 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Holgate :

1. This appeal is concerned with the relationship between planning control under the Town and Country Planning Act 1990 ("TCPA 1990") and the licensing of caravan sites under the Caravan Sites and Control of Development Act 1960 ("the 1960 Act"). It is common ground that there is some overlap between the two regimes, but it has been decided that the determination of an application for a site licence under the 1960 Act, must disregard "purely planning considerations". What does that mean?

2. The appellant, the operator of a caravan site, says that the licensing authority under the 1960 Act must disregard a final determination under the TCPA 1990 that engineering operations which have taken place, such as the construction of hardstandings for caravans, were a breach of planning control and must be removed and the land restored in accordance with an enforcement notice. Consequently, the decision-maker may grant a licence subject to a condition requiring those hardstandings to be provided for mobile homes. The appellant then says that that condition would entitle it to rely upon a general planning permission granted pursuant to a development order, the Town and Country Planning (General Permitted Development) (England) Order (SI 2015 No. 596 – "the GPDO 2015"). Class B of Part 5 of Sched.2 to the GPDO 2015 grants a permitted development right for development required by the conditions of a site licence granted under the 1960 Act ("the Class B right"). The appellant accepts that that right could only apply to the provision of future hardstandings and related development, not the existing hardstandings.[1] But because the enforcement notice could not prevent future reliance on the Class B right in that way, the appellant submits that it would be irrational for the local planning authority to require compliance with that notice, as the appellant would be entitled to put essentially the same development back in place in reliance upon its Class B right[2].

3. The upshot of the appellant's argument is that the decisions of the Planning Inspector dismissing its appeal against the enforcement notice and of Mr. Timothy Mould KC (then a Deputy High Court judge) dismissing its appeal under s.289 of the TCPA 1990 against the Inspector's decision, would cease to have any legal effect. The Inspector's decisions (i) that the hardstandings and other engineering works constituted a breach of planning control as development without planning permission, (ii) to refuse to grant planning permission for that development because of harm to heritage assets and the landscape and (iii) to require those works to be removed and the land restored, would all be negated. In effect planning permission for the engineering operations will have been obtained simply by virtue of a site licensing decision under the 1960 Act, without any planning authority having decided that that permission be granted on the merits. We have to decide whether the two regimes interact in this way.

4. In 2016, the appellant, Haytop Country Park Limited, acquired a caravan site known as Haytop Country Park ("the site") near Whatstandwell in the Derwent Valley in Derbyshire. The respondent, Amber Valley Borough Council ("the Council"), is the local planning authority and also the caravan site licensing authority for its area.

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[1] That appears to be consistent with the obiter dictum of Mann J (as he then was) in *Masefield v Taylor* (1987) JPL 721 that s.92(1) of the TCPA 1971 (the forerunner of s.180(1) of the TCPA 1990 – see [25] below) was not engaged by a planning permission in the form of a permitted development right,

[2] See oral submissions in the Court of Appeal and submissions to the Upper Tribunal at [48].

5. The "site" lies to the south of the Derwent and slopes down towards the river. The whole of the site and the surrounding area lie within the defined buffer zone of the Derwent Mills World Heritage site and a Special Landscape Area designated in the Amber Valley Local Plan. It is also adjacent to a Site of Special Scientific Interest. It contains woods which form part of the grounds formerly associated with Alderwasley Hall, a listed building, and which are included within the Alderwasley Conservation Area. In this area the World Heritage site runs along the bottom of the river valley and encompasses the Derwent, the A6 and a railway line. Views of the site are obtainable from *inter alia* the valley bottom.

6. In 1978 a tree preservation order was made under planning legislation protecting part of the site as woodland and prohibiting the felling of any trees within that designated area without the Council's consent.

7. The site has the benefit of two planning permissions, one granted in 1952 and the other in 1966. They permit the use of the site for up to 60 caravans. Condition 2 of the 1966 permission restricted the siting of caravan "standings" to the areas A to H shown on an attached plan, which can no longer be found.

8. In 1968 a site licence was granted under the 1960 Act which referred to the planning permissions granted in 1952 and in 1966. Condition 2 restricted the number of caravans on the site to 60 and condition 8 required each caravan to be on a hardstanding. Condition 4 provided that the "standings" should be sited within the areas A to H shown on the plan attached to the licence. That plan still exists and it has been assumed that those areas within which hardstandings and caravans are to be located are essentially the same as those shown on the plan attached to the 1966 permission (although the orientation of individual units may vary between the two drawings in view of the terms of condition 2 of the 1966 permission).

9. In March 2017 the appellant unlawfully felled 121 trees in the woodland area protected by the 1978 tree preservation order. It then carried out engineering works which included earth moving and reprofiling of the land, to create a series of levelled terraces supported by retaining walls, the laying of concrete bases and an internal roadway. In all, 27 concrete bases or hardstandings were laid, mostly on ground carved out of the sloping hillside, but a few on ground which was already level.

10. On 15 March 2019 the Council issued two enforcement notices under s.172 of the TCPA 1990 alleging breaches of development control. The second related to the engineering operations. The appellant appealed. On 20 August 2021 the Planning Inspector issued her decision dismissing the appeal against that notice. On 15 July 2022 the appellant's appeal to the High Court under s.289 of the TCPA 1990 was dismissed. The enforcement notice was of no effect until the final determination of that appeal. The notice then allowed 6 months for compliance.

11. On 27 January 2021 the Council served a tree replacement notice under s.207 of the TCPA 1990 requiring the planting of 100 trees in positions shown on a plan by 25 February 2021. The appellant appealed against that notice to a Planning Inspector. By a decision letter dated 4 March 2024 the Inspector largely upheld the notice.

12. On 26 April 2022 the Council granted a new site licence in response to an application by the appellant under s.3 of the 1960 Act. The appellant applied for a licence for 30

residential caravans. But the conditions of the licence granted by the Council limited the number of caravans to three in locations said not to interfere with the requirements of the tree replanting notice or the remedial steps, in particular reprofiling of the land, required by the enforcement notice against the engineering operations carried out in breach of planning control.

13. The appellant appealed against that decision to the First-tier Tribunal Property Chamber (Residential Property) ("the FTT") under s.7 of the 1960 Act. On 6 July 2023 the FTT issued its amended decision in which it allowed the appellant's appeal to the extent of ordering the Council to issue a caravan site licence for occupation by up to 18 caravans on the positions shown on an attached plan. The FTT rejected the appellant's submission that their determination of how many caravans to authorise under the site licence should disregard the requirements of the tree replacement notice. But the FTT also decided that their determination should *not* have regard to the requirements of the enforcement notice against the unlawful engineering operations.

14. The Council appealed against that decision to the Upper Tribunal (Lands Chamber) ("the UT") where the matter came before Mr. Martin Rodger KC, the Deputy Chamber President. There was no cross appeal by the appellant.

15. On 22 August 2024 the UT gave its decision, allowing the Council's appeal. The Tribunal accepted their case that the FTT should not have decided to disregard the outcome of the enforcement notice appeal or "the planning baseline". It should not have imposed a condition as to the number and position of the caravans authorised which was inconsistent with that established planning position. The UT identified three pitches lying outside the area covered by the enforcement notice and so directed that those be added to the three pitches which the Council had accepted in its licensing decision dated 26 April 2022.

16. The upshot is that this court is asked to resolve the difference of law between the two Tribunals: can a site licence be granted for the siting of caravans in locations which are inconsistent with the planning permissions upon which the licence application is based, or which is inconsistent with the determination of the planning rights in the statutory process for taking enforcement action against breaches of planning control?

Statutory framework

Town and Country Planning Act 1990

17. Planning permission is required for "development" (s.57). In general, "development" is defined to mean either the carrying out of building, engineering, mining or other operations in, over or under land ("operational development") or the making of a material change in the use of any buildings or land (s.55(1)).

18. Planning permission may be granted in a number of ways, including an express grant of permission by a local planning authority in the determination of an application to that authority or permitted development rights granted by a development order in the form of a statutory instrument (ss.58 to 61). The relevant order is the GPDO 2015.

19. Article 3(1) of the GPDO 2015 grants planning permission, subject to the provisions of the Order, for development described as "permitted development" in sched.2. However, Art.3(4) provides:

> "Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 or Part 13 of the Act otherwise than by this Order."

The Class B right reads as follows:

> "B. Development required by the conditions of a site licence for the time being in force under the 1960 Act."

20. By s.171A(1) of the TCPA 1990 "the carrying out of development without the required planning permission" or a failure "to comply with any condition or limitation subject to which planning permission has been granted" constitutes "a breach of planning control".

21. By s.172(1) where a local planning authority considers that a breach of planning control has occurred, and that it is expedient to do so, they may issue an enforcement notice. Such a notice must specify the breach of planning control alleged (s.173(1)) and *inter alia* the steps required to be taken to remedy the breach by restoring the land to its condition before the breach took place, or to remedy any injury to amenity caused by the breach (s.173(3) and (4)). An enforcement notice may, for example, require the removal of any works or the carrying out of any building or other operations (s.173(5)). The notice must specify the date on which it is to take effect and the period for compliance with the notice (s.173(8) and (9)).

22. Section 174 provides for an appeal against an enforcement notice to the Secretary of State. The grounds of appeal in s.174(2) include under sub-para.(c) that the matters referred to in the notice do not constitute a breach of planning control and under sub-para.(a) that planning permission should be granted for the matters alleged to constitute development without permission. Ground (a) is linked to the provisions in s.177 for the determination of a deemed application for planning permission for the matters stated in the notice to constitute a breach of planning control. The appellant's appeal against the enforcement notice relating to the engineering operations involved both grounds (a) and (c).

23. Section 285(1) provides that the validity of an enforcement notice shall not, except by an appeal under Part VII of the TCPA 1990 (i.e. an appeal under s174) be questioned in any proceedings on any of the grounds on which such an appeal may be brought (i.e. the grounds in s 174(2)). Under s. 289(1) an appeal on a point of law may be made to the High Court against the determination of an appeal against an enforcement notice under Part VII, but only with the leave of that Court (s.289(6)).

24. Section 181 of the TCPA 1990 provides for an enforcement notice to have effect against subsequent development falling within its scope which is carried out after there has been compliance with the notice:

"**181.— Enforcement notice to have effect against subsequent development.**

(1) Compliance with an enforcement notice, whether in respect of—

(a) the completion, removal or alteration of any buildings or works;

(b) the discontinuance of any use of land; or

(c) any other requirements contained in the notice,

shall not discharge the notice.

(2) Without prejudice to subsection (1), any provision of an enforcement notice requiring a use of land to be discontinued shall operate as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Part III; and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice shall to that extent be in contravention of the enforcement notice.

(3) Without prejudice to subsection (1), if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice shall, notwithstanding that its terms are not apt for the purpose, be deemed to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to subsection (4), the provisions of section 178(1) and (2) shall apply accordingly.

(4) Where, at any time after an enforcement notice takes effect—

(a) any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with the notice; and

(b) the local planning authority purpose, under section 178(1), to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration,

the local planning authority shall, not less than 28 days before taking any such steps, serve on the owner and occupier of the land a notice of their intention to do so.

(5) Where without planning permission a person carries out any development on land by way of reinstating or restoring buildings

> or works which have been removed or altered in compliance with an enforcement notice—
>
> (a) he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, and
>
> (b) no person shall be liable under section 179(2) for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been so reinstated or restored."

25. But s.180 of the TCPA 1990 deals with the effect of the grant of a planning permission for development already carried out upon an existing enforcement notice:

> "**180.— Effect of planning permission, etc., on enforcement or breach of condition notice.**
>
> (1) Where, after the service of—
>
> (a) a copy of an enforcement notice; or
>
> (b) a breach of condition notice,
>
> planning permission is granted for *any development carried out before the grant of that permission*, the notice shall cease to have effect so far as inconsistent with that permission.
>
> (2) Where after a breach of condition notice has been served any condition to which the notice relates is discharged, the notice shall cease to have effect so far as it requires any person to secure compliance with the condition in question.
>
> (3) The fact that an enforcement notice or breach of condition notice has wholly or partly ceased to have effect by virtue of this section shall not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice." (emphasis added)

26. The regime dealing with tree preservation orders is set out in Chapter 1 of Part VIII of the TCPA 1990 and in the Town and Country Planning (Tree Preservation) (England) Regulations 2012 (SI 2012 No 605). By reg.13 of the Regulations no person may cut down, top, lop, uproot, or wilfully damage or destroy such a tree, or cause or permit any such activity, except with the written consent of the local planning authority (reg.13). Consent must be obtained beforehand. Regulation 14 contains a number of exceptions to that prohibition, one of which relates to work which is necessary to enable a person to implement a full or detailed (not an outline) planning permission.

27. By s 206(1) of TCPA 1990 if a tree is removed or destroyed in breach of a tree preservation order, it is the duty of the owner of the land to plant another tree of appropriate size and species at the same place as soon as he can reasonably can. Section 206(3) imposes a similar obligation on a landowner to replant trees unlawfully removed

from woodland. If it appears to the LPA that s.206 has not been complied with, it may serve on the owner of the land a tree replacement notice under s.207, that is a notice requiring him to plant a tree or trees of such size and species as may be specified. In default, the LPA may under s.209 enter the land and carry out the works required by the notice at the expense of the then owner of the land.

28. Section 210 creates an offence for non-compliance with a TPO. Subsection (1) provides:

> "If any person, in contravention of tree preservation regulations—
>
> (a) cuts down, uproots or wilfully destroys a tree, or
>
> (b) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,
>
> (c) causes or permits the carrying out of any of the activities in paragraph (a) or (b),
>
> he shall be guilty of an offence."

The offence is triable either way and is punishable in the Crown Court by an unlimited fine.

Caravan Sites and Development Control Act 1960

29. Section 1(1) imposes a requirement for an occupier of land to obtain a caravan site licence for the use of land as a caravan site:

> "(1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used."

30. Section 1(4) defines a "caravan site":

> "(4) In this Part of this Act the expression "caravan site" means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed."

31. Section 3, dealing with the grant of a site licence, provides so far as is material:

> "(1) An application for the issue of a site licence in respect of any land may be made by the occupier thereof to the local authority in whose area the land is situated.
>
> (2) An application under this section shall be in writing and shall specify the land in respect of which the application is made; and the applicant shall, either at the time of making the application

> or subsequently, give to the local authority such other information as they may reasonably require.
>
> (2A) …
>
> (3) A local authority may on an application under this section issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site granted under Part III of the Act of 1947 otherwise than by a development order."

Section 3(3) is important to the determination of this appeal. It provides that a site licence may not be granted unless the applicant is entitled to rely on an express grant of planning permission for the use of the land as a caravan site, but not a permitted development right such as one granted by the GPDO 2015.

32. Section 3(4) distinguishes between cases where the local authority must grant a site licence as opposed to those where it has a discretion whether or not to do so. Mr. Harwood KC, on behalf of the appellant, said that this was a case where the Council had a discretion as to whether to grant a site licence.

33. Section 4 provides that where planning permission has been granted for the use of land as a caravan site for a limited period of time, any site licence granted must expire on the same date. Otherwise, the site licence must not be subject to any time limit.

34. Section 5 deals with the power of a local authority to attach conditions to a site licence. The key provision is s.5(1):

> "(1) A site licence issued by a local authority in respect of any land may be so issued subject to such conditions as the authority may think it necessary or desirable to impose on the occupier of the land in the interests of persons dwelling thereon in caravans, or of any other class of persons, or of the public at large; and in particular, but without prejudice to the generality of the foregoing, a site licence may be issued subject to conditions—
>
> (a) for restricting the occasions on which caravans are stationed on the land for the purposes of human habitation, or the total number of caravans which are so stationed at any one time;
>
> (b) for controlling (whether by reference to their size, the state of their repair or, subject to the provisions of subsection (2) of this section, any other feature) the types of caravan which are stationed on the land;
>
> (c) for regulating the positions in which caravans are stationed on the land for the purposes of human habitation and for prohibiting, restricting, or otherwise regulating, the placing or erection on the land, at any time when caravans are so

> stationed, of structures and vehicles of any description whatsoever and of tents;
>
> (d) for securing the taking of any steps for preserving or enhancing the amenity of the land, including the planting and replanting thereof with trees and bushes;
>
> (e) for securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained;
>
> (f) for securing that adequate sanitary facilities, and such other facilities, services or equipment as may be specified, are provided for the use of persons dwelling on the land in caravans and that, at all times when caravans are stationed thereon for the purposes of human habitation, any facilities and equipment so provided are properly maintained."

35. When deciding what conditions should be imposed, s.5(6) obliges a local authority to have regard to any model standards specified by the Minister:

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

In addition, the local authority must consult the fire and rescue authority as to what conditions relating to fire precautions would be appropriate for the site (see s.5(3A) to (3C) and (7)).

36. In England a person aggrieved by the conditions imposed on a site licence may appeal to the FTT under s.7. If the Tribunal is satisfied that a condition is unduly burdensome, having regard *inter alia* to any model standards issued under s.5(6), they may vary or cancel it s.7(1)).

The history of the planning and site licensing decisions

37. On 27 March 1952 planning permission was granted under reference BER/352/12 to use 7.5 acres of land at the site for the siting of 30 mobile dwellings. Condition 2 restricted the siting of those units to a particular part of the site.

38. On 17 June 1966 planning permission was granted under reference BER/964/39 to extend the existing caravan site from 30 to 60 caravans. Condition 1 stated that this consent was supplementary to the 1952 permission and that no more than 60 mobile dwellings should be stationed on the site at any one time. Condition 2 required all caravan standings to be sited within areas defined on an attached plan as areas A to H subject to compliance with conditions 7 to 9. Condition 2 also limited the number of caravans within areas A, B and F. Condition 7 required the provision of additional

landscaping. Condition 8 required the approval of the local planning authority to be obtained for the details of any works authorised or required by the permission which involved the felling of an existing tree. Condition 9 required a central green to be kept permanently open for recreation and free of caravans, tents and buildings.

39. The 1966 planning permission recorded the authority's "reasons" which included:

> "This is a site of great scenic importance in a stretch of the Derwent Valley indicated in the approved development plan as an area of great landscape value… This part of the Valley is the gateway for many travellers by road or rail to the National Park further north."

Reason (a) stated:

> "The further concentration of caravans, otherwise than in the approved groupings, would be likely to expose them to view from the A6 Trunk Road and the Derby-Manchester railway line, from both at which they are at present effectively concealed, and from many vantage points in the surrounding area."

40. In her decision letter dated 20 August 2021 the Inspector dealing with the enforcement notice appeals recorded at DL 114 evidence from various witnesses familiar with the area that the caravan site had been "largely nestled in woodland and relatively inconspicuous". The Inspector concluded that even in September 2016 there was still a "sustained woodland character" within the site (DL 115). That was before the appellant felled 121 trees in March 2017.

41. On 27 July 1968 a site licence was granted under s.3 of the 1960 Act. The licence recited that the applicant was entitled to the benefit of the express grants of planning permission in 1952 and 1966 (refs. BER/352/12 and BER/964/39). Condition 2 imposed a limit of 60 caravans at any one time. Condition 4 required the standings to be located within areas shown on the attached plan as A to H. Condition 7 imposed separation distances between caravans and also from any carriageway. Condition 8 required each caravan to be located on a hardstanding extending over the whole area occupied by the caravan. Condition 9 required the provision of firepoints. Condition 10 specified the provision and design of water supplies. Conditions 11 to 17 specified requirements for sanitation, laundry facilities, septic tanks and drainage, and provision for waste water refuse, storage and parking. In short, the licence contained detailed controls within the site for the living conditions, health and safety of the occupiers of the authorised caravans.

42. In March 2017 the appellant unlawfully felled 121 trees in breach of the tree preservation order. It was prosecuted by the Council for those breaches resulting in a conviction and fine.

43. On 14 September 2017 the Council issued a stop notice under the TCPA 1990 requiring the appellant to cease carrying out works in the central green within the site in breach of condition 9 of the 1966 planning permission. In December 2017 the County Court granted the Council an injunction prohibiting the siting of caravans and the carrying out of other works in that area.

44. On 3 August 2018 the appellant applied to the Council for a new site licence under the 1960 Act. On 21 December 2018 the Council refused the application on the basis that *inter alia* the site did not benefit from an appropriate planning permission, as required by s.3(3) of that Act. The appellant appealed to the FTT.

45. Before that appeal was determined, on 15 March 2019 the Council issued the two enforcement notices already referred to and on 18 March 2019 the appellant applied to the Council under s.192(1)(a) of the TCPA 1990 for a certificate of the lawfulness of a proposed use or development of the site (a "CLOPUD").

46. The appellant sought a CLOPUD that, for the purposes of the TCPA 1990, the site could lawfully be used for the proposed siting of 30 static caravans for permanent residential accommodation and 30 static caravans for 12 months holiday occupation. The Council refused to grant the certificate and the appellant appealed against that decision under s.195 of the TCPA 1990 to the Secretary of State.

47. The breach of planning control alleged by the first enforcement notice was the carrying out of development without planning permission, namely a material change in the use of the site to the stationing of caravans that were static caravans, not trailer caravans designed and built to be towed by a car. In effect, the notice complained about the use of the site for mobile homes and alleged that this was outside the scope of the 1952 and 1966 planning permissions. The notice required removal of all static caravans from the site.

48. The breach of planning control alleged by the second enforcement notice was the carrying out of operational development without planning permission, including:

    (1) Engineering and other operations to re-contour the land so as to create a series of terraced platforms;

    (2) The construction of concrete bases, hardstandings and retaining walls;

    (3) The construction of a new roadway on the site;

    (4) The construction of raised wooden decking structures around the caravans.

    The notice required the reprofiling of the land to restore it to its previous contours and condition, the removal of all of the concrete bases, hardstandings, retaining walls, roadway and decking structures.

49. The appellant appealed against both enforcement notices to the Secretary of State.

50. On 25 July 2019, the FTT allowed the appellant's appeal under s.7 of the 1960 Act by ordering the Council to issue a site licence under s.3. The FTT said that there was a planning permission for the use of the site as a caravan site, the 1952 permission. The FTT recognised that there was a planning dispute between the parties as to the meaning of the permission which was being litigated in a different forum and was not for the Tribunal to resolve. I also note that the FTT agreed with Mr. Harwood when he said that the Council was not obliged to grant a site licence under the 1960 Act allowing it to be used in a way which *would breach the current planning consents*; it could impose conditions on the licence regarding both type of caravan and layout. Consequently, it could grant a site licence on the same terms as the 1968 licence ([103]-[104]).

51. The Council appealed against that decision of the FTT to the UT. On 16 March 2020 UT Judge Elizabeth Cooke allowed the appeal (*Amber Valley Borough Council v Haytop Country Park Limited* [2020] UKUT 68 (LC)). In summary she concluded that:

    (1) By virtue of s.3 of the 1960 Act and secondary legislation, planning considerations may be relevant matters in a decision whether to grant a site licence. For example, the operation of a site in breach of planning control is directly relevant to the management of the site and the ability of a licence holder to comply with conditions of a site licence ([45]-[46];

    (2) Both the local authority and the FTT (at [103]) were entitled to consider whether the site licence for which the operator had applied would involve a breach of planning control. The lawfulness of the proposed use of the site under the planning regime (including the 1952 and 1956 consents) was relevant to the question whether to grant a licence [47];

    (3) It would be irrational to interpret the 1960 Act as requiring either the local authority or the FTT to grant a licence for the site to be used in conflict with a relevant planning permission. It would also be irrational for there to be a conflict between a site licence granted by a local authority and its enforcement notice in relation to that site. The authority would be condoning with its left hand what it was prohibiting with its right [48];

    (4) There was a genuine dispute about whether the use proposed in the licence application conflicted with the relevant planning permissions. Before the UT both the appellant and the Council agreed that the FTT had been entitled to leave the resolution of the planning issue to the appeal process under the TCPA 1990 [50];

    (5) It was irrational for the FTT to have ordered the Council to grant a site licence which would involve having to choose between either (a) the licence sought by the appellant which would conflict with the planning permissions or (b) a licence compliant with the planning permissions but which would render the existing homes on the site unlawful under the 1960 Act. Instead, the FTT could have stayed the site licence appeal before them until the planning issue was resolved through the planning appeal process. The matter was remitted to the FTT ([54]-[55]).

    I note that the appellant's applications for permission to appeal against this decision were refused by the UT and by the Court of Appeal.

52. The tree replacement notice was served on 27 January 2021 under s.207 of the TCPA 1990, against which the appellant appealed unsuccessfully ([11] above).

53. The planning inquiry into the CLOPUD and enforcement notice appeals took place in January and February 2021. The Inspector's decision letter was issued on 20 August 2021.

54. The Inspector granted the CLOPUD sought by the appellant based on her interpretation of the 1952 and 1966 planning permissions. She decided that the site could be used for the stationing of 30 static caravans for permanent residential use and 30 static caravans

for 12-month holiday occupation. At DL 67 she concluded that the 1966 permission did not contain any restriction on the type of caravan that could be stationed. However, the Inspector stated at DL 72 that the CLOPUD would not certify the location of the caravan standings or the layout of the site. She left open the issue whether 60 static caravans could physically be accommodated on the site, whilst still complying with other conditions of the 1966 permission, in particular condition 2 concerning layout, and also with the tree replacement order (DL 71).

55. In relation to the first enforcement notice dealing with an alleged material change of use, the factual position was that 9 twin-unit mobile homes were stationed on the land at the time the notice was issued. The Inspector decided that on her interpretation of the 1952 and 1966 planning permissions, no material change in the use of the land had occurred and quashed the enforcement notice on that basis (DL 89-90). The Inspector added that it fell outside the remit of that appeal to determine whether the stationing of the caravans involved a breach of any of the conditions of the 1966 planning permission, such as condition 2 (DL 85).

56. The Inspector then upheld the second enforcement notice relating to the operational development.

57. The appellant had argued that the works carried out were lawful, relying upon the Class B right. It contended that the works had been required by conditions 7, 8 and 17 of the 1968 site licence, which stipulated the provision of hardstandings subject to separation distances and car parking. But the Inspector decided that the permitted development right would only apply to development which was required in order to satisfy the conditions of a site licence *read as a whole.* Class B did not apply to development required by one condition of a site licence if it was contrary to another condition of that licence. Accordingly, the appellant's argument depended on whether the operational development accorded with the layout required by condition 4 of the 1968 site licence, which was to the same effect as condition 2 of the 1966 planning permission, requiring caravan hardstandings to be sited within the areas shown as groups A-H on the plan attached to the licence (DL 100-101). She concluded that the development carried out was inconsistent with that layout (DL 105-108).

58. The Inspector then went on to refuse the deemed application for planning permission for the operational development. In summary, she reached that decision because:

    (1) The development had a negative impact on the relict landscape, an important attribute of the World Heritage site buffer zone;

    (2) The impact of the development was "large adverse" on the setting of Alderwasley Hall and the character of the conservation area, having regard to the development that could reasonably take place under the 1966 planning permission. The terraced platforms are an alien feature clearly at odds with the parkland setting (DL 150-151);

    (3) The urbanising effect of the development rendered the site incongruous and adversely affected a designated Special Landscape Area. The layout offered little scope for effective tree planting (DL 163 to 165);

    (4) The development conflicted with the development plan (DL 169).

59. The Council did not challenge in the High Court the Inspector's decisions to grant the CLOPUD and to quash the "change of use" enforcement notice. However, the appellant appealed under s.289 of the TCPA against the Inspector's decision to dismiss its appeal against the operational development enforcement notice. The appellant challenged her conclusions that those operations had constituted a breach of planning control and that planning permission should not be granted.

60. In relation to the breach of planning control issue, the appellant submitted that the Inspector had erred in law in deciding that the Class B right only authorises development required by the conditions of the site licence read as a whole and which was not in conflict with any condition of the licence. The judge, Mr. Mould, rejected that argument at [70]-[81] of his judgment ([2022] EWHC 1848 (Admin)). He held that:

(1) The Class B right only applies to development required by the conditions of a site licence *read as a whole* and not to development which is required by one condition but is in conflict with another [72];

(2) In order to determine whether the construction of a hardstanding on which to station a caravan was required by the conditions of the 1968 site licence, it was necessary to consider whether that development was located in accordance with condition 4 of that licence [74];

(3) It was no answer for the appellant to say that the Council retained the power to enforce condition 4 of the 1968 licence. Whether the development fell within the scope of the class B right was a logically prior question [75];

(4) The appellant's argument was contrary to the principled approach to interpretation stated by Lord Hodge JSC in *Trump International Golf Club Scotland Limited v Scottish Ministers* [2015] UKSC 74; [2016] 1 WLR 85 at [34] (see [62] and [78]). The meaning of the language used in a condition is to be understood in the context of the other conditions and also the permission as a whole;

(5) Condition 4 of the site licence regulated *inter alia* the position of the hardstandings and the Inspector had been entitled to find that the operational development carried out conflicted with the 1968 site licence conditions [79].

61. The judge went on to reject the appellant's legal challenge to the Inspector's dismissal of its deemed application for planning permission. Under ground 3 the appellant argued that the Inspector failed to consider a "fallback position" constructed on the basis of what would be the requirements of a modern site licence. The judge said that this argument could only have been based on the 1952 and 1966 planning permissions. There were no other permissions for use as a caravan site [93]. A modern site licence would be expected to require hardstandings to be located within the areas of the site authorised by condition 2 of the 1966 permission ([95]-[96]). Indeed, the judge regarded that as being the only realistic fallback, not the reinstatement of the unlawful operational development carried out by the appellant since 2016 [102].

The 2022 site licence and decisions of the FTT and UT

62. As foreshadowed by UT Judge Cooke in her decision on 16 March 2020, once the Planning Inspector had determined the appeals relating to the CLOPUD and the enforcement notices, the Council was in a position to grant a site licence under the 1960 Act. They did so on 25 April 2022. They granted a licence which allowed three caravans to be located on the site. The licence also requires all caravans on site to be located on hardstandings.

The decision of the First-tier Tribunal

63. On 18 May 2022 the appellant appealed against the conditions on the licence to the FTT. On 6 July 2023 the FTT issued its decision as finally amended. It increased the number of caravan plots from three to eighteen.

64. The FTT recorded that the appellant's plan for the site proposed 36 caravan plots [16]. They were sized to accommodate twin-unit mobile homes. The engineering operations the subject of the enforcement notice cost £0.75m ([37] and [38]).

65. Mr. Arkle the Council's head of Housing and Growth, gave evidence. The Council had decided that the licence should not allow any of the appellant's proposed plots which conflicted with the requirements of the operational development enforcement notice or the tree replacement notice ([66]-[67] and [69]). One of the problems was that the tree replacement notice could not be complied with in full until the remedial requirements of the enforcement notice had been fully complied with [70]. He also pointed out that the caravans previously located on the site had been single static and towing caravans which took up only one quarter of the space occupied by the hardstandings which the appellant had constructed [68].

66. In cross-examination Mr. Arkle accepted that the three plots which the Council had allowed under the 2022 licence were in fact located within the area covered by the operational development enforcement notice. But he explained that the council had considered it reasonable for those plots to remain because the enforcement notice did not require those areas to be reprofiled. He accepted that that also applied to five other plots.

67. Mr. Harwood submitted on behalf of the appellant that the restriction on the number of caravan plots to three was not justified by the tree replacement notice and the enforcement notice because:

    (1) They were legally irrelevant to the imposition of site licence conditions under the 1960 Act;

    (2) They were an "unduly burdensome" attempt to duplicate controls under another regime, the TCPA 1990;

    (3) The operational development enforcement notice does not affect the future of the site.

68. The FTT decided that the Council had been entitled to require the precise location of the plots to be fixed in the site licence under the 1960 Act. This was because the site was in a highly sensitive, important woodland setting, where the location of plots had

a significant effect on the amenity of the site for its uses and the protection of its environment ([134]-[136]).

69. On the number of plots the FTT decided that the constraints imposed by the enforcement notice were legally irrelevant to the site licensing decision. The site licence addresses how the site will be operated in future, and when granted gives rise to permitted development rights for any development necessary in order to comply with the terms of the licence [140]. By contrast, the enforcement notice was not forward-looking; it imposed requirements for the restoration of the site to remedy unlawful development in the past [141]. Case law discourages duplication of other regimes by planning controls ([101]-[106] and [144]).

70. It is surprising that the FTT then said that the view they had reached should not be seen as releasing the appellant in any way from full compliance with the enforcement notice, suggesting that that was a matter for planning authorities [146]. They did not explain how that should be reconciled with their acceptance in [140] that their decision on the number and location of caravan hardstandings would give rise to permitted development rights.

71. However, at [148]-[155] the FTT treated the tree replacement notice differently. In part they based this on s.5(1)(d) of the 1960 Act. They decided that that statutory responsibility under the 1960 Act to preserve amenity with regard to trees did not involve any unjustified duplication of controls "arising under legislation governing the protection of trees". It was a standalone duty upon the Council as a site licensing authority under the 1960 Act. The FTT saw the tree replacement notice under s.207 of the TCPA 1990 as a legitimate constraint upon the number and location of caravan pitches licensable under the 1960 Act.

72. The Council appealed to the UT against the FTT's decision. However, the appellant did not cross-appeal to the UT, either in relation to the FTT's treatment of the tree replacement notice or its decision to reject the appellant's proposal for 36 plots rather than 18. The appellant accepts that if its appeal to this court were to succeed, the outcome would be the reinstatement of the FTT's decision that a site licence be granted for 18 plots.

The decision of the Upper Tribunal

73. In summary, the decision of the UT contained the following key points:

    (1) The difficulty in this case was of the appellant's making. It could have made an application for planning permission for the operations necessary to create its preferred layout or for any other layout it considered to be consistent with planning constraints. It could have sought to obtain the Council's consent to do work to the woodland trees. It did neither but proceeded unlawfully to carry out the operational development. The appellant was seeking to benefit from its own unlawful activities by seeking a site licence the effect of which could be to legitimise that wrong without the application of any scrutiny on planning grounds, by arguing that it would be pointless (or irrational) to require the unlawful development to be removed when something similar would be required under a modern site licence. As a matter of principle, the appellant should not be allowed that advantage [49];

(2) The FTT reversed the order in which matters ought to have been considered. All major planning issues should be resolved before any decision to issue a site licence. That is reflected in s.3(3) of the 1960 Act. The appellant has the benefit of the planning permissions granted in 1952 and 1966 and does not have planning permission for the operational development which it has carried out [51];

(3) The UT's decision of 16 March 2020 determined that the planning issues had to be resolved before the application for the site licence could sensibly be determined (see [51] above). That dispute had been resolved by the Planning Inspector, but the conditions determined by the FTT allowing 18 plots in the locations identified and the consequential Class B rights were inconsistent with that planning baseline [52];

(4) The FTT avoided facing up to the inconsistency between that baseline and the Class B rights. It erred in law by assuming that the Council would be able to insist on full compliance with the enforcement notice once the site licence had been granted and those rights acquired [53];

(5) The FTT's approach, in which it washed its hands of any consideration of planning matters and imposed conditions undermining the enforcement of planning control, was irrational. It was not "unduly burdensome" for the Council to limit in the site licence the number and position of caravans on the site so as to be consistent with the operational development enforcement notice and the tree replacement notice [54];

(6) The fact that those were planning considerations did not render the Council's approach to the site licence unlawful. That approach did not involve asking the FTT to determine purely planning considerations. Rather it was illegitimate for the FTT to disregard the definitive determination under the TCPA 1990 of the planning issues and restrictions on the use of the site as a caravan site [55].

A summary of the appellant's submissions

74. Mr. Harwood sought to maintain the submissions which had been made on behalf of the appellant in the UT.

75. In summary, the appellant submitted that:

(1) The 2022 licence permitted only three plots, or as amended by the UT 6 plots, in contrast to the 60 plots authorised by the 1952 and 1966 planning permissions and the 1968 site licence;

(2) The remedial steps in an enforcement notice must be directed to the breach of planning control specified. It cannot remove existing planning rights (*Mansi v Elstree District Council* (1964) 15 P & CR 153). An enforcement notice will be interpreted so as not to interfere with any permitted development rights under the GPDO 2015 (*Duguid v Secretary of State for the Environment, Transport and the Regions* (2001) 82 P & CR 6). It would be irrational for the Council to enforce against and obtain the removal of, hardstandings and services which

could then be put back immediately under a permitted development right, namely the Class B right;

(3) Permitted development rights are prospective. They authorise development which has yet to take place. An enforcement notice is directed against development which has already occurred and cannot prevent reliance in the future upon permitted development rights;

(4) The Upper Tribunal erred in law in finding that it was irrational for a site licence to authorise caravan plots giving rise to Class B rights which were inconsistent with the operational development enforcement notice. The ability of a subsequent decision to allow development inconsistent with an enforcement notice is inherent in planning legislation and the relationship of the 1960 Act with that regime. Whether land can be used as a caravan site depends upon the grant of planning permission (or a lawful development certificate). A site licence under the 1960 Act usually controls "the details" of the use of a site and gives rise to permitted development rights for development required by the site licence conditions. That allows for flexibility and the upgrading of facilities over time without having to make planning applications;

(5) Conditions may only be imposed on a site licence under the 1960 Act for site licensing purposes and not for purely planning purposes. The issues underlying the enforcement notice were planning not site licensing matters.

Discussion

Preliminary points

76. It is helpful to begin by clearing the decks.

77. Contrary to Mr Harwood's suggestion, there is nothing necessarily surprising, let alone irrational, about the fact that a site licensing decision permits only three caravans rather than the 60 caravans allowed by the 1952 and 1960 permissions (or some other number closer to that figure). Those permissions (and indeed the 1968 site licence) have to be read as a whole. The permissions are not limited to towing caravans equivalent in size to a single unit; they also include twin unit mobile homes. But it does not follow that the permissions authorise the stationing of 60 twin-unit mobile homes, if in practice that could not be achieved compatibly with all relevant conditions of those permissions. For example, the stationing of larger units requiring larger bases might in practice be inconsistent with conditions as to layout (condition 2), separation and other distances. Furthermore, assuming that a layout with 60 caravans could in practice be compatible with the 1952 and 1966 permissions read as a whole, the site is subject to an additional layer of control, the tree preservation order and, because of the unlawful felling of trees, the tree replacement notice. Even the appellant's application asked for only 36 plots to be approved rather than 60 and now they would be content with 18.

78. A number of the appellant's arguments beg the very question which it was the function of the site licensing decision to resolve, namely the number and location of caravan plots to be approved. Its submissions that an enforcement notice does not prevent reliance in the future on Class B rights for hardstandings and related development, or that it would be irrational to require the removal of the existing operational development

which could then be put back immediately relying on those rights, depend upon a logically prior licensing decision as to how many plots should be authorised on the site and where. The Appellant pointed to the possibility of a local planning authority making a direction under Art.4 of the GPDO 2015 restricting or removing Class B rights within a defined area, subject to a possible liability to pay compensation to those affected. But whether there is any need for an authority to take such action again depends upon that same prior question. Submissions of this nature do not demonstrate that the UT's decision was wrong in law.

79. The appellant is also incorrect in so far as it suggested that there is a separation between the retrospective nature of an enforcement notice and the prospective nature of permitted development rights. Enforcement notices are not confined to dealing with breaches of planning control which have occurred in the past. Section 181 makes it clear that, even after there has been compliance with the requirements of an enforcement notice to remedy a breach of planning control, the notice is not discharged. It continues to be effective against a repetition of that breach of planning control, whether a resumption of a use or the reinstatement of operational development (s.181(2) to (4)). Section 181(5) imposes a criminal sanction. It is because of s.181 that a landowner needs to obtain a planning permission to authorise any reiteration of development the subject of an enforcement notice. Such a notice has a prospective, continuing effect.

80. Where a planning permission is granted for the retention of development which has previously been carried out (for example under s.73A of TCPA 1990), an enforcement notice ceases to have effect insofar as it is inconsistent with that permission. But that does not alter any criminal liability for a breach of the enforcement notice before that planning permission was granted (s.180(3)). The notice continues to be effective going forwards, unless and until any overriding planning permission is granted.

81. The appellant's submissions based upon the *Mansi* line of authority (see [75(2)] above) also beg the question which was to be resolved in the site licensing decision, namely how many caravans could be approved? There were no relevant permitted development rights in existence authorising the operational development at the time of the enforcement notice. That was determined conclusively by the Planning Inspector in her decision on 20 August 2021. The site licence the subject of this appeal had yet to be granted and so the Class B rights upon which the appellant seeks to rely had yet to arise. The *Mansi* principle adds nothing to the appellant's other arguments.

82. Despite the clear reasoning of Judge Cooke in her decision on 16 March 2020, which was binding on the FTT, the appellant led the FTT to conclude that they should disregard the constraints imposed by the enforcement notice because site licensing should not duplicate planning controls (see [101]-[106]). However, this argument had petered out by the time the case reached this court and rightly so. The case law on regulatory duplication is sensitive to the terms and purposes of the legislation in question. Furthermore, some of the case law simply decided that a planning authority did not act unlawfully by leaving a particular issue to be dealt with by another regime, not that it necessarily had to do so or was obliged to disregard it. The discouragement of duplication between other regimes has no bearing on the legal relationship between the 1960 Act and the TCPA 1990, which turns upon the language used by Parliament and the relevant case law.

The relationship between planning legislation and the 1960 Act

83. I note that the Class B permitted development right in the GPDO 2015 was introduced from the inception of the 1960 Act. That statute came into force on 29 August 1960 (see s.50(4)). On the same day the Town and Country Planning General Development (Amendment No.2) Order 1960 (SI 1960 No. 1476) also came into force, adding Class XXIV as a new permitted development right, which corresponds to the current right in the GPDO 2015 upon which the appellant relies. Thus, the interrelationship between the 1960 Act, planning control and the Class B right has always been a potential issue for over 60 years.

84. The present system of planning control dates back to the Town and Country Planning Act 1947, which came into force on 1 July 1948. Planning control is exercised by reference to the statutory development plan and "any other material considerations" (see e.g. s.70(2)) of TCPA 1990). A "material consideration" must be relevant to the development in question and serve a planning purpose, that is one which relates to the character of the use of land (Lord Sales JSC in *R (Wright) v Forest of Dean District Council* [2019] UKSC 53; [2019] 1 WLR 6562 at [36]). The concept is broad.

85. The controls over the use of caravan sites introduced by Part I of the 1960 Act replaced s.269 of the Public Health Act 1936. Section 269 allowed local authorities to grant licences to persons to allow land occupied by them to be used as sites for "moveable dwellings" and to station and use such dwellings, subject to conditions regarding the number and type of dwellings, space between dwellings, water supply and sanitary conditions.

86. In July 1959 Sir Arton Wilson produced a report for the Government ,"Caravans as Homes" (Cmnd.872), which addressed a number of problems with caravan sites and the controls available. The report identified a number of mischiefs at which the 1960 Act was subsequently aimed, including:

    (1) Lack of public control over construction standards and unfitness of caravans (paras.162-170);

    (2) Inadequacy of the powers under Housing and Public Health Acts to tackle overcrowding (paras.171-174);

    (3) The scope of s.269 of the 1936 Act was limited to controlling public health issues. It did not address, for example, safety, amenity and the internal conditions of sites (paras.177 to 192);

    (4) Lack of control under planning legislation over sites with "existing use" rights such as pre-July 1948 uses.

    The Bill was described in Parliament as being carefully linked in, or co-ordinated with, the system of planning control.

87. It is a pre-requisite for the grant of a site licence that the applicant is entitled to rely upon an express grant of planning permission for the use of the land as a caravan site (s.3(3) of the 1960 Act). Here, the appellant was only able to point to the 1952 and 1966 planning permissions as the basis for obtaining a site licence. But Mr. Harwood

suggested that the planning permissions were only relevant in so far as they authorised the *use* of the site and that the appellant has not relied upon them as authorising the *hardstandings*. But, as a matter of general principle, each of the permissions granted in 1952 and 1966 has to be read as a whole; the conditions to which each was subject form an integral part of the relevant permission, regulating the grant itself and indispensable to it (*Barton Park Estates Limited v Secretary of State for Housing, Communities and Local Government* [2022] EWCA Civ 833; [2022] PTSR 1699 at [21]-[31]). Section 29(4) of the 1960 Act is to the same effect. Any reference in that statute to a permission granted for the use of land as a caravan site is taken to refer to such permission, whether or not subject to a condition. So the 1966 permission gave consent for the number and type of caravans specified subject to the conditions, including the restrictions on the areas of the site which may be used for the stationing of caravans.

88. This point was considered by the Divisional Court *in R v Kent Justices ex parte Crittenden* [1964] 1 QB 144. Planning permission was granted for the use of land as a caravan site, subject to a condition limiting the number of caravans to 13. The local authority granted a site licence subject to a condition to the same effect. The site owner sought to challenge the imposition of that limit on the number of caravans on site.

89. Lord Parker CJ held that a site licence could only be granted within the restrictions imposed by the planning permission, including its conditions, and not outside the boundaries of that permission. He considered that this was implicit in s.29(4). It is the planning permission with its conditions which are the necessary prerequisite for the grant of a site licence (pp. 154-6). Winn J gave a judgment to the same effect. Parliament intended that the planning authority should determine what pieces of land may be used as caravan sites and the extent to which such land may be so used and that the licensing authority should have power under the 1960 Act to control by conditions the manner in which the land is used as a caravan site, but only within the limits of the extent of user approved by the planning permission (pp.162-3).

90. Although Ashworth J did not agree with Lord Parker's construction of s.29(4) by implication, he arrived at the same outcome. He said that s.3(3) was a plain indication that the scheme of control under the 1960 Act should be linked with the system of planning control (p.157), such that the two systems are to be operated in harmony and not in conflict. The object of the legislation would be frustrated if the number fixed in the site licence exceeded the number restricted by the planning permission. It would not be "unduly burdensome" to repeat that restriction in the site licence (p.159).

91. It does not appear that these principles in *Crittenden* have been disapproved in any subsequent decision.

92. However, in *Esdell Caravan Parks Limited v Hemel Hempstead Rural District Council* [1966] 1 QB 895 Lord Denning MR stated that a planning authority should only consider matters in outline directed to the question whether the land ought to be used as a caravan site at all, and not go into the number of caravans to be authorised or impose a condition restricting that number. Once planning permission is given, the licensing authority should deal with the details, including the number and type of caravans authorised (p.923). This *dictum* was unnecessary for the decision and the other members of the constitution did not agree to it. Indeed, Winn LJ endorsed *Crittenden* (p.937). It does not appear that Lord Denning's *obiter dictum* has been approved or followed in any subsequent decision.

93. The 1960 Act applies in Scotland, where there is a planning regime similar to the TCPA 1990. The local planning authority in *Cartledge v Scottish Ministers (No.1)* (2011) S.C. 587 [2011] CSIH 23 had granted planning permission for a caravan park in accordance with plans, one of which showed 64 plots. The Secretary of State refused to grant to the site owner a lawful development certificate which would have legitimised an unlimited number of caravans. In the Inner House the site owner argued that the number of caravans permitted on a site should be determined by a site licence, not the planning permission, relying on Lord Denning's *dictum*. He also relied upon the Scots equivalent of what is now the Class B permitted development right [19].

94. The Inner House disagreed with Lord Denning's *dictum* [21]. Lord Gill, the Lord Justice Clerk, held that questions such as the density of development and use of the site and type of caravans to be permitted raise planning considerations. The licence conditions serve a different purpose and raise different considerations, such as public health and hygiene, although there is some overlap. For licensing reasons, the site licence may allow fewer caravans to be on site than the number allowed in the planning permission, but it is not open to the licensing authority to enlarge the planning permission by licensing the site for any greater number [22]. That permission had imposed a limit on the number of caravans and their location on the site.

95. In my judgment, given the degree of similarity between the planning legislation in the two jurisdictions, this court should follow the decision of the Inner House unless satisfied that there are compelling reasons to the contrary (*R (Jwanczuk) v Secretary of State for Work and Pensions* [2023] EWCA Civ 1156; [2024] KB 275 [39]-[44]). No such reasons have been identified. Both highly experienced leading counsel said that in practice Lord Denning's *dictum* is not followed. Neither contended that *Cartledge* was incorrect.

96. For my part, I agree with the reasoning in *Cartledge.* According to Lord Denning's *dictum*, no matter how sensitive the area in which a caravan site is proposed and the degree of harm that would be caused, the planning authority can approve the location in principle by granting a planning permission but cannot restrict the number and/or location of the caravans. *Esdell* went on to decide that site licensing could not impose such restrictions on purely planning-related grounds. The upshot would be that although planning harm, for example to the wider landscape or the environment, could be taken into account in deciding whether to grant or refuse planning permission, it could not be reflected in a condition on that permission restricting the number and/or location of caravans so as to avoid or mitigate such harm. With great respect, that would be unreasonable and cannot have been the intention of Parliament when enacting the 1947 Act and subsequent planning legislation.

97. The decision in *Cartledge* accords with the principle laid down in *Crittenden*, with which I also agree, that the site licence has to be in harmony, and not in conflict, with the terms of the planning permission relied upon to satisfy the precondition in s.3(3) of the 1960 Act. Those terms include the conditions of the permission (see [87] above). The conditions may include requirements and standards for the development, including the use of, and operational development on, the caravan site. Although a site licence can impose tighter obligations or restrictions than those conditions, on grounds relevant to the site licensing regime, it cannot have the effect of enlarging the planning permission or relaxing the requirements of its conditions. The 1960 Act simply imposes an additional layer of control.

98. To this extent a site licensing authority setting the conditions of the site licence does take into account something which may be based solely on planning considerations, namely the terms and effect of the planning permission which is the pre-requisite for the grant of that licence. But that is unobjectionable. It is simply what the statutory scheme requires.

99. Once this position is reached, there can be no criticism of the Council and the UT for having taken into account in site licensing what was referred to as "the planning baseline" in this case, i.e. the determination in the enforcement notice appeal that all the operational development enforced against constituted an unlawful breach of planning control for which planning permission has been refused and which must be removed or remedied. It is nothing to the point that these matters involve purely planning considerations. They are relevant because the consistency principle indicated by s.3(3) of the 1960 Act, *Crittenden* and *Cartledge* requires the operation of the 1960 Act to be in harmony with the planning regime, not in conflict. It would be contrary to the purposes of the legislation for a site licence to approve or require works to be carried out which are in breach of planning control and for which planning permission has been refused. The appellant's criticism of the UT's decision is antithetical to the statutory scheme. I return to this subject below.

Circumstances where a pure planning consideration is irrelevant to site licensing

100. On the other hand, some cases have decided that a purely planning consideration can be irrelevant to site licensing. What were the circumstances in which that conclusion was reached?

101. These cases concerned sites which were being used as caravan sites when the 1960 Act came into force and already had planning use rights as a caravan site for the purposes of the TCPA 1947. The categories of existing use rights were explained by Lord Reid in *Hartnell v Minister of Housing and Local Government* [1965] AC 1134 at 1155. They included uses which began before 1 July 1948 and uses which had become immune from enforcement after 4 years' uninterrupted use. Ordinarily a pre-1948 use right or a use right gained through immunity would not have been subject to any conditions as might be attached to a planning permission, such as a defined limit on the number of caravans that could be stationed on the land. Before the 1960 Act a local planning authority would not have been entitled to impose a restriction on the number of caravans to be located on such a site without obtaining a discontinuance order and paying compensation to the landowner. When the 1960 Act came into force, site owners with such use rights had to apply for a site licence and by s.17(2) the local planning authority had to decide what planning permission should be granted to them (pp. 1155-7). In *Hartnell* the House of Lords decided that the authority could not impose conditions on the grant of such a permission which materially cut down, without compensation, the scope of the landowner's pre-existing use rights.

102. In *Esdell* s.17(3) of the 1960 Act resulted in planning permission being deemed to be granted for the use of the land as a caravan site without any condition or limitation. The local authority issued a site licence restricting the number of caravans on the site to 24. The Court of Appeal decided that such a condition could be imposed under the 1960 Act so long as the imposition of that restriction was for licensing reasons related to the use of the land as a caravan site and were not for purely planning purposes. It was improper for a site licensing authority to impose, for purely planning reasons,

requirements on a site licence which were more restrictive than existing planning use rights and which could not be achieved by a planning authority without payment of compensation.

103. But what did the courts have in mind when referring to "purely planning considerations"? In *Esdell* Lord Denning stated that planning considerations and site considerations could not sensibly be divided into distinct groups. That would be devoid of reality and certainty. Restrictions relating to the same issue can be justified both on licensing and planning grounds dealing with both on-site and off-site effects (e.g. education facilities, sewerage capacity and traffic). There is a large overlap where conditions can be justified on both licensing and planning grounds, which would be lawful. The point was illustrated by the range of site licence conditions which the Court of Appeal upheld at p.924G-925F. By contrast, what Lord Denning considered to be a pure planning consideration in that case was the magistrates' reliance upon Green Belt policy to conclude that planning permission would have been refused for a new caravan site on the land in question (para.3(l) of the case stated at p.900C and see p.925G). That was the irrelevant factor which the magistrates wrongly took into account in their decision on site licensing. Instead, they should have proceeded on the basis that for the purposes of planning control there was an existing, unrestricted right to use the land as a caravan site (pp.925G-926A). The reasoning of Harman LJ (pp.929B-931E) and Winn LJ (pp.936C-939B) was to the same effect.

104. Similarly, in *Babbage v North Norfolk District Council* (1989) 59 P & CR 248 the site operator had the benefit of an unconditional planning permission under the deeming provision in s.17(2) of the 1960 Act. But in 1979 a site licence was granted with a condition which between November and March each year (a) prohibited occupation of any caravans and (b) required the removal of all caravans from the site. The only issue related to requirement (b). The local authority contended that this fell within s.5(1)(d) of the 1960 Act as a "step for preserving or enhancing the amenity of the land for the benefit of persons living in the vicinity or members of the public at large" (p.252). Their concern related to visual impact on the wider landscape.

105. The Court of Appeal pointed out that, as in *Esdell*, the local planning authority would have been liable to pay compensation to the site owner if it had sought to impose that restriction by way of a modification of the planning permission (p.254):

> "Now the distinction between planning considerations and what may be called "site" considerations may often be difficult to identify with clarity. But in the present case the condition, it seems to me, is not directed to the nature of the use of the site as a caravan site. What it is doing is requiring that, during about five months of the year, the site should not be used for the siting of caravans at all. The condition is not directed to the public health or traffic considerations or to the number of persons using the site or the number of caravans upon it or to the parts of the site where caravans may be placed. The condition is requiring total cessation of use for siting of caravans during the specified period and notwithstanding that the appellant has unconditional planning permission to use the site as a caravan site. Moreover, there is nothing in the case stated to suggest that the council had any reason for imposing the condition except to improve the

> aspect for the benefit of persons occupying or using other land. That seems to me to be solely a planning consideration. It is preventing use of the site for the siting of caravans solely for the benefit of the visual amenities of other land. It is, of course, the case that the statute specifically authorises the preservation of the amenity of the caravan site land for the benefit of any class of persons or of the public at large. But as Winn L.J. observed in the *Esdell* case (at p.937):
>
> The references to those interests [i.e. the general public and others] does not extend their powers; it restricts them to measures of control by which one or more of those interests is protected against misuse of the site. The manner of use of the site is controllable, not its existence in the locality nor the extent to which it is used, save in so far as misuse of the site to the prejudice of those interests is involved in such extent of user.
>
> There is nothing here which could be called misuse of the site. The council simply objects to its existence in the locality during the winter months."

106. The Court referred again to the difficulty of distinguishing between "licensing" and "planning considerations". But it was clear that the restriction in question did not simply regulate the use of the land *as a caravan site*. Instead, it was altogether prohibiting that usage during a specified period of each year. The justification for the restriction was similar in nature to the Green Belt point in *Esdell* which, as Lord Denning said, really went to the question whether the land should be used as a caravan site at all. The disputed restriction was not controlling what would otherwise be a misuse of the site as a caravan site.

107. Each of these cases involved the imposition of a restriction which was unlawful under the 1960 Act because it was only justified in planning terms and had the effect of preventing reliance upon a planning permission not so restricted and without compensation which would have been payable under planning legislation. Thus, properly read, these decisions are consistent with the principle laid down in *Crittenden* and *Cartledge* that the site licensing regime must be operated in harmony with the planning permission which is the prerequisite for the grant of a site licence. The licensing regime cannot be used so as to extend the rights conferred by that planning permission or to relax the conditions to which it is subject.

Departing from the terms of a planning permission upon which the site licence depends

108. What happens if a caravan site operator wishes to carry out a scheme different from that for which he has planning permission, and on which his site licence is based? If he wants to carry out the development without complying with one or more conditions of the existing planning permission, he can make an application to the local planning authority for that purpose under s.73 of the TCPA 1990. A successful application under s.73 results in the grant of a freestanding planning permission (*R v Leicester City Council ex parte Powergen UK Limited* (2001) 81 P & CR 5). If the description in a planning permission of the development approved, the "operative part", does not meet the operator's current requirements, he can apply for a new planning permission in the

ordinary way. If successful, the site operator can apply for a fresh site licence based upon the new planning permission.

109. A permitted development right is also a form of planning permission, but it is granted by a development order (s.58 of the TCPA 1990). Such a right cannot satisfy the pre-requisite for the grant of a site licence laid down by s.3(3) of the 1960 Act. The applicant must show that he is entitled to the benefit of a planning permission for the use of the land as a caravan site granted otherwise than by a development order. Thus, the 1960 Act requires the site licence to be in harmony with an *express* grant of planning permission by a planning authority, where the planning merits will already have been considered.

110. How then does a Class B right which arises consequentially upon the grant of a site licence fall within this statutory framework? According to the appellant, the licensing authority and the Tribunals were obliged to disregard the "planning baseline" determined in the enforcement notice appeal because that involved purely planning matters. On that basis, the appellant also submits that the decision-maker was obliged to consider the merits of the location of the hardstandings proposed by the appellant ignoring any purely planning considerations. Thus, the FTT was entitled to approve the 18 caravan plots and to impose a condition requiring hardstandings to be provided for each of those plots. Then, it is said that the enforcement notice would not apply to operational development carried out in the future pursuant to the Class B right in order to comply with that condition.

111. There is a potential problem with that line of argument. I mention it in case it may need to be considered in another case. However, it did not form part of the submissions to us and therefore does not form the basis for my conclusions. Mr. Harwood said that the appellant relies upon the 1952 and 1966 planning permissions to authorise the *use* of the land as a caravan site and the Class B right consequential upon the FTT's licensing decision (if reinstated) to authorise the *operational development*. That raises the consistency of that operational development with the 1966 permission. In so far as it is inconsistent, it is arguable that the *Pilkington* principle applies and the applicant cannot rely on both the permitted development right and the 1966 permission (*Hillside Parks Limited v Snowdonia National Park Authority* [2022] UKSC 30; [2022] 1 WLR 5077).

112. Putting that point to one side, in my judgment it is plain that the appellant's argument is in any event misconceived. It comes back to its assertion that the planning baseline must be disregarded in site licensing because that is a purely planning matter. But the planning permissions in this case, which are a prerequisite for the grant of a site licence, must also form part of the "planning baseline". On the logic of the appellant's argument, those permissions would also have to be disregarded because they are purely planning matters. By the same token, any conflict between the proposed terms of a site licence and the parameters and requirements of the permission upon which it is founded would also have to be ignored. In other words, the fundamental flaw in the appellant's argument is that it flies in the face of the principle that the site licensing regime should be operated in harmony with the planning regime including the relevant planning permission for the site.

113. In addition, the appellant's argument makes a nonsense of the Class B right conferred by Part 5 of Sched.2 to the GPDO 2015. That right only arises if a site licence is granted under the 1960 Act containing conditions which require the carrying out of

development. The right is conferred by secondary legislation. It should be read and applied in the context of the relationship between the TCPA 1990 (the parent statute for the GPDO 2015) and the 1960 Act. On the appellant's argument, the Class B right would apply irrespective of whether or not the site licence was granted in harmony with the relevant planning permission upon which it depends, or the determination of planning rights under the TCPA 1990. In my judgment, that cannot have been Parliament's intention when it enacted SI 1960 No. 1476.

114. In summary, if a site licensee wishes to operate a caravan site outside the parameters of the planning permission upon which the licence is based, or without complying with requirements of that permission, he needs to make an appropriate application under the TCPA 1990 for a fresh grant of permission or, where possible, a variation. That enables the merits of that different form of development to be assessed taking into account relevant planning considerations. He cannot circumvent that normal process by obtaining a site licence which goes beyond those parameters or relaxes those requirements, so that he can rely upon the Class B right to legitimise under the TCPA 1990 development which is not authorised by the express planning permission upon which the site licence is based.

Conclusions

115. From the above analysis it follows that the determination of the site licence had to be made taking into account, and consistently with, the decision on the enforcement notice appeal relating to the operational development. The appellant failed to show that that development was required by the 1968 site licence and so it was not permitted by the Class B right. The appellant did not claim that the operational development was authorised by the 1952 and 1966 planning permissions. It was therefore unlawful development without planning permission. The site licence should not have approved any plots which were the subject of the enforcement notice, save that it was proper for the licence to authorise plots in respect of which no action under the enforcement notice needed to be taken. That approach was in harmony with the proper application of the planning regime and did not render any other part of the site licensing decision by the Council (or by the UT) unlawful.

116. It also follows that the decision to grant the site licence had to take into account the terms of the 1952 and 1966 permissions so as to be in harmony with those consents in the sense explained above ([89]-[97]). That included compliance with condition 2 of the 1966 permission. In the UT the Deputy President recorded that it had been assumed that the site layout referred to in condition 4 of the 1968 site licence reflected the layout referred to in condition 2 of the 1966 planning permission. That is supported by the observations of the Planning Inspector in her decision on the enforcement notice appeal (see e.g. DL 100-104 and DL 114). I did not understand Mr. Harwood to disagree with that assessment, although he fairly made the point that some of the plots within groups C, D and H were not aligned in a north-east to south-east direction as required by condition 2 of the 1966 permission. Nevertheless, the point remains that the 1968 licence layout, reflecting the layout approved by the 1966 planning permission, shows the locations and groupings of the 60 plots. The Inspector decided that the operational development carried out was inconsistent with the 1968 licence layout (DL 107) and therefore is unlikely to have been consistent with condition 2 of the 1966 permission.

117. Accordingly, the FTT erred in deciding that the operational development enforcement notice and the determination of the appeal against that notice were irrelevant to site licensing. I would uphold the decision of the Deputy President of the Lands Chamber. I have expressed my analysis primarily in terms of the purposes, construction and legal interaction of the two regimes (as he did in [55]). The appellant's argument only serves to demonstrate why the principle of harmony between the 1960 Act and the planning regime is essential.

118. Furthermore, the appellant's argument that it would be irrational for the Council to require compliance with the 2019 enforcement notice when the appellant would be entitled to rely upon "future" Class B rights, is itself irrational, as the Deputy President found. It would require a site licensing authority to ignore requirements (or restrictions) in relevant planning permissions and an extant enforcement notice, but would allow that authority to impose conditions resulting in Class B rights which may be used to justify non-compliance with those requirements, without any opportunity for the planning consequences to be considered. Fortunately, the legislation enacted by Parliament does not operate in that way.

Conclusion

119. For these reasons I would uphold the decision of the Upper Tribunal and dismiss the appeal.

Nugee LJ

120. I agree.

Moylan LJ

121. I also agree.