



The Company Secretary
Ocean One Hundred Limited
Royale House, 1550 Parkway
Whiteley
Fareham
Hampshire
PO15 7AG

13 January 2023

Dear Sir/Madam

Vernon Dene, Ringwood Road, North Ripley, Bransgore BH23 8EL
Application Reference: 91960
Town & Country Planning Act 1990, Section 193(7) & Town and Country
Planning (Development Management Procedure) (England) Order 2015,
Article 39(15)

Introduction

We write further to the Certificate of Lawful Use dated 2007 (“the Certificate”) in respect of Vernon Dene, Ringwood Road, North Ripley, Bransgore BH23 8EL (“the Site”). The Authority has been provided with and assembled a body of material (“the Pack”) which, it is claimed, justifies the revocation of the Certificate under s.193(7) of the Town and Country Planning Act 1990 (“the 1990 Act”) on the basis that on the application for the Certificate (“the Application”) the applicant, Jonathan Cox (“JC”) made statements which were false in a material particular and/or material information was withheld. This letter is written pursuant to article 39(15) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (“the DMPO”) which requires the Authority to give you an opportunity to make representations in response to this letter and the material provided in the Pack.

The Application

The Application Form (“the Form”) was completed by JC and described the use of the Site as a “touring caravan site [and] touring caravan store”. The Form confirmed that the use had begun “before I moved here (pre 1991)” and that other family members “...are happy to confirm if required”. The Form was accompanied by an OS based location plan showing “storage area in red chequers”. The same OS based plan included an annotation of the site area

New Forest National Park Authority

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(6.34 acres/2.57 ha) hatched in grey and carrying the legend 'Vernon Dene Campsite'. A declaration was included at the end of the Form whereby JC certified that no false or misleading information or documents had previously been supplied and no material information had been withheld. The Form is dated 4 July 2007.

No further information was submitted in support of the Application. The Authority's Solicitor wrote to JC on 14 November 2007 to advise that the Authority was not satisfied with the Application and invited JC to provide further evidence in support of the Application.

The Authority's records show that the Authority's Solicitor subsequently held a conversation with JC in which he explained that caravans had been stored on the Site for more than 10 years. In the absence of any evidence to the contrary, the Authority's Solicitor relied on the assertions made by JC and issued the Certificate on 1 August 2008.

The Pack

A group of local residents have provided the Authority with statements attesting to the previous condition and use of the land prior to the issue of the Certificate. The Authority has also sought counsel's advice and this has informed the statement of Stephen Avery, a senior officer employed by the Authority, which is further supported by a series of verifiable satellite imagery, google earth imagery and photographs taken by Authority staff. Together these documents comprise the Pack. At this stage, the Authority has redacted the personal details of the local residents but all have committed to provide statutory declarations in support of their evidence. The Authority reserves the right to make further amendments and alterations to the information contained within the Pack if further evidence or information comes to light.

The Authority has concluded, having regard to the recent case in the High Court (*R (on application of Ocado Retail Ltd) v Islington London Borough Council*), that if the material in the Pack and the inferences drawn from that information are correct, then there would appear to be a justification for revocation under s.193(7) on the following grounds:

- 1) that JC made a false statement on the extent of the use of the site as a caravan site
- 2) that JC made a false statement that no other use occurred on the site
- 3) that JC withheld information that parts of the site had been used for grazing/pastures
- 4) that JC withheld information that part of the site was not used for touring caravan site
- 5) that JC withheld information about the numbers of caravans

We invite your comments on the whole of the material in the Pack. Without prejudice to the generality of that invitation, we are specifically concerned to receive your comment as to:

- (i) whether your clients hold or are aware of any additional evidence, records or information that may have been submitted by JC (or any family members, associates or agents acting on behalf of the former owners) during the course of the determination of the Application (especially during the period 9 May – 1 August 2008),
- (ii) whether your clients have had any correspondence or conversation with the former owners since 1 August 2008; and
- (iii) whether your clients hold or are aware of any evidence, records or information pertaining to the use of the site which has not previously been disclosed to the Authority.

If so, we ask that you supply the Authority with copies of this evidence, records and/or information.

We invite your detailed comments by 3 February 2023. We would invite you to provide any further material/evidence in the form of a statutory declaration.

Yours sincerely



Steve Avery
Executive Director Strategy and Planning

copy to: Laister Planning Limited



Town and Country Planning Act 1990 – Section 193(7)

Revocation of Certificate of Lawfulness issued on 4 July 2007
for use of land as a caravan site (application number 91960)

Statement of Stephen Avery BSc (Hons) MRTPI DMS

Land at Vernon Dene, Ringwood Road, North Ripley,
Bransgore BH23 8EL

January 2023

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1.0 Introduction

- 1.1 I make this statement in support of the New Forest National Park Authority's decision to revoke a Certificate of Lawfulness for use of land at Vernon Dene as a caravan site.
- 1.2 I am the Executive Director (Strategy and Planning) at the New Forest National Park Authority. I am a chartered town planner with 34 years post qualification experience in local authority planning. I have worked in the New Forest area since 1998 and have been employed by the New Forest National Park Authority since March 2006, initially as Head of Development Control and for the last 13 years in my current post as Executive Director (Strategy and Planning).
- 1.3 A series of numbered photographs, including aerial photographs, are attached as Appendix 1 and referred to throughout this statement.

2.0 Summary

- 2.1 On 1 August 2008 the Authority issued a Certificate of Lawfulness for use of land at Vernon Dene as a caravan site, including a limited use for the storage of touring caravans pursuant to s.191 of the Town and Country Planning Act 1990 (application number 91960). A copy of the application form, the accompanying plan and the decision notice are attached as Appendix 2.
- 2.2 The application was made by the previous owner of the land, Mr Jonathan Cox, who lived on the property in a detached bungalow (which has since been demolished).
- 2.3 Vernon Dene comprises approximately 2.57 hectares of level land, rectangular in shape and located in open countryside some 2 km north of Bransgore. All the land lies within the New Forest National Park. Aerial photographs of the site show that prior to and after the issue of the Certificate relatively few caravans (circa 20) were kept on the site, which up until April 2019, was largely a grassed field with evidence of grazing and other storage uses, as evidenced by the aerial photographs numbered 1 – 13.
- 2.4 Land registry documents confirm that Mr Cox sold the land to Park One Developments in December 2018 for £2.6 million. The company's interest in the land was only revealed by a Land Registry search in April 2019 following substantial site clearance works carried out over that Easter Bank Holiday weekend (which had attracted complaints from the public).
- 2.5 The initial enforcement investigation confirmed that the site was not the subject of a Tree Preservation Order and benefitted from a lawful use certificate granted in August 2008 for use as a caravan site.
- 2.6 Park One Developments quickly confirmed their intentions to establish a permanent residential mobile home park on the site by applying to New Forest District Council for a site licence on 3 May 2019 under the Caravan Sites and Control of Development Act 1960.

- 2.7 In view of the established caravan site use, a site licence was granted by New Forest District Council in July 2019 for 83 permanent residential caravans/mobile homes. A copy of the site licence is attached as Appendix 3.
- 2.8 Ordinarily, development that is required by the conditions of a site licence, such as internal roadways and concrete bases, are exempt from further planning control (being classed as 'permitted development'). Site works were commenced soon after the licence was granted and these included the laying of hard surfaces for caravan bases and internal roads as shown in photographs 46 – 52 (Appendix 1).
- 2.9 However, permitted development rights are subject to compliance with the Habitats Regulations and in this instance, the Authority has advised the owner that the site works are in breach of the Habitat Regulations and accordingly do not benefit from permitted development rights. Furthermore, the Authority has since adopted a Screening Opinion under the Environmental Impact Assessment (EIA) Regulations and concluded that the site works are 'EIA' development, being another reason why the works do not constitute permitted development. Park One Developments challenged this decision and sought a 'Screening Direction' from the Secretary of State (SoS). The SoS has since confirmed by letter dated 21 April 2022 that the proposed development is 'EIA development' noting that the *"intensification of caravans and associated activity on the site would have a significant effect on this area of countryside within the National Park."*
- 2.10 Park One Developments agreed to cease all work on site until the requirements of the Habitat and EIA regulations could be met.
- 2.11 More recently, the Authority's attention has been drawn to a number of anomalies in the application form for the Certificate of Lawfulness. These include the extent of the caravan use at that time (2007 - 2008) as well as other uses taking place on the site. It appears that information that would have been known to the applicant about the extent and range of uses taking place on the site was withheld from the Authority at the time of making the application for the Certificate of Lawfulness (CLU).
- 2.12 It is now evident from aerial and other photographs of the site, before and after the CLU was issued, that the caravan use was not widespread across the site and that other uses were taking place on the site. The written records of enforcement officer visits before and after the CLU was issued also confirm that other uses were taking place on the site.
- 2.13 A very recent case in the High Court (*R (on application of Ocado Retail Ltd) v Islington London Borough Council*) provides helpful clarity on certain aspects of the law relating to the revocation of certificates of lawful use, in particular that when deciding whether to revoke a certificate on the grounds that information was withheld, the withholding of information does not have to be deliberate. The judge commented that *"public confidence in [lawful use certificates] must extend to the reliability of the information put forward by an*

applicant to support the grant of a certificate...[the applicant] obtained a certificate to which it was not entitled on the basis of the information it provided and withheld."

- 2.14 There are several grounds on which the Authority seeks to rely in revoking the CLU. These are set out in further detail below but can be summarised as follows:
- 1) False statement on the extent of the use of the site as a caravan site
 - 2) False statement that no other use occurred on the site
 - 3) Withholding information that parts of the site had been used for grazing/pastures
 - 4) Withholding information that part of the site was not used for touring caravan site
 - 5) Withholding information about the numbers of caravans
- 2.15 I wrote to the site owner's planning advisor, Laister Planning Limited, on 31 January 2022 to advise that the Authority was considering the case for revocation citing the above grounds (and referencing the *Ocado* case). I wrote to Laister Planning Limited again on 25 March 2022 to further advise that "*On the basis of all information we have collected so far, it is highly probable that the Authority will take action...to revoke the Certificate.*" Copies of these letters are attached as Appendix 4.
- 2.16 On 12 April 2022 we received a letter from Mishcon de Reya to advise that that they were acting on behalf of the new owners - Time GB Group Limited – who purchased the site in December 2021.

3.0 The Site

- 3.1 Vernon Dene lies in an area of open countryside within the New Forest National Park. The New Forest is a landscape of outstanding natural beauty and is valued for its ecological, historical, cultural and archaeological significance. The site is accessed from Ringwood Road which connects the settlements of Ringwood and Bransgore. There are no immediately adjoining residential properties. More recently, the developers, in seeking to establish a residential mobile home park on the site, have created two new bell mouth entrances with ornamental brick pillars either side. A close boarded fence has been erected along the front boundary with Ringwood Road as shown in photographs 54 and 55 (Appendix 1).
- 3.2 As recorded in the SoS Screening Direction, significant site works have already taken place that include the laying of hard surfaces for caravan bases and internal roads. These works are unauthorised and a breach of planning control.
- 3.3 Two mobile homes are stationed on the site but do not appear to be occupied.
- 3.4 The site lies in an area of open countryside within the New Forest National Park and within the catchment of the River Avon Special Area of Conservation (SAC). The site also adjoins the New Forest Site of Special Scientific Interest

(SSSI) and lies within 400m of the New Forest Special Area of Conservation (SAC), the New Forest Special Protection Area (SPA) and the New Forest Ramsar.

4.0 Planning History

- 4.1 A search of the Authority's planning records reveal that Vernon Dene has been the subject of a number of planning applications and more recently, investigations into suspected breaches of planning control. For completeness all the planning history is detailed below:
- 4.2 RF149 – planning permission granted on 13 November **1948** for addition of bathroom and WC to bungalow known as Vernon Dene (Appendix 5).
- 4.3 92660 – planning permission refused on 23 February **1978** for use of the northern part of the site as an 'overspill site for 20 caravans during June, July and August each year (touring)'. The subsequent appeal was dismissed on 6 March 1979 with the Inspector noting that "*...to allow the appeal would set a dangerous precedent that would lead inevitably to pressures for an increase in the number of touring caravans permitted elsewhere in the area*". From the appeal documentation it is clear that at this time, the site was only operated as a certified location for up to five touring caravans (Appendix 6).
- 4.4 24404 – planning permission granted on 16 August **1983** for alterations to existing pedestrian/vehicular access. The red line application site included the whole site and the application form confirmed the use of the land as a nursery and campsite (Appendix 7).
- 4.5 44242 – planning permission granted on 19 March **1990** for single storey extension to bungalow. No reference to a campsite or caravan site on the plans accompanying the application (Appendix 8).
- 4.6 47740 – planning permission granted on 22 July **1991** to erect buildings for a boarding cattery (close to southern boundary of site and next to the existing bungalow). Again, no reference to a campsite or caravan site on the plans accompanying the application (Appendix 9).
- 4.7 QU/07/0080, 07/0081 and 07/0082 – enforcement investigation opened in February **2007** into reported 'business from home', 'stationing of residential caravans' and 'use of dwelling for multiple occupation'. The Enforcement Officer's notes (dated 5 April 2007 and attached as Appendix 10) record a number of issues that were investigated including:
- multiple occupation of the bungalow – the owner Mr Cox confirmed that previous lodgers had been asked to leave and that he lived at the property with his girlfriend, brother and two lodgers
 - the hiring out of a mobile mini crusher from the site – this was kept on the site and as well as being hired out, was also used to level rubble and dirt on the site "to turn it back into a paddock for his horses"
 - car repairs – a previous lodger had raced cars and these were repaired on site – this use was to cease

- caravan storage – over 20 caravans observed on site. Mr Cox explained that some belonged to him and his brother, most belonged to friends and relatives and a few belonged “to other people that pay him to store them on his land”. Mr Cox said that caravan storage has been going on for over 10 years and he would like to apply for a LDCE

The associated photographs taken at the time of this investigation (2007 – 2008) are attached as photograph numbers 14 – 21 and 24 – 32 (Appendix 1).

- 4.9 91960 – Certificate of Lawful Use issued on 1 August **2008** for use of the land as a caravan site and use of a smaller area for the storage of touring caravans. This application was received on 9 August 2007 (attached as Appendix 1) and it is evident from file notes and correspondence that the Authority was not able to support the application as originally submitted. The Authority’s Solicitor wrote to the applicant on 14 November 2007 to advise that the Authority was not satisfied with the evidence and to offer the applicant the opportunity to provide further evidence.
- 4.10 It appears that no further information was forthcoming from the applicant and the Authority’s Solicitor wrote to the applicant again on 9 May 2008 (following an earlier telephone conversation he had had with the planning officer) noting that *“I understand that you are planning to provide further information to the request laid out in my letter...I will not proceed to determine your application until this information is available...”*
- 4.11 Unfortunately the paperwork for this application is incomplete (Appendix 11) but from a file note dated 24 June 2008 it appears that on the basis of a conversation between the Authority’s Solicitor and Mr Cox, a corroboratory letter from Mr and Mrs Higgins who lived close by *“and indicated that since Mr Cox purchased the property, caravans and boats had been stored on the land”* and Office Copy Entries confirming Mr Cox had owned the land for last 10 years, the Authority’s Solicitor relied on the assertions made by Mr Cox and issued the Certificate of Lawful Use on 1 August 2008.
- 4.12 The information provided by Mr Cox in support of his application is examined in further detail below (see section 5 below).
- 4.13 QU/11/0367 – enforcement investigation opened on 28 November **2011** into alleged use of site for car repairs. The Enforcement Officer visited the site on 6 January 2012 and met with Mr Cox. The officer’s note of the meeting (Appendix 12) records:

“He confirmed that he was man of many trades and he would repair and maintain friends and family's motor vehicles and horse boxes/lorries. He was currently awaiting one/two hip/knee replacements and his lodger was working on some cars (belonging mainly to Mr Cox) as a favour. He used one end of the stable building as his workshop for the vehicle repairs. There were also a number of vehicles and other items stored on the land (doughnut trailers,

horse boxes, buses). Mr Cox had been at the property for 20 years and inherited the land in the same sort of state that it is in now”.

The associated photographs taken at the time of this visit are attached as photograph numbers 58 – 62 (Appendix 1).

- 4.14 QU/19/0105 – enforcement investigation opened on 23 April **2019** into site clearance works. This followed an email alert I had received from a local resident on 21 April 2019 (Easter Sunday) who reported extensive site clearance and engineering works. I drove past the site that day (21 April) and observed heavy plant and machinery being employed to clear the site. Felled trees and vegetation were being burnt on site. Security guards sat at the entrance of the site.
- 4.15 The subsequent enforcement investigation revealed that the site benefitted from an unencumbered caravan use (the 2008 CLU) and early on it was felt that there was not much the local planning authority could do to prevent the stationing of new caravans/mobile homes on the site. However, over the following months, as the owners’ intentions became clearer, the Authority began to question whether the owners could rely on permitted development rights to meet the requirements of the site licence that had subsequently been granted in May 2019 by the New Forest District Council. Further concerns were raised about the drainage arrangements and it became clear that the owners did not have the necessary Water Quality permit from the Environment Agency.
- 4.16 The Authority had been caught on the back foot but it eventually emerged that the on-site works (internal roadways and hardstandings etc) did not constitute permitted development by virtue of the Habitat and EIA Regulations. The more the Authority began to research the planning history and evolution of the site, supported by satellite imagery, the more questions began to be asked about the original evidence that supported the 2008 CLU. In short, it became clear that the information provided on the CLU application form bore little resemblance to what was self evident in the satellite imagery. Furthermore, local residents were coming forward with their own evidence that suggested that information had been withheld from the CLU application.
- 4.17 The Authority formally adopted its Screening Assessment under the Habitat Regs on 28 June 2021 (appendix 13) and its EIA Screening Opinion on 28 June 2021 (appendix 14). The developer’s subsequent request for a Screening Direction from the Secretary of State (SoS) was concluded on 21 April 2022 and a copy of the SoS’s written statement confirming that the site works are EIA development is attached as Appendix 15.
- 4.18 On 24 November 2022 the Authority issued an Enforcement Notice in respect of the on-site works and a copy of the Notice is attached as Appendix 16. The owners have since lodged an appeal against the Enforcement Notice (ref. APP/B9506/C/22/3312350) which is proceeding by way of an Inquiry. A date for the Inquiry has yet to be set.

5.0 The Authority's case for revocation

5.1 The CLU for Vernon Dene was issued on 1 August 2008 for use of the land as a caravan site and use of a smaller area for the storage of touring caravans on an application made by Mr Jonathan Cox on 9 August 2007.

5.2 S.193(7) of the Town and Country Planning Act 1990 ('TCPA 1990') provides that:

A local planning authority may revoke a certificate under either of those sections if, on the application for a certificate –

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.”

5.3 The Authority is entitled to and expected to rely on the information provided in an application and hence the onus is on the Applicant to ensure it is accurate and complete. S.193(7) is to protect against the position where information is false in a material particular or material information is withheld. The fact that the Authority in assessing the Application had not identified that the Application was false in a material particular or any material information was withheld does not render s.193(7) inapplicable or make it inappropriate for the Authority to rely on it. Indeed s.193(7) is to address a situation where the falsity of the statement or the withholding of material information is not identified until after the grant of the CLU.

5.4 The focus of this provision is on the Application and material provided with it. To be “false” under (a), the statement simply has to be wrong and not according with the facts – it does not have to be deliberately wrong. It is no part of the test under (b) that the material was deliberately withheld in order to mislead or to create a false understanding.

5.5 Matters relating to the nature, periods and continuity of use were material to the decision as to whether the grounds for the CLU were made out and matters relevant to the identification of the planning unit were material in determining whether the statutory tests were met and in respect of what areas.

The Application

5.6 The application for the CLU was received by the Authority on 9 August 2007. The application was made by Jonathan Cox for a Certificate of Lawfulness for an existing use pursuant to s.191 of the TCPA 1990. The application was required to answer the questions on the prescribed form - Art 39(1) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. The application form is signed by Mr Cox and dated 4 July 2007. On the application form, Mr Cox described himself as the owner of Vernon Dene (Q4). The existing use was described as “STORAGE OF TOURING CARAVANS” (Q6).

5.7 Q9 of the application form is very significant. In the question it says the following:

If there is more than one existing use of, or operation or activity on the land at the date of this application describe fully each of them and where appropriate showed to which part of the land each use operational activity relates.

5.8 Mr Cox's response to Q9 was to describe the use as "TOURING CARAVAN SITE + TOURING CARAVAN STORE". The use was said to have begun "BEFORE I MOVED HERE (PRE 1991) " in response to Q10.

5.9 Q12 again called for evidence to cover the whole of the period of the application. It said as follows:

Give any additional information including relevant documents as appropriate including statutory declarations you consider necessary to substantiate your claim. Statements should refer to the submitted plans. Taken together the information should cover the whole of the period of the application.

5.10 None was provided with the application although Mr Cox did say that other family members "...ARE HAPPY TO CONFIRM IF REQUIRED".

5.11 Q13 asks the applicant to list all the documents, drawings or plans which accompany the application. The answer to Q13 was to enclose the OS location plan with 'STORAGE AREA IN RED CHEQUERS'. The same OS plan includes an annotation of the site area (6.34 acres/2.57 ha), is hatched in grey and carries the legend 'Vernon Dene Campsite'. A declaration is included at the end of the application form whereby the applicant certifies that no false or misleading information or documents have previously been supplied and no material information has been withheld. The form is duly then signed and dated 4 July 2007.

5.12 The Authority no longer holds a hard copy of the application file but from all the information held on the Authority's digitised records, it is clear that no additional information or evidence was offered in support of the application at the time of its submission. This is confirmed in the planning officer's briefing note to Sopley Parish Council dated 28 August 2007:

- *This proposal seeks to regularise what is stated to be an established use.*
- *The application has not been accompanied by any additional evidence although it is stated that family members can confirm the use as being well established.*
- *Consideration should be given to the amount and nature of available evidence and whether this is likely to be regarded as sufficient.*

5.13 On 3 September 2007 the occupier of the adjoining property (Mr Higgins of Sunnycroft) submitted an online objection to the application stating that "AS WE ARE IMMEDIATE NEIGHBOURS, WE STRONGLY OBJECT TO THIS CARAVAN SITE, BOTH AS A STORAGE SITE".

- 5.14 On 14 November 2007, the Authority's Senior Solicitor, Julia Mutlow, wrote to Mr Cox to advise that the Authority was not satisfied with the application:

"You have applied for a Lawful Development Certificate confirming that the use of the land in question has been for storage of touring caravans and as a touring caravan site in excess of ten years as at the date of the application (4 July 2007).

On the basis of the information before me, I am not satisfied that this is the case and I must advise that the onus is on the applicant for such a certificate, to provide evidence to demonstrate, on the balance of probabilities, that the use claimed has been ongoing for the requisite period. I am writing to provide you with an opportunity to provide further evidence in support of your application, if you wish to do so.

If I have not heard from you within 21 days of the date of this letter I will assume you do not wish to submit further information and I will proceed to determine the application accordingly."

- 5.15 No additional information was forthcoming and the Authority wrote to Mr Cox again on 9 May 2008 with a request that any further information be provided 'as soon as possible'. This final request for information appears to have followed an earlier telephone conversation between Mr Cox and the case officer (Liz Young) on 29 April 2008.

- 5.16 On 24 June 2008, the Authority's Senior Solicitor recorded the following attendance note:

"JPM discussing the application with Liz Young. Mr Cox had provided further limited evidence which coupled with the conversation that I had with him and explained that they had stored their caravan for well over 10 years. It appeared that the storages had been going on for some 10 years plus. I said that I would have liked detailed evidence. However I had no evidence to the contrary and therefore, on the balance of probabilities, It appeared that this use had been going on for the period claimed and therefore I had little evidence on which to refuse it.

Furthermore, there was a letter from Mr and Mrs Higgins who lived close to the cottages and indicated that since Mr Cox purchased the property, caravans and boats had been stored on the land.

I therefore said that I would obtain Office Copy Entries to establish when Mr Cox took over the land which would add prudence to the argument that he had been using the land for over 10 years if in fact he had purchased it in excess of 10 years ago. On that basis I would issue the certificate."

- 5.17 Unfortunately, the Authority does not have any record of the "further limited evidence" provided by Mr Cox or the subsequent letter from Mr and Mrs Higgins. But it appears that on the basis of the conversation that the Authority's Solicitor had with Mr Cox and the subsequent confirmation of him having owned the land for the relevant period (at least ten years preceding the

date of the application) that was justification enough, on the balance of probability, to issue the CLU on 1 August 2008.

Grounds for Revocation

5.18 As noted above, the test as to whether a local authority can revoke a lawful use certificate is set out in s193(7) of the TCPA 1990. The provision was recently considered by Holgate J in R (*Ocado Retail Limited v London Borough of Islington*) [2021] EWHC 1509 (Admin). The judgment also considers the procedure for obtaining a CLU. This part of the judgment sets out a number of important principles which help to understand the conclusions reached in respect of the scope of s.193(7):

- (i) the burden lies on an applicant to demonstrate that a breach of planning control has become lawful applying the civil standard; [61]
- (ii) an applicant must complete an application form published by the Secretary of State and provide such evidence verifying the information included in the application as the applicant can provide; [62]
- (iii) it is only if the applicant provides a local authority with information which satisfies them of the lawfulness of the matter specified in the application that the authority should grant a certificate. If an authority is not satisfied that the information provided to them by an applicant is adequate for that purpose it may refuse the application; [63] and [64]
- (iv) a local authority is not obliged to exercise its powers to require more information to be provided in order to try and remedy deficiencies in the material submitted by an applicant; [65]
- (v) an application under s.191 of TCPA 1990 is asking for a certificate to be granted which is intended to provide immunity from subsequent enforcement action inconsistent with the right certified. It would therefore be appropriate in many cases for the applicant to have in mind the type and level of information which would be needed to advance a successful appeal against an enforcement notice under grounds (c) or (d) in s.174(2); [69]

5.19 In respect of the impact of s.193(7) on the CLU process, Holgate J observed at [71]-[72] that:

“71...an applicant assumes a risk (which passes to or affects successors in title) that any certificate he obtains may be revoked if it turns out that materially inadequate or false information was provided on the application. That risk is likely to be greater if he takes a minimalist approach to the provision of information. In practical terms, an applicant takes on responsibility for supplying information to verify his application that will not give rise to action under s.193(7).

72. Because s.193(7) deals with a material withholding of information, it follows that an applicant takes a risk of his certificate being revoked if he withholds material which is adverse to his case. As Mr. Wald QC put it, the legislation implicitly assumes that an applicant seeking a CLEUD is candid

with the local planning authority in the information he supplies to verify his application. Where, for example, an applicant has adverse material, he would need to consider carefully whether he could properly justify withholding it. If, for example, it is fatal to the application the obvious answer is “no”. Indeed, the application ought not to be made, bearing in mind the criminal sanctions which might apply as well as the risk of revocation. For other adverse information, the appropriate course may well be to disclose the material with an explanation (and any verifying evidence) explaining why it is considered to be non-material to the merits of the application. That after all, is the course which would have to be followed if grounds for revocation arose subsequently. One advantage of disclosure up-front is that the local authority is then able to consider whether it is appropriate to pursue any other lines of enquiry before deciding whether to grant a certificate. Where such steps are taken, it is more likely that any subsequent suggestion of revocation could be resisted more effectively.”

- 5.20 It is the Authority’s case that there are several grounds to support the revocation of the CLU issued on 1 August 2008.
- 1. False statement that use for caravan site was on all the grey hatched area.**
- 5.21 The effect of the information provided in boxes 9, 10, 11, 12, 13 and the location plan is to make the statement that the whole of the Vernon Dene site except for the storage area is and has been used for a touring caravan site.
- 5.22 This is false in light of the aerial photographs (numbers 1-5, 7-9 and 11-13) which were taken in 1999, 2000, 2002, 2003, 2004, 2005 and 2007, specifically:
- i. The photographs show no caravans in the eastern and western paddocks whilst those in the central paddock are limited to the area hatched in red on the CLU application plan.
 - ii. Photographs 5, 8, 12 and 13 appear to show grazing animals in the eastern paddock.
 - iii. Photograph 9 is particularly relevant as this was taken on 1 August 2007 – one week before the CLU application was submitted.
- 5.23 It is clear from these aerial photographs that large parts of the site were not used as either a touring caravan site or for the storage of caravans. The eastern and western paddocks and most of the central paddock were kept as open pasture. The statement that the whole of the site was used for as a touring caravan site was false. As set out above, by reference to paragraph [84] of *Ocado*, there is no need for the Authority to be satisfied that the false statement was a deliberately false statement just that it was incorrect.
- 5.24 This false statement was clearly material to the determination of the application, applying the test set out in paragraphs [95] and [96] of *Ocado*.

5.25 The statement that the use covered the whole site was plainly relevant to whether the certificate should be granted. If the applicant had disclosed that that part of the site had not been used as a caravan site, that would have led to a different line of inquiry and the application being determined differently, for example, by considering restricting the area of the certificate. [REDACTED] has since confirmed in her statement of 24 April 2022 that *“The small number caravans that Mr Cox kept at the site were confined to the trackway on the northern boundary...”* [REDACTED] statement is equally clear when he says there were never any caravans kept in the eastern paddock – it was used to keep horses – and that no caravans were kept in the western paddocks due to flooding and poor drainage.

2 False statement that no other use occurred on the site.

5.26 The effect of the application form is that there was no other use on the site apart from touring caravan site and touring caravan store and that this had been the position for the whole relevant period. Photographs 17, 19 - 22 and 24 – 30 (Appendix 1) reveal a variety of other items stored on the site in 2007 and 2008 including horse boxes, trailers, boats, steel containers, plant and machinery, cars, ladders, tools, mounds of rubble and telegraph poles. As [REDACTED] confirms, Mr Cox would *“rent anything out to anyone”*.

5.27 As noted in the earlier planning history (paragraph 4.7) the 2007 enforcement investigation identified a number of other uses taking place on the site that included:

- multiple occupation of the bungalow
- the hiring out of a mobile mini crusher from the site
- car repairs

5.28 As [REDACTED] observes in her statement *“The rusting and dilapidated vehicles and caravans along the trackway did not appear to move from one year to the next.”*

3 Withholding information that parts of the site had been used for grazing/pasture

5.29 It is clearly material information that part of the site was used for grazing/pasture. This information was not provided at all on the form. There is no indication that it was provided afterwards, and the Authority’s Solicitor’s attendance note of 24 June 2008 and determination on 1 August 2008 suggest that it was not. [REDACTED] is clear in his statement that at the time of his visit to the site in late August/early September 2007 that the *“whole of the remainder of the Vernon Site – comprising three large paddocks, separated by hedging and post and rail fencing – was actively being used for the grazing of horses...”* This information must have been in the knowledge of the applicant at the time of making the CLU application and it is therefore information which was material and was withheld.

5.30 [REDACTED] is similarly clear in her statement when she states that *“During the entire period from 1998 to 2019, the three paddocks that form the majority of the Vernon Dene site appeared to be in continual rotation for the grazing of livestock.”*

4 Withholding information that part of the site was not used for touring caravan site

5.31 There is nothing on the application form to suggest that parts of the site were not used for a touring caravan site apart from the storage area. The aerial photographs (1-9) show that this was the case and that most of the site was not used as a caravan site. Again, this does not need to have been shown to have been a deliberate or reckless act of withholding information. And again, such information would clearly be material to the application applying the test in Ocado [paragraph 96].

5 Withholding information about the numbers of caravans

5.32 Finally, the application form did not provide the number of caravans over the 10 year period it was claimed to make the use lawful. Instead, it gave a very minimalist description of the use of the land as a caravan site. It is likely that the applicant would have known the approximate number of caravans which used the land. That information would clearly have been material to the application (Ocado [96]). It could well have meant that there was a line of inquiry that would have been considered which would have led to the application being determined differently. For example, with a different certificate being more precise about the level of use for touring caravans, and where that use occurred on the site.

6. Expediency and wider planning considerations

6.1 The New Forest became a National Park on 1 March 2005 and the National Park Authority took on its role as the local planning authority on 1 April 2006. The two statutory purposes of the National Park Authority are:

- (i) to conserve and enhance the natural beauty, wildlife and cultural heritage of the New Forest; and
- (ii) to promote opportunities for the understanding and enjoyment of the special qualities of the area by the public.

6.2 Section 62(2) of the Environment Act 1995 states that in exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to such purposes.

6.3 National Parks have been confirmed by Government as having the highest status of protection in relation to landscape and scenic beauty. The revised National Planning Policy Framework (NPPF) advises that within National Parks, great weight should be given to conserving landscape and scenic beauty (paragraph 176). The Government’s National Parks Vision and Circular (2010) – cross referenced with the NPPF – recognises that national parks are not suitable locations for unrestricted housing.

- 6.4 The New Forest National Park Local Plan 2016-2036 was adopted in August 2019 and directs all new housing in the National Park to the four 'Defined Villages' (policy SP19) and specific housing site allocations. Outside of these villages, the Local Plan only supports new housing in very limited circumstances, such as meeting a proven need for an agricultural or forestry worker's dwelling or delivering a small scale 'rural exception site' (100% affordable housing).
- 6.5 There are also strict policies in place for new campsites and extensions to existing holiday parks, caravan and camping sites in the National Park (policy DP47). Such developments are only permitted if it is to enable the removal of pitches from sensitive areas by relocation to a less sensitive area.
- 6.6 The site is therefore subject to stringent policies which seek to protect the unspoilt character of the New Forest.
- 6.7 The proposed development of the site for use as a residential mobile home park is contrary to almost every policy in the National Park Local Plan and completely at odds with the Government's policies for National Parks and the wider countryside.
- 6.8 If permitted, it would represent the largest new housing site in the National Park with the exception of the redevelopment of the redundant Fawley Power Station. There would be no provision of the normal requirements for new housing sites (as they apply to the Defined Villages and site allocations), such as meeting a target of 50% for affordable housing, provision of public open space, off site transport contributions, habitat mitigation and Biodiversity Net Gain (to name a few).
- 6.9 The SoS Screening Direction acknowledges the potential likely significant effects on the statutorily designated nature conservation sites as referenced earlier at 3.4.
- 6.10 To allow this development to proceed on the basis of a flawed and misleading CLU application would be a dereliction of duty and contrary to the first statutory purpose of the National Park.

I moved to Vernon Dene in 2001 following the breakdown of a relationship and I lived in a caravan at the far eastern end of the site. I moved into the main bungalow on the site in June/July 2002 before moving back into the caravan in 2005.

I knew Jonathan Cox and he would rent anything out to anyone. He used to let people store boats and horse trailers on the land as well as caravans. I remember he kept a concrete crusher on the site and this was rented out too.

During my occupation of the site I recall some 10 -15 people living in caravans all year round. These caravans were kept in the areas shown hatched black on the attached plan. There were never any caravans kept in the eastern paddock (hatched in red) which was used to keep horses (Mr Cox had three ex-hunting horses of his own). Similarly no caravans were ever kept in the area hatched in blue as this was liable to flooding and the ground was often sodden in the winter months.

I left the site in April 2009 although my business address was registered to Vernon Dene until very recently.

I am aware that the new owners wish to cram 92 mobile homes on the site and this would spoil the area. It would greatly exceed the 20 or so caravans I used to see kept on the site.

Signed:

Peter Grummitt

13 May 2022



Henrik Schlegel
Oakwood House
Avon Tyrrell
Nr. Bransgore
Hants
BH23 8EW Christchurch

Avon Tyrrell, April 25th, 2022

Witness Statement Vernon Dene

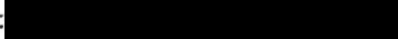
I have been the owner of Oakwood House, the property closest to the eastern perimeter of Vernon Dene, since March 1999. During this period, I have often observed the site, from driving past on my bike and in cars. The site has over the years appeared to be uninhabited, with a few horses grazing in the paddocks, a large amount of rubbish in piles spread over the area, old cars that appeared to be wrecks or under breaking, horse trailers, builders trailers, a rusty mini digger and a few times probably more than 10-15 years ago, I noticed a 4x4 with a horse trailer and some people trying to move the animals. I have only observed light a few times in the past 20+ years, indicating the sight has not been inhabited.

Henrik P. Schlegel

*Tyrrells Farmhouse
Avon Tyrrell
Bransgore
Christchurch
Dorset BH23 8EW*



24th April 2022

Email: 

To Whom it May Concern

Vernon Dene

I have lived at Tyrrells Farmhouse for over 24 years. Vernon Dene is a neighboring property located on Ringwood Rd approximately 200 metres south of the entrance to my driveway and I have been driving past it on an almost daily basis for nearly a quarter of a century.

Prior to its recent demolition and site clearance, Vernon Dene consisted of a residential bungalow with three adjoining paddocks where horses were grazed. On the North side of the property (bordering adjacent woodland) there was a separate entrance gate and trackway that led to a small concrete stable block and workshop. On either side of this trackway and clearly visible from the road, the previous owner, Mr Jonathan Cox, had accumulated a collection of dilapidated caravans, horse boxes and items of farm machinery in varying states of deterioration. I knew Mr Cox by sight and I would occasionally encounter him riding out on a chestnut hunter type horse.

The situation that I have described above had remained little changed from 1998 (when I moved into Tyrrells Farmhouse) until Easter 2019 – when developers moved onto the Vernon Dene site and started the demolition process. Throughout this period, and with the exception of the grazing of the owner's livestock, there seemed to be very little activity whatsoever at Vernon Dene. Over time, the bungalow, garden, boundary hedges and grounds all gradually seemed to fall into disrepair and the whole of the property became extremely untidy and unkempt. The rusting and dilapidated vehicles and caravans along the trackway did not appear to move from one year to the next.

The only positive outcome that I have observed during Vernon Dene's gradual decline into disuse has been a noticeable increase in wildlife in the surrounding woods and fields. Owls and nightjars became (and still are) regular night-time visitors, the populations of woodland bird species visiting my garden have increased and deer can be observed grazing right up to the Vernon Dene site boundaries

 
Solicitor

I have recently become aware that Mr Cox was granted permission to operate a caravan site at Vernon Dene in 2008 – apparently on the basis of a claim that the whole property has been operating as a campsite for the preceding ten years. To the best of my knowledge, there have not been any caravanning activities of a significant scale at Vernon Dene in all of the time that I have lived here – including the decade prior to 2008. On an occasional and infrequent basis one or two of the caravans kept there appeared to have been occupied (caravan lights having been visible from the road) – but that is all.

During the entire period from 1998 to 2019, the three paddocks that form the majority of the Vernon Dene site appeared to be in continual rotation for the grazing of livestock. The small number of caravans that Mr Cox kept at the site were confined to the trackway on the Northern boundary and very few of them seemed to be habitable. I can also confirm that at no time before or after 2008 have I seen any evidence of signage on or near the property to indicate that it was a caravan site, nor any advertising of the camping facilities in the local press.



Angela Pease (Mrs)



MICHAEL G.R. STOUKEN - SOLICITOR,
Witchamers Solicitors
Ringwood

My name is Gerald Lewis and I live at Chapel Cottage, Ripley. I have lived at this address for 40 years (since July 1981) and for 5 years prior to that I lived on the Rosehill Farm estate in Bransgore. For much of the past 40 years, I have been associated with Sopley Parish Council, having served as a Parish Councillor from 1990 to 1996 and again from 2004 until 2012. After 2012, I undertook the role of Parish Clerk for a further 3 years – and I continued to represent Sopley Parish as a co-opted member of the New Forest Consultative Panel until 2021.

In the summer of 2007, the Parish Council was notified by the Planning Department of the New Forest National Park Authority of an application for a Certificate of Lawful Use relating to the storage of touring caravans on a small part of a property called 'Vernon Dene' situated on Ringwood Rd, North Ripley. Following standard practice, the Park Authority asked the Parish Council if it wished to make any comments or representations in respect of the application and whether it would support or oppose the requested use

I can confirm that the NPA / Parish Council planning consultation related solely to the storage of caravans on a small plot directly behind the bungalow and that the Parish Council were unaware of - and were not asked to consider or comment upon - any proposal to use the whole site as a caravan park.

I can also confirm that during the consultation period, I briefly visited the site in my role as a Parish Councillor in late August or early September 2007 – as, I believe, did my fellow Cllr, the late Robin Pease, whose own property (Tyrrells Farmhouse) lay only a few hundred metres from Vernon Dene.

At the time of my site visit, there were a small number (maybe a dozen?) of small, towable touring caravans parked closely together a short distance behind the main residence (a bungalow) and outbuildings. Their location was well screened from the road by a tall hedge and by the Vernon Dene bungalow, and also partly screened from adjacent farmland to the South by hedging. As a consequence, the cluster of stored caravans could only be fully seen by entering the property from a farm gate in the North-East corner, walking down the trackway to the old breezeblock nursery building and then looking across the paddock on the right.

Located along this track leading up to the old nursery building were a couple more caravans and a number of old vans, trailers and horseboxes – one or two in good condition but the majority in varying states of disrepair and dereliction. Beyond the nursery building were a small number of caravans (perhaps half a dozen) that looked to be well maintained and which were set out on wider pitches in a fenced and grassed area. A couple of these appeared to be occupied when I visited (there were cars parked adjacent to them and the caravans had awnings opened out). I have no idea who the occupants were – they could have been holiday makers (it was late summer) or they may have been longer-term occupiers. All of the remaining caravans that I could see appeared to be empty / unoccupied. As a local resident and Parish Councillor, I was aware that some neighbouring residents were unhappy about the messy nature of the Vernon Dene site and my assumption at the time was that the application to create a dedicated storage area for the caravans behind the bungalow was an attempt to tidy up the overall site by moving them all to a single location.

I didn't speak to the applicant (Mr Cox) during my visit - there was no answer when I called at the bungalow - but I was personally satisfied that the application for a CLU to store caravans appeared to be a legitimate one. In my view, the proposal would not be detrimental to the location and, by limiting the caravans to a small area, should serve to tidy it up. I subsequently relayed all of this information to the Parish Clerk (advising that I had no objection to the proposal) as, I believe, did Cllr Pease. At the time of my visit, the whole of the remainder of the Vernon Dene site – comprising three large paddocks, separated by hedging and post and rail fencing – was actively being used for the grazing of horses and there was no sign of any further caravans or other vehicles on that land.

There were a couple of occasions (I think during the late 1970s and early 1980s) when the owners had flirted with the idea of using part of the land adjacent to the nursery area (where they had occasionally allowed camping in tents) into a small area for touring caravans and they did hold one or two weekend caravan rallies there in the 1980s – possibly organised by the East Dorset Caravan Club? To the best of my knowledge, this initiative fizzled out and, up until the submission of the 2007 CLU application, that was the sum total of any significant caravanning activities at Vernon Dene.

I can confirm that the scattering of small caravans and other vehicles that were present at Vernon Dene around the time of the 2007 CLU application and my site visit had appeared there in dribs and drabs over the preceding few years and (to my eye as a regularly passing motorist) those that could be seen from the road appeared to be empty and unoccupied – and in one or two cases, derelict.

Lastly, had the Parish Council been asked to consider an application for a CLU claiming the use of the whole of Vernon Dene as a Caravan Park, my view would have been that could see no evidence on site to support such a claim. I have lived in this area (about a mile from Vernon Dene) for a total of 45 years and I know the site fairly well. During this period, the land at Vernon Dene has been used at various times as a small horticultural nursery, a boarding cattery, and as grazing for horses and other livestock – but to the best of my knowledge, it has never operated as a commercial caravan site.

Mr G N Lewis.

4th February 2022.

I first came to live in Blackberry Farm in.... 1972

9 SH
In 1984 I moved away but I continued to come to the farm regularly in order to assist Derek Stainer in running the farm. Derek is now 83 years old and has lived at Blackberry Farm since he was 2 years old.

7 SH
In 2004 I returned to live full-time on Blackberry Farm.

Jonathan Cox rented the field directly adjoining Vernon Dene from Derek Stainer as he needed additional grazing for his horses. He had a number of horses which grazed the paddocks on Vernon Dene together with the adjoining field rented from Derek. The paddocks on Vernon Dene often had pieces of machinery parked on them but that did not stop Jonathan Cox letting his horses run free and graze those paddocks.

Jonathan Cox also used part of Vernon Dene for the storage of boats. A man called A Robin operated a business there doing up old military vehicles and I believe he disposed of unexploded ordnance by burying it on Vernon Dene.

There were a number of caravans along the northern boundary of Vernon Dene but I believe they were mostly derelict. As for touring caravans visiting the site I occasionally saw one or two such caravans on Vernon Dene but only ever in the summer months. A man called Trevor Jones used to bring his caravan every summer spending 28 days at Vernon Dene and then moving it to spend 28 days on Blackberry Farm. He was very friendly with Derek Stainer and helped look after Derek when he had his hip replacement operation in...2000
Trevor stopped bringing his caravan in about...2002

Sharon Hiscock

..July 2022

S. Hiscock

12-7-2022

