

JONES DAY

AUTHORISED AND REGULATED BY THE SOLICITORS REGULATION AUTHORITY

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Date 8 September 2023

Steve Avery
Executive Director (Strategy & Planning)
New Forest National Park Authority
Lymington Town Hall
Avenue Road
Lymington
Hampshire
SO41 9ZG

Sent by Email (to Steve.Avery@newforestnpa.gov.uk) and by Recorded Delivery

Dear Mr Avery,

**Vernon Dene Caravan Site, Ringwood Road, North Ripley, Bransgore, BH23 8EL (“the Site”)
Proposed Revocation of Certificate of Lawfulness**

We are the solicitors who act for Ocean One Hundred Limited, the owner of the Site. We refer to the potential revocation by the National Park Authority of the certificate of lawfulness of existing use or development. We enclose detailed submissions on our client’s behalf by Richard Harwood OBE KC, which explain why:

- the proposed revocation would be both unlawful and highly prejudicial to our client; and
- the National Park Authority’s handling of the revocation process has also been unlawful.

As stated in the detailed submissions, the Authority should therefore end the revocation process now. If a recommendation to revoke is made to the Authority’s Planning Committee then this letter and the detailed submissions which accompany it should be put in front of the committee, the committee report should be published, the item considered in public session and oral representations allowed from the landowner.

Kindly acknowledge safe receipt of this letter and the enclosed submissions by return.

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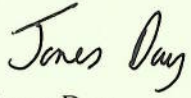
A LIST OF PARTNERS AND THEIR PROFESSIONAL QUALIFICATIONS IS AVAILABLE AT
21 TUDOR STREET • LONDON EC4Y 0DJ

JONES DAY

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Continued 2

Yours faithfully,

A handwritten signature in cursive script that reads "Jones Day".

Jones Day

Enclosures: Verne Dene Revocation Response Submission 20230908.pdf; List of Outstanding Information.pdf

**IN THE MATTER OF VERNON DENE, RINGWOOD ROAD, NORTH RIPLEY, BRANSGORE,
CHRISTCHURCH, BH23 8EL**

These representations combine the submissions made in response to the statutory consultation in February 2023 with comments on the NPA's 26th May 2023 letter and its production of some of the withheld information. It was produced in conjunction with Richard Adams of JonesDay and Nick Laister of Laister Planning.

In brief, the NPA's 2008 decision to issue the certificate was based on correct and comprehensive evidence, where its officers carefully considered the current complaints. There were no false statements or material information withheld in the application process. It would be unlawful to revoke the certificate, both because of the evidence which is available, and the NPA's loss or destruction of its records means that it would not be possible to conclude that false statements or material information withheld. The NPA's handling of the revocation process has also been unlawful.

The NPA should therefore end the revocation process now. If a recommendation to revoke is made to the NPA's Planning Committee then these representations should be put in front of the committee, the committee report should be published, the item considered in public session and oral representations allowed from the landowners.

Summary

1. Vernon Dene has been in use as a caravan site for over 45 years.
2. The proposed revocation is ill-founded, misconceived and based on a patently unfair and unlawful procedure. We note that the NPA accept that Vernon Dene has a lawful use as a caravan site. The NPA's complaint is about other activities, the area taken by the caravan site use and the number of caravans, all of which were considered by the NPA when it issued the certificate.
3. It is however apparent from the incomplete material provided by the NPA that Mr Cox did explain the variety of activities on the site and the NPA had ample evidence from two site visits. Having carefully considered that material (including the enforcement file) the NPA concluded that the application was accurate and complete, and the certificate should be issued. The officers involved at the time carefully evaluated all of that material. They concluded that notwithstanding information on other activities, the planning use of the land was for the storage of touring caravans and as a caravan site.

4. The aerial/satellite photographs relied upon by the NPA in 2023 would have been available in 2008 and in any event supports their earlier decision. The third party statements are inconsistent with each other and the contemporaneous evidence. The most credible third party statements support the contemporaneous records and the CLEUD: 20 caravans or so on the site including permanent residential occupation.
5. As far as evidence is available, the information provided by Mr Cox in the application process was correct and nothing material was withheld.
6. The NPA is relying on a record of the 2008 decision making which is incomplete. It accepts that it has lost or destroyed relevant material, including further information submitted by Mr Cox. It is impossible therefore for the NPA to be able to conclude that Mr Cox made false statements or withheld material information when they do not know the full extent of what he did say or what information the NPA had from all sources at the time.
7. The NPA's conduct of the revocation process is unfair and unlawful. It concealed the decision to propose revocation in breach of the Local Government Act 1972. The statutory consultation was based on anonymised and redacted statements, violating a very basic principle that a person is entitled to know the case against them. That has only latterly been remedied in part. The NPA continues to withhold highly relevant representations made to it by third parties as well as important documents which it holds, including in both cases concerning the 2021 decision not to revoke the certificate.
8. The proposed revocation is highly prejudicial to the innocent purchaser of the site in 2018 and the proposed purchaser who contracted to acquire in 2021 in reliance upon the NPA's 2021 decision not to revoke and moreover to the current owner, Ocean One Hundred Limited, who (as with its immediate predecessors in title) was not involved with the CLEUD application and has acquired the site entirely innocently in reliance upon the CLEUD. Revocation is also pointless as the evidence is that the certified use continued and will be lawful now if it was not already lawful in 2007.

The use of the Vernon Dene site

9. The history and use of the Vernon Dene site is reasonably clear. What is known at the present time accords with the evidence considered by the NPA's officers in 2007-2008 and the certificate which the NPA issued in August 2008
10. Planning application records show that a caravan site was operating at Vernon Dene prior to 1978. An overspill extension of 20 caravans was proposed (and refused) in the northern part

of the site at that time, indicating that the current use was significant. Subsequent 1983 and 1991 planning applications refer to a camp site.

11. Aerial photographs show a number of areas: a substantial track with buildings alongside it in the northwest and northern sectors; a field in north east; western, central and eastern fields, a bungalow in the south west and a south central area. Some of these areas are entirely open to the others, alternatively they have clearly used tracks and paths connecting each other.
12. Aerial photographs from 2000 show caravans in the north west/north (all years); north east (all years); central (photo 1,3, 4 all undated; 2000, 2002 (in north and south), 2017 (centre), western (2000, 2005 2017); eastern (2000, 2002); and south central areas (all years, many stored). The NPA's site visits in 2007 and 2008 showed caravans across large parts of the site.
13. This extensive and widespread use is confirmed by those third parties who went onto the site.
14. There were a variety of other activities on the site at various times, including storage, car repairs, the hiring out of a mobile mini crusher and keeping horses on site. The NPA investigated those matters as part of its decision making on the CLEUD application and concluded that the certificate should be issued for a caravan site and the storage of touring caravans. It also concluded that the whole site was in caravan site use, with storage of touring caravans in one part; that any type of occupation of the caravans was lawful; and that no number of caravans should be specified in the certificate.
15. The use continued after 2008, see 2017 aerial photographs in particular. Redevelopment of the caravan site to bring it up to modern standards commenced in 2019.

Revocation – legal principles

Revocation

16. A lawful development certificate may be revoked by the local planning authority if it transpires that:¹

“on the application for the certificate:

- (a) a statement was made or document used which was false in a material particular;
or
- (b) any material information was withheld”

¹ Town and Country Planning Act 1990, s 193(7).

17. 'Material' in 'material particular' and 'material information' must mean material to the decision on the application in a way which might have adversely affected the certificate granted (the NPA seem to accept this point in the second page of their May 2023 letter). That is affected by what the local planning authority knew at the time and why they determined the application the way they did.
18. For example, a false statement or withheld information is not material if the local planning authority knew of the correct information before it made the decision, whether corrected by the person who made the original error or from another source. The decision would have been made on a correct basis. Statements are also made in a context and often need that context to be known for it to be understood what is being said. A false statement may be corrected by later comments or it may be immaterial to the decision which is finally taken.
19. The content of the decision and the reasons for it are also important in assessing whether an error or omission was material. For example, where the CLEUD does not identify the number of caravans which can lawfully be sited on the site, what information there was about the number of caravans would not alter the certificate.
20. A false statement does not need to be deliberately false.² In *Ocado Holgate J* said that information could be withheld by someone who did not deliberately hold back information which they considered to be material.³ Information can only be withheld if it is already 'held' by someone who, in the circumstances, ought to have found it and produced it.
21. It also needs to be borne in mind that:
 - (I) The revocation process is not about whether the NPA thinks it made the wrong decision in 2008, whether on the information which it had at the time or the information which is now has;
 - (II) The lawfulness of the decision in 2008 has not been challenged and cannot be challenged. The judgement which the NPA reached in 2008 on the information available then is unimpeachable. It is not open to the NPA to now reconsider that material, conclude that the LDC should not have been granted, decide therefore that there were false statements made or material withheld because it does not accept that evidence.

² *R (Russman) v Hounslow London Borough Council* [2011] EWHC 931 (Admin) (permission decision) at para 11 per Collins J; affirmed in *R (Ocado Retail Ltd) v Islington London Borough Council* [2021] EWHC 1509 (Admin), [2021] PTSR 1833 at para 84 per Holgate J.

³ *Ocado* at para 87 to 89.

Human Rights Act

22. A CLEUD is conclusive of the lawfulness of the matters which it states. It also provides the necessary planning authorisation to give a right to caravan site licence for holiday occupation and is a necessary precondition for the issue of a caravan site licence for permanent residential occupation.⁴
23. A CLEUD is therefore a property right. It is subject to the qualified right to respect for property in Article 1 of the First Protocol to the European Convention on Human Rights. A CLEUD may still be revoked if in accordance with the statutory tests and proportionately in the public interest, but those human rights are part of the matters to be addressed when the exercise of any discretion to revoke is considered.
24. The revocation process is subject to the right to a fair hearing in Article 6 of the European Convention on Human Rights. The revocation amounts to a determination of civil rights. It must therefore be carried out fairly. The factual findings required and the exercise of discretion are matters for the local planning authority subject to judicial review. Unlike most other planning decisions which affect individual rights, there is no ability to appeal to the Secretary of State. Consequently the LPA processes must be conspicuously fair.

Meaning of caravan site

25. In the Caravan Sites and Control of Development Act 1960 ““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’.⁵ Where a word or expression is defined in planning legislation then it is taken to be used with that meaning in a planning permission or similar document in the absence of a clear indication to the contrary⁶. Therefore the meaning of ‘caravan’ and ‘caravan site’ in the Caravan Sites and Control of Development Act 1960 was applied to those terms in a planning permission.⁷
26. Consequently in considering the extent of the caravan site use in 2008 the NPA was considering not simply areas where caravans were sited but areas used in conjunction with that land. This includes ancillary recreational space for residents and land used for the management of the site.
27. That a caravan site can (and usually does) include recreational and management space which is not covered by caravans or in their immediate vicinity is overlooked by the NPA

⁴ Caravan Sites and Control of Development Act 1960, s 3.

⁵ Caravan Sites and Control of Development Act 1960, s 1(4).

⁶ *Wyre Forest District Council v Secretary of State for the Environment*, [1990] 2 AC 357 at 365 per Lord Bridge.

⁷ *Wyre Forest*

(Avery, para 5.23) and the representations on behalf of Lord Manners (Elvin submissions, para 38).

Underpinning issues and the NPA processes

28. Before turning to the evidence which shows positively that there is no power in this case to revoke the certificate, there are several fundamental matters which prevent the revocation of the CLEUD and make the NPA's handling of the revocation issue unlawful.

Incomplete NPA records of what was said or not said in the CLEUD application

29. The NPA accept that their records of the application and the decision are incomplete.

30. This omission – which is entirely the NPA's fault – is fatal to the attempt to revoke:

- (i) It is not possible to know whether a statement was made and not changed before the decision or its meaning if the overall material is not known;
- (ii) It is also not possible to conclude that a person withheld information unless it is known what that person did say to the NPA. It is not sufficient to say that a particular matter was not disclosed on one occasion if it is not known whether it was disclosed on another occasion;
- (iii) It is not known what the NPA did know, so it is not possible to identify whether a false statement or a withholding of information affected their knowledge at the time of the decision;
- (iv) In this case, the NPA's allegations all have to be based on an inconsistency between what was happening on the site and the matters considered in the CLEUD application. Whilst what is available indicates that all relevant matters were considered, the loss of contemporaneous evidence by the NPA it cannot determine what the actual use of the site was or how it was presented in the course of the CLEUD application.

31. In the present case a great deal changed during the course of the application. The CLEUD was submitted for 'storage of touring caravans' with a note that the existing uses were 'touring caravan site and touring caravan store'. It was in November 2007 that the NPA described the application as being for 'storage of touring caravans and as a touring caravan site'. The use certified in the CLEUD was 'use of the land as a caravan site and use of the area cross hatched in blue for the storage of touring caravans'. So the subject of the application changed to include a caravan site as well as storage and the certificate was for a site for any caravans, not just a touring caravan site.

32. The site area expanded significantly. The submitted application plan shows the 'Vernon Dene Campsite' as cut off to the west and the east. The full area does not appear on a plan in the NPA's records until after the certificate has been granted. The storage area was much smaller but changed slightly in the final decision to avoid a building.
33. Over a year passed between the CLEUD application being submitted and granted. Information was provided by Mr Cox and also third parties, and obtained by the NPA in its own investigations. Much of that material has been lost, destroyed or not disclosed by the NPA. In the absence of that material it is impossible to conclude that false statements were made, information withheld, whether any such defaults were material or whether they could have altered the decision.

Anonymised, redacted and withheld evidence and representations

34. The NPA has withheld evidence from the owner and operator in the revocation process. This is unlawful and unfair.

Anonymised evidence

35. The names and any identifying details of the third parties making statements were deleted for the statutory consultation. Our clients were unable to know the names of those who are producing evidence to take away their rights. This was corrected belatedly by the NPA following our complaint.
36. It is a fundamental and basic aspect of justice and fairness that a person is entitled to know who is giving evidence against them.

Redacted evidence

37. Beyond the removal of names and identifying details, the evidence was heavily redacted. Some parts were rendered completely incomprehensible. Consequently no fair opportunity was given to address that material.

Withheld representations to the NPA

38. It is known that there have been detailed third party representations to the NPA over the last few years raising planning issues on the Vernon Dene site. These have included two attempts to secure the revocation of the LDC: 'third parties are now challenging the validity of the 2008 Certificate for Lawful Use as a consequence of misleading and incorrect information set out in the 2007 application form' (NPA to Mr Barney-Smith, 29th January 2021); 'Our attention has now been drawn to the case of Ocado Retail' (NPA to Mr Laister, 31st January 2022).

39. Despite releasing the Environmental Law Foundation letter of 13th November 2020 and the legal submissions on behalf of Lord Manners dated 25th January 2023 the NPA has still refused to provide other representations made about the site, including those which prompted the comments in the January 2021 and January 2022 letters. Since the NPA has now belatedly produced the ELF letter, there can be no legitimate reason to withhold the other material. Given its relevance, as raised in the February 2023 submissions and at various times over the last few years, the refusal to produce it looks like the deliberate concealment of highly significant and damaging material.
40. The NPA is required to conduct a fair process and also comply with its statutory duties to disclose material.
41. Those representations are highly material to the credibility of the third party evidence which has been submitted and to the revocation case. The evidence produced has come about from an organised campaign raising a variety of legal points. Third parties were also said to be raising Environmental Impact Assessment issues. Habitats matters had been raised previously. On 4th March 2021 the NPA confirmed that third parties had threatened legal proceedings against it. The necessary inference is that the third party correspondence was well thought through, was based on legal advice and included one or more letters sent by or written by lawyers. It is also apparent that the third parties were taking every point that they could reasonably think of. That is obvious from the ELF November 2020 letter and Mr Elvin KC's January 2023 submissions. It is though apparent that there were further legal or quasi-legal representations made to the NPA which have still been withheld.
42. It is impossible to judge the statements without knowing what the statement-makers have said previously about the site or what the campaign which organised their evidence has said.
43. There is a particular unusual factor in this case. The NPA previously considered a request by this campaign to revoke the LDC. It rejected that request in 2021. It is pertinent to know what the request and any related comments were. Some aspects will have already been covered in that exercise. If allegations were not made by local residents in in 2021 then that affects the credibility of them being raised now. The NPA has still refused to produce that material.
44. In April 2022 Mishcon de Reya for Time GB Group requested the information which the NPA said it had received in relation to the second proposed revocation. That request has been repeated, and has been repeatedly ignored.

Withheld evidence referred to in Mr Avery's Statement

45. Mr Avery quotes from various documents in the incomplete 2007-2008 files: statement para 5.12 (briefing note to Sopley Parish Council) and 5.13 (Mr Higgins representations). The briefing note has now been provided, but not material which must have accompanied it: Mr Lewis of the Parish Council says the storage proposal was on land behind the bungalow, which is not information in the note. The NPA now say they do not have 'a late letter of representation from Mr and Mrs Higgins'. It is not explained whether that is the representation which is partially quoted in para 5.13 or a further representation. In any event there is no explanation of where that quote has come from.

Withheld NPA reasoning and documents – 2021 and 2022

46. The NPA's previous consideration of whether to revoke the LDC in 2021 is highly material to the present consideration. The NPA is proposing to resile on a decision which it had taken and communicated to the site owner less than two years ago. That change of position is highly prejudicial to our clients. Consistency and fairness requires the NPA to explain its change. We note that Mr Avery's statement does not refer to the 2021 decision not to revoke at all; omitting consideration of a highly material matter.
47. The NPA decision not to revoke was taken on counsel's advice: see the NPA letter of 1st March 2021 to Nick Laister. The NPA said it would not pursue revocation 'based on all the information available'. Please provide a copy of the information referred to in the letter.
48. We have asked repeatedly for a copy of the 2021 decision not to revoke and the matters considered in reaching that decision. Since the NPA is no longer relying on the legal advice it received in 2021, then it would not be prejudiced by disclosing it.
49. The NPA decision to commence the revocation process has not been disclosed. In response to our February 2023 request the NPA has now said that the decision was taken by the Planning Committee of the NPA on 23rd September 2022.

Inconsistent evidence produced

50. The third party evidence is contradictory. On any view much of it must be wrong – or to use the language of s 193(7) – false. Those contradictions go to the heart of the alleged use:
- (i) Sharon Hiscock (Statement A) says that there were occasionally one or two caravans in the summer months;
 - (ii) Henrik Schlegel (Statement B) refers to no caravans at all;

- (iii) Peter Grummitt (Statement C) says he lived at the site from 2001 to 2009, being in a caravan from 2001-2002 and 2005-2009, and in the bungalow the remainder of the time. There were 20 or so caravans kept on the site and 10-15 people living in caravans all year round;
 - (iv) Mr Lewis (Statement D) records 20 or more caravans in at least three different locations but not a 'commercial caravan site'. He records his view, following his site visit, that the CLEUD application as submitted in 2007 was accurate. If he has a complaint it is that the scope of the certificate issued by the NPA was wider than the application as it appeared to have been originally made;
 - (v) Mrs Pease (Statement E) asserts an unidentified number of caravans with one or two occupied 'on an occasional and infrequent basis'. Mr Lewis does though say that the late Mr Robin Pease (who lived at the same property as Mrs Pease) had visited the site in 2007 as a parish councillor and implicitly had agreed the Parish Council support for the application as they understood it.
51. So even considering the statements against each other, each is asserting that the majority of their fellow witnesses are wrong. The more credible evidence is from those who had been on the site, showing a substantial use as a caravan site.

NPA decision making

52. The NPA was asked in February 2023 to provide the decision to propose revocation and the papers relating to it. The NPA have refused to provide those documents, but said the decision was taken by the Planning Committee on 23rd September 2022.
53. The Planning Committee of the NPA are subject to the access to meetings and documents provisions of the Local Government Act 1972: ss 100E(1), 100J(1).
54. The published agenda for that meeting does not refer to Vernon Dene. It has a Part II (so potentially exempt item) of 'Proposed Enforcement Action (PC 404/22)'. Since the purpose of a published agenda is to enable the public to understand what items are to be considered by the committee, even if that is done in closed session, the description was insufficient: there was no way of understanding what site was being considered, or even the type of action. The description of "proposed enforcement action" did not in any event cover revocation of a LDC: enforcement action is issuing an enforcement notice or serving a breach of condition notice. The NPA failed to publish 'the agenda including the item' contrary to s 100B(4). It is only the NPA's statement in May 2023 that the decision was taken at this meeting which indicates that this might be the relevant item.

55. The NPA was required to publish a minute of the consideration of the revocation decision (s 100C(1)) or a summary by s 100C(1)(b),(2):

“Where, in consequence of the exclusion of parts of the minutes which disclose exempt information, the document open to inspection under subsection (1)(a) above ... does not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, the proper officer shall make a written summary of the proceedings or the part, as the case may be, which provides such a record without disclosing the exempt information.”

The minutes simply said after the exclusion of the public decision: “Planning Appeals (PC 403/22).

Members considered a part 2 report on the above matter which was minuted separately.”

That provides no explanation of the item at all. Indeed it has a different title (Planning Appeals) and committee item reference number. If that was the minute or summary for the revocation decision then the title was false and positively misleading.

It is more than unfortunate that the NPA’s decision about alleged false statements and the withholding of information was the subject of a false statement and the unlawful withholding of information by the NPA itself.

Alleged false statements or material withheld

56. The proposed revocation is deeply flawed.

Aerial Photography

57. The NPA rely on aerial photographs to assert that ‘large parts of the site were not used as either a touring caravan site or for the storage of caravans’ (Avery, para 5.23). That assertion proceeds on an error of law as to the meaning of caravan site: it includes land used in conjunction with a caravan site and not just land on which caravans are sited (or land in the immediate proximity of such caravans). Most caravan sites contain open areas which are used for amenity purposes. Indeed the 2019 site licence requires land to be available for recreational purposes. So the exercise undertaken by Mr Avery proceeded on a false and unlawful basis.
58. Aerial photographs are useful in identifying the siting of caravans, parking of vehicles or presence of hard infrastructure. They do in fact show caravans in every area within the site, as explained above. However they are of little use in attempting to identify the use of land in

caravan sites for ancillary purposes. What is happening on a piece of grass can rarely be identified by an aerial snapshot. Animals may be present for a multitude of reasons which are compatible with a caravan site, including as residents' animals, being used to keep the grass down or simply being de minimis. Aerial photographs have been found to be insufficient to justify revoking an LDC for a substantial use, an open area waste: *R v Surrey County Council ex p Bridge Court Holdings* [2000] PLCR 344.

59. There is simply no basis upon which it can be concluded from the aerial photographs that parts of the site were not in use as a caravan site.
60. By definition the pre-2008 aerial photographs would have been available to the NPA prior to the grant of the LDC: they come from public sources. It would be very strange for a local planning authority in 2008 not to look at aerial photographs when considering an LDC application or the active enforcement case involving open uses. Since the NPA has lost the papers, it is not able to show that it acted contrary to sensible practice and did not consider those photographs.

The third party statements

61. The third party statements cannot be lawfully relied upon in any event, but they are inconsistent with each other and the aerial photographs. They also proceed on a false basis as to what a caravan site is (see Avery, para 5.25). The disclosure of the third party positions is incomplete and inconsistent. That undermines the exercise.

The evidence considered by the NPA in 2008

62. The NPA overlook the considerable amount of evidence which they had in their mind at the time about the use of all parts of the site. This included at least:
 - (i) Inspections by NPA planning officers in March and/or April 2007 and April 2008 with considerable numbers of photographs taken;
 - (ii) The discussions with Mr Cox in those investigations (including at the April 2007 site visit and then a meeting at the NPA's offices on 5th April 2007). The NPA knew there were over 20 caravans from their site visit;
 - (iii) The NPA was aware of the hiring out of a mobile mini crusher and some car repairs being carried out by a now former lodger in 2007 (see April 2007 enforcement interview, Avery App 10). They were also aware of the intention to bring horses back onto the site. In that interview Mr Cox said that the field was being used as a camping and caravan site. Judging from the enforcement officer's note, Mr Cox was entirely candid;

- (iv) The determining officer (the NPA's solicitor, Julia Mutlow) received a memorandum from the planning officer, Liz Young, dated 10th September 2007. That memorandum appears to have been supportive of the application, Ms Mutlow responding 'Whilst I note the points you make, I am not minded to grant ...'. That memorandum has not been produced;
- (v) By 18 October 2007 Ms Mutlow had considered 'the file' which had indicated other uses: 'the contrary issued raised on the face of the file (i.e. what other activities are ongoing on the site)'. At the same time she noted that there was no evidence submitted in support of the application. 'The file' therefore contained information from within the NPA and was, most obviously, the file on the live enforcement investigation;
- (vi) Information provided in response to the NPA's solicitor's request of 14th November 2007. The NPA no longer have that information;
- (vii) A conversation with the NPA's planning officer, Liz Young, on 29th April 2008 (see Julia Mutlow letter, 8th May 2008). Again, any note of this is lost;
- (viii) The June 2008 conversation between Mr Cox and the NPA's solicitor;
- (ix) 'Further limited evidence' provided to the NPA's solicitor (referred to in the 24 June 2008), but which has now been lost by the NPA;
- (x) Representations received, including from Sopley Parish Council and Mr and Mrs Higgins. It is now apparent that the Parish Council had visited the site and supported the application as made. It is unclear whether there were one or more letters from Mr and Mrs Higgins, but they referred to caravans and boats being stored on the land.

Material which was readily available to the NPA in 2008

63. In addition to the material which Ms Mutlow did consider when deciding to issue the certificate, there was information which was readily available to the NPA and obviously material. Since the CLEUD application process took a year and the application was carefully considered by the NPA's solicitor and planning officers this material would, on the balance of probabilities, have been considered.

- (i) The planning history, shows a longstanding caravan site on part of Vernon Dene in 1978. A planning application for a 20 touring caravan 'overflow' site was for the northern part of the site (similar to Mr Grummitt's black hatched area). It follows that the existing site was to the south, within the overall red lined Vernon Dene site. That

is the area which now seems to be contentious. The Council said that there was a certified area for up to five touring caravans. A 20 unit overfill area must be referring to an existing site which was much larger than that. The 1978 Inspector noted that absence of a boundary between the appeal site there (along the northern part of the site) and the rest of the site;

- (ii) The planning permission for the significantly widened access at the northern part of site in 1983, indicating extensive use of the 'nursery and camp site'. There was further confirmation of the camp site use in 1991 when a small (15 animal) cattery was proposed to replace existing stores, immediately behind the bungalow. There was no suggestion of any other uses on the site.
64. Additionally, aerial/satellite photographs would have readily (and freely) available to the NPA at the time, for example by looking on Google Maps or Google Earth.
 65. The NPA's proposed revocation is based in part on an alleged conflict between the enforcement photographs taken in 2007 and 2008 and the LDC application. But that material was known to the NPA officers dealing with the CLEUD application at the time. The 2007 enforcement investigation had prompted the LDC application in the first place and was considered by Ms Mutlow when dealing with the LDC application. The LDC application was given careful consideration by the NPA – it took a year to approve it. The NPA's solicitor seems to have been more sceptical of its merits than the planning officers were but ultimately decided to issue the certificate.
 66. Another feature of the history is Mr Cox's candour. He gave a detailed explanation to the NPA's officers in April 2007 which mentions all of the matters which are now the subject of complaint. So not only had he disclosed those to the NPA even before submitting the LDC application, there is no reason to think that he did not maintain the same level of candour during the LDC application.
 67. The CLEUD application form was seeking a certificate in respect of caravan storage. As Mr Lewis confirmed on his site visit, that application was accurate. The NPA's complaints are about the widening of the application to a caravan site by an amendment initiated or agreed by the NPA. The information given from that point onwards has been largely lost.
 68. We observe that the NPA's planning officers were sympathetic to the LDC application in a 10 September 2007 memorandum, see the legal response on 18th October 2007 'Whilst I note the points you make, I am not minded to grant this certificate'. The 10th September 2007 memo appears to have been lost by the NPA, although it clearly makes relevant comments about the local planning authority's knowledge of the site.

69. The NPA solicitor's memorandum in response on 18th October 2007 says there is a 'contrary issue raised on the face of the file (i.e. what other activities are ongoing on the site)'. The necessary inference is that the solicitor had seen the enforcement material and was aware from photographs, Mr Cox's April interview or other information that other activities had been mentioned.
70. Mr Cox had the opportunity to address this again in his further information and his 2008 conversations with the solicitor and planning officer. Those officers would have raised other activities if these were of any concern to them. As his April 2007 interview shows, Mr Cox was candidly explaining the use of the land.

The number of caravans

71. The NPA allege that Mr Cox did not disclose the number of caravans on the site. As to that:
- (i) Since the NPA do not know what Mr Cox did tell the NPA, they cannot conclude that he did not disclose the number of caravans;
 - (ii) From its two enforcement visits in 2007 and 2008, the NPA knew that there were over 20 caravans on site;
 - (iii) In April 2007 they discussed the number of caravans with Mr Cox, see the enforcement interview note;
 - (iv) The NPA decided that the number of caravans was not material to its decision on the content of the CLEUD, alternatively it concluded that it had sufficient information on numbers. It chose to issue a LDC which did not give numbers of caravans. If it considered that the numbers of caravans were relevant to judging the extent of the caravan site, it had information from the enforcement visits and was able to ask Mr Cox how many caravans were on the site.

Conclusion on the evidence

72. The NPA were well aware that an issue arose about other uses on the land and Mr Cox gave them information in respect of that. The substance of the NPA's complaint in 2023 is that Mr Cox had not told them about other activities, issues about where on site the activities were and the number of caravans. The evidence which the NPA has revealed is that Mr Cox did tell them and that was taken into account in the NPA's CLEUD decision. The evidence which the NPA has lost – Mr Cox's further information and additional conversations – would have dealt with those topics insofar as the NPA had concerns at the

time. One error in the NPA's 2023 consideration is that it ignores the totality of what Mr Cox was telling the NPA.

73. The NPA considered the substantial amount of evidence available to them and concluded that the use of the site was as a caravan site with some caravan storage. They were far better placed in 2008 to reach that judgement than the NPA are in 2023. They therefore concluded in 2008 that Mr Cox's application as originally submitted for caravan storage was correct: that the expanded application was also well founded and any other activities were not of a scale to affect the use of the land.
74. The NPA's subsequent position relies on that material (forgetting that it was considered), aerial photographs which would have been available to the NPA and which only supported the CLEUD application, and very recent third party statements which are in the main inconsistent with each other and the contemporaneous evidence, or supportive of the CLEUD. The 2008 decision appreciated, which the current consideration does not, that a caravan site includes land used in conjunction with the siting of caravans.

Whether to revoke

75. The NPA accept that there was a lawful caravan site use at Vernon Dene in 2007 and that lawful use continues. They complain (whether correctly or not) about not being told the number of caravans on the site, but the NPA chose to issue an LDC which did not refer to numbers. It saw no need to include numbers as a benchmark and it is too late for the NPA to change its mind about that. The complaint appears to be that it drew the area of the caravan site too wide.

No potentially different decision at the time

76. Even if there was a false statement or material information withheld in the 2008 LDC process, the NPA granted the certificate with the benefit of at least two site visits, extensive photographs taken by officers, at least two interviews with Mr Cox and consultation responses from third parties. It would also have had available the planning history and aerial/satellite photographs. The NPA therefore had plenty of evidence to reach the conclusion which it did. It clearly considered that the other activities mentioned did not alter the conclusion that the site was a lawful caravan site. There is no power (alternatively it would be irrational) to revoke a LDC which was based on having the correct and relevant information about the site even if the applicant had provided false material or withheld information.

No potentially different decision now – passage of time

77. The only significance of the later 2012 enforcement investigation is that the NPA must have concluded that the other activities mentioned were so small scale that they did not amount to a material change of use of the land away from the certified caravan site.
78. The caravan site use of the CLEUD site has continued since 2008. The lack of enforcement action in 2012 confirms the continuation of the certified use under Mr Cox. Since the site was acquired in 2018 it has been laid out as a caravan site. Consequently were the lawful use of the site to be considered afresh in 2023 then more than 10 years' use would have been achieved (even since the 2012 enforcement query) and the use would be lawful. In those circumstances the certificate would be granted again.

Innocence of the owners and purchasers

79. Park One acquired the site, and Time GB Group later agreed to acquire the site from them, on the basis of the lawful development certificate. Time GB Group had also seen and relied upon the letter from the NPA stating that it would not be revoking the permission when it decided to acquire the site. The current owner of the site, Ocean One Hundred Limited, also relied on the existence of the CLEUD in acquiring the site.
80. None of these parties were involved with the 2007 CLEUD application. This is unlike *Ocado* where the Court inferred that all parties affected by the revocation had been involved in the preparation of (or at least had the opportunity to review) the CLEUD application material⁸.

The NPA's abuse of process

Assurance of no documents

81. In 2021 the NPA was asked to provide the documentation available on the LDC application, beyond the limited amount of material which was on the NPA's website. On 4th March 2021 the NPA gave assurances that it had carried out 'an extensive search' of the planning and legal files but had turned up no documents other than the November 2007 and May 2008 chasing letters. The NPA asserted that 'we have no record of a response to either of these letters'.
82. The NPA is now claiming that documents are available, albeit it accepts that the material is incomplete. These include the 28 June 2008 memorandum which records a response to the May 2008 letter in the form of further information having been provided and a conversation.

⁸ See paragraph 203 of the judgment, *R (Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin)

83. Our clients acted on the basis that there were no further documents and so no further potential surprises.
84. In February 2022 we said that the NPA should explain why it is now producing or quoting from documents which it had said it did not have in 2021. In particular it needs to explain:
- (i) Whether the NPA officers involved in the searches in 2021 were unaware that the NPA had those documents;
 - (ii) How and when those documents were subsequently found.
85. The NPA has failed to address these questions.

Reversal of position

86. The NPA has comprehensively reversed its position to the detriment of our clients. In 2021 the NPA said that revocation was being considered. Park One responded, at significant cost to itself. The NPA then said that revocation was not being pursued. Time GB Group and Ocean One Hundred Ltd relied on that decision when it agreed to purchase the site.
87. Further prejudice from the reversal of position is that our clients did not need to pursue the NPA's refusal to provide documents relevant to the revocation issue in March 2021. The threat of revocation having gone away, it would have been an unnecessary use of our clients' and the NPA's resources to take it further to an internal review and if necessary to the ICO. That position has now changed and our clients are prejudiced by the absence of that material.

Prejudice and hardship

88. Among the obviously material matters in the exercise of discretion are "the effect of revoking a certificate on affected landowners, particularly if time has elapsed and successors in title demonstrate the harm they would suffer"⁹.
89. In the present case the prejudice to our clients will be immense. Considerable sums have been spent on the acquisition of the site and works to improve it.
90. They were entirely innocent of causing or knowing of the grounds for any revocation. They acquired the site from a similarly innocent purchaser. The later acquisition was after the NPA had said it had dismissed a request to revoke the certificate.
91. Another aspect of the prejudice is that the site has the benefit of a caravan site licence which relies on the CLEUD. Since the NPA appear to accept that the land includes a lawful

⁹ Paragraph 107 of the judgment, citation above at footnote 8

caravan site (even if there is some caveat on the extent of the land or a mixed use), revoking the certificate will imperil the licence which the caravan site is entitled to have.

Information required

92. The NPA has withheld large amounts of relevant information. It has proposed to remove our clients' rights on the basis of secret evidence.
93. The NPA should therefore disclose:
 - (i) The full files on the LDC application, and the enforcement investigations in 2007 and 2008. This includes, but is not limited to, documents quoted in Mr Avery's statement which have not been produced;
 - (ii) Representations received from third parties in respect of Vernon Dene since 2019;
 - (iii) The correspondence associated with the statements enclosed with the NPA's revocation consultation;
 - (iv) The NPA's documentation in relation to the 2021 decision not to revoke and the decision to commence the present revocation process.
94. A list is enclosed.

Conclusion

This is a long established caravan site. The NPAs officers made a careful and fully informed decision to issue the CLEUD in 2008. The potentially non-caravan activities on the site were known to the NPA, raised by Mr Cox with the NPA and investigated by the NPA. There is no basis for concluding that false statements were made or information withheld. The matters raised now were known at the time by the NPA and so would not have altered the decision.

The NPAs withholding of relevant material is unlawful and unfair. It has caused direct prejudice to the subsequent owners.

In the present circumstances the NPA has no power to revoke the certificate and could not exercise a discretion to revoke in any event.

Richard Harwood KC

8th September 2023

Information Requests – List of outstanding information following various requests

(paragraph references are from Ocean One Hundred Limited response dated on 8th September 2023)

Para 39 – New Forest National Park Authority (NFNPA) has refused requests to provide representations about the site, including those related to those found in January 2021 and 2022 letters.

Para 41 – Given the representations have raised legal points about various issues, there appears to be further legal or quasi-legal representations to the NPA, which have not been released.

Para 43 – The NFNPA has refused to supply copies of third-party campaigners to revoke the LDC and any related comments to that.

Para 44 – Mishcon de Reya April 2022 letter requested information various information, which was repeated numerous times. This information has not been supplied and the requests ignored by the NFNPA. The letter is enclosed with this note.

Para 45 – NFNPA quote from the Sopley Parish Council briefing note. The note has been provided, but the accompanying material has not been supplied. Please supply this.

Para 45 – NFNPA has not supplied the material from where they quote Mr and Mrs Higgins.

Para 46 – NFNPA's explanation of their change in position regarding the revocation of the LDC (the intention to recile from the decision to from Mr Laister letter 1st March 2021.

Para 47 – NFNPA stated on a letter dated 1st March 2021 that they would not pursue revocation 'based on all the information available'. Please supply a copy of this information.

Para 48 – NFNPA have not supplied a copy of the decision by the Planning Committee taken in 2021 not to pursue revocation (we also do not know when this decision was made).

Para 48 – As the NFNPA is no longer relying on the legal advice obtained in 2021 related to the decision not to pursue revocation, this advice should be released as it would not be prejudiced by disclosing it.

Para 49 – NFNPA has not disclosed its decision to commence with the revocation process. Please supply this. It is understood that the decision was taken at the Planning Committee held on 23rd September 2022 (perhaps at Minute No 87).

Para 52 – NFNPA has refused to provide papers/documentation that supported the decision to propose revocation. Please supply this.

Para 62 – NFNPA has not supplied the memorandum prepared by Liz Young, planning officer, dated 10th September 2007, to Ms Julia Mutlow, NFNPA's solicitor. Please supply this.

Paras 81-85 – NFNPA was asked to provide documentation available on the LDC application, beyond the available website information. On 4th March 2021, NPA gave assurances that it has carried out an extensive search, and no further documentation was available. Further documentation was later found. A request was made to clarify how or why it was quoting documentation that it did not have in 2021. Please answer the questions in Para 84. Please also confirm that no further information or documentation is available (or supply it to us).

Mishcon de Reya

Our Ref: 63677.5

Your Ref: Planning Application 91960

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12 April 2022

BY EMAIL ONLY (STEVE.AVERY@NEWFORESTNPA.GOV.UK)

Dear Steve

**Vernon Dene, Ringwood Road, North Ripley, Bransgore BH23 8EL (the "Land")
Proposed Revocation of Certificate of Lawful Development dated 8 August 2008
(the "Certificate")**

I. BACKGROUND

- I.1 We act for Time GB Group Limited and have been passed copies of your letters to Mr Nick Laister 31 January 2022 and 25 March 2022.
- I.2 Our client group purchased the Vernon Dene site in December 2021. It did so with the benefit of and placing reliance upon both the 2008 Certificate and the NPA's express decision contained in its 1 March 2021 letter that it could not and would not revoke that Certificate. In addition, our client relied on the NPA's express confirmation that no additional information about the application for the Certificate could be located (given on 4 March 2021 under the stringencies of the Environmental Information Regulations 2004 and discussed further below).
- I.3 Your recent letters indicating a potential reversal of that express position is of considerable concern and potential prejudice to our client. Given the correspondence that has gone before, and for the reasons set out below we can see no lawful basis on which the NPA could revoke the Certificate.
- I.4 It is apparent that the Authority is in possession of information that has not been shared. If the Authority seeks a genuine dialogue on the merits or otherwise of a purported revocation of the Certificate then it will be necessary for the full suite of information on which the Authority is basing its review of the matter to be shared. This should occur in good time before any decision is taken in order to allow the information to be reviewed and considered by our client. We reserve our client's

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position as to any additional or different comments that may arise from the unseen material.

- 1.5 As the Court recognised in the *Ocado*¹ decision to which you have referred, the power to revoke a Certificate comprises two elements. First, the legal tests must be satisfied so as to trigger the legal power to revoke – that is, factors satisfying either section 193(7)(a) or 193(7)(b) must be present. Second, and of equal importance, the NPA must then properly exercise its discretion whether or not to use that power, having regard to all the circumstances. It is not clear from the correspondence to date that the NPA has considered the second, discretionary, aspect of the process properly or at all.

2. THE LEGAL TESTS

- 2.1 The power to revoke is contained in the Town and Country Planning Act 1990, s 193(7):

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

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

(b) any material information was withheld.”

- 2.2 A few observations can be made as to the legal tests:

2.2.1 An authority may not revoke a certificate simply because new evidence has come to light, or because the authority changes its conclusions as to the facts or alters its judgment as to what the planning uses were or whether they had become lawful at the relevant time. The NPA must show a defect in the application for the Certificate of the kind set out;

2.2.2 That is, the power to revoke only arises if a statement or document comprised in the application was ‘false in a material particular’ or if ‘any material information was withheld’;

2.2.3 If the NPA can establish that a false statement was made or that some information was withheld, it must further show that the particular falsehood or the withheld information was ‘material’ (as in ‘material particular’ and ‘material information’). This must mean material to the decision on the application in a way which might have adversely affected the decision to grant the Certificate.²

¹ *R (Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509 (Admin)

² See *R (Russman) v Hounslow London Borough Council* [2011] EWHC 931 (Admin) (permission decision) at para 11 per Collins J: ‘False does not mean deliberately false in the sense of dishonestly so; it suffices if, as a matter of objective fact, information given is false and clearly false in a material particular, because if it

- 2.2.4 Any consideration of that materiality must include consideration of the false statement or withheld information in the context of all the information taken into account by the authority at the time of its decision. For example an initial omission (or 'withholding') of information would not be material if it was identified and the information provided prior to the decision being taken. Similarly, a falsehood that was subsequently corrected by the provision of accurate information could not rationally be regarded as 'material';
- 2.3 Both parts of the legal test, whether a statement was false or whether material information was withheld, therefore require knowledge of the totality of the information that the NPA was given or that it took into account.
- 2.4 The NPA has not produced the material which it says it is considering. The information which we are presently able to comment on is the small amount which has been released by the NPA, and its correspondence with the previous owner and their advisors.

The Application

- 2.5 The only documents which have been made available by the NPA in respect of the application for the Certificate are the application form, a plan and the decision notice.
- 2.6 On 4 February 2021 Mr Laister requested information on the application for the Certificate and decision, and on the threatened revocation. That request was (properly) treated as one to which the Environmental Information Regulations 2004 applied and pursuant to the corresponding legal obligations the NPA responded on 4 March 2021. The relevant requests and the NPA's statutory response to them were as set out below:

Information sought:

"Mr Cox's application form is dated 4 July 2007, but no other supporting documentation or plans, is on your authority's planning portal. If this does not comprise the entire application package, please provide me with a complete set of the documentation."

NPA's response:

"As you have noted, the planning application form dated 4 July 2007 and the site location plan which were submitted by the applicant (date stamped 9 August 2007), are available for public inspection on our website, along with the decision notice and Certificate of Lawfulness dated 1 August 2008. We do not hold any

could not have had any conceivable effect upon the grant of the certificate then it would not be right to revoke ...

further documentation that was submitted by the applicant in relation to this planning application.

Records relating to the determination of this LDCE are held in two places – our planning database, known as Acolaid, which contains the application documents (our reference 07/91960), and the legal file which is on the network drive and is/was maintained by our solicitor. Regrettably, despite an extensive search of both files, we have not been able to locate any further application documents. Our legal file shows that the solicitor wrote to the applicant on 14 November 2007 requesting more information and sent a further letter on 9 May 2008 chasing a response to the previous letter; however, we have no record of any response to either of these letters.

At the time the application was considered, legal advice was provided to the NPA under a service level agreement with Hampshire County Council. We have therefore checked with the Council, but in accordance with their retention policy they no longer hold files dating back to that time, so it is not possible to say whether some relevant information may have been destroyed. Furthermore, the solicitor who considered the matter is no longer employed by us and their emails have also been deleted from our systems."

Information sought:

"Please also provide any officer report on the application"

NPA's response:

"We do not hold this information. I regret that despite an extensive search, we have not located the case officer's report for this application (which in this case would have taken the form of a memorandum to the Authority's Solicitor)."

- 2.7 No documents were produced in respect of the request. By that time the NPA had confirmed (in its letter of 1 March 2021) that the Certificate would not be revoked. It is noted that the NPA's legal responsibilities under the Environmental Information Regulations include a duty to confirm or deny whether information matching the request exists. The authority undertook an exhaustive search in compliance with that duty and provided legally definitive confirmation no such information could be found.

Consideration of the application and grant of the Certificate

- 2.8 The following matters are known about the process leading to the grant of the Certificate.
- 2.9 The application was dated 4th July 2007 and date stamped by the NPA 9th August 2007.
- 2.10 The application sought a section 191 CLEUD for a use initially described as "storage of touring caravans". The existing use of the subject site was described as "touring

caravan site + touring caravan store". The use was said to have started "*before I moved here (pre 1991)*". The form also said that five members of the same family had been visiting the site for more than 30 years. Others had been coming for 12-14 years and all were happy to confirm this if required.

- 2.11 The application contained the standard warning that it was an offence to furnish false or misleading information or withhold material information with the intent to deceive and that a certificate may be revoked for false or misleading information.
- 2.12 Also date stamped 9 August 2007 was an OS map marked as 'Vernon Dene Campsite Area 6.34 acres (2.57 ha)'. The map showed part of the site – the red line is cut off by the edge of the map extract at four points. Inside the red line is hatched green. A small area within this is hatched red over the text 'storage area'.
- 2.13 The Certificate was issued almost a full a year later, on 1 August 2008. It was signed 'For and on behalf of the Solicitor to the New Forest National Park Authority'.
- 2.14 The Certificate as issued was for a different use and a different area to that shown on the application form and the disclosed application plan. The use certified was:

"Use of the land as a caravan site and use of the area cross hatched in blue for the storage of touring caravans"
- 2.15 The application's request for confirmation that 'storage of touring caravans' was lawful was added to in the Certificate by 'use of the land as a caravan site'. In addition the attached plan covered a much larger area than that shown on the date stamped map.
- 2.16 It is therefore apparent that there must have been further information provided by the applicant and/or obtained by the NPA before making its decision. This is consistent with the lengthy period that elapsed between submission and determination of the application, and with the NPA's 2021 confirmation that the legal file records the sending of two letters by the NPA seeking such additional information.
- 2.17 Further, the NPA's 29 January 2022 letter confirms that direct dialogue between the applicant and the NPA took place prior to the grant of the Certificate. It says:

"There was also an enforcement investigation in April 2008 and a note of a meeting in which Mr Cox confirmed that a mobile mini crusher hire business was operated from the site."
- 2.18 Whilst January 2022 was the first time our clients have been aware of that claimed investigation, it is noteworthy that it took place just three months or so before the Certificate was issued. The NPA therefore had Mr Cox's explanations from that meeting and the conclusions of the investigation when deciding to issue the Certificate in the form that it did. We note also that there is no record of any enforcement action having been taken.

- 2.19 Plainly, the authority had more information – perhaps considerably more information – before it in granting the Certificate than is now available. However it is not known (and cannot be known) what that information was, since the NPA has since deleted, destroyed or lost the relevant documents.

Implications for the legal tests

- 2.20 It is not possible for the NPA to find that statements were made which were false in a material particular because the NPA no longer knows what statements were made. It is clear from the face of the Certificate that the statements which were made in the application form were not adopted by the NPA without further elaboration, but it is not known what that elaboration was. It is impossible to determine that any allegedly false statement was corrected in the subsequent dialogue. An error which was corrected before the Certificate is issued cannot justify the later revocation of the Certificate.
- 2.21 Similarly, it is impossible to find that material information was withheld, because it is not known what information was provided.
- 2.22 Given the NPA's destruction of most of the records relating to the Certificate the statutory tests in section 193(7) cannot possibly be met. The legal power to revoke the Certificate therefore does not and cannot arise.

Purported grounds for revocation

- 2.23 The NPA's January 2022 letter fails to produce any of the documents which are said to justify considering revocation. Our client is therefore not in a position to respond fully to the specific issues that have been raised. However (and without prejudice to the legal position as set out above) a few comments may be of assistance by reference to the paragraph numbering of your 31 January 2022 letter. We reserve our client's right to make further representations.

Site Area – your paragraphs (i) and (iv)

- 2.23.1 You have indicated that aerial photographs obtained by the Authority indicate a false statement on the application form that with the exception of a storage area the entire site was used as a touring caravan site. Even prior to seeing the photographs to which you refer there are two obvious flaws in this assertion.
- 2.23.2 First, the very nature of touring caravan sites is that the number and distribution of caravans present on the site might vary even from day to day, as well as by time of year. It is extremely unlikely that a sufficiently comprehensive photographic record exists to prove the negative that a given part of the land was not used over a period of 10 years (now stretching back more than 20 years in the past). It is not sufficient that the Authority considers that doubt has been cast on a statement comprised in

the application, it is for the Authority to *prove* a falsehood in order to activate the revocation power.

- 2.23.3 Second, the application form contains very limited information and as has been set out above it is apparent that additional information must have been before the authority when the Certificate was granted. A bare contradiction of a statement on the application form cannot be translated into a contradiction of the totality of the information taken into account because it is not known what that information was or whether the statement was corrected.
- 2.23.4 In addition there is no reason to believe that the aerial photographs now cited were not considered by the NPA in granting the Certificate in 2008. Photographs available to the NPA now would equally have been available to the NPA in 2008.
- 2.23.5 Paragraph (iv) adds nothing to paragraph (i). The NPA cannot definitively establish that any part of the Land was not used, so there is no basis for concluding that such non-use comprises withheld information. In addition, without knowing the totality of the information that was provided it is impossible to establish that anything was withheld.

Additional Uses – your paragraph (ii) and (iii)

- 2.23.6 Your letter cites evidence (which has not been provided) of grazing and the hire of one or more "mobile mini crushers" on/from the Land, and alleges that the application form (presumably by reference to box 9) contained either false or incomplete information.
- 2.23.7 Whilst our clients have no information about animals on the Land prior to 2008, we note that, for example, the use of animals to keep the grass down in a caravan site would commonly be part of the caravan site use. The enforcement meeting with Mr Cox took place between the application being made and the Certificate being granted, so it would have been taken into account in reaching that decision.
- 2.23.8 The requirement of the application form is to describe the legal or primary planning use of the Land. It is not necessary to set out every ancillary activity carried on in association with that primary use. The presence of grazing animals is not incompatible with a primary use as a touring caravan site. Similarly, occasional hire of mobile equipment would not be incompatible, and might logically be expected to have occurred from the 'storage' area excluded from the application site in any event.
- 2.23.9 In the absence of evidence detailing the scale, location, duration and intensity of those uses, and the relative economic importance of each by comparison to the use as a touring caravan site it is not possible for the NPA to reach a conclusion that one or any of them was a primary use and

not an ancillary use. We therefore cannot see how the NPA can rationally conclude that adequate information exists to override the clear statement as to the primary planning use of the Land made on the application form.

- 2.23.10 Paragraph (iii) adds nothing to paragraph (ii). If additional but legally ancillary uses did occur then it is not correct to characterise the lack of detail about ancillary uses as information "withheld". It is neither practical nor reasonable to expect an application under section 191 to detail every ancillary use or operation carried out over the relevant period as part of the primary planning use to which an application relates. Further and as noted already, "withheld" cannot in any event be established without knowing what was provided.

Number of Caravans – your paragraph (v)

- 2.23.11 We do not understand the relevance of this paragraph. It is not known from the limited documents which the NPA have retained whether anything was said about the number of caravans during consideration of the application for the Certificate. In any event, the NPA decided to issue a LDC which did not refer to the number of caravans.
- 2.23.12 As outlined above, information must be material in order to satisfy one of section 193(7)(a) or 193(7)(b). Materiality in that context means that it must have been at least relevant, in that it *could* have affected decision to grant the Certificate, given rise to a different inference or finding of fact or set the Authority on a line on inquiry leading to such information.³
- 2.23.13 In planning terms the number of caravans occupying the Land is only capable of being relevant to the scale / intensity of the use to which the application related, it is not relevant to the fact of the use itself. Information about the scale / intensity of the use is given at box 12 of the application form. The number of caravans comprising that scale would not add materially to the information provided.
- 2.23.14 In addition, information can only be withheld if it exists. It is unknown whether the applicant for the Certificate held records which included precise numbers over the ten year period in question. The Authority cannot possibly conclude that such information was withheld without first establishing that it existed. As already noted, it cannot possibly established that anything was withheld because it does not know what was provided.

3. DISCRETION

- 3.1 It is important to observe that the *Ocado* decision related to a certificate which had been recently granted at the time that revocation was proposed, and in respect of which the Court inferred that all parties affected by the revocation had been

³ See paragraphs 95 and 96 of the judgment, citation above at footnote 1

involved in the preparation of (or at least had the opportunity to review) the CLEUD application material.⁴ In this case the present owner was not the applicant for the certificate, nor associated with the applicant in any way. The Cox family, who made the application sold the site to the previous owner, Park One Developments Limited, in 2018. As the NPA is aware, even that entity also had no connections with the applicant until around a decade after the Certificate had been granted.

- 3.2 The facts of the present case are therefore materially different from those which occurred in the *Ocado* matter. The application was made more than 14 years ago by unrelated parties. Given the age of the Certificate, its revocation would have significant implications for the innocent third party now in possession of the Land where successive intervening owners have all have relied on the Certificate. Even if additional persuasive information can be provided by the NPA which clearly demonstrates that the legal power to revoke the Certificate does arise, then the NPA still needs to grapple with the question of whether or not to exercise its discretion to use that power.
- 3.3 It is accepted that the discretion is usually wide, and that legal guidance on its scope is limited. However, some general principles can be found in the *Ocado* decision.⁵

Passage of time and impact on innocent third party

- 3.4 Critically, when giving an example of factors which fall within the "obviously material" category for considerations the omission of which would render a revocation vulnerable to legal challenge, Mr Justice Holgate expressly identified "*the effect of revoking a certificate on affected landowners, particularly if time has elapsed and successors in title demonstrate the harm they would suffer*"⁶.
- 3.5 Any revocation of the Certificate in this case would give rise to immense prejudice to our client. They were entirely innocent of causing or knowing of the grounds for any revocation. They acquired the site from a similarly innocent purchaser.
- 3.6 Another aspect of the prejudice is that the site has the benefit of a caravan site licence which relies on the Certificate. Since the NPA appear to accept that the Land includes a lawful caravan site (even if there is some caveat on the extent of the land or a mixed use), revoking the Certificate will imperil the licence which the caravan site is entitled to have. This sets the facts of the current case even further apart from those in the *Ocado* case. The Court in *Ocado* considered the ability of the land owner to simply seek a further certificate on revised grounds to be relevant to the discretion to revoke.⁷ This case, by contrast, is complicated by potential consequences of revocation for the site licensing regime.

⁴ See paragraph 203 of the judgment, citation above at footnote 1

⁵ See in particular paragraphs 105 to 108 of the judgment, citation above at footnote 1

⁶ Paragraph 107 of the judgment, citation above at footnote 1

⁷ See in particular paragraph 23 of the judgment, citation above at footnote 1

Prior statements by the NPA

3.7 In this case the NPA expressly considered revocation in 2021 and decided that there were no grounds to revoke. That decision (detailed further below), was taken on Counsel's advice and with all available information, and was relied upon by our clients when purchasing the site. The NPA ought to have been aware that third parties would be likely to rely on the accuracy of clear statements by public bodies of this kind, especially when they go to matters affecting the use and value of property. A reversal of that position would be an abuse of power by the NPA and grossly unfair.

3.8 Following the previous owner's acquisition of the site in 2018, the NPA and local residents raised various questions about the lawfulness of works on the site. In November 2020 the NPA served a planning contravention notice, raising issues of habitats regulations and Environmental Impact Assessment.

3.9 On 29 January 2021 the NPA wrote to the (then) operator of the site, Mr Barney-Smith:

"In the meantime, I thought you should know that third parties are now challenging the validity of the 2008 Certificate for Lawful Use as a consequence of misleading and incorrect information set out in the 2007 application form."

3.10 Third parties were also said to be raising Environmental Impact Assessment issues. Habitats matters had been raised previously. On 4 March 2021 the NPA confirmed that third parties had threatened legal proceedings against it. The necessary inference is that the third party correspondence was well thought through, was likely based on legal advice and included one or more letters sent by or written by lawyers. It is unlikely in that context that that third party correspondence in question was less than comprehensive in putting potential grounds of objection to the Certificate before the NPA.

3.11 In response to the threat of revocation, RPS pointed out for Park One Developments:

"I note that since 2008, your authority has never asserted that the certificate was not legally effective. You have been quoted in the local media to that effect and your officers have taken that stance in correspondence. My client acquired the site in 2018 in the legitimate expectation that the lawfulness, at 4 July 2007, of the use stated in the certificate is lawfully to be presumed in accordance with section 191 of the Town and Country Planning Act 1990. Since acquiring the site my client has carried out works in reliance upon the certificate and in total has incurred several million pounds of expenditure. My client would be extremely concerned if any steps were now taken to seek to revoke that certificate, without any basis, over 12 years after it was secured by a party entirely unconnected to my client and with my client having committed significant expenditure on the basis of the documented planning status of the land, viz. the certificate."

- 3.12 RPS requested information on the 2007 application and the recent third party correspondence. On 1 March 2021 the NPA replied:
- "We have now received further advice from Counsel on the matters of concern to the Authority and I can confirm the Authority's position as follows:*
- ...
- 2) The validity of the 2008 Certificate for Lawful Use*
- The application for the Certificate of Lawful Use was submitted in July 2007 by Mr Jonathan Cox. It has recently been established that at the time of the application that the legal ownership of the land was held by Mr Geoffrey Cox. Third parties are aware of this misstatement as to the ownership of the land at the time the application was submitted and determined and have questioned the validity of the Certificate on this basis.*
- Our assessment is that whilst it may be the case that a false statement was made within the Lawful Use application itself, we do not see this (taken in isolation) as grounds for exercising the Authority's powers of revocation and do not intend to pursue that matter further based on all the information available."*
- 3.13 Our client had seen and relied upon that letter from the NPA when it decided to buy the site.
- 3.14 In the light of your 31 January 2022 letter, several points arise:
- 3.14.1 The 2020 decision identifies a single error in the 2007 documentation, namely that the site was owned by a different member of the family.
- 3.14.2 It ought to have been obvious to the NPA and the third parties that the precise family ownership was not material to whether the Certificate should have been granted. If that was the sole potential issue, revocation would not have been raised with Park One Developments and the NPA would have been unlikely to require the advice of counsel.
- 3.14.3 However, the NPA did take advice from counsel, having provided them with 'all the information available'. The reasonable inference is that the NPA were at that time also considering whether there was allegedly false or withheld information in relation to the application for the Certificate.
- 3.14.4 The NPA decision not to revoke contained no qualifications. It did not leave open the possibility of revocation in the future.
- 3.15 The NPA say that their attention has subsequently been drawn to the *Ocado* judgment. That does not alter the exercise which the NPA carried out earlier in 2021, nor does the decision in *Ocado* diminish the statutory tests against which the availability of a power to revoke is judged.

Revocation serves no planning purpose

- 3.16 There would also be no discernible rationale for revocation. The NPA's letter does not question that there was a lawful caravan site on the land in 2007. At its highest, the letter suggests that some of the land may have had an additional grazing / pasture / equipment hire use. That does not alter the basic thrust of the Certificate.
- 3.17 More than 10 years have passed since the date of the Certificate. The NPA have not disputed that the Land has in fact been used in accordance with the Certificate since it was granted. The planning contravention notice dated 27 November 2020 raised 17 questions, none of which queried the caravan site use of the whole site. Question 12 asked about the habitats condition which applies to permitted development rights: a question which could *only* arise if the site was a lawful caravan site.
- 3.18 Consequently, even if the certificate was too wide in 2007, the use of the land in accordance with the description on the certificate will have become lawful in any event by the passage of time.

Human Rights

- 3.19 It is also noted that the Certificate ought to properly be regarded as a "possession" for the purposes of Article 1 of the First Protocol to the ECHR (as accepted in *Ocado I*⁸). In circumstances where no meaningful records of the application have been kept, where the Certificate has been established for many years, where it has been relied upon by numerous innocent parties, where the affected party directly sought to investigate the basis on which the Certificate had been granted and further where that party has been expressly told by the NPA that no information capable of supporting a revocation exists, and further still where the NPA has independently considered, taken advice about and expressly confirmed that the Certificate is beyond the power of revocation, for the NPA to then reverse its position and revoke the Certificate would be a gross infringement of that right.

4. ACTIONS REQUIRED

- 4.1 For the reasons set out, no legal power to revoke the Certificate exists. In addition, the factors relevant to the exercise of any discretion to exercise such a power weigh decisively against it use. The NPA is therefore request to confirm by return that it will not proceed further with revocation proceedings.
- 4.2 The NPA has indicated that it has additional information not provided on 4 March 2021. Please provide all relevant information in the NPA's possession, including without limitation:

⁸ See paragraph 83 of the judgment, citation above at footnote 1

Mishcon de Reya

- 4.2.1 the 'legal file' referred to in the NPA's letter of 4 March 2021 and the letters of 14 November 2007 and 9 May 2008 mentioned in it;
- 4.2.2 the statement of the 'third party who can attest to the land 'actively being used for grazing' together with all other third party representations referred to in the 2021 correspondence. Data protection and/or privacy concerns cannot justify withholding the at least the substantive representations that have been made to the NPA in respect of the site;
- 4.2.3 the 'information' considered by counsel which is referred to in the 1 March 2021 letter;
- 4.2.4 the instructions provided to counsel and the advice received from counsel;
- 4.2.5 the documentation which brought *Ocado* and a potential revocation to the NPA's attention following its March 2021 decision.

We remind the authority of the requirements of Article 39(15) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

Yours faithfully

DocuSigned by:

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