

DORSET COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 174

**Appeal by Royale Parks (Dorset) LTD against an enforcement
Notice issued by Dorset Council in respect to:-**

**A. Contrary to section 171A(1)(a) of the Town and Country Planning
Act 1990 the unauthorised material change in use of the Land
edged red on the attached plan marked 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 of the Town
and Country Planning (General Permitted Development) (England)
Order 2015 and schedule 1 of the Caravans 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; and**
- ii. The storage of caravans.**
- iii. The keeping of donkeys,**

and;

B. Contrary to section 171A(1)(a) of the Town and Country Planning Act 1990, the carrying out of unauthorised operational development on the Land edged red on the attached plan marked as “Planning Unit A”, which facilitates the unauthorised material change in use of the land alleged in section A. above. The unauthorised integral operational development consisting of the following:

i. Hard standings and tracks;

ii. Toilet and shower blocks;

iii. Sceptic Tanks

iv. Electrical hook-up equipment;

v. Fire hydrants;

vi. A water/waste water facility

vii. Location signs.

viii. Animal shelter and concrete base

**at Gundry’s Farm, School Lane, Three Legged Cross, Dorset, BH21
6RU**

LOCAL PLANNING AUTHORITY REF: ENF/17/0094

PLANNING INSPECTORATE REF: APP/D1265/C/22/3313965

<u>CONTENTS:</u>	<u>PAGE</u>
1. INTRODUCTION	5-7
2. THE APPEAL SITE AND ITS SURROUNDINGS	7-10
3. PLANNING HISTORY	10-13
4. THE DEVELOPMENT PLAN	13-15
5. NATIONAL POLICY AND GUIDANCE	15
6. THE CASE FOR THE COUNCIL	15-16
7. COMMENTS ON THE GROUNDS OF APPEAL	16-24
8. CONCLUSION	34

1. INTRODUCTION

- 1.1 This statement is in response to the appeal by the Appellants against the issue of an Enforcement Notice (the Notice) by Dorset Council on the 4th October 2022. A true copy of the Notice has been included in the appeal questionnaire.
- 1.2 The Notice was issued by the Council because it appears that there has been a breach of planning control, within paragraph (a) of Section 171A(1) of the Town & Country Planning Act 1990 (the 1990 Act).
- 1.3 The Notice relates to part of the land and premises known as Gundry's Farm, School Lane, Three-Legged Cross, Wimborne, Dorset.
- 1.4 The matter that appears to constitute a breach of planning control relates to unauthorised development consisting of:

A. Contrary to section 171A(1)(a) of the Town and Country Planning Act 1990 the unauthorised material change in use of the Land edged red on the attached plan marked 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 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and schedule 1 of the Caravans 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;*
- ii. The storage of caravans.*
- iii. The keeping of donkeys,*

and;

B. Contrary to section 171A(1)(a) of the Town and Country Planning Act 1990, the carrying out of unauthorised operational development on the Land edged red on the attached plan marked as "Planning Unit A", which facilitates the unauthorised material change in use of the land alleged in section A. above. The unauthorised integral operational development consisting of the following:

i. Hard standings and tracks; ii. Toilet and shower blocks; iii. Septic Tanks; iv. Electrical hook-up equipment; v. Fire hydrants; vi. A water/waste water facility; vii. Location signs; viii. Animal shelter and concrete base

1.5 The Notice relates to a breach of planning control which has occurred within the last 10 years (material change of use with integral operational development). It is notable that the keeping of donkeys on the land has been a recent addition being first observed in 2021 by officers.

1.6 The appeals have been made under grounds (a) (b) (c), (d) (f) and (g) which are:

- (a) That Planning permission should be granted for what is alleged in the Notice.
- (b) The breach of planning control alleged in the Notice has not occurred as a matter of fact.
- (c) that there has not been a breach of planning control (for example because permission has already been granted, or it is “permitted development”).
- (d) that, at the date when the Notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
- (f) that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;
- (g) The time to comply with the Notice is too short.

1.7 In all appeals on grounds (c) and (d), the burden of proof is firmly on the Appellant to prove its case on the balance of probability.

1.8 The reasons for issuing the Notice are set out in Paragraph 4 of the Notice.

1.9 The requirements of the Notice are to:

Permanently:

A. Cease the use of the Land for the stationing of caravans (with and without awnings), motorhomes, campervans, trailer-tents and tents for the purposes of human habitation*

**This Notice does not affect any existing use rights or uses that are not development of land 'or any applicable permitted development under The Town and Country Planning (General Permitted Development) (England) Order 2015.*

B. Cease the use of 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

1.10 The time for compliance given is six months following the Notice taking effect.

1.11 The aim of the Notice was to remedy the harm to the amenity of the area. The Notice under-enforces in that it does not require the keeping of donkeys on the land to cease or the removal of the donkey shelter or tracks. It also does not require the removal of the track across the north of the site which was apparently laid to facilitate caravanning use.

2. THE APPEAL SITE AND ITS SURROUNDINGS

2.1 The land in single ownership has a combination of paddocks associated to a group of agricultural buildings in close proximity to a farmhouse to which there are gardens as curtilage. The former farm is used for the mixed purposes

including: grazing areas caravan site, caravan storage and residential; the dwelling house is located centrally. A plan breaking the site down in to its constituent areas and with the area covered by the notice shaded red, can be found at **appendix A** of this statement.

2.2 Historically the entire site was put to agriculture with an associated dwelling but, over the passage of time a caravanning and camping business has grown by piecemeal development and change of use. The piecemeal development of the caravanning and camping development on parts of the site have been the subject of a series of S191 LDC decisions but, notably the land covered by the enforcement Notice has not. There is a current LDC application under consideration which does in part cover the appeal site, planning unit A, ref: P/CLE/2022/05407.

2.3 There are distinct areas within the land owned by the Appellant which the Council has identified as follows in appendix A.:

Area A: Includes the appeal site which is the subject of the Enforcement Notice

Area B1: The first paddock area on approach from the north. B1, which currently has a lawful use established over time covered by and confirmed by LDC certificate of Lawfulness ref: 03/96/09024/LDC for:-

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.

Area B2: The second paddock to the south of area B1 and benefiting from a LDC certificate of Lawfulness ref: 3/10/0137/LDC for:-

On the land edged in red on the attached plan, in the area shaded blue, 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.

Area C: This area comprises the residential farm house and its curtilage garden, the latter established as lawful is covered by a Certificate of Lawfulness 3/11/0393/LDC stating:

The Council is satisfied, on the balance of probability, that the land outlined in red on the attached plan has formed, and been used as, the residential curtilage of the farmhouse at Gundry's Farm for at least the last 10 years on a continuous basis.

There is a current application for a certificate of lawfulness relating to the buildings which are excluded from the 2011 certificate. The application includes a caravan site office and maintenance store associated with the caravan use of areas B1 and B2, and a toilet block to the north east of the dwelling and an attached shower block to the south of the dwelling within this area which are currently in used in association with the caravan site B1 and B2. The buildings are the subject of certificate of lawfulness application ref: P/CLE/2021/04256 for '*Ancillary buildings have been on site for over 4 years as facilities for the camp site and the use of land has been established as a caravan site in excess of 10 years*'.

The application lacks elevation details to enable determination.

Area D: This area of land to the East of Area C is used for the storage of 30 caravans. This is the subject a certificate of Lawfulness 3/10/0135:

On the land edged in red on the attached plan, in the area coloured blue, the use of the land for the stationing of up to 25 (twenty-five) caravans for storage purposes only, the use having been established over a period of not less than 10 years as of the application date.

- 2.4 Area A is physically and functionally separate from all other areas identified.
- 2.5 The Notice covers part of the open land (area A) to the east of the former farm buildings where no planning permission has been granted or certificate of lawfulness issued in relation to this land. The land is laid to grass and there appears to be little apparent agricultural use of the land by the current landowner. It is understood that there is a third party who retains access to part

of the large area for grazing and taking a cut. A copy of the Enforcement Notice plan was submitted in the Council's questionnaire.

2.5 At the time of serving the Enforcement Notice the land was accessed by single road from the public highway off School Lane, and internal tracks, with no public access across the land. An additional access to the land may have been created from Ringwood Road, to the east of Hilliers Garden Centre. There are very few public vantage points, to the North lie residential and commercial properties, to the West forestry commission land and to the South commercial and MoD land. The site is located within the Green Belt and lies within 400m of protected Heathland.

2.6 The land is owned by Royale Parks (Dorset) Ltd. Landownership details can be found at **Appendix B**.

3. PLANNING AND ENFORCEMENT HISTORY

3.1	Planning applications and decisions relating to this site are attached at Appendix D . For completeness the history is also set out in brief below:	
Area	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
B1	3/96/9024 LDC application Granted	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>

D	3/10/0135/CLU Granted	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.
B2	3/10/0136/CLU Granted	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.
B2	3/10/0137/CLU Granted	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.
B2	3/10/0917/CLU Refused	Caravan Storage area for 10 caravans
C	3/11/0393/CLU Granted	Use of land as a residential curtilage of the farmhouse at Gundry's Farm for at least the 10 years on a continuous basis.
C	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 Gundry's 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 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 caravan, and never separated from the property by freehold sale or licence or other method of disposal. The residential curtilage is labelled C and shaded green on the plan at Appendix B .
B1 & B2	3/17/1464/CLP 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
A	3/17/2370/CLE Refused	Use of Land for the siting of up to 100 caravans from Easter to the end of October (This appeal relates to this application)
B1 & B2	P/CLP/2021/04164 Refused	The use of land as a caravanning and camping site for up to 24 caravans in hatched area and as a campsite for up to 30 caravans in the area cross hatched on the plan.

Summary of Lawful Certificate consents granted.

- 3.3 The genesis of a caravan and camping use on the land 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 by s191 of the 1990 Act.
- 3.4 Area B1 has a lawful use for 24 holiday units of accommodation, (caravans, motorhomes and tents) in 1997, limited to seasonal use.

- 3.5 Area B2 has a lawful use for 30 holiday units of accommodation alongside the provision of 12 hook-up points, limited to seasonal use.
- 3.6 The seasonal use for Paddocks B1 and B2 has been consistently set between Easter and the end of September.
- 3.7 Area D was regularised for the storage of up to 25 caravans in 2010. The storage in Area D can occur throughout the year.
- 3.8 As Area A, the land partly covered by the Notice, is not within the curtilage of a building it can benefit from permitted development rights under Part 4 of the GPDO for camping, or for caravanning event supervised by an exempt organisation under Part 5 of the GPDO.

Recent Certificate of Lawfulness applications

- 3.9 P/CLP/2021/04256 – LDC still under consideration. The use applied for is that ancillary buildings have been on site for over 4 years as facilities for the camp site and the use of land has been established as a caravan site in excess of 10 years. Covers areas B1 B2, C (Farmhouse residential curtilage) and D.
- 3.10 P/CLE/2022/05407 Yet to be determined certificate of Lawfulness application which covers part of Planning Unit A as well as other areas used for camping and caravanning.

4. THE DEVELOPMENT PLAN

4.1 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);
- 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).

4.2 **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.

4.3 **Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document** (This superseded the 2015-2020 SPD that was in force when the original Enforcement Notice was issued)

4.4 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.

5. NATIONAL POLICY AND 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) 2014 (Revised).

6. THE COUNCIL'S CASE

6.1 Investigations in respect of the breach of planning control as described began in April 2017. Concurrently the Council has also considered applications for Certificates of Lawfulness, under s191 and s192 of the 1990 Act.

6.2 The Council set out its planning assessment of the activities taking place on the site within section 7 of the Expediency Report a copy of which was submitted with the Council's questionnaire. This assessment found the mixed use activities on the site were in conflict with the following Core Strategy policies:

- KS1 (Presumption in favour of sustainable development);
- KS3 (Green Belt);
- ME1 (Safeguarding biodiversity and geodiversity)
- ME2 (Protection of Dorset Heathlands)
- HE2 (Design of new development);

- HE3 (Landscape quality);
- PC4 (The Rural Economy);
- PC6 (Tourism).

6.3 Additionally, the unauthorised development is therefore considered contrary to: 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; Dorset Heathlands Planning Framework 2020-2025.

6.4 The Council therefore considered it expedient to take enforcement action in relation to the site.

7. COMMENTS ON THE GROUNDS OF APPEAL (BCDEFGA)

7.1 The Appellant has submitted that they consider the Enforcement Notice is a nullity.

7.2 There is a difference between a Notice rendered a nullity and a Notice that contains a defect or is invalid. A nullity is incapable of correction.

7.3 For a Notice to be a nullity it has to fail to accord with the requirements of s.173 of the Town and Country Planning Act 1990. This section stipulates that an enforcement notice must:

- (i) state the matters which appear to the local planning authority to constitute the breach of planning control, so as to enable any person on whom a copy is served to know what those matters are (subss.(1)(a) and (2));
- (ii) state the paragraph of s.171A(1) within which, in the opinion of the authority, the breach falls (subs.(1)(b));

- (iii) specify the steps which the authority require to be taken, or the activities it requires to cease, in order to achieve wholly or partly the purposes specified in subs.(4) (subs.(3));
- (iv) specify the date on which it is to take effect (subs.(8));
- (v) specify the period for compliance (subs.(9));
- (vi) specify the reasons why the local planning authority considers it expedient to issue the Notice;
- (vii) specify all policies and proposals in the development plan which are relevant to the decision to issue the enforcement Notice;
- (viii) specify the precise boundaries of the land to which it relates, whether by reference to a plan or otherwise; and
- (ix) be accompanied by an explanatory note including as to appeal rights and the names/addresses of the persons served.

7.4 The Enforcement Notice complies with all the requirements of s.173 it is not therefore a nullity. The Council may make reference, to other relevant documents and relevant case law and appeal decisions to support its position that the Notice is not a nullity. If any inadequacies are identified, they are all capable of correction without prejudice to either party.

Ground B that the breach has not occurred as a matter of fact.

7.5 Whilst the Appellant asserts that the Notice is a nullity, they also appear in their submission to make the case that the Notice is invalid.

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.

7.7 In the appeal decision relating to Gundry’s Farm (APP/U1240/X/17/3186342) which was against a refusal of a certificate of lawfulness for “the use of the land edged red.... for the siting of up to 54 caravans throughout the year for the purposes of human habitation”. The Inspector found as follows:

The Appellant argued that a caravan site is a caravan site and it does not matter how the caravans (assuming only caravans were on either site and that could be the situation) are occupied. The Appellant also argued that the Council was wrong to state that the issue of the LDCs meant that the sites could not be occupied at other points. The second point is not really relevant in this case as the appeal is not about the same use for 12 months rather than six or seven and whether that is materially different. It does however add weight to the argument that the use would be materially different in character and appearance if the ramifications of the Appellant's arguments are taken into consideration.

Para 11

The question to be determined in this appeal is whether the use for human habitation, i.e. "living" in which would be on a permanent or long term basis is a materially different use to a recreational one, which would in my view consist of non-permanent occupation of the caravans, tents or motorhomes on the sites.

Para 12

The Planning Statutory Review application was refused by the High Court on 14 January 2019 this decision can be found at **appendix C** of this statement.

- 7.8 It is noteworthy that the Appellant attempted to challenge the Inspector's DL and was refused permission as follows:

Ground 1 is unarguable. The Inspector was unarguably entitled to treat the application as being for a use of caravans for human habitation throughout the year, not restricted to such a use (if it be such) while their occupants were on holiday.

The Inspector was equally unarguably entitled to conclude that the CLEUDs, which had been granted for use of the land "as a caravanning and camping site" and "as a campsite" including the use of caravans for that purpose in the summer months, were limited to use of the land for holiday activities (given the ordinary meaning of such terms). Whether such a change to such an unrestricted use would involve the making of a material change of use was then a question of planning judgment for the Inspector.

Ground 2 is likewise unarguable.....the Inspector was unarguably entitled to use his planning judgment as to the likely effects in terms of traffic movements, the number of vehicles on the land, residential paraphernalia e.t.c.

- 7.9 If there is any ambiguity caused, it is plainly capable of correction by adding some wording.
- 7.10 In relation to existing use rights, this does not render the EN a nullity. If it is considered by the inspector to be unnecessary, then it is capable of correction.
- 7.11 In relation to the water/wastewater facility. The Council considers that this requirement is reasonable and does not make the Notice invalid. It is clearly a matter for ground f.
- 7.12 The Council accepts that the wording of the Notice in relation to referencing “Planning Unit A” is not repeated on the Notice plan. However, the Notice plan clearly identifies the land which the Notice is directed at. If it is considered that the reference should be deleted, it could be done so without prejudice, and it does not make the Notice invalid. The area on the plan does not need to be amended.
- 7.13 The Notice alleges a material change of use of land which formed part of a separate planning unit with a lawful use for agriculture. The Council recognises that one of the paddocks (that closest to area D) in area A has been used in the past for caravan rallies but contends that this benefitted from permission under the Town and Country Planning (General Permitted Development) Order 1995 and subsequently 2015 (as amended).
- 7.14 The Council considers that the land within the redline of the Notice is no longer in use for its lawful purpose for agricultural purposes. Area A is physically and functionally distinct from the caravan site and that there has been a material

change of use from agriculture to a mixed use for the siting of caravans for human habitation as holiday accommodation, for caravan storage, the keeping of donkeys and agriculture. In **Appendix F** aerial photographs of the land demonstrate there are physically separate areas. Area A is separated from other areas of the site by fencing hedges and buildings. **Appendix G** contains photographs of the site including some which show the physical barriers.

- 7.15 The Council may make reference, to other relevant documents and relevant case law to support its case on Ground B.

Ground C that the matters do not represent a breach of planning control

- 7.16 The Appellant's case in respect of appeal on Ground C appears to rest on the assertion that the lawful use of the land is for a mixed use for agriculture and as a caravan site for exempt organisations, but, that a change to a mixed used for agriculture, caravan site for human habitation, caravan storage and donkeys is not a material change of use.
- 7.17 The Council considers that this does constitute a material change of use which requires planning permission. At the Appellant's own assertion in certificate of lawfulness application P/CLE/2022/05407 they believe that they have grounds to claim a lawful mixed use of the land for Camping and Caravanning uses from Easter to 30 September and Agricultural use, in the enforcement notice area. The Council will dispute lawfulness through the passage of time has been established in the ground D appeal.
- 7.18 The Appellant also appears to be stating that the keeping of donkeys on the land is not material. Donkeys are a part of the Equidae family, the same as horses. The keeping of horses on land usually constitutes a material change of use of agriculture to an equine use. Only if the horses are just left to graze on the land would they still constitute an agricultural use, donkeys should be

treated in the same way. The presence of a shelter for the donkeys in which straw for feed has been observed does indicate that their presence has introduced another element to the unauthorised use. Section 336 of the Town and Country Planning Act 1990 includes in its definition of agriculture “... *the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land) the use of land as grazing land, meadow land,...*” .

- 7.19 In relation to the keeping of horses it is the Council’s position that a planning application is normally required for the use of land for the keeping of horses and for equestrian activities unless they are kept as livestock or the land is used for grazing. Factors which have been given weight when considering this issue are a) whether the land is used permanently for horses; b) whether there are related structures on the land such as field shelters, jumps etc.; and c) whether food is brought in. The presence of the donkeys, erection of the shelter and presence of feed does indicate an Equine use has been introduced.
- 7.20 The use of the word “Habitation” is considered reasonable. Whilst relating to another part of Gundry’s farm in application 3/17/1464/CLP (see paragraphs 7.7-7.8 above and **appendix C**) the Appellant made an application on the basis(See supporting document for this application) that section 1 (4) of the Caravan Sites and Control of Development Act 1960 s1 (4) states: “*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 that the change from 30 to 54 and from seasonal to all year round was not a material change of use. The Council refused this application, the appeal was dismissed and the challenge to the Planning Inspectorate’s decision also failed. The challenge decision included the conclusion that “*The Inspector was unarguably entitled to treat the application as being for a use of caravans for human habitation* ”. The Council is simply acting consistently with this finding when using the term habitation in the description of the breach.

7.21 The Appellant is asserting that the Waste water facilities in area A are required by the site licence and are therefore permitted development under Part 5, Class A of the GPDO. This is not accepted. It is Part 5, **Class B** which grants consent for operational development to be carried out to meet the conditions of a site license. A copy of the site licence for Gundry's farm can be found at **appendix E** of this statement. The site license as can be seen clearly does not cover Area A. The license requires that fresh water and wastewater facilities be provided within 90 metres. The facilities buildings required to be removed lie more than 90 metres (nearest is approx. double) away. The licence also requires that toilet and showers be provided at a location acceptable to the licensing authority. No consent from the licensing authority has been sought or granted for the erection/siting of the facilities building within the redline of the Notice. The facilities buildings cannot therefore be considered permitted under the license.

Ground (d) that, at the date when the Notice was issued, no enforcement action could be taken.

7.22 The Notice was served on 4th October 2022. The relevant period to be considered for a material change of use (and the integral operational development) is 10 years (Section 171B(3) of the T&CPA). Therefore, the Appellant has to prove that the unauthorised use has been occurring continuously since 4th October 2022.

7.23 The Council has evidence including aerial photographs (see **appendix F**), photographs (see **appendix G**), list of rallies (**appendix J**) extracts from the website (**see Appendix H**) which contradict the Appellant's contention that the use is immune. All this evidence indicates that area A was not in use at that time for unfettered caravanning/camping.

- 7.24 The aerial photographs in **appendix F** include wide angle shots and extracts/close ups of the site taken since 2002, 2005, 2009, 2010, 2012, 2014, 2017 and 2018.
- 7.25 **Appendix G** includes photographs taken on 17.10.2018 of the area covered by the Notice being used for caravan storage and occupation indicating a breach was taking place, no evidence that this is a rally run by an exempt organisation is known to the Council. There are also photographs from 3.09.2020 of caravans in the area of the Notice again indicating a breach at the time.
- 7.26 The keeping of donkeys on the land appears to have started in 2020 or before. At **appendix I** photographs (1 & 2) show donkeys on the land on 26.08.2021 and a photograph of the shelter and a donkey dated 4th October 2022. At the time of these photographs an unauthorised use which would fall to be equine in nature would have been occurring on the land.
- 7.27 The Appellant asserts that the *material change of use, then the operational development complained about was for the purpose of the 'original' mixed use, as a caravan site for exempt organisations (Area A?), or as part of the use of the land to the east(B1 B2?) for the lawful caravan site activities*. **Appendix J** is a list of rallies known to have taken place in the paddock within area A adjacent to Area D since 2007 to 2017 (the later rallies in the last 10 years). At the time these were taking place enforcement action could not have been taken, because what was going on was permitted development. This also demonstrates that the breach could not have been going on continuously where the Rallies were being held in order for that area of land to obtain immunity.
- 7.28 **Appendix H** includes extracts from trip adviser website indicating that the new toilet facilities in Area A (the sunset field) were under construction ready for the 2017 Season (indicating this operational development has occurred in the last 10 years).

- 7.29 An application which sought to establish the lawful use of land within Area A for the siting of up to 100 caravans from Easter to the end of October (3/17/2370/CLE) was considered by the Council and refused as Unlawful on 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.

- 7.30 The land to the east (B1 and B2) does not fall within area A or within the redline of the Notice. The operational development has been undertaken in the last ten years and are therefore by virtue of the principle established in the Murfitt case not immune from enforcement action.

Ground (a) That planning permission should be granted for what is alleged in the notice.

Location

- 7.31 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 - an appropriate assessment is required. Whilst this has been undertaken, there is no conclusion that there would be 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 and is contrary to NPPF.

Green Belt

Is the development inappropriate development in the green belt

- 7.32 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.
- 7.33 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.
- 7.34 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.
- 7.35 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".
- 7.36 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;

7.37 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

7.38 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 Gundry's 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.

7.39 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 in a spatial and visual context.

7.40 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.

- 7.41 Since enforcement action was first taken the landowners 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.
- 7.42 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 proposal also fails to accord with paragraph 138 of the NPPF.

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

- 7.43 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) and toilet block infrastructure on land which has previously been open and undeveloped.

These physical features appear as a utilitarian form of development which is considered out of keeping/incompatible with the grassland/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.

- 7.44 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.
- 7.45 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.

Impact Upon Protected Dorset Heathland

- 7.46 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.
- 7.47 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

- 7.48 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. The site also lies within 5km of other areas of protected Dorset Heathlands. 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. Natural England has advised authorities that the increase in residential development across South East Dorset is associated with increased pressures, both direct and indirect, on Dorset Heathlands, harming the integrity of the protected sites. A copy of Natural England's comments were submitted with the Council's Questionnaire.
- 7.49 The Dorset Heathlands Planning Framework 2020-2025 Supplementary Planning Document (SPD) identifies the main urban effects on lowland heath that are associated with new residential units within 5km. Appendix B of the SPD confirms that self-catering, caravan and touring proposals are likely to have broadly similar impacts upon the heathland than those arising from residential development.
- 7.50 Usually no new residential development (including holiday accommodation) would be allowed within 400m of protected heathlands as mitigation cannot be relied upon. In this case, however, the protected heathland within 400m of the site forms part of the Ministry of Defence (MoD) West Moors Depot. The advice from Natural England is that because of the security arrangements at the MoD

establishment, the range of anticipated 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.

- 7.51 While Natural England has identified that harm to the adjacent heathland would be lessened by the access restrictions, this would not fully mitigate the impacts and there are other heathland sites within the vicinity. 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). The cumulative impact of additional self-catering recreational use of the appeal site together with other urban development would be likely to result in harm to Dorset Heathland unless mitigation can be secured. Natural England has advised that to accord with the SPD, an on-site Heathland Infrastructure Project would be required, specifically a Suitable Area of Natural Greenspace (SANG) to divert visits from heathland. Conditions would also need to be applied to restrict occupancy. No mitigation has been proposed. It is the Council's position that without mitigation the development would be contrary to paragraphs 174 to 182 of the NPPF, Policies ME1 and ME2 of the Core Strategy and the adopted Dorset Heathlands SPD.

Whether any very special circumstances exist

- 7.52 No very special circumstances have been brought forward or identified that would outweigh the harm to the Green Belt and other harm.
- 7.53 In conclusion for the above reasons the development fails to accord with the development plan and should be refused permission.

Ground (f) that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control.

- 7.54 The Council has issued the Notice with a view to remedying the harm to the amenity of the area. Whilst included in the breach description the requirements of the Notice do not require the removal of the Septic tanks, track along the northern boundary or the removal of the donkey shelter or the donkeys from the land. The Notice is underenforcing on these elements because it is considered they do not cause any harm.
- 7.55 The Appellant asserts that “the steps required are unclear for the reasons above” in paragraph 29 of their grounds of appeal. In stating this they appear to be referring to their arguments that they consider the Notice is a nullity, there is no other qualification. The reasons why the Council do not consider the notice a nullity or invalid are set out in the grounds B and C sections of this statement. The Council strongly disputes the requirements of the Notice are unclear.
- 7.56 The Appellant also appears to be asserting that, the steps are excessive as permitted development rights exist for the use of the land as a caravan site for exempt organisations. The Council’s position is set out above.
- 7.57 The Appellant’s argument that the notice is a nullity for including reference to PD rights contradicts their argument that the notice steps are unclear.
- 7.58 The Council is not aware of any PD right which would allow these operational developments without planning permission from the Council and the appellant has not put forward any argument to the contrary in their grounds of appeal. The requirements to remove the facilities buildings and hook ups are, therefore, entirely clear and reasonable.
- 7.59 The Council considers that the requirements are the minimum required to remedy the harm to the amenity of the area. In Secretary of State for the Environment, Transport and the Regions v Wyatt Brothers (Oxford) Ltd the principle that under a ground F appeal an inspector cannot turn a Notice requiring a return of land to the condition it was in prior to the breach of planning

control into a Notice that required something less. The Council contends that by under enforcing the Notice does not even go as far as requiring the land be returned to its condition prior to the breach. It therefore, cannot be argued that the Notice goes beyond what is necessary to rectify the breach of planning control.

Ground (g) that any period specified in the Notice in accordance with section 173(9) falls short of what should reasonably be allowed.

- 7.60 The Appellant has offered no reasons why the three-month period for compliance with the Notice is too short. They refer to the previous, withdrawn, enforcement Notices which set longer periods.
- 7.61 The Notice is requiring a use to cease in this case, and it is considered that requirement. i could literally be undertaken with immediate effect, however by giving 3 months this will allow the appellant to meet its commitment to campers who have booked a plot for a reasonable period. The Council considers that this is a reasonable balance with its duty to protect the amenity of the area and nearby residents.
- 7.62 Three months to comply with requirement gives a reasonable period for the owners of the caravans stored on the land to find alternative location to store their caravans. There are established storage facilities available in the area.
- 7.63 The integral operational development that consists of the 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 could all be moved by a contractor. They are not major or substantial forms of operational development which would require specialist expertise to remove. A timeframe of 3 months is therefore considered entirely reasonable.

8.0 OVERALL CONCLUSION

- 8.1 Having considered all the arguments advanced, the Council's position remains that the grounds of appeal have not been made out by the Appellant.
- 8.2 The Council reserves its position in relation to referring to relevant authorities, and documents.

List of Appendices

A – Plan showing different areas of the site.

B – Land Ownership (Land Registry) details.

C – Planning Court (Appeal challenge) decision.

D - Certificate Lawfulness decision Notices establishing plans Area C 3/11/0393/CLU, and Area D 3/10/0135/CLU.

E – Copy of site license

F – Aerial photographs

G – Officer Photographs

H – Website extracts

I – Photographs of Donkeys & Shelter

J – List of Rallies