

EXPEDIENCY REPORT FOR ENFORCEMENT ACTION

Case reference	ENF/17/0094
Location	Gundrys Farm, School Lane, Three Legged Cross (Planning Unit A)
Breach Description	Without planning permission, the material change of use of agricultural land edged red on the attached plan, to a mixed use of:- i. Agriculture and the stationing of caravans (with and without awnings), motorhomes, campervans, trailer-tents and tents for the purpose of human habitation; together with the integral operational development consisting of two toilet blocks with ramps and septic tanks/waste and water facilities, and fire hydrants, construction of a track, electrical hook ups, and; ii. The storage of caravans, and iii. The Keeping of donkeys and the construction of a field shelter and concrete base integral to this.

1.0 INTRODUCTION

- 1.1 Investigations in respect of the breach of planning control as described began in April 2017. Concurrently the Council has also considered applications for lawfulness, by s191 and s192 of the Act 1990.
- 1.2 A previous Enforcement Notice, dated 14 November 2018, was withdrawn by the Council on 4 February 2020 following concerns raised by the Inspector due to oversee the appeal (ref: APP/U1240/C/18/3218259) about the lack of clarity within the Notice.
- 1.3 To avoid repetition of facts already considered, this report will illustrate the more salient points of the case. A collection of dated site photographs are attached at **Appendix 1**, aerial photographs are attached at **Appendix 2** and information obtained from the camping and caravan sites website contained at **Appendix 3A-G**. The s192/s191 reports for the applications and respective appeals where relevant can be found at **Appendices 4A-D and 5A-F**.

2.0 AUTHORISED USES

- 2.1 The land in ownership represents several planning units. The planning unit the subject of this report is planning unit A comprising approx. 14 hectares of flat, open land, with what is considered to be a lawful use of agriculture and benefiting from permitted development rights by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015.

- 2.2 The remainder of the land in ownership comprises land which can be lawfully used for caravanning and camping, with associated former agricultural buildings and land that can be used for caravan storage. These are in close proximity to a dwelling with a garden.
- 2.3 The subject land, except the westernmost area, has recently been put to caravanning and camping operations by the landowners.
- 2.4 Planning unit A is physically and functionally separated from the rest of the site:

Planning Unit A (red)

Has been used for agriculture and used in accordance with Part 5 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) 2015 and schedule 1 of the Caravan Sites and Control of Development Act 1960 Order 2015 periodically. No continuous use for another purpose has been established in this investigation or proved through the section 191 applications for area A. There are hedgerow, gates and fencing physically separating unit A from Units B and C.

Planning Unit B (green)

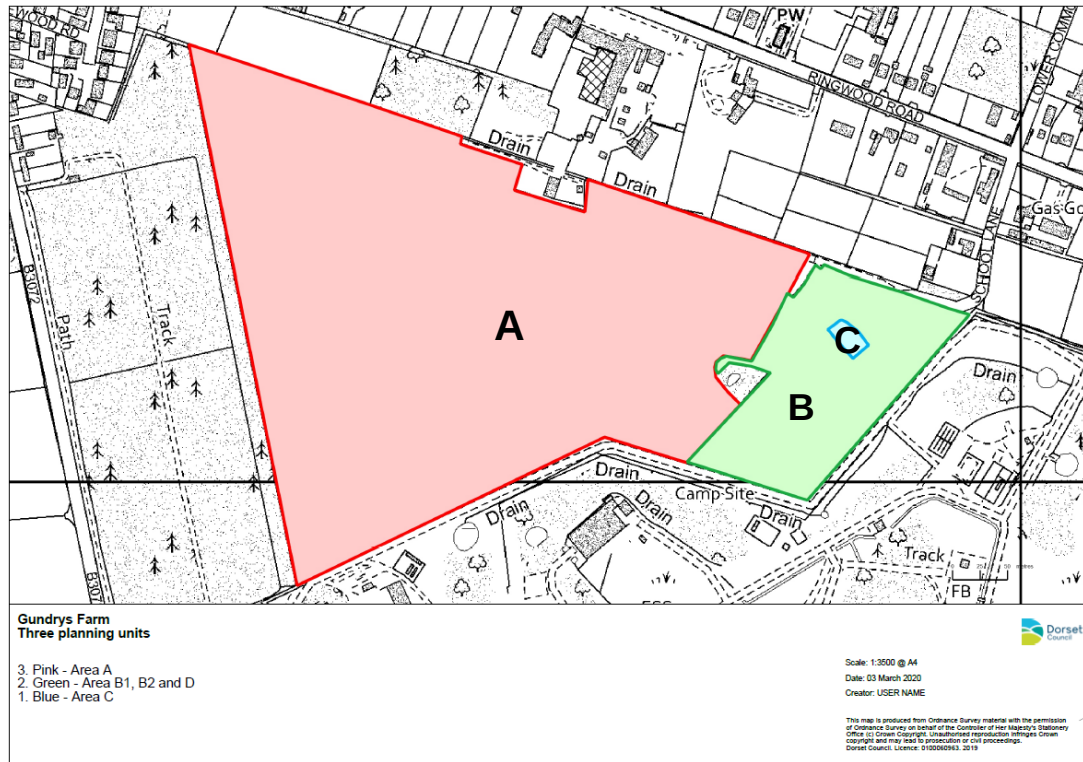
Camping and Caravanning site comprising lawful development certificates for a specified number of caravan/camping units (B1 and B2) and storage within area B3. There are pockets of land without the benefit of defined lawful uses.

Planning Unit C (blue)

Dwelling and residential curtilage

These are demarcated on the plan below.

2.5



2.6 The land is accessed by single road from the public highway, and internal tracks with no public access across the land. There are very few public vantage points. Observations from adjacent landowners are likely to provide more accurate information about the use of the land.

2.7 The land is owned by Royale Parks (Dorset) Ltd. Landownership details are found at **Appendix 6A-F**.

3.0 PLANNING HISTORY

3.1 Planning applications and decisions relating to this site are set out in brief below. Copies of the officer report and decisions for the two latest Certificates of Lawfulness applications are provided at appendices 4 and 5.

Reference	Description of use (as decision)
3/96/0663 Withdrawn	Retrospective Application To Use Former Field As A Caravanning And Camping Site 1 April 30 September
3/96/9024 LDC application Granted (Unit B)	Between the period from Easter to the end of September each year use as a caravanning and camping site for up to 24 caravans and tents (24 in total making no distinction between caravans and tents) without the benefit of planning consent. <i>Description changed.</i>
3/10/0135/CLU Granted (Unit B)	The use of the land for the stationing of up to 25 caravans for storage purposes only, the use having been established over a period of not less than 10 years.

3/10/0136/CLU Granted (Unit B)	Development in the form of 12 (twelve) electricity hook-up points, the development having been in existence for more than 4 years as of the application date.
3/10/0137/CLU Granted (Unit B)	The use of the land as a campsite for up to 30 caravans, tents and motorhomes (30 in total making no distinction between caravans, tents and motorhomes) between Easter and 30 September of each year only.
3/10/0917/CLU Refused	Caravan Storage area for 10 caravans
3/11/0393/CLU Granted (Unit C)	Use of land as a residential curtilage of the farmhouse at Gundry's Farm for at least the 10 years on a continuous basis.

Unilateral Planning Obligation Pursuant to S106 of the Town & Country Planning Act LPA,s Deed Ref: 1209 106 dated 21 June 2011	Unilateral Planning Obligation dated 21 June 2011 relating to Gundrys Farm, School Lane, Three Legged Cross, Wimborne, Dorset – legal agreement confirms that a caravan placed on the land forming the residential curtilage of the property shall only ever be used for a purpose which is incidental to the enjoyment of the dwelling as such, and that it shall only ever be occupied by a person or persons who are or who are at that time members of the same household occupying the dwelling and it shall not be occupied by any other person or person who is not or not at that time a member of the same household occupying the dwelling. The legal agreement goes on to ensure that within the residential curtilage of the property shall be limited to one, and never separated from the property by freehold sale or licence or other method of disposal neither shall the property be freehold sale lease or licence or other method of disposal. This legal agreement dovetails into the above CLU decision and re-affirms what is residential curtilage to the Property known as Gundry's Farm. The residential curtilage is labelled C and shaded blue on the plan at para 2.5.
3/17/1464/CLP (Unit B) Refused Appeal Dismissed	Use of land edged red for the siting of up to 54 caravans throughout the year for the purposes of human habitation
3/17/2370/CLE (Unit A) Refused	Use of Land for the siting of up to 100 caravans from Easter to the end of October

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- 3.3 The Council is currently determining a further two LDC applications as follows

By s191 (existing use) P/CLE/2021/04256 for existing buildings (on units B and C) used for ancillary purposes to the camping and caravanning activities.

By s192 (proposed use) P/CLP/2021/04164 for a proposed use of fields 1 and 2 (Unit B) for caravanning and camping.

Initial officer opinion is that both these applications should be refused. The intention is to serve the enforcement notice at the time or shortly after these two decisions are issued. This is partially because after a meeting last year with the agent on site officers were under the impression that **three** LDC applications would be submitted which would address all the alleged breaches on the land but these two LDC applications do not reflect what was agreed with the agent at that meeting.

- 3.4 **Use of land for camping and caravanning (caravan site)**

The genesis of a caravan and camping use at Gundry's Farm on the land adjacent to Area A began under the provisions for exempted organisations by the 1960 Act. By 1995 association to the Camping and Caravanning Club had ceased and thus the landowners sought to regularise the wider established operations in unit B by s191 of the Act 1990.

3.5 **Agricultural Use**

- 3.6 An agricultural function (haylage and grazing livestock) continues to date at the westerly end of Planning Unit A is believed to be operated by a third party. It is not known whether he makes use of any other parts of the planning unit or the buildings or still continues to take a crop from this parcel of land.

- 3.7 Recently, operational development has taken place to erect a stable building being used to keep donkeys. The location of the building is shown on **Appendix 7**. It is arguable that the development fails to conform with the definition of agriculture (section 336 Town and Country Planning Act 1990 as amended) but as it would appear to fall within the NPPF green belt exceptions as an appropriate facility for outdoor recreation. It is therefore proposed to under enforce on this aspect by including it in the description of the breach but excluding its cessation in the requirements of the notice, thereby granting planning permission by virtue of sec. 173(11) of T&CPA.

3.9 **Previous Lawfulness Application For Planning Unit A**

3.10 **S191 – 3/17/2370/CLE (Appendices 4A-D) Use of Land for the siting of up to 100 caravans from Easter to the end of October - Refused Unlawful on the 07/11/2017**

This application was refused for the following reason -

The Applicant has failed to provide the Council with sufficient evidence to establish that the land described in the Second Schedule and as edged red has been used continuously for the purposes subject of the development as described in the First Schedule for the past 10 years.

3.11 This refusal requires the Council to consider expediency against the current operations.

4.0 Enforcement History

4.1 There is limited enforcement history. In 2009 investigations are commenced and lead to the submission of the 2010 applications by s191. Subsequent extensive investigations inspired the submission of Certificate of lawfulness applications as a means to regularisation and the agreement with the former land owners of the Unilateral Planning Obligation dated 21 June 2011.

4.2 Investigations began as a result of concern raised by neighbouring property owners that the known and familiar and occasional use of the land for rallies, *which would be permitted by Part 5 of the GPDO/Act 1960*, appeared to have widened into a more permanent use.

The site was visited on several occasions and images taken. Generally the following is observed within the field system of planning unit A –

- Two distinct areas for caravan site use, with units stationed
- Substantial capacity of pitches demarked by electric hook-up points (approximately 120 in situ) set out in rows.
- Electrically cabinets
- Fire safety points
- Dog waste points
- Standpipes
- Shower and WC buildings with water and electricity supply and waste water collected by land drainage pipes
- Large water containers
- A hardsurface access track laid out with paths to the Shower and WC buildings

- Storage of caravans sheltered from view west of the pond
 - Coded access barriers to the field
- 4.3 The officer's investigations included planning and enforcement historical checks, background verification of the installation of hook-up points, website searches for information relating to the marketing of the land as a caravan site, obtaining images relating to such use, and contact with exempted organisations. The officer also spoke with staff on site.
- 4.4 During investigations it was noted that an access gate has been erected on the northern boundary of Planning Unit A to the rear of Westerly Grange which itself has an access from Ringwood Road. Permission has been refused (ref: 3/19/1915/FUL) for a new access from Ringwood Road.
- 4.5 Planning Contravention Notices (PCNs) were issued to the former landowner and the current landowner-company (**Appendix 8**).

The PCN exercise provided factual declarations as follows –

- On 15 June 2017 in addition to the Company as an entity, there were 4 interested persons in the land;
- WC and shower blocks were installed on the land (Planning Unit A) circa January 2017;
- They were installed to replace existing ones;
- The installation works were appointed by Royale Parks (Dorset) Ltd;
- Area A has historically included hook-ups;
- The current installation amounts to 120 hook-up points;
- There are no holiday lets of the caravans within Area A
- Applications are being prepared
- WC blocks are ancillary to the caravan site and not development
- Hook-up installations are not development

For factual accuracy, there is no historical reference or evidence of the following –

- Existing WC and showers facilities in Area A
- Hook-up points in Areas A

There is also a historic PCN dated 26 October 2009 which is relevant and this can be found in **Appendix 9**. This confirms:

- The land edged green (part of Area A) was in use for agricultural purposes being used for the keeping of sheep and cattle and the growing of hay or silage
- At the time of the PCN 6 caravans had been moved into Area A on 8 October 2009 as a temporary measure while contractors worked on camping fields 1 and 2.
- Use by the Caravan and Camping club as a 28 day temporary holiday site commenced in August 2009

4.6 Notwithstanding any permitted development rights for use of the land for caravanning rallies under Schedule 2, Part 5 of the GPDO, this report pursues activities generally found occurring on the land where no claim of permitted development was made or recorded by the Camping and Caravan Club. (Rally information is provided at **Appendix 10**)

4.7 The case investigations concluded that operational development has occurred to enable a material change of use of agricultural areas, Planning Unit A, for use of the land as a caravan site for mobile units of accommodation comprising (as observed) touring caravans and motorhomes.

4.8 **Enforcement Action Taken and Withdrawal of Notices**

The Council has previously issued three Enforcement notices:

Date notice served	Summary of reach identified	Outcome
16 December 2018	Material change of use of land for permanent use as a camping and caravan site; Material change of use of land for caravan and camping outside of the period identified as lawful by the Certificates of Lawfulness; Material change of use of residential unit to a mixed use; Material change of use of caravan storage area to mixed use include seasonal staff accommodation- wider site area identified.	Withdrawn following pre-inquiry note by Inspector identifying lack of precision which he judged to prejudice the appellant.
13 December 2020	Material change of use of land for permanent use as a camping and caravan site- site area narrowed to area A	Withdrawn due to incorrect service
21 April 2021	Material change of use of land for permanent use as a camping and caravan site- site area narrowed to area A	Withdrawn due to omission of caravan storage from breach and risk of underenforcing.

5.0 **Site Licensing**

Caravan Sites and Control of Development Act 1960

5.1 There is no site licence, as required by the Act 1960, for planning unit A.

6.0 THE BREACH OF PLANNING CONTROL

- 6.1 Various site inspections have been undertaken of the site between October 2017 and 31st August 2021. Relevant images from these visits and images available online are provided at **Appendix 1**.
- 6.2 Based on the site inspection records the Council alleges that development has occurred without planning permission as follows:

Material change of use

Contrary to section 171A(1)(a) of the Town and Country Planning Act 1990 the unauthorised material change in the use of the Land marked on the attached plan as "Planning Unit A" from a lawful mixed use of agriculture and a caravan site for exempt organisations in accordance with Part 5 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 and schedule 1 of the Caravan Sites and Control of Development Act 1960, to a mixed use of agriculture and an unauthorised caravan site consisting of:

- i. The stationing of caravans (with and without awnings), motorhomes, campervans, trailer-tents and tents for the purpose of human habitation; together with the integral operational development consisting of two toilet blocks with ramps and septic tanks, construction of a track, electrical hook ups, and;
- ii. The storage of caravans, and
- iii. Keeping of donkeys and the construction of a field shelter and concrete base integral to this use

- 6.3 Some of the land with in unit A also remains in agricultural use being left fallow.
- 6.4 The caravanning and camping activities provide over 100 suspected pitches each serviced with electrical hook-up installations. These operational developments are considered integral to the change of use and therefore are subject to the ten year rule as established in case law *Murfitt v SOS*.

7.0 THE DEVELOPMENT PLAN

- 7.1 Enforcement Action must have regard to the provisions of the development plan and to any other material considerations (s172(1) of the Town and Country Planning Act 1990)
- 7.2 **Local Plan Policy**

Christchurch and East Dorset

Local Plan, Part 1, Core Strategy (April 2014)

- KS1 (Presumption in favour of sustainable development);
- KS2 (Settlement Hierarchy);
- KS3 (Green Belt);
- KS11 (Transport and Development);
- KS12 (Parking provisions);
- ME1 (Safeguarding biodiversity and geodiversity)
- ME2 (Protection of Dorset Heathlands)
- HE2 (Design of new development);
- HE3 (Landscape quality);
- PC4 (The Rural Economy);
- PC6 (Tourism).

East Dorset Local Plan 2002 (Saved Policies)

Policy TODEV2 - New sites or extensions to sites for static or touring caravans, tents, chalets or cabins for holiday use will not be permitted within the Green Belt, or where it would cause harm to the landscape character of the AONB, or Area of Great Landscape Value. Elsewhere, such development will be permitted if the following criteria are satisfied:

- a) the site is well screened from external views by means of landform or landscaping;
- b) the development would not harm residential amenity;
- c) any additional traffic can safely be accommodated on the local highway network;
- d) the proposal would not harm an important wildlife habitat;
- e) there would be no detrimental impact upon a site of archaeological importance, listed building, or conservation area;
- f) the site is well laid out to provide adequate room for pitches and will allow for generous landscaping;
- g) it is established that any risk of flooding is acceptable.

7.3 National Legislation/Policy/Guidance

- Town and Country Planning Act 1990;
- Planning and Compulsory Purchase Act 2004; S38(6);
- National Planning Policy Framework (NPPF) 2021;
- Planning Practice Guidance (PPG) (Revised).

7.4 Effective enforcement is important as a means of maintaining public confidence in the planning system (NPPF). Given that enforcement action is discretionary, the Council must ensure that it has acted properly and proportionately in responding to suspected breaches of planning control. This requires an assessment of the

breach against relevant national planning guidance through to the adopted development plan policies.

7.5 **Supplementary Policy**

7.6 **Dorset Heathlands Planning Framework 2020-2025**

Dorset Authorities whose areas contain lowland heath protected by international designations have produced the above document for their protection. The framework has been in place since December 2006, and its purpose is to ensure that there is no net increase in urban pressures on the heaths as a result of additional residential development between 400 metres and five kilometres of heathland. The document demonstrates how harm to the protected heathlands can be avoided based upon a range of measures and sets out a mechanism to be applied cross boundary by the relevant local authorities.

7.7 **PLANNING ASSESSMENT**

Key Planning Considerations

7.8 The main planning considerations are:

1. Whether development ought to be granted planning permission with regards to:
 - Presumption in favour of sustainable development
 - The principle of development and its location;
 - The settlement hierarchy and its location;
2. Whether the development would be inappropriate and have effect on the openness of the Green Belt;
3. Whether the development effects landscape character and the visual and general amenity of the surrounding area;
4. Whether the development aligned to Rural Economy and Tourism policies;
5. Whether the development causes off-site effects such as road safety;
6. Whether the development effects protected heathland.
7. Whether there are very special circumstances which outweigh any identified harm

7.8 ***Presumption in favour of sustainable development***

The site is located within the open countryside, located at a distance from local services and facilities. The location of the site does not provide easy access to local services except by use of a private car. The purpose of restricting such development in open countryside is to ensure such users of the site would enable to be integrated within the wider community and not be isolated away from the local population. Holt and West Moors Heath is a European protected site therefore the presumption in favour of sustainable development does not apply unless an appropriate assessment has concluded that the project will not adversely affect the integrity of the habitats sites (see para. 182 of the NPPF). An

appropriate assessment has been undertaken but is unable to conclude no adverse effect due to a lack of mitigation (**Appendix 13A-B**). To this end the development fails to comply with policy KS1 of the Core Strategy.

The principle of development in its current location

- 7.9 Policy KS2 of the Core Strategy requires the location, scale and distribution of development to conform to the settlement hierarchy. This hierarchy identifies settlements in the district and Gundry's Farm is not within any of these. However, it is recognised that development in the rural areas outside settlements is acceptable in certain circumstances, and Policy PC4 of the Core Strategy deals with this.

Is the development inappropriate development in the green belt

- 7.10 The site lies within the South East Dorset Green Belt. The Green Belt was first established in principle in the South East Dorset Structure Plan dated 1980. The Green Belt boundaries were first drawn in 1982 and have not changed significantly since then. The South East Dorset Green Belt covers about 33,000 hectares, of which 16,840 hectares lie within East Dorset, approximately 47% of the District.
- 7.11 Saved Policy TODEV2 of the East Dorset Local Plan 2002 states that: *New sites or extensions to sites for static or touring caravans, tents, chalets or cabins for holiday use will not be permitted within the Green Belt, or where it would cause harm to the landscape character of the AONB, or Area of Great Landscape Value.*
- 7.12 The policy is clearly prohibitive and in its preamble text refers to the conflict such uses have with the aims of Green Belt Policy. Therefore, and as the site falls within the designated Green Belt, the development is clearly contrary to this policy.
- 7.13 One of the most important purposes of the Green Belt is to prevent encroachment of development into the countryside and to protect the separate physical identity of individual settlements in the area by maintaining wedges and corridors of open land between them. Green Belt policy has been an important tool in controlling the location of growth throughout the District and has proved to be successful in controlling the spread of development into the countryside, as set out in paragraph 4.9 of the Development Plan.
- 7.14 Paragraph 148 of the NPPF advise LPA's that *"When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations"*.
- 7.15 Paragraph 149 of the NPPF advises that new buildings are inappropriate in the Green Belt, but goes on further to confirm six key exceptions to this rule. Exceptions 1 and 2 are as follows:

- *buildings for agriculture and forestry;*
- *provision of appropriate facilities for outdoor sport, outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it;*

7.16 Development consisting of buildings, hook-up points, infrastructure to serve the use clearly facilitates a use of land for outdoor camping, caravanning and motorhome use. Together with all the associated operational development, this use of land would not be considered to fall within the second exception. Therefore, the proposed change of use, together with all its buildings, hook-up points, hardstanding tracks and associated infrastructure used in connection with the camping, caravanning and motorhome camping for recreational residential purposes, including their continued presence when not in active use, would be inappropriate development, contrary to Policy KS3 of the Development Plan and paragraphs 148 and 149 of the National Planning Policy Framework.

The effect on the openness of the Green Belt

7.17 The site's former character was of open grazing areas of fairly flat and level ground. The site is accessed off a shared track off School Lane, which leads into Gundrys Farm courtyard or gated fields leading to the areas where the caravan and camping fields are located. The site has a number of residential properties in School Lane and Ringwood Road in close proximity to the site.

7.18 The site is fairly well screened and there are very limited public access points whereby you can see where the camping is located. The fact that you cannot easily see it does not mean that for the purposes of Green Belt it has no effect on openness. It is well established that openness in the context of Green Belt means freedom from physical inappropriate development.

7.19 It is noted that the use may be offered on a seasonal basis, and with some caravans and motorhomes coming and going, some elements being more transient than others; but it is evident that other caravans and motor homes together with the buildings, hook-up points, hardstanding tracks and associated infrastructure which support the use of land remain on site all year round. The website offers seasonal pitches and storage and during a previous visit, the season was purported to end at the end of October with a season's pitch being a full year, with an option to retain the caravan on site when not in use. It is unknown how many customers took advantage of this at the time.

7.20 Since enforcement action was first taken the land owners have not used the majority of the land for camping and caravanning customers but nevertheless infrastructure has remained. On 3 September 2020 there were a few caravans on the former rally site .

- 7.21 Paragraph 137 of the NPPF reaffirms the fundamental aims of Green Belt. The NPPF confirms that openness is the essential characteristic of the Green Belt. It is considered that the development would reduce the overall openness of the Green Belt when in active use and in respect to the caravans and motor homes, buildings hook-up points, hardstanding tracks and associated infrastructure which remain behind when the camping season ends; therefore the unauthorised development considered as a whole erodes the site's openness and as such undermines the Green Belt's essential characteristics, thus conflicting with the provisions of the NPPF.

The effect of the proposal on the landscape character and the visual and general amenity of the surrounding area

- 7.22 The development has a deleterious impact upon the rural character of the locality by reason of the siting of: tents; caravans and motorhomes; associated vehicles; domestic paraphernalia (the latter when in use), (prior to enforcement action there was open storage of caravans and camper vans when not in any active use), on land which has previously been maintained as open and undeveloped. These physical features appear as a utilitarian form of development which is considered out of keeping/incompatible with the woodland character of surrounding land within the Green Belt. The current unauthorised use of land and its facilitating operational development is considered contrary to the general rural aesthetic of the wider site and area.
- 7.23 Furthermore, a number of concerns have been raised by local residents in the area in connection with the unauthorised development. The main thrust of their comments has included: noise, impact upon residential amenity, general disturbance, traffic generation, unlawful works and unauthorised use of the site, as well as Green Belt concerns.
- 7.24 Consequently, the development is contrary to Policy HE2 and HE3 regarding visual and loss of amenity to the surrounding area and nearby residential properties as set out within the Christchurch and East Dorset Local Plan Part 1, Core Strategy dated April 2014 and paragraph 185, of the NPPF, in terms of tranquillity and character of the immediate area and design, form and visual impact of the built form within the immediate and wider setting of the area.

The Rural Economy

- 7.25 PC4 entitled "The Rural Economy" is a permissive policy for economic development subject to a number of criteria.

Whilst the Council acknowledges that this business site makes a positive contribution to the rural economy through tourism (many local attractions), such a use of land must not cause harm to the openness of the Green Belt nor have adverse impacts on sensitive habitats. The development has an impact on the openness of the Green Belt and could have an adverse impact on sensitive habitats, therefore the development is contrary to policy PC4 of the Core Strategy and para 84 of the NPPF.

Tourism

- 7.26 Policy PC6 acknowledges the enhancement tourism can bring to the local economy, but at the same time the policy seeks to avoid potential harmful impacts on other important natural features and reducing recreational features on sensitive habitats. The development which is the subject of this report increases visitor pressure on the Dorset Heaths and in the absence of any possible or appropriate mitigation the development would be contrary to this policy.

The effect of parking and manoeuvring of vehicles associated with the development, and impact on road safety

- 7.27 Core Strategy Policy KS11 (Transport and Development) and Policy KS12 (Parking provisions) are relevant to the use of land and buildings for camping, caravanning and motorhome camping and open storage facilities which are being carried out on the land.
- 7.28 The site is accessed via a track off School lane off the main Ringwood Road, Three Legged Cross, which also serves a number of other properties. Dorset County Council as local Highway Authority was contacted in regard to the use of the land and has raised no objection to the road safety impact of the land use. There are opportunities for vehicles and towing vehicles using the site to leave in a forward gear and no objection is raised in respect of this issue.
- 7.29 The site provides adequate space to park vehicles and the areas where the camping, caravanning and motorhome activities are undertaken are sufficiently distant from the nearest residential properties so as not to adversely impact on the amenities of their occupants.
- 7.30 For the above reasoning, it is considered the mixed use does not conflict with Core Strategy Policies KS11 and KS12.

Impact Upon Protected Dorset Heathland

- 7.31 The site lies within 400 metres of Holt and West Moors Heath SSSI which is also a Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site (wetlands and waterfowl) protected by international legislation. European wildlife sites are protected by the EC Birds and Habitats Directives, specific provisions of which are applied in the UK by the Conservation of Habitats and Species Regulations 2017.
- 7.32 The Dorset Heathlands cover an extensive area of South East Dorset. In accordance with advice from Natural England, and adopted in the Dorset Heathlands Planning Framework 2020-2025 and Supplementary Planning Document (SPD), no new residential development (including temporary) will be permitted within 400 metres of protected European and internationally protected heathlands. Holt and West Moors Heath is a European site where the presumption in favour of sustainable development does not apply whereby development

requiring appropriate assessment because of its potential impact on a habitats site being planned or determined (para. 182 of the NPPF). This SPD accords with the principles of the NPPF and it is a result of the co-operative approach to partnership working between the local authorities in South East Dorset and statutory and third party stakeholders as prescribed by the Localism Act 2011

- 7.33 The protected heathland to the south, and which is within 400m of the site, is part of West Moors Depot (MoD). The advice from Natural England is that because of the security arrangements at the MoD establishment, the range of urban related recreational pressures – including disturbance from walking, dog walking and predation by cats, as well as impacts from arson, are significantly reduced for the adjacent specifically protected heathland. As a result, Natural England have advised that there may be scope for an exception to the restrictions on development within 400m of this particular site and proposed development, subject to conditions restricting the keeping of pets at the site, and restriction of occupancy to ensure turnover of occupants and prevent residential occupation. Without the opportunity to subject the proposed development to conditions, the development would have a significant adverse effect upon the designated site, and would be contrary to paragraphs 174 to and including 182 of the Framework and Policies ME1 and ME2 of the Core Strategy and contrary to the adopted Dorset Heathlands SPD.
- 7.34 The site also lies within a 400m to 5km distance of a number of other protected heathland sites, including other parts of Holt and West Moors Heath SSSI to the north of the site. Development would therefore be likely to have a significant adverse effect upon protected Dorset Heathland in the 400m to 5km range. The protected heathlands to the north of the site are open countryside and directly linked to the application site by Rights of Way (a walk of c. 1.2km). In respect of these areas of protected Dorset Heathland, Natural England has advised that it would be necessary for mitigation to be secured in accordance with the SPD including an on site Heathland Infrastructure Project, specifically a suitable area of natural greenspace. Without mitigation the development would be contrary to paragraphs 174 to and including paragraph 182 of the Framework and Policies ME1 and ME2 of the Core Strategy and contrary to the adopted Dorset Heathlands SPD.
- 7.35 Natural England has advised the authority about the intensification of residential development (including temporary/seasonal) in South East Dorset and the resultant pressures placed upon protected Heathland by new occupants of developments (including temporary/seasonal) living in close proximity to the Heathlands, since 2007. Natural England report many scientific studies as evidence that public access to lowland Heathland, from nearby development, has led to an increase in wild fires, damaging recreational uses, the introduction of incompatible plants and animals, loss of vegetation and soil erosion and disturbance by humans and their pets amongst other factors have an adverse effect on the Heathland ecology. These effects are most marked for development within 400m of heathland where Natural England advise that additional residential

development will have a significant adverse effect upon the designated site, either alone or in combination with other developments.

- 7.36 It is the view of Natural England that there is no evidence to demonstrate that the occupants of permanent/seasonal for tourist use, or others would be likely to have different recreational needs to residents in Use Class C3 dwellings. Therefore it is the view of Natural England that effects from development proposals of this type would act in combination with effects from Use Class C3 residential development and in these circumstances applications within 400m to 5km of European/internationally protected heathland should be treated in the same way as applications for Use Class C3 development. In this case Natural England advice that scale of the proposal and its location in context to other protected heathlands within walking distance is such that the applicant should provide a Heathland Infrastructure Project (e.g. Suitable Alternative Natural Greenspace (SANG)) to demonstrate that they can effectively avoid or mitigate harm to the protected sites.
- 7.37 Natural England's advice is consistent with Dorset Heathlands Planning Framework 2015-2020 SPD which considers self-catering tourist caravans to be considered in the same respect as Use Class C3.

Whether any very special circumstances exist

- 7.38 No very special circumstances have been brought forward by the land owners or their agent through positive engagement of the enforcement investigation.
- 7.39 The Donkey Sanctuary does not fall to be considered an equine use and this is a countryside location just outside a settlement boundary. The use of the land as a donkey sanctuary at this location would therefore, in principal can be an acceptable material change of use in the Countryside and on Greenbelt land.
- 7.40 Aerial photographs indicate that there has been an informal track in the position of the recently formed access track since at least 2009. The track and shelter with hardstanding are all close to the northern boundary where vegetation and trees provide visual screening from locations outside the site. By hugging the northern boundary the operational development associated with the donkey sanctuary use do not have any significant adverse impact on the openness of the Countryside or green belt in which the site lies.
- 7.41 If an application for the Donkey Sanctuary was submitted with the shelter and track included it is considered permission would be granted given the limited impact. This element of the unauthorised use and associated operational development in unit A does accord with paragraphs 84, 149 and 150 of the NPPF and policies KS1 KS3 HE3 and PCS4 of the Christchurch and East Dorset Local Plan. The intention is therefore to under enforce there by granting planning permission.

8.0 EXPEDIENCY FOR ENFORCEMENT ACTION

8.1 The need to maintain public confidence in the planning system and the proportionality of taking action underpins enforcement procedures and the decision on whether it is appropriate to serve a notice. Having had regard to Paragraph 59 of the NPPF (2018) and the National Planning Policy Guidance (2014), in particular the section entitled '*Ensuring effective enforcement*', advice is given to local planning authorities of particular circumstances where it would not be proportionate to issue an enforcement notice in the absence of a valid planning permission.

8.2 Based on the above planning assessment, consideration of the relevant Acts and other relevant material considerations, including the advice contained within the policies of the Development Plan, para 59 of the NPPF (2018) and PPG (2014), it is considered reasonable, proportionate and expedient in view of policies contained within the Development Plan to instigate enforcement action on this occasion.

Human Rights Act 1998

8.3 In taking the decision whether or not to take enforcement action the private interests of the owner and/or occupier of the land must be weighed against the wider public interest and competing private interests. The Convention rights that are likely to be most relevant to this decision are:

- Article 1 of the 1st Protocol - The Right to Enjoyment of Property and Article 8 - The Right to Respect for Home, Privacy and Family Life.
- Article 1 of the First Protocol and Article 8 are qualified rights. Interference with these rights can occur where sanctioned by law (The Town and Country Planning legislation) and must be proportionate.

8.4 The Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. However, where such an interference is in accordance with planning law and pursues a legitimate aim namely that of protecting the rights of others in the sense of environmental protection, which is also (for the purposes of Article 1 Protocol 1) in the general public interest, then the interference can be deemed to be justified.

8.5 Having regard to the circumstances of this case it is considered that the issue of an Enforcement Notice is appropriate and proportionate having regard to the harm caused by the breach of planning control. There is no indication that there is any permanent residential occupation within unit A and therefore article 1 of the first protocol does not apply.

Equalities Act 2010

- 8.6 There are no considerations of protected characteristics under this Act.

CONCLUSIONS

- 8.7 Enforcement action should always be commensurate with the breach of planning control to which it relates and it is usually inappropriate to take formal action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site.
- 8.8 It appears to the Council that a Breach of planning control occurred within the 10 years preceding the original Enforcement Notice but has not yet gained immunity by section 171B(3) the ten year rule. This is by virtue that the introduction of the Donkey Sanctuary within the confines of area A has occurred in the last few years creating a new chapter in the planning history of the planning unit. In any case by section 171B(4) and 173A(4) in combination, the Council maintain good reason to take enforcement action within 4 years of the previously withdrawn notice.
- 8.9 The need as to whether it is expedient to take enforcement action has been assessed, as set out above, against the Development Plan policies and all other material considerations finding that the harm caused by the development is not outweighed by the benefits.
- 8.10 Conditions would not overcome the harm caused to enable planning permission to be granted.

9.0 RECOMMENDATION

- 9.1 That an enforcement notice requiring the cessation of the use and removal of the operational development may remedy the breach of planning control on Planning Unit A.
- 9.2 That an enforcement notice should be served the suggested wording for which is expressed as follows, this will be subject to checks by legal services before service.:

THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Contrary to section 171A(1)(a) of the Town and Country Planning Act 1990 the unauthorised material change in the use of the Land marked on the attached plan as "Planning Unit A" from a lawful mixed use of agriculture and a caravan site for exempt organisations in accordance with Part 5 of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 and schedule 1 of the

Caravan Sites and Control of Development Act 1960, to a mixed use of agriculture and an authorised caravan site consisting of:

- i. The stationing of caravans (with and without awnings), motorhomes, campervans, trailer-tents and tents for the purpose of human habitation; together with the integral operational development consisting of two toilet blocks with ramps and septic tanks/waste and water facilities, and fire hydrants, construction of a track, electrical hook ups, and;
- ii. The storage of caravans, and
- iii. The Keeping of donkeys and the construction of a field shelter and concrete base integral to this.

REASONS

The unauthorised development has occurred in the last ten years and as such is not immune to enforcement by virtue of section 171B(3) of the Act.

The presumption in favour of sustainable development does not apply for the unauthorised development in this location unless an appropriate assessment has concluded that the project will not adversely affect the integrity of the nearby habitat's sites. No such assessment has concluded this is the case.

The location, scale and distribution of the unauthorised development fails to conform to the settlement hierarchy. The unauthorised development is considered as a whole to erode the site's openness and as such undermines the Green Belt's essential characteristics increases visitor pressure on the Dorset Heaths and in the absence of any possible or appropriate mitigation the unauthorised development is not acceptable.

The site also lies within a 400m to 5km distance of a number of other protected heathland sites, including other parts of Holt and West Moors Heath SSSI to the north of the site and other protected habitats in the area. The unauthorised development is considered of a type that would have the same impacts as a C3 Residential use, which would not be appropriate in this location, and, therefore, the unauthorised development is not acceptable in this location.

The potential noise, impact upon residential amenity, general disturbance, traffic generation, unlawful works and unauthorised use are considered contrary to policy. The unauthorised development has a harmful impact on the amenity of the area.

The unauthorised development is therefore considered contrary to: Policies HE2, HE3, KS1, KS2, KS3, ME1, ME2, PC4 and PC6 of the Core Strategy; Saved

Policy TODEV2 of the East Dorset Local Plan 2002; policies 84, 137, 148, 149, 174 to and including 182 and 185 of the National Planning Policy Framework and; other adopted Supplementary Planning Documents.

Whilst the imposition of conditions may mitigate some of the harmful impacts identified it is considered that planning permission would not be granted for the unauthorised development as conditions could not overcome all the adverse impacts identified above.

WHAT YOU ARE REQUIRED TO DO

a. Cease* the use of the land for the stationing of caravans (with and without awnings), motorhomes, campervans, trailer-tents and tents

**This requirement does not prevent those served with this notice from using the land temporarily for tented camping or for the stationing of caravans to the extent permitted by Part 4 class B or Part 5 respectively of Schedule 2 to The Town and Country Planning (General Permitted Development) (England) Order 2015 and schedule 1 of the Caravan Sites and Control of Development Act 1960*

b. Cease to use the Land for the storage of caravans

c. Demolish and remove from the Land, all:

- i. toilet and shower blocks including associated decking and fencing;
- ii. electrical hook-up equipment;
- iii. fire hydrants;
- iv. water / waste water facilities
- v. location signs

TIME FOR COMPLIANCE

that a period of 3 months be allowed for compliance.

10.0 PROCEDURAL MATTERS

Persons on whom to serve an enforcement notice (Not exhaustive – refer to land registry)

Also see **Appendix 5** for landownership documents

Royale Parks (Dorset) Limited 7 th Floor Dashwood House, 69 Old Broad Street, LONDON, EC2N 1QS	Company Secretary
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The Office, Royale Parks (Dorset) Limited Gundrys Farm, Three Legged Cross- by post (and hand delivery if possible)	The operational site office & staff
Lancashire Mortgage Corporation Limited Lake View, Lakeside, Cheadle, SK8 3GW	Mortgager
Site Notice – to be placed at the entrance of the site by hand delivery	To whom it may concern

Case Officer: Mark Hitchcott	Nominated Officer: Anna Lee
Date: January 2022	Date: 10/03/2022

APPENDICES

1	<i>Aerial Photographs</i>
2	<i>Site Photographs</i>
3 A-G	<i>Gundrys Farm Web site details</i>
4 A	<i>Decision Notice 3/17/2370/CLE</i>
4 B	<i>Decision Notice Plan 3/17/2370/CLE</i>
4 C	<i>Officer Report 3/17/2370/CLE</i>
4 D	<i>Officer Report Appendices</i>
5 A	<i>Appeal Decision 3/18/6342/CLP</i>
5 B	<i>Decision Notice Plan 3/18/6342/CLP</i>
5 C	<i>Officer Report 3/18/6342/CLP</i>
5 D-F	<i>Officer Report Appendices 3/18/6342/CLP</i>
6 A-E	<i>Land ownership details</i>
7	<i>Site Licencing</i>
8	<i>PCN</i>
9	<i>Site visit images</i>
10	<i>Communications to the Landowner</i>
11	<i>Development Plan Policies</i>
12	<i>Dorset Heathlands Planning Framework 2020-2025 SDP</i>
13A	<i>Appropriate Assessment and Annex A</i>
13B	<i>Annex B Natural England's response</i>