

TOWN & COUNTRY PLANNING ACT 1990 (as amended)

S174 APPEAL

(Inquiry procedure)

PROOF OF EVIDENCE 1

DORSET COUNCIL

Planning & Enforcement History

Appellant

ROYALE PARKS (DORSET) LTD

Against the issue of an enforcement notice in respect of use of land

Land

GUNDRYS FARM

School Lane, Three Legged Cross, Wimborne, Dorset, BH21 6RU

By Reference

PINS APP/U1240/C/18/3218259

LPA ENF/17/0094

Appendices for this Proof

- 1. Enforcement Notice background documents**
- 2. Historical Planning Decisions***
- 3. Appellant 2017 LDC Applications***
- 4. Chart Exempted Organisations Bookings**
- 9. LPA Letter to PINS**

*The LPA provides the Decision, plan and officer report. Where historical files require closer examination, paper copies can be provided on the day as they are large files and need redacting.

INTRODUCTION

- 1 I, David Lloyd, am a planning enforcement practitioner, since 2004 and provide services to Local Planning Authorities under contract with specialist recruitment agencies. I am a BA Hons IIA Graduate of the University of Wales (1986).
- 2 I confirm that the contents of the Proof of Evidence are true and contain my knowledge and professional opinion of the planning matters at the Gundrys Farm caravan site.
- 3 I set out within this document what I am advised and believe to be the planning and legal position on this appeal under s174 of the Town and Country Planning Act 1990 (as amended) ("the Act 1990").

Enforcement Notice

- 4 The subject appeal was lodged following issue of an enforcement notice under s172 of the Act 1990 on 14th November 2018.
- 5 The enforcement notice, the enforcement plan and its background documents are attached as **Appendix 1**.
- 6 The enforcement notice was accompanied by a plan which annotates areas within the planning unit labelled A, B1, B2, C, and D. The appeal comprises a range of grounds specific to these areas.
- 7 Area descriptions are as follows:
Area A comprises an open field system;
Area B1 and B2 are small paddocks used for caravanning and camping;
Area C comprises a residential curtilage of the farmhouse with outbuildings;
Area D is an area used for storage of caravans;

The planning history set out within this document illustrates that areas B1, B2, C and D have Lawful Development Certificates which determine how each component area can be lawfully used.
- 8 The enforcement notice was issued pursuant to a breach of planning control (s171A) in

respect of five (5) matters as set out within paragraph 3 of the notice hereafter paraphrased –

- 9 (i) The material change of use of land shaded red and labelled A on the enforcement plan for the permanent use as a camping and caravan site, caravan and motorhome storage and operational development, the erection of structures and equipment to facilitate such a use, on land known to have previously used for agriculture and Schedule 1 caravanning rallies;
- 10 For clarity “Schedule 1” above refers to Schedule 1 of the Caravans Sites and Control of Development Act 1960, as also referred within Part 5 of the General Permitted Development Order 2015.
- 11 (ii) The material change of use of the land shaded Blue and labelled B1 on the enforcement plan from the use of land between the period from Easter to the end of September each year, as a caravanning and camping site for up to 24 caravans and tents (making no distinction between either) subject to a Lawful Development Certificate reference 3/96/9024, to a mixed use of the paddock labelled B1 for camping and caravanning use outside of the lawful and permitted seasonal use; and thereafter when not in active use for the stationing and storage of caravans.
- 12 (iii) The material change of use of the land shaded Blue and labelled B2 on the enforcement notice plan from the use of the land as a campsite for up to 30 caravans, tents and motorhomes (making no distinction) between Easter and 30 September each year, subject to a Lawful Development Certificate reference 3/10/0137, to a mixed use of the paddock for camping and caravanning outside of the lawful and permitted seasonal use and thereafter when not in an active use for the stationing and storage of caravans.
- 13 (iv) The material change of the use of land and buildings with the area shaded Green and labelled C on the enforcement plan, from the lawful use as a dwellinghouse and garden, including the siting of a single static caravan for incidental uses connected to the occupation of the dwellinghouse, to a mixed use comprising the residential occupation of the single static caravan for warden/manager’s

accommodation; the siting and occupation of additional caravans and motorhomes for seasonal staff accommodation; new built operational development consisting of a WC block (marked X within the shaded Green area); the conversion of part of the ground floor of the dwellinghouse accessed from the south west side elevation to provide toilet and shower facilities; use of the building labelled C within the area shaded Green as an office and reception all in connection with the wider use of the land edged red as a caravan and camping use.

- 13A The wording underlined above was added by letter from the Local Planning Authority to PINS provided as appendix 9.
- 14 (v) The material change of the land shaded Orange and labelled D, the use for caravan storage for up to 25 caravans, to a mixed use comprising the storage of caravan and the siting and occupation of additional caravans and motorhomes for seasonal staff accommodation contrary to a Lawful Development Certificate.
- 15 The Lawful Development Certificate to which the enforcement notice refers is decision 3/10/0135.
- 16 The reasons for the notice are set out broadly within paragraph 4 of the notice and in summary states
- The breach of planning control has occurred within 10 years and is not immune by s171B(3)
 - Planning conditions would not overcome the harm caused
 - The development is not sustainable and is contrary to Local Plan Core Strategy (“Local Plan”) Policy KS1
 - The site lies within the South East Dorset Green Belt (“Green Belt”) and represents inappropriate development which by definition would be harmful. There are no special circumstances which outweigh the harm.
 - The development would be contrary to Local Plan Policy KS3
 - The development would be contrary to National Planning Policy Framework 2018 (“NPPF”) paragraphs 133, 143 to and including 147
 - The development would represent visual and loss of amenity by disturbance to

surrounding and nearby residential properties

- The development would be contrary to the Local Plan Policies HE2 and HE3 and NPPF paragraphs 170 and 180
- The development would have adverse impact on sensitive habitats and be contrary to Local Plan Policy PC4 and NPPF paragraph 84
- The development places the adjacent Hole and West Moors heathlands at risk of predation of wildlife
- The development increases visitor pressure on the Dorset Heaths. There has been no appropriate mitigation proposed
- The development would be contrary to Local Plan Policy PC6 and NPPF Paragraphs 174 to and including 177
- The site lies within 400 metres of the Holt and West Moors Heath SSSI, a Special Area of Conservation, Special Protection Area and Ramsar site protected by international legislation. There has been no avoidance or mitigation proposed. Natural England advise that the development is likely to have a significant effect unless mitigation is provided either alone or in combination with other plans or projects. The presumption in favour of sustainable development does not apply in respect to NPPF paragraph 177.
- The development is likely to have a significant adverse effect upon protected heathlands contrary to NPPF paragraphs 174 to and including 177 and Local Plan Policies ME1 and ME2 and the Dorset Heathlands Planning Framework 2015-2020, a Supplementary Planning Document, dated 03/01/2017.

17 The reason constitutes the Council's objection in planning terms to the development which, it is alleged, is a breach of planning control.

18 The notice requires the Appellant to undertake in respect of each of the five alleged breaches as follows –

Within Area A and pursuant to alleged breach (i)

(a) cease to use the land labelled A for camping and caravanning other than as permitted by planning Act or Order (Act 1960 and GPDO)

(b) cease to store caravan, motorhomes, campers and equipment on the land

- (c) remove all caravans etc other than units permitted by planning Act or Order
 - (d) cease the use of the WC and Shower buildings and structures erected, together with equipment installed on, in and under the land, together with hardstanding track, for camping and caravanning purposes
 - (e) remove all buildings (...) marked X on the enforcement plan within area labelled A, the access paths leading up to the buildings; remove the structures (...) and equipment (..) installed on, in and under the land to facilitate the camping and caravanning activity
 - (f) remove the hardstanding track on the line labelled Y1 and Y2
- 19 Within Area B1 and pursuant to alleged breach (ii)
- (g) cease to use the land labelled B1 for camping and caravanning, stationing and storage purposes between 1st October and the following Easter period
 - (h) remove all caravans, motorhomes, campers, tents and awnings from the land between 1st October and the following Easter period
 - (i) ensure that there are no more than 24 caravans and tents on the land between Easter and 30th September each year
- 20 Within Area B2 and pursuant to alleged breach (iii)
- (j) cease to use the land labelled B2 for camping and caravanning, stationing and storage purposes between 1st October and the following Easter period
 - (k) remove all caravans, motorhomes, campers, tents and awnings from the land between 1st October and the following Easter period
 - (l) ensure that there are no more than 30 caravans and tents on the land between Easter and 30th September each year
- 20A The expression in (i) and (l) above should include “at any time” as the requirement does not imply that only 24 caravans in total can appear on the land in the requisite period.
- 21 Within Area C and pursuant to alleged breach (iv)
- (m) cease the residential occupation of the static caravan within the area labelled C
 - (n) cease the use of all caravans, motorhomes, campers used as habitable

- accommodation by seasonal staff and/or stationed or stored in connection with the wider use of the land as a caravan and camping use
- (o) with the exception of the single static caravan, remove all caravans, motorhomes, campers and associated awnings from the land
 - (p) demolish the WC block (X) within area C
 - (q) remove from the land all resulting demolition material
 - (r) cease the use of part of the ground floor of the dwellinghouse (...) as toilet and shower facilities serving the wider use of the land as a caravan and camping use
 - (s) cease the use of the outbuilding as an office and reception, used in connection with the wider use of the land as a caravan and camping use
- 21A It is implied within requirement (m) that any non-incidental residential occupation would amount to a breach of planning control. As a matter of law, enforcement notices cannot remove lawful use rights. To that extent therefore it is not considered this would prevent incidental uses of the static caravan associated with the reasonable enjoyment of the lawful residential farmhouse.
- 22 Within Area D and pursuant to alleged breach (v)
- (t) cease to use the land labelled D for the siting and occupation of caravans, motorhomes and campers for human habitation and camping and caravanning purposes
 - (u) remove all caravans, motorhomes, campers, tents and awnings other than up to 25 caravans as permitted to be stored pursuant to Certificate 3/10/0135
- 22A The Council considers Good Friday in each year to begin the Easter period.
- 23 The notice provides a timeframe of 6 months to comply with all requirements above.
- 24 The enforcement notice was served 15/11/2018.
It is understood that there is no ground (e) appeal and good service is accepted.
- 25 Enforcement case reference 17/0094 comprises an investigation initially of an alleged breach of "The erection of circa 200 electric hook-up posts, the erection of four purpose

built toilet / shower buildings and the use of agricultural land as an unlicensed caravan site.”

THE APPEAL SITE

26 Landownership

The land is in single ownership, and there is no division of the land making a distinction of ownership or operation. It is believed that a parcel of Area A (the most easterly paddock) is rented to a person who conducts agriculture comprising grazing for sheep and grass/haylage, the extent of the use is unknown. It is further believed that the residential use of the dwellinghouse is associated to the daily operations of the land for caravan and camping purposes.

27 The Planning Unit

The land is a single planning unit, falling within criteria (1) or (2) by reference to *Burdle v SSE* [1972].

- (1) Wherever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.*
- (2) It may be equally apt to consider the entire unit of occupation even though the occupier carries out a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land.*
- (3) However, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.*

Other than the land as a (former) farm being put to agriculture, operations of the land appear predominantly put for caravan and camping purposes.

This does not appear to preclude the land being put to agriculture in the alternative. It is believed that a parcel of Area A (the most easterly paddock) is rented to a person who regularly conducts agriculture comprising grazing for sheep and grass/haylage.

It is further believed that the residential use of the dwellinghouse is associated to the daily operations of the land for caravan and camping purposes.

BACKGROUND: PLANNING AND PLANNING ENFORCEMENT

29 Planning History

Page 3 of the Enforcement Expediency Report (Appendix 1) provides a table of all decisions relevant to the appeal land.

30 Planning decisions for the appeal site are included at **Appendix 2**.

3/96/9024 establishes as a point in time of an existing use of area B1 as referred on the enforcement plan for a use as described - "Between the period from Easter to the end of September each year the 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." A Lawful Development Certificate (s191) was granted 04/03/1997.

31 The Council concludes that this Certificate certifies the extent of the use by virtue of the seasonality; the manner of the use is controlled by the capacity of accommodation units which can be placed on the area B1 at any time during the season.

32 **3/10/0135** established as a point in time of an existing use of area D as referred on the enforcement plan as a place only for storage of up to 25 caravans. A Lawful Development Certificate (s191) was granted 23/02/2010.

- 33 The Council concludes that this Certificate permits a single use of land – for storage of caravans.
- 34 **3/10/0136** established as a point in time of an existing operational development of 12 (twelve) electricity hook-up points within area B2 of the enforcement plan. A Lawful Development Certificate (s191) was granted 20/04/2010.
- 35 **3/10/0137** established as a point in time of an existing use of area B2 for “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.” A Lawful Development Certificate (s191) was granted 28/05/2010.
- 36 The Council concludes that this Certificate certifies the extent of the use by virtue of the seasonality; the manner of the use is controlled by the capacity of accommodation units which can be placed on the area B2 at any time during the season.
- 37 **11/0393** established as point in time of an existing use of area C as “residential curtilage of the farmhouse”. A Lawful Development Certificate (s191) was granted 01/06/2011.
- 37A The phrase “residential curtilage” is interpreted and comprising of a farmhouse with outbuildings, and ancillary and incidental use of garden, pond, lawns, and hardstanding forming a yard between the farmhouse and outbuildings. The use of space surrounding the farmhouse within the defined area C would be incidental in use to the enjoyment of the dwellinghouse or otherwise the use of the land for agriculture.
- 38 The Council concludes that this Certificate permits use of the land by the provisions of s55 (2) (d) the Act 1990 and the GPDO 2015 for purposes incidental to the enjoyment of the dwellinghouse as such, being a C3 (Use Classes Order 1987) residential premises, and for any other of the provisions within the GPDO where applicable.
- 39 The applicants for the decisions above were Mr & Mrs Pitts, who are now in the employ of the Appellant as *site managers*. Pursuant to s106 of the Act 1990, they signed a unilateral planning obligation dated 21 June 2011 for a caravan (within area C) to be only used for a

purpose incidental to the enjoyment of the dwellinghouse (the farmhouse), and that it shall only ever be occupied by a person or persons who are members of the household occupying the dwelling.

40 The Appellant, Royale Parks (Dorset) Ltd, has applied under s191 and s192 of the Act 1990; decisions are included at **Appendix 3**.

41 **3/17/1464/CLP** proposed to claim that “use of land for the siting of up to 54 caravans throughout the year for the purposes of human habitation” would be lawful by s192. The application was deemed not lawful on 07/09/2017. The decision was appealed (APP/U1240/X/17/3186342) and on 01/10/2018 was dismissed. A s288 High Court Challenge (CO/4467/2018) was lodged and also dismissed on 26/02/2019.

42 This application and its subsequent s195 and s288 appeals combine and challenge the use of areas B1 and B2. **The Council contends that the Appellant’s ground C/D appeals for these areas has previously been considered and are exhausted.**

43 Further to the planning appeal, the Inspector disagreed with the Appellant’s view as to how a unit of accommodation could be used. On consideration of use of a unit for human habitation (meaning unfettered occupation) the Inspector found a Certificate provides a description “in exact terms what is lawful and any change has to be considered against that to determine whether there is a material change of use from what has been declared lawful.” (para 6)

44 The Inspector found that the appeal site (area B1 and B2) “is only permitted to be used for up to six or seven months (depending when Easter occurs) in any year. That has implications when one is considering whether a new use is materially different to what exists and it is not actually a similar situation in my view.” (para 7)

45 The Inspector found that the appeal site is “clearly a holiday use only and would encompass both short stays (one night) and longer stays (maybe up to a few weeks)” (para 9) and “it is clear from the definitions that a campsite is for camping and caravanning is a holiday activity.” (para 10).

- 46 From paragraph 12-22 the Inspector examines whether long term or permanently is a materially different use to a recreational one or non-permanent occupation. D E Morden concludes the proposals would
- Be “materially different particularly in terms of traffic and vehicle movements to and from the site.” (para 13-16)
 - “look differently and physical changes would take place” (para 16)
 - “would require roads” (para 17) “proper access .. and hardstandings” (para 18)
 - “would require additional features” (para 19)
 - That intensification amounts to a material change in the character and appearance of the site and the activity associated with change in numbers, by reference (para 21) to R (Childs) v (1) FSS and (2) test Valley BC [2005] EWHC 2638 (Admin).
 - And amount to a “material change in the character and appearance of the site and a material change in the activity associated with the use even if it was only taking place over the same six months,” (para 22) and “magnified if it were to take place over 12 months”.
 - “The LDCs certify that a specific type of activity on the land is lawful and in my view change in the character and appearance of the use and the activities that occur as part and parcel of that use could and does amount to a material change of use.”
- 47 The Inspector also inferred that the Certificates for areas B1 and B2 apply control or limitation (para 20).
- 48 The S288 High Court Challenge concluded –
- “.... I would have refused permission on the basis that just as I found that the challenge to the Inspector’s approach to the interpretation of the pre-existing LDC’s relation to the site and use on it for caravanning and camping within a certain period, was not arguable, nor could it amount to real prospects of a successful appeal.”*
- 49 **3/17/2370/CLE** proposed to claim that “use of land for the siting of up to 100 caravans from Easter to the end of October” would be lawful by s191. The application was refused on 7/11/2017. No appeal was lodged.

50 This application applies to a parcel of area A. The refused application re-emerges within this appeal as the appellant's Ground C/D.

51 The application was refused for the following reason

The applicant has failed to provide the Council with sufficient evidence to establish that the land .. has been used continuously for the purposes ... as described .. for the past 10 years.

52 The application report concluded that occupation of the land was not demonstrated, relying heavily on use as a "Rally Field". The Council concluded that any use of area A by the provisions of Part 5 GPDO and Schedule 1 Act 1960 for exempted organisations would not amount to a breach of planning control. By s191 the application sought to claim that the land amounted to a breach of planning control and immune by s171B(3). By investigation the claims illustrated what had been recently developed rather than it being laid out with infrastructure for a requisite period of 10 years.

53 The Council received evidence from a range of third parties on the operations of the land as set out within the officer report (para 2.7) and result in material impact from operations within.

54 The Council sought evidence from exempted organisations and an explanation how each rally/meeting occurs (report para 3.6). This has been formed into a chart which is found at **Appendix 4.**

55 **Enforcement History**

There is limited enforcement history other than the more recent investigations which have resulted in the s172 action being taken relative to this appeal. In 2009 investigations commenced and lead to the submissions of the 2010 s191 applications.

SUMMARY FACTS

- 56 The Planning Unit is a single planning unit which turns on a mix of caravanning and camping operations, residential occupation, and small-scale agriculture.
- 57 The caravanning/camping operations and residential occupations have been made distinct by LDC s191 decisions primarily in 2010 and 2011. However since that time the land has been used more intensely and for wider commercial operation such that recent LDC applications submitted have been unsuccessful where they aim to operate a site throughout the year for permanent residential purposes.

ENDS