

Preliminary Note

1. The parties will know from *Miller-Mead* that a notice must tell the recipients clearly from within its four corners what they have done wrong and what must be done to put it right. The wording of the notice that is the subject of the appeal by Royale Parks (Dorset) Ltd is complex. In my view, it either fails the *Miller-Mead* test and is a nullity or it is invalid and incapable of correction without injustice to either party. Whichever, the Council should seriously consider withdrawing the notice before the Inquiry opens in order to minimise the expense to all parties.
2. There is no question that the appeal site is a single planning unit; that is common ground. It is therefore necessary if alleging a material change of use to identify if it is in a single primary use or a mixed use. Not to do so makes it impossible to assess whether there has been a material change of use as a result of the further development that has taken place.
3. Paragraph 56 of Mr Lloyd's proof confirms that it is in a single primary use.
4. That is also clear from the notice once the allegations are aggregated. Subject to what I say below, allegations 3i to 3iii all allege use of the land for caravans, allegation 3iv is for development ancillary to the primary use of the planning unit ("in connection with") and 3v is again ancillary to the primary use.
5. It seems to me that the LDCs quoted in 3ii and 3iii do no more than establish a benchmark against which to measure any further development within the planning unit. It may well be that far more caravans etc. are now present on the land than are stated in the LDCs. However, whether that amounts to a breach of planning control depends on why they are there.
6. The mere stationing of a caravan on land is not a breach of planning control. The use to which the caravan is being put needs to be specified. In allegations 3ii and 3iii it is not.
7. If they have been stationed to provide permanent residential accommodation that would amount to a different and new primary use and the planning unit would then be in a mixed use. Inspector Morden's appeal decision and the court judgement may then be relevant. However, that does not appear to be what is alleged.
8. Alternatively, it may be that there are simply far more caravans using the land for holidaying. If that amounts to a material change of use, it would be by intensification. That is the very clear implication of Mr Lloyd's paragraph 57. However, the notice does not say that either as the courts have established it must. It seems to me that this is the substance of some of the appellant's ground (c) arguments which may well succeed.

9. In fact, by not specifying the purpose for which the caravans have been "stationed" the recipient of the notice cannot know what the nature of the breach is.
10. In theory, this may be capable of correction but, as with the proposed insertion of the mistakenly omitted wording into 3iv (see Appendix 9 from the Council), this would almost inevitably open the possibility of other or different grounds of appeal and thus cause injustice to the appellant.
11. More likely, in my view, is a finding that the notice is simply unclear on its face and thus a nullity.
12. The Council is asked to indicate how it intends to proceed as a matter of urgency so that arrangements for the Inquiry can either be cancelled or confirmed as soon as possible.

Brian Cook

Appointed Inspector