

Enforcement Appeal – Comments on LPA Statement

Appeal Site Address: New Forest Court Park (Gundry's Farm Caravan Park), School Lane, Three Legged Cross, Wimbourne, BH21 6RU

Appeal Ref: APP/D1265/C/22/3313965 | LPA Ref: ENF/17/0094

The Appellant provides the following comments on Dorset Council's (the "LPA") Statement of Case (the "SoC"). The Appellant will be providing further comments on the LPA's SoC during the course of the Appeal, including in the Proofs of Evidence and during the Inquiry hearings. The comments below should be read in conjunction with the Appellant's SoC, which sets out the Appellant's case on various grounds against the Enforcement Notice (the "EN") issued by the LPA on 4th October 2022.

References to paragraphs below are taken from the LPA's SoC. It is noted that the Appellant has only submitted selected comments at this stage where it is necessary to correct the Council's position, and some matters will be further discussed in the Proofs of Evidence or at the Inquiry.

General

The LPA's SoC does not refer to the substantial correction made to the EN Regulation 37 (the "Reg 37 Notice"), which is discussed below. The correction was made to indicate that the alleged development was Environment Impact Assessment ("EIA") development, and this was made after the Appellant's Statement of Matters (the "SoM") was submitted, which identified a number of defects which rendered the EN a nullity. By making a correction after the date as to when the EN was due to come into force, it had created a substantial injustice to the other parties to whom the EN was served, and who may have submitted an Appeal had the correction been made before the EN was due to come into effect. The Appellant strongly believes that the LPA should have withdrawn the EN. As noted below, this change provides substantial credence to the Appellant's identified nullities set out in the SoM.

The Appellant remains of the view that the EN is a nullity for the reasons set out in the SoM, and the EN is incapable of correction as it does not exist. This will be further discussed by the Appellant through additional submissions and at the Inquiry.

Paragraph 1.11

The LPA confirms that the Notice as issued under-enforces with regards to the alleged breaches of planning control. It does not, for example, seek to remove the use of the land for the keeping of donkeys, the removal of the donkey shelter or the track serving the area which the LPA states was apparently laid to facilitate the caravanning site use.

With regards to the track, this is the correct approach in the Appellant's view: the track was laid to support what the Appellant will demonstrate is a lawful caravan site use, either by way of permitted development rights or via a material change of use which is now lawful through the passage of time.

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Paragraphs 2.3 & 2.4

This section set out the LPA's view regarding the status of various pieces of land which are subject to the EN or which the Appellant owns at the site. At the following paragraph it states: *"Area A is physically and functionally separate from all other areas identified."* As set out in the Appellant's Statement, both the LPA's case officer, David Lloyd, and the current Development Management Team Leader, Elizabeth Adams, acknowledged that the site was a single planning unit (see discussion at Appellant's SoC Paragraph 2.60). The Inspector stated in its Preliminary Note regarding the Appeal against the 2018 Enforcement Notice that it was common ground that the whole of the Appellant's land was a single planning unit.

The LPA has not explained in its current SoC why the situation is different to 2018. It simply makes up a new conclusion that the area of the current EN is a separate planning unit, without any evidence to support the change in its own interpretations, or the Inspectors conclusions at the time.

Paragraph 2.5

In this Paragraph, the LPA does not acknowledge that those visiting the areas of the caravan park which are lawfully already in caravan site use (as confirmed by lawful development certificates) have full and unfettered access to the area that is covered by the current EN (and used it for dog walking, for example). Nor does it acknowledge that the LPA has previously confirmed that this land was in a single planning unit with the areas which are lawfully in caravan site use, as stated above. It does acknowledge that there are 'very few public vantage points' to the Appeal site, however, which the Appellant agrees with.

Section 3

The LPA's summary of the Planning and Enforcement History is not comprehensive and fails to acknowledge that the LPA has twice attempted to enforce against alleged caravan site use on the Appeal site, notwithstanding the title of the section referring to 'Enforcement History'. Had the LPA referred to the history of Enforcement in their SoC, they would have readily acknowledged their failures to successfully conclude enforcement action, because they have previously acknowledged that the Appeal site is in the same planning unit as a lawful caravan site, and/or the land benefits from permitted development rights to be used as a caravan site.

Indeed, the LPA acknowledges at Paragraph 3.8 that *"it can benefit from permitted development rights under Part 4 of the GDPO for camping, or for caravanning event supervised by an exempt organisation under Part 5 of the GPDO."*

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Section 4

Paragraph 4.3 refers to 'original Enforcement Notice'. It is not clear what is meant by this phrase, as there are no original enforcement notices. Any notices were withdrawn by the LPA following an Appeal by the Appellant, as noted in the Appellant's SoC. The document that they refer to in bold was published by the LPA in March 2020, so clearly predates the EN subject to this Appeal.

In the following paragraph, it refers to 'additional residential development'. The Appeal is not related to any residential development, and it is unclear why the LPA refers to this use.

Section 5

The LPA does not refer to which sections of the National Planning Policy Framework (the "NPPF") it considers relevant. It also seems to refer to the Town and Country Planning Act 1990 (the "TCPA") and the Planning and Compulsory Purchase Act 2004 (the "PCPA") as 'National Policy and Guidance', when these are acts of Parliament and form the law. They are not "policy".

Paragraphs 7.1–7.4

Between Paragraphs 7.1 and 7.4, the LPA discusses the identified issues with the Notice which the Appellant identifies means that it is a nullity and incapable of amendment.

Critically, the LPA does not discuss their own substantial amendment to the Notice, particularly the accompanying Reg 37 Notice, which the Appellant noted referred to a different (now withdrawn EN). It was amended by way of a correction after the date to which the EN was due to come into force. The LPA states at Paragraph 7.4 that *"If any inadequacies are identified, they are all capable of correction without prejudice to either party"*, however, that statement is clearly not correct as the correction altered the nature of the EN and the Appeal to which it could be subject, and created a substantial prejudice to the other parties on which the EN was served.

Paragraphs 7.5–7.10

The Council states at Paragraph 7.6: *"The Council does not consider that the Enforcement Notice is invalid as a result of alleging "unlawful stationing of caravans 'for human habitation'" in the Notice."*

The phrase 'human habitation' is derived from the Caravan Sites and Control of Development Act 1960 (the "1960 Act", as amended) with regards to 'caravan sites' and states the following at Section 1(4) – see Appellant SoC Paragraphs 1.41–1.43. This is adopted

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into the planning system by TPCA Section 336, and it relates to both caravan sites which are used for holiday purposes or for those which are used for residential purposes, and both require a site licence under the act as both represent 'caravan sites' (otherwise, the LPA's position would mean that holiday sites would not require a licence).

1 Prohibition of use of land as caravan site without site licence

- (1) Subject to the provisions of this Part of this Act, no occupier of land shall after the commencement of this Act cause or permit any part of the land to be used as a caravan site unless he is the holder of a site licence (that is to say, a licence under this Part of this Act authorising the use of land as a caravan site) for the time being in force as respects the land so used.
- (2) If the occupier of any land contravenes subsection (1) of this section he shall be guilty of an offence and liable on summary conviction, in the case of the first offence to a fine not exceeding one hundred pounds, and, in the case of a second or subsequent offence, to a fine not exceeding two hundred and fifty pounds.
- (3) In this Part of this Act the expression " occupier " means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land:
Provided that where land amounting to not more than four hundred square yards in area is let under a tenancy entered into with a view to the use of the land as a caravan site, the expression " occupier " means in relation to that land the person who would be entitled to possession of the land but for the rights of any person under that tenancy.
- (4) In this Part of this Act the expression " caravan site " means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed.

This would also include sites which are used for 'caravan rallies', which are still caravan sites but which are exempted from licensing requirements according to the 1960 Schedule 1, and as a result except from planning permission according to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the "GPDO", as amended).

The Appellant has already stated why the Notice is a nullity the reasons set out in the SoM and the Appellant's SoC. There is no need to discuss these further as the LPA has not provided any evidence of why the Appellant's position on this matter is incorrect in Paragraphs 7.10–7.13.

The Council's comments on this appear to demonstrate a fundamental misunderstanding of planning matters relating to caravan sites and the applicable legislation, etc.

Paragraphs 7.12–7.16

The LPA continues to argue that the Appeal area is a separate planning unit, although this remains in contrast to their own statements in 2018 and elsewhere, as referred to in the Appellant's SoC. The LPA does not address the previous Inspector's conclusions that the Appeal site formed a single planning unit with an existing caravan site. Failure to address the previous Inspector's own conclusions on this matter renders the LPA's arguments that it is separate as unfounded, without any additional evidence to disagree with what the Inspector stated previously.

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Paragraph 7.15

The LPA states that *"The Council may make reference, to other relevant documents and relevant case law to support its case on Ground B."* This is not an acceptable statement by the LPA. The Appeal guidance is clear that all arguments and documents to which parties will rely on must be referred to in their SoC, as set out below (taken from <https://www.gov.uk/government/publications/enforcement-appeals-procedural-guide/procedural-guide-enforcement-notice-appeals-england>, viewed on 30/04/2023 @ 7:14am):

8.4.9. Statement of case

8.4.9.1. The appellant and LPA must submit a statement of case within 6 weeks of the start date of the appeal.

8.4.9.2. The statement of case:

- must include a list of documents, maps and plans the party intends to rely on
- should describe, but not contain, the evidence
- Should, in the appellant's statement, refer to any policies or other documents not referred to by the LPA but considered to support the appellant's case
- should not, normally, in the LPA's statement introduce additional policies, except where the local policies have changed since the notice was issued
- should set out both the planning and legal arguments which a party intends to put forward at the inquiry
- should cite any statutory provisions and case law they intend to use in support of their arguments
- should focus on the areas of differences - as the areas of agreement will be in the statement of common ground (see 8.4.13).

It is unacceptable that the LPA might refer to other arguments or case law or statutory provisions at a later date which it did not refer to in its SoC, and any such further reference outside of what it has referred to in its SoC will likely result in a costs application against the LPA for introducing new materials at a late stage. The LPA should not have issued an Enforcement Notice where they had not satisfactorily considered the case and prepared this in advance so it could be supplied with their SoC. This is especially important where the LPA was well aware that the Appellant would submit an Appeal against the Notice, given they had previously appealed against two previous Notices, and were successful in having them withdrawn.

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It is noted, for example, that the Appellant intends to discuss case law in its Proof of Evidences, but has already referred to these cases in its SoC, as required by the Appeal guidance (see Paragraph 4.71). This is the correct way to do this, because it allows the LPA to understand the case that the Appellant intends to present. The LPA's blanket reference to some uncited case law or arguments which they intend to introduce at a later date is simply unacceptable and will be challenged by the Appellant.

Paragraphs 7.18 –7.19

This relates to the keeping of donkeys, which the LPA identified as a material change of use. As the LPA has not sought the removal of the donkeys in the EN, there is no further need to discuss this matter, as there is nothing that the Appellant would need to do if the EN was upheld.

Paragraph 7.20

The LPA refers to a previous Appeal and a discussion around the word 'habitation' in relation to caravan sites. This has been discussed above, and it is unnecessary to repeat that discussion here.

Paragraph 7.21

The LPA notes that it is GPDO Schedule 2, Part 5, Class B which provides for permission to install infrastructure which is required by the conditions of a caravan site licence. The Appellant apologises for the typographical error; it was clear that the Appellant intended to refer to Class B rights, not those of Class A.

The site is a single planning unit, and the reality is that the licence should have covered all of the land given this position, as the land is lawfully in caravan site use.

The LPA is misreading the licence requirements. It states under Section 6. That no caravan should be further than 90m from a waste water disposal unit (i.e. a toilet). That foul water needs to be disposed of, and the licence provides for this in Part 9. Further details of the facility will be discussed in the proofs.

Paragraph 7.27

The LPA has a list of rallies which have taken place in the area subject to the Appeal, but this list is far from comprehensive. The Appellants will provide a list of caravan activities, some of which were not for rallies which fell within 1960 Act Schedule 1, and therefore exempt from planning permission, dating back as far as 2009, as stated in Paragraphs 4.72–4.76 of the Appellant's SoC.

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Paragraph 7.28

The LPA refers to photographs of the toilet facilities being constructed for 2017 season, according to trip adviser (sic), which in the Council's view 'indicates this operational development has occurred in the last 10 years). They suggest that this isn't lawful because the lawful use of the land was confirmed, so the 10 year rule applies to gain immunity from enforcement according to the 'Murfitt' principles. However, the LPA obviously knew about the toilet block's construction, and in 2018, confirmed that this land was part of the planning unit for the lawful caravan site, which means the use of land was caravan site. The four-year rule would apply to these facilities, and clearly by the LPA's own evidence, the facilities are lawful as the time to take enforcement has passed.

Paragraphs 7.43–7.44

In assessing Green Belt issues, the LPA has had regard to the site's used as a caravan site. However, all of the effects which they identify are equally associated with the permitted development rights of the site, which is to use it as a caravan site for exempt organisations. These effects are therefore ones which are already permitted and therefore the degree of harm is limited, to the green belt or otherwise. However, the LPA does not actually identify the degree of harm to the Green Belt or any other harm, which is not the correct approach (as it is necessary to then weigh the other considerations against this harm in accordance with Green Belt policy to determine if very special circumstances exist to allow the development to come forward).

Paragraphs 7.47–7.48

In summarising the Dorset Heathlands Supplementary Planning Framework documentation, the LPA refers to 'no new residential development' and 'increase in residential development is associated with increased pressures'. It is unclear why the LPA refers to residential development in this section when the alleged development is not residential in nature.

Paragraph 7.49

It is welcome that the LPA acknowledges that the area designated as Special Protection Area (SPA) near to the appeal site is controlled by the Ministry of Defence, and access arrangements are limited, or in the LPA's words 'significantly reduced'.

Paragraph 7.52

The LPA argues that no very special circumstances have been brought forward. This is incorrect, and the Appellant has set these out in its SoC. However, the LPA has not actually

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correctly identified the degree of harm to the Green Belt and any other harm, to appropriately judge whether the other considerations clearly outweigh the identified harm. This represents a significant flaw in the LPA's assessment of the proposals in accordance with Green Belt policy.

Third Party comments

Third party comments have been received from two neighbours. They raise nothing which is relevant to provide comment on at this stage, and the issues raised primarily relate to the Ground a) considerations. Their comments refer to traffic generation, but also noise, pollution, and scale of development. Their concerns will be discussed in the Proofs of Evidence and it remains the Appellant's position that planning permission should be granted for the reasons outlined in the Appellant's SoC.

One comment, however, is that Mrs Linda Porter's statement states, in reference to her knowledge of the site since 2010, that: *"The original campsite was a small site using the front two licenced paddocks with the occasional Caravan club rallies **& short stay season tourists in the marked area on your plan.**"* Short stay season tourists were not covered by an exempt organisation's permitted development rights, and Mrs Porter has independently confirmed the Appellant's own evidence that from 2010 onwards, the site has been used as a caravan site outside of permitted development rights. As the Appellant set out in its case under Ground d), it is now too late to enforce against the alleged breach of planning control, as such breach is now immune from enforcement through the passage of time. Mrs Porter has independently affirmed that position in her own comments.

Date: 1st May 2023