NEW FOREST
NATIONAL PARK

Mr Will Land
Jones Day
21 Tudor Street
London
EC4Y 0DJ

Sent by Email

3 October 2023

Dear Mr Land

Vernon Dene, Ringwood Road, North Ripley, Bransgore BH23 8EL
Proposed Revocation of Certificate of Lawfulness

I write further to your letter of 8 September 2023 (and the accompanying submissions by Richard Harwood OBE KC) on behalf of Ocean One Hundred Limited written in response to the Authority's letter of 26 May 2023.

We note your latest submissions combine the submissions already made in response to the Authority's earlier letter of 13 January 2023 (Laister's letter of 10 February 2023) with those now made in response to our letter of 26 May 2023.

This reply similarly combines our response to your latest submissions with our earlier response to Laister's letter of 10 February 2023.

As recently advised we shall be taking a report to the full Authority meeting on 19 October 2023. The report will be made public in advance and there will be an opportunity to make representations at the start of the meeting (normally limited to three minutes). Your letter of 8 September 2023 and the detailed submissions which accompanied it will be put in front of Members together with a copy of this reply as annexes to the report. The decision whether to proceed with the revocation will be made in public, and your clients will be able to hear the debate on this matter (subject to the need for Members to go into a Part 2 [private] session in order to take legal advice).

We note that you maintain the proposed revocation would be both unlawful and highly prejudicial to your clients and that you consider the Authority's handling of the revocation process to be unlawful. You have asked that the Authority end the revocation process now.

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Look for Newforestnpa
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The decision on whether or not to revoke the Certificate of Lawfulness will be made by Members at the Authority meeting on 19 October 2023.

As before this letter responds by reference to the headline points you have made.

The use of the Vernon Dene site

You refer to the 1978 planning application (9266C) as 'indicating' the caravan use was significant at that time. The details of this application are recorded at paragraph 4.3 of my draft Statement. The Inspector's appeal decision letter (appendix 6 to my draft Statement) describes the use of the site at this time as follows:

"The appeal holding comprises some 2.6ha, in the south-west corner of which is the bungalow, dating from around 1930, occupied by the appellant. The greater part of the holding is used as grazing land. Near to the northern boundary of the site is a building constructed in concrete blocks, and the area immediately adjacent to this building has been used for a number of years as a certified location for up to five touring caravans."

Certified Location sites (for up to five touring caravans) do not require planning permission and there is therefore no evidence of a caravan use (requiring planning permission) dating from this time.

You refer to the third party evidence as being 'contradictory'. It is acknowledged that individual residents may have varying recollections of Vernon Dene at any given point in time but they are all in agreement that other uses were taking place on the site, notably the grazing of livestock in paddocks. Third parties are also consistent in saying that there was never any caravan use in the paddock areas:

- "There were never any caravans kept in the eastern paddock" (Mr Grummitt)
- "…the three paddocks that form the majority of the Vernon Dene site appeared to be in continual rotation for the grazing of livestock" (Ms Pease)
- "…a few horses grazing in the paddocks" (Mr Schlegel)
- "…three large paddocks…actively being used for the grazing of horses" (Mr Lewis)
- "The paddocks…had pieces of machinery parked on them but that did not stop Mr Jonathan Cox letting his horses run free and graze those paddocks" (Ms Hiscock)

You say that the Authority has overlooked the fact that a caravan site can include 'recreational and management space'. The aerial photographs and the ground level photographs appended to my draft Statement suggest that the areas not in caravan use (which is most of the site) were neither reserved nor used as 'recreational and management space' in association with the caravan use. These areas were used for other usages as recorded in my draft Statement which suggest a mixed use of the site at the time the CLU application

was submitted, contrary to the information provided by Mr Cox in answer to question 9 on the CLU application form.

With regard to the location of caravans on the site, the aerial photographs and those taken by the Authority in 2007 and 2008 evidence a consistent pattern of use which is characterised by a dispersed grouping of caravans in the northeast corner of the site and a more tightly packed grouping of caravans in a smaller area to the rear of the former bungalow, adjacent to the southern boundary. This latter area is the same as that crossed hatch blue on the plan attached to the Certificate. The 2008 photos (nos. 26 – 30 attached to my draft statement) show a couple of caravans in the northwest corner of the site (alongside the track) but these are in-between and mixed with an assortment of other vehicles / trailers/ machinery / discarded items which all appear to be in varying states of disrepair and abandonment. This is consistent with the third party evidence.

The Authority's enforcement officer counted over 20 caravans on her visit in April 2007 and this tallies with the aerial photographs from this time (nos. 8 and 9 attached to my draft statement). But it is important to note too the description of those caravans as recorded by the enforcement officer at the time "He [Mr Cox] states that some of them are his and some are his brothers, the majority belong to friends and relatives as he lets them store them here and a few belong to other people that pay him to store them on his land."

We have assumed your reference to aerial photographs in paragraph 12 of your letter refers to those attached to my draft statement. If you have additional aerial photographs other than those appended to my draft Statement which you seek to rely on, then please make these available to the Authority by return.

The proposed revocation is ill-founded, misconceived and based on a patently unfair and unlawful procedure

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 Authority relies on the recent judgment of Holgate J in R (*Ocado Retail Limited v London Borough of Islington*) [2021] EWHC 1509 (Admin) as providing the framework for consideration of its case for revocation under s.193(7).

The Authority considers that both ground (a) and (b) of section 193(7) may be engaged.

In *Ocado* Holgate J identified at [88] that there is no sharp distinction between grounds (a) and (b) and that they are both concerned to promote reliable decision making. Therefore, the positive falsity of a statement may go hand in glove with the non-provision of information and may relate to the same subject-matter.

The definition of the term "material particular" is summarised in [99]:

> *"In summary, a local planning authority considering whether to exercise the power of revocation under s.193(7) does not have to be satisfied that if false statements had not been made or information*

withheld, it would have refused to grant the certificate applied for. One possible basis for the exercise of the power is that the matters in question are "material" because the authority considers that the certificate could have been refused if a line of inquiry had been followed."

There is no need for the Authority to be satisfied that the false statement was a deliberately false statement, just that it was incorrect.

We invited you to expressly confirm you accept this approach to the law and/or indicate what your position is. This has not been expressly addressed in your latest representations.

Further:

(a) For the avoidance of doubt, the Authority is quite aware it should not be looking to revisit the merits of the CLU application (ref. 91960); and

(b) Whilst the Authority acknowledges that it does not hold a complete record of all the correspondence and communications pertaining to the CLU application, the Authority currently considers that it holds sufficient of the CLU records to form a view. These comprise the completed application form and associated application plan (the applicant did not provide any form of supporting written statement and simply relied upon the completed application form and plan), the decision notice and a note recording the Authority's Solicitor's reasons for issuing the decision. The information we do not hold is the "further limited evidence" provided by Mr Cox and the details of what would have been a final telephone conversation between the Authority's Solicitor and Mr Cox just prior to issuing the decision notice. We also asked that if you consider we have omitted any material from either list please indicate but note that you have drawn no new material to our attention.

The Authority has responded to previous information requests and I would refer you to our earlier letters of 4 March 2021 and 12 May 2022 and the information disclosed therein. We have since released further information including unredacted copies of the statements made by third parties. We continue to withhold legally privileged and other confidential information which includes Counsel's advice and correspondence with third parties. We maintain that the information we have withheld is confidential and exempt from disclosure to the public under Schedule 12A to the Local Government Act 1972. I have reviewed the status of that material in the light of the points you have made about it and currently do not consider a different view should be taken. I consider your clients have had a fair chance to put their case, in particular having had sight of the ELF letter and the legal submissions on behalf of Lord Manners. Moreover, your comments as to inconsistency of the third party evidence appear somewhat inconsistent with at least part of this complaint.

As to the released material, you have had ample opportunity and time to consider and comment upon the recently released material and your complaints to the contrary are without justification.

Mr Cox explained the variety of activities and the NPA had ample evidence from two site visits

The burden lies on an applicant to demonstrate that a breach of planning control has become lawful. The applicant must not only complete an application form published by the Secretary of State, he must also provide "such evidence verifying the information included in the application as the applicant can provide" (article 39 (1) and (2) of the DMPO 2015).

My draft Statement (5.15 – 5.17) sets out the lengths the Authority went to in seeking further information from Mr Cox. It is not known how much of the earlier enforcement investigation was known to the Authority's Solicitor at the time but there is no evidence to suggest that the results of the enforcement investigation were taken into account by the Authority's Solicitor in deciding to issue the certificate (or that any enforcement file was made available to the Authority's Solicitor in considering that application). The initial enforcement investigation in 2007 predated the submission of the application for a CLU whilst the subsequent enforcement investigation in 2008 (regarding storage use and the untidy appearance of the site) was not progressed further pending the determination of the CLU application.

You refer to Mr Cox's candour in giving a detailed explanation to the enforcement officer in April 2007 and posit that "there is no reason to think that he did not maintain the same level of candour during the LDC application." In completing the CLU application form some three months later, Mr Cox makes no reference to these other uses taking place on the site (such as the hiring out of the mobile mini crusher).

However, it is considered that it is pertinent to note that in *Ocado*, Holgate J dismissed "as wholly untenable" the suggestion that an applicant cannot be treated as withholding information in an application for a CLU if that information is already in the possession of the local planning authority [194]:

> "*An applicant withholds material information if he has it and does not provide it to the authority. That remains the case even if the authority has that information in its records. Ocado's contention is completely at odds with the statutory scheme, which puts the onus on the applicant to justify the grant of a CLEUD with adequate verifying information. The legislation places a clear risk upon an applicant and his successors in title that a CLEUD may be revoked in the future if the conditions in s.193(7) are met. It is a deeply unattractive submission that what would otherwise amount to a material withholding of information justifying the revocation of a CLEUD, should be treated differently simply because the local planning authority did not search through its register of planning applications looking for anything which might undermine the application. Ocado's submission transforms the statutory expectation that an applicant will make an adequate and candid disclosure of relevant information into an implicit obligation on the local authority to search through its own records and files before granting a CLEUD."*

The aerial/satellite photographs relied upon by the NPA in 2023 would have been available in 2008

As noted above, in making a CLU application the onus lies with the applicant to demonstrate the claimed lawful use. It is not incumbent on the local planning authority to trawl through archived material or to interrogate aerial photographic records in order to corroborate the applicant's case.

The aerial photographs appended to my draft Statement appear to demonstrate a consistent pattern and extent of the caravan use of the site over a number of years, and at different times of the year. These aerial photographs, and what they show, are further supported by the Authority's own ground level photographs.

The NPA is relying on a record of the 2008 decision making which is incomplete

This is acknowledged, as noted above. It is also clear from the Authority's Solicitor's attendance note of 24 June 2008 that she would have liked more detailed evidence but was satisfied, on the balance of probabilities, to rely on the information, including that further limited evidence provided by Mr Cox in a subsequent telephone conservation. The Authority accepts that it would have been helpful to have retained all the records associated with the application although it is not the case that records have been knowingly destroyed. These are all matters which will be material to any final decision.

As to paragraph 45, as you acknowledge, a copy of the parish briefing note referred to has been provided and I can confirm that no other material would have accompanied it as the application details would have been available to the parish council to view online. Mr Higgins submitted an online objection on 3 September 2007 (which is quoted verbatim at para 5.13 of my draft Statement). We do not hold any further letter from Mr Higgins and so we can only assume that the 'letter from Mr and Mrs Higgins' referred to in the Authority Solicitor's attendance note of 24 June 2008 (para 5.16 of my draft Statement) is referring to the same online submission received on 3 September 2007.

The NPA has anonymised and redacted statements, violating a very basic principle that a person is entitled to know the case against them

We have made the relevant third parties aware of your concerns and have released their statements without any redactions save for personal telephone numbers and email addresses.

We do not accept your assertion that these third party statements are 'contradictory'.

We do hold other third party representations raising planning issues about the site but it is our general policy to treat such representations in confidence. Nonetheless we have with their agreement released the following representations:

- Letter from the Environmental Law Foundation dated 13 November 2020 questioning the lawfulness of the operational development on site; and
- Representations from Landmark Chambers dated 25 January 2023 on behalf of Lord Manners in support of the proposed revocation

You have asked for information on the Authority's decision making. The decision to commence the formal revocation process was made at a Part 2 (private) meeting of the Authority's Planning Committee on 20 September 2022. The public and press were excluded from this session in order to protect the confidential information of the Authority and third parties, including information that is subject to legal professional privilege. That material remains of a confidential and privileged nature and will not be released at this time.

The Local Government Act 1972 allows authorities to make inherently sensitive decisions of this nature within the parameters of a Part 2 session, as occurred on this occasion. Your client was subsequently informed of the course of action that the Authority was considering taking and the evidence on which this was based and was given every opportunity to comment on that evidence. We have also sought to respond to all of the questions and concerns that you have raised and there has been no injustice caused to your clients by virtue of the fact that the initial decision was taken in private. Moreover, as set out above, your clients will have the opportunity to put forward their position at the Authority meeting on 19 October 2023 at which the actual decision will be taken, and will be able to listen to all of the material / debate at that time save for the giving of and consideration of legal advice. It would be very surprising, given for example the threats inherent in your correspondence, if the Authority did not avail itself of legal advice and retain privilege in respect of such advice.

The owners have acquired the site innocently in reliance upon the NPA's 2021 decision not to revoke

The assertion that the purchaser of the site did so "in reliance upon the NPA's 2021 decision not to revoke" is based upon the Authority's letter to Laister Planning dated 1 March 2021. We understand that the site owner at this time was Park One Developments.

You will be aware that Mr Cox incorrectly stated his legal interest in the land on the application form as 'owner'. This was brought to our attention in 2020 by third parties when it was established that the land had in fact been owned at the time by Mr Cox's brother – Mr Geoffrey Cox. Whilst this plainly establishes that Mr Jonathan Cox (the applicant) made a false statement in completing and submitting the CLU application, it was our view that in itself this was an insufficient reason to formally revoke the Certificate. This is made clear in our letter of 1 March 2021 when we state inter alia:

"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."

Time GB Group purchased the site in December 2021 (as confirmed by Mishcon de Reya in their letter of 12 April 2022). Prior to your clients' purchase of the site it was a matter of record that the Authority had serious concerns about the proposed development and the lawfulness of the proposed works. In particular the Authority had already adopted its Screening Assessment under the Habitat Regulations and its EIA Screening Opinion on 28 June 2021.

Our letter of 1 March 2021 confirmed these points whilst the penultimate paragraph concluded:

"Given that the works are unauthorised, the harm caused by those works and in the absence of any suitable mitigation, we shall be commencing formal enforcement action to secure the removal of the unauthorised works from the site."

We note too that both Time GB Group and Ocean One Hundred Limited share the same registered office - Royale House 1550 Parkway, Whiteley, Fareham, Hampshire, England, PO15 7AG – and the same Director in Mr Robert Bull. We invite you to explain the relationship between these two companies and any relationship they may have had with Park One Developments.

It is not unusual (but of course is not necessary) for a prospective purchaser to make enquiries of the local planning authority prior to a site acquisition, especially so when that prospective purchaser is looking to redevelop the site and where the same local planning authority has already put on record - in writing - that it is to commence enforcement action. It would also have been known to the previous owners (Park One Developments) "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" as detailed in my letter to Mr Barney-Smith dated 29 January 2021.

We shall send you a copy of the report to the Authority meeting on the same day it is published which we expect to be on 12 October 2023. We shall at this time also confirm the arrangements for making representations at that meeting.

A formal response to this letter is not encouraged, save in respect of the specific question raised three paragraphs above, as we have to prepare for the meeting in a coherent manner but if there are any factual inaccuracies or other obvious errors, which we hope there are not, please draw the same to the writer's attention as soon as possible.

Yours sincerely,

Steve Avery
Executive Director Strategy and Planning