

**AM 665/23**

## **NEW FOREST NATIONAL PARK AUTHORITY**

### **AUTHORITY MEETING – 19 OCTOBER 2023**

#### **PROPOSED REVOCATION OF CERTIFICATE OF LAWFULNESS ISSUED ON 1 AUGUST 2008 FOR USE OF LAND AS A CARAVAN SITE (91960) VERNON DENE, RINGWOOD ROAD, NORTH RIPLEY, BRANGSGORE**

**Report by:** Steve Avery, Executive Director

#### **1. INTRODUCTION**

- 1.1 The property known as Vernon Dene, which extends to some 2.6 ha and lies just to the north of Brangsgore, has been the subject of an ongoing enforcement investigation over the last five years. It concerns a former caravan site and grazing land which was acquired by a park home developer in 2019. Following a further sale, the current owner is seeking to rely on an earlier Certificate of Lawfulness issued on 1 August 2008 (for use of the land as a caravan site) in order to redevelop the site as a permanent residential mobile home park in excess of 80 dwellings.
- 1.2 A significant amount of engineering work has already been carried out (in breach of planning control) and this includes the laying of concrete bases (for the mobile homes), drainage works, internal roadways and new splayed entrances. An Enforcement Notice was served last November requiring their removal and this is now the subject of an enforcement appeal.
- 1.3 In the course of the Authority's investigations, it would appear that a number of false statements were made, and information withheld, by the previous owner in support of the earlier application for a Certificate of Lawfulness (CLU). There is provision in the Town and Country Planning Act 1990 for local planning authorities to revoke a CLU if false statements were made or relevant information was withheld by the applicant.
- 1.4 Having taken legal advice, received written testimonies from local residents and corresponded with the current owners' appointed agents, officers believe there is a sound arguable case to support the revocation of the CLU that currently applies to Vernon Dene. Should the Authority resolve to revoke the CLU, then the owners only recourse to challenge is through a judicial review. Indeed, there have been indications given that whatever decision is taken it will be unlawful. As with any prospective legal action, there are inherent risks and exposure to costs and for these reasons, there are a number of detailed legal and financial considerations that may need to be considered in private session ('Part 2' of the meeting). However, it is considered appropriate to make the final decision on whether to proceed or not with revocation in open session.
- 1.5 There are a large number of relevant documents and some of these are appended to this report. Others will be shown at the meeting including aerial and other photographs of the site.

## 2. BACKGROUND

- 2.1 Vernon Dene formerly comprised a residential bungalow with adjacent paddocks and an assortment of buildings along its northern boundary, previously used in connection with a horticultural nursery. The property had also been used as a 'certified location site' for up to five touring caravans whilst a planning application for an 'overspill site for 20 caravans during June, July and August' was refused in 1978 and subsequently dismissed on appeal (ref. 9266C).
- 2.2 In response to an enforcement investigation in 2007, the previous owner submitted an application for a Certificate of Lawfulness (ref. 91960) and described the use of the land as a 'touring caravan site + touring caravan store' which had begun 'before I moved here 'pre 1991'. After some correspondence with the applicant, the application was eventually approved and the Certificate issued on 1 August 2008 for "Use of the land as a caravan site and use of the area cross hatched in blue for the storage of touring caravans". A copy of the Certificate is attached as **Annex 1**.
- 2.3 Aside from one further enforcement investigation in 2011 concerning the alleged use of the site for car repairs, the Authority had no further engagement with the site until the Easter Bank Holiday weekend of 2019.
- 2.4 It was on this weekend (the Easter Bank Holiday of 2019), and without any prior warning, that heavy plant and machinery were employed to carry out extensive site clearance and engineering works across the Vernon Dene site. Felled trees and vegetation were burnt on site with security guards stationed at the site entrance. The subsequent enforcement investigation established that the land had been sold to Park One Developments in December 2018 for £2.6 million and that the site had what appeared to be an unencumbered lawful caravan use (by virtue of the Certificate of the Lawfulness issued on 1 August 2008).
- 2.5 Park One Developments quickly confirmed their intentions to establish a permanent residential mobile home park on the site by applying to New Forest District Council (NFDC) for a site licence on 3 May 2019 under the Caravan Sites and Control of Development Act 1960. In view of the existence of the Certificate of Lawfulness (CLU) NFDC issued a site licence on 24 July 2019 for 83 permanent residential caravans/mobile homes. A copy of the site layout plan that accompanied the site licence application is attached as **Annex 2**.
- 2.6 Ordinarily, development that is required by the conditions of a site licence, such as internal roadways and concrete caravan bases, are exempt from further planning control (being classed as 'permitted development'). Site works commenced soon after the licence was granted.
- 2.7 However, over the following months, and as the owners' intentions became clearer, the Authority began to question whether the owners could rely on permitted development rights to meet the requirements of the site licence (in the absence of the Authority's approval under the Habitat Regulations). The owners were advised in early autumn 2019 that the site works were likely to require planning permission and that any further works carried out on the site were done so entirely at their own risk.

Further concerns were raised about the drainage arrangements, one being that the owners did not have the necessary Water Quality permit from the Environment Agency (and this remains the case to date).

- 2.8 The owners contested the Authority's application of the Habitat Regulations and Environmental Impact Assessment (EIA) Regulations but agreed not to undertake any further works. The Authority formally adopted its Screening Assessment under the Habitat Regulations on 28 June 2021 and its EIA Screening Opinion on 28 June 2021, which confirmed that the site works were likely to have a significant effect on a European designated site. The owners challenged this decision and sought a 'Screening Direction' from the Secretary of State (SoS). The SoS confirmed by letter dated 21 April 2022 that the proposed development was 'EIA development' noting that the "intensification of caravans and associated activity on the site would have a significant effect on this area of countryside within the National Park."
- 2.9 Just prior to the SoS decision, the Authority was informed of a change of ownership. A search of the land registry confirmed that Ocean One Hundred Ltd had acquired the site in December 2021 for £10 million. It is relevant to note that the new owners acquired the site in the knowledge that the Authority was to commence enforcement action to secure the removal of the unauthorised site works and at a time when the Authority and the previous owners were already in dispute about whether the site works constituted 'EIA development'.
- 2.10 Even before receipt of the SoS decision, third parties had begun to question the validity of the CLU, initially on the basis of a false statement about the ownership of the site at the time the application was made. The applicant (Mr Jonathan Cox) had certified on the application form that he was the sole owner of the land. Land Registry documents confirmed that his brother (Mr Geoffrey Cox) was in fact the owner of the land. Having taken legal advice, the Authority concluded in March 2021 that taken in isolation, the misstatement of ownership was an insufficient reason to revoke the Certificate (and this decision was confirmed to Park One Developments at the time and so prior to the acquisition of the site referred to at paragraph 2.9).
- 2.11 However, further investigation of the information contained with the CLU application began to reveal a number of other anomalies. These included the extent of the caravan use at that time (2007 - 2008) as well as other uses taking place on the site. It appeared that information that would have been known to the applicant about the extent and range of the caravan and other uses taking place on the site had been withheld from the Authority at the time of making the CLU application.
- 2.12 It is evident from aerial and other photographs of the site (before and after the CLU was issued) as well as more recent third party statements, that the caravan use was not widespread across the site and that other uses were taking place on the site. The written records of enforcement officer visits before the CLU was issued also confirm that other uses were taking place on the site. None of this information was disclosed by the applicant at the time of making the CLU application.

- 2.13 A relatively recent case (June 2021) in the High Court (*R (on application of Ocado Retail Ltd) v Islington London Borough Council*) ('the Ocado case') provides helpful clarity on certain aspects of the law relating to the revocation of certificates of lawful use, in particular that when deciding whether to revoke a certificate on the grounds that information was withheld, the withholding of information does not have to be deliberate. The judge commented that "public confidence in [lawful use certificates] must extend to the reliability of the information put forward by an applicant to support the grant of a certificate...[the applicant] obtained a certificate to which it was not entitled on the basis of the information it provided and withheld."
- 2.14 There are several grounds on which the Authority could revoke the CLU. These are set out in further detail below but can be summarised as follows:
- 1) False statement on the extent of the use of the site as a caravan site
  - 2) False statement that no other use occurred on the site
  - 3) Withholding information that parts of the site had been used for grazing/pastures
  - 4) Withholding information that part of the site was not used for touring caravan site
  - 5) Withholding information about the numbers of caravans

### 3. CURRENT POSITION

#### 3.1 Enforcement Action commenced

- 3.2 In view of the earlier screening decisions pursuant to the Habitats and EIA Regulations, the site works require planning permission and in the absence of such, represent a breach of planning control. The Authority issued an Enforcement Notice on 24 November 2022 requiring all the hard surfaces (caravan bases, internal roadways, parking areas) and the two bell mouth entrances to be removed from the site within six months of the Notice taking effect. A copy of the Enforcement Notice is attached at **Annex 3**.
- 3.3 The owners have appealed the Enforcement Notice (ref. APP/B9506/C/22/3312350) on the grounds that the works constitute permitted development (ground c), that planning permission should be granted (ground a) and that there should be a longer compliance period (ground g). The appeal is due to be heard at an Inquiry although a date has not yet been set.
- 3.4 The Planning Inspectorate have confirmed that the deemed planning application (ground (a) appeal) is subject to the EIA regulations and required the owners to submit an Environmental Statement (ES) by 1 August 2023. On 16 May 2023, the owners notified the Planning Inspectorate that "administrators have been called in at RoyaleLife" and that the owners were not in a position to continue the appeal until matters "are resolved with the administrators." The owners asked the Inspectorate if the appeal could be temporarily placed in abeyance but this request was denied (and opposed by the Authority). The owners have not submitted an ES in the required timescale and the Planning Inspectorate have since confirmed that the ground (a) appeal (deemed planning application) is no longer proceeding. The owners are now

considering challenging this decision and on 25 September 2023 sent the Planning Inspectorate a formal letter before claim (in accordance with the Pre-Action Protocol for Judicial Review).

3.5 Caravan site licence (Caravan Sites and Control of Development Act 1960)

3.6 On 20 February 2023 New Forest District Council (NFDC) received an application to transfer the existing caravan site licence from the former owners (Park One Developments Ltd) to the new owners (Ocean One Hundred Ltd). It is understood that, following an outstanding request from NFDC for the owners to provide more information, the application has not been progressed any further.

3.7 Proposed Revocation

3.8 On 13 January 2023 the Authority invited the owner to make formal representations on the proposed revocation pursuant to article 39(15) of the Town and Country Planning (Development Management Procedure) (England) Order 2015. In doing so the Authority included all the evidence it had assembled, which included the Authority's own statement and statements from local residents. A copy of this letter and the accompanying 'pack' of information is attached as **Annex 4**.

3.9 The owner replied in writing on 10 February 2023 which included a summary of the main points raised which is reproduced in full below:

1. 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.
2. 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 material the NPA concluded that the application was accurate and complete, and the certificate should be issued.
3. 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.
4. The NPA is relying on a record of the 2008 decision making which is incomplete. It accepts that it has lost relevant material, including further information submitted by Mr Cox. It is impossible therefore for the NPA to be able to include 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.
5. The NPA's conduct of the revocation process is unfair and unlawful. It has anonymised and redacted statements, violating a very basic principle that a person is entitled to know the case against them. The NPA has withheld 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.

6. The proposed revocation is highly prejudicial to the innocent purchaser of the site in 2019 and the proposed purchaser who contracted to acquire in reliance upon the NPA's 2021 decision not to revoke. 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.
- 3.10 Having taken further legal advice, the Authority responded by letter dated 26 May 2023 addressing each of the summary points listed above. The Authority's letter advised the owners that no concluded view had been taken on their representations and provided the owners with the opportunity to make further representations, should they so wish.
- 3.11 Local residents who had made statements agreed to waive their anonymity and unredacted copies of their statements were made available to the owners, including a third party's advice from Counsel.
- 3.12 The owners' agent emailed the Authority on 11 July 2023 referring to "the situation with Royale and the administrators" and that it was expected "that matters will have sufficiently progressed by end of July to allow our barrister to be appointed to review and make comments on your latest letter. We would therefore be grateful for an extension to the middle of August." On 31 August 2023, the owners' agent sent a further email to advise that "the company has been able to arrange refinancing, which is now in place, and we have confirmed that our Counsel can prepare a full response to your letter of 26 May 2023 by no later than 15 September 2023."
- 3.13 The Authority, having requested an earlier response, received further detailed representations from the owners on 8 September 2023 maintaining their position that the proposed revocation would be 'both unlawful and highly prejudicial' to the owners and that the Authority's 'handling of the revocation process has also been unlawful'. These latest representations repeat a number of the points already raised in earlier correspondence, notably in Laister's letter of 10 February 2023, as well as raising some new points in response to the Authority's letter of 26 May 2023. This includes an assertion that the residents' statements are inconsistent and potentially biased against the current owners.
- 3.14 The owners have asked that these representations 'be put in front of the committee', that any decision should be considered in 'public session' and that the Authority allow oral representations from the owners at the meeting. A copy of these representations are attached as **Annex 5** and the Authority's subsequent detailed response of 3 October 2023 is attached as **Annex 6**.
- 3.15 Attention is directed to both these documents, as any attempt to summarise either runs the risk of being incomplete.

#### **4. EXPEDIENCY OF REVOCATION AND RELEVANT CONSIDERATIONS**

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

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

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

4.2 The Ocado case provides a helpful and up to date framework for consideration of the proposed revocation of the CLU under s.193(7). The Authority’s draft Statement (included at annex 4) sets out the case for revocation and the relevant planning considerations (paragraphs 5.20 to 6.10). In doing so, it is important to stress that the Authority is not looking to (and should not) revisit the merits of the CLU application (nor should revocation occur just because an Authority has changed its mind about findings of fact it has made or the inferences or conclusions it has drawn from the material originally submitted).

4.3 The Authority’s case for revocation can be summarised as follows:

- Large parts of the site were not used as either a touring caravan site or for the storage of caravans (the CLU application falsely stated that the whole site had been used as a touring caravan site)
- A variety of other items were stored on the site including horse boxes, trailers, boats, steel containers, plant and machinery, cars, ladders, tools, mounds of rubble and telegraph poles (the CLU application falsely stated that there were no other uses on the site)
- A significant part of the site was used for grazing and pasture (the CLU application withheld this information)
- Parts of the site were not used as either a touring caravan site or for the storage of caravans (the CLU application withheld this information)
- The application gave a minimalist description of the use of the land as caravan site (the CLU application withheld information about the number of caravans on site)

4.4 Notwithstanding the Authority’s earlier decision in March 2021 not to revoke the CLU (based solely on the misstatement of ownership), it is relevant to note that the applicant falsely represented himself as the owner of the property at the time of making the CLU application and further stated incorrectly that there were no other third party interests in the land. This resulted in subsequent enquiries regarding the CLU application being directed to the wrong party.

4.5 The Ocado case is clear that the withholding of information by an applicant in making a CLU application does not need to be proven as a deliberate or reckless act. Similarly, it is not a defence for an applicant to claim that this information was (or should have been) known to the local planning authority at the time.

- 4.6 Officers acknowledge that there are some shortcomings in the Authority's case. Firstly, the Authority's records of the CLU decision are incomplete. From the information that we do hold it is evident that both the planning officer and the Authority's Solicitor were of the initial view that the CLU application as submitted (in July 2007) could not be supported. The held information confirms a telephone conversation between the applicant and the Authority's Solicitor in or around June 2008 and this was apparently enough to persuade the Authority's Solicitor to eventually issue the CLU in August 2008. There is no record, or knowledge, of what was discussed in that telephone conversation. Neither the Authority's former Solicitor nor the former planning officer have any recollection of what was discussed. Similarly, we have made enquiries of Hampshire County Council's (HCC) legal department to see if they hold any related records and they have confirmed that they do not (HCC were providing the Authority with legal advice in 2007 and 2008 under a service legal agreement).
- 4.7 However, in itself this does not detract from the fact that the applicant made false statements and withheld information that would have been known to him in completing the application form and preparing the accompanying site plan.
- 4.8 Secondly, the answers to the questions on the application form are inconsistent in so far that in one section of the form the existing use is described as 'storage of touring caravans' and in another it is stated as 'touring caravan site and touring caravan store'. It appears that officers chose to accept the latter description as this is what was shown on the accompanying site plan which annotated the whole site as a 'campsite' with a smaller area shown as a storage area.
- 4.9 Thirdly, it is evident from notes (February 2007) and photographs (22 April 2008) taken by the Authority's enforcement officer that the Authority was aware of other uses taking place on the site at the time of determining the CLU application. This information does not appear to have been shared with those officers determining the CLU application. Similarly, the Authority would have had access to aerial photographs at the time of considering the CLU application. That said, the onus is very much on the applicant to provide the correct information in support of any application for a CLU. Nor is the local authority obliged to exercise its powers to require more information to be provided in order to try and remedy deficiencies in the material submitted by an applicant.
- 4.10 Fourthly, officers note the owners' criticisms of the residents' statements referred to above. Having carefully considered the residents' statements and met with them, officers are satisfied that weight can properly be attached to them as part of the case in support of revocation, notwithstanding that they and other third parties are pressing for revocation. As more fully detailed in the Authority's draft statement and the Authority's letter of 3 October 2023 overall they provide support for the case as demonstrated in the photographic evidence. But whilst the evidence of local residents are important considerations, the decision to proceed with revocation is entirely at the Authority's discretion.



- 4.11 Despite these shortcomings, which are discussed in more detail in the annexes officers consider that there is still a sound case for revocation but they will be matters Members will need to consider.
- 4.12 If the Authority concludes that there are grounds for revocation it has a discretion as to whether or not to revoke. It is important to note that the factors relevant to the exercise of discretion are not relevant to the conclusion as to whether or not there are grounds for revocation. In exercising the discretion to revoke, the Ocado judgment provides further guidance on what should be considered (paragraph 107):
- “By way of example, the local planning authority might take into account the effect of revoking the certificate on affected landowners, particularly if time has elapsed and successors in title demonstrate the harm they would suffer. In that event, it could also be relevant to consider whether a successor in title was involved in, or aware of, the application for a certificate, particularly if it intended to rely upon any certificate granted. Where a local authority has reason to conclude that material information was deliberately withheld at the application stage, or that there has been material concealment of information after the certificate was issued, those matters could be taken into account as weighing in favour of revocation. Although the planning merits of a development or a legitimised breach of condition are irrelevant to whether subparagraphs (a) or (b) of s.193(7) are satisfied, a local authority may have regard to that aspect when exercising its discretion whether to revoke a certificate. But it is entirely a matter for the authority whether to consider planning benefits or harm at all and, if so, to what extent, subject only to review on the grounds of irrationality.”
- 4.13 Members therefore, amongst other matters, need to take into account the effect of revocation on the new owners and their lack of involvement in the original CLU application. The prejudice to the owners’ property rights if the revocation proceeds is unavoidable but is an important consideration. If a revocation is made there is no compensation provision within s193(7) of the Town and Country Planning Act 1990. Nor is any decision to revoke a CLU subject to confirmation by the Secretary of State. This was confirmed in the recent Ocado judgment (paragraph 82). The owners are likely to have a substantial financial interest in challenging any decision to revoke the CLU which would need to be done by judicial review. There is clearly a risk of having to pay significant costs if such a judicial review succeeds.
- 4.14 It should also be noted that the owners maintain that they “acquired the site entirely innocently” and on reliance of the Authority’s earlier decision in March 2021 not to revoke the CLU. The owners (Ocean One Hundred Limited) have been asked to confirm whether they have any relationship with the previous owners Time GB Group and Park One Developments.
- 4.15 If the CLU is not revoked and the requirements of the Enforcement Notice are upheld on appeal, then it is likely to be difficult for the owners to develop the site in the manner so far proposed. It would also be open to the owners to submit an alternative application for a CLU should the current CLU be revoked (e.g., for a more limited caravan use of the site). Such an application would need to be considered on its merits having regard to the relevant evidence.

- 4.16 As with all planning decisions, the Authority must consider Article 1 of Protocol 1 to the European Convention on Human Rights and Schedule 1 to the Human Rights Act 1998, namely, the right to property (which includes rights associated with that property, such as the right to use it in any particular way). In this case, should the CLU be revoked it will undoubtedly interfere with the landowner's rights to use the land. It underlines the need to act lawfully, fairly and proportionately. However, the Authority also needs to take into account the importance of protecting the National Park as a nationally protected landscape, which would likely be negatively impacted by the potential use of the site if the CLU is not revoked, as well as the impact of potential development on the amenity of neighbours. The protection of the environment is a strong public interest factor and carries substantial weight. Further information on the consideration of these Rights is attached as **Annex 7**.
- 4.17 Taking all these factors into account, it is the view of your officers, having taken legal advice, that there are several grounds (as referred to in 4.3 above) which provide a basis upon which it would be reasonable to revoke the CLU. Further advice regarding any subsequent challenge is set out in the Part 2 report.
- 4.18 The planning harm that would be caused by one of the largest and non-conforming residential developments in the National Park (which would be reliant on a falsely made application for a CLU) is so severe that the balance of considerations is considered to weigh in favour of revocation. The site borders the Avon Tyrrell Meadow Special Area of Conservation – which forms part of the New Forest SAC - and is immediately adjacent to three Sites of Special Scientific Interest. There are no planning policies, national or local, that would support such a large scale, intense residential development in such an isolated and open area of countryside within the National Park.
- 4.19 Before making a final decision, Members will want to debate freely and without prejudice the financial and legal risks of proceeding with revocation and these are set out in the accompanying Part 2 report.
- 4.20 It should be made clear that the delegation referred to in the recommendation below is for administrative purposes only - the decision whether or not to revoke the Certificate sits with Members.

#### **RECOMMENDATION:**

**Subject to the consideration of the latest representations from the site owners and Members being fully appraised of the associated financial and legal risks, the Authority resolves to revoke the CLU issued on 1 August 2008 in accordance with the provisions of S.193(7) of the Town and Country Planning Act 1990, and delegates authority to the Executive Director of Strategy and Planning to carry out all actions as necessary in this regard.**

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**Papers:**

AM 665/23 Covering Paper

Annex 1 – The Certificate of Lawfulness issued on 1 August 2008

Annex 2 – The site licence issued on 24 July 2019

Annex 3 – The Enforcement Notice issued on 24 November 2022

Annex 4 – The Authority's letter dated 13 January 2023 and the accompanying pack (minus the appendices attached to the Authority's draft statement)

Annex 5 – Jones Day letter dated 8 September 2023

Annex 6 – The Authority's letter dated 3 October 2023

Annex 7 – Consideration under Article 1 of Protocol 1 to the European Convention on Human Rights and Schedule 1 to the Human Rights Act 1998