

**DORSET COUNCIL Final comments on Appellants statement of
case.**

TOWN AND COUNTRY PLANNING ACT 1990

APPEAL UNDER SECTION 174(Enforcement Notice)

Appeal by Royale Parks (Dorset) LTD

LOCAL PLANNING AUTHORITY REF: ENF/17/0094

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

1. Paragraphs 1.18-1.19 of the Appellant's Statement of Case states that the purpose of the Enforcement Notice (the Notice) is not clear. The Council strongly disputes this. The Notice is clear and the requirements of the Notice are also clear. The Notice is simply trying to prevent the continued unfettered use of the land within the redline on the Notice plan as a caravan site, for caravan storage and secure the removal of the integral operational development to the caravan site which is visible above ground and, harmful to the openness of the greenbelt.
2. Paragraph 1.28-1.31 of the Appellants Statement of Case refers to the Regulation 37 Notice, served with the Enforcement Notice, being defective. The Planning Inspectorate sent an e-mail to the Council on the 25th April 2023 which effectively has agreed to the Appellant's request to extend the deadline for the EIA assessment to 11th September 2023. This being the case the Appellant has not been prejudiced by the errors in the drafting of the Regulation 37 Notice and will continue to profit from the unauthorised use throughout the 2023 holiday season. The Council corrected the errors in the Regulations 37 Notice as soon as it was able. The Appellant's indication that they are eligible for costs for doing something that is required for this type of development appears unfounded, costs can only be awarded if unreasonable behaviour results in unnecessary expense which is clearly not the case here. The Council will make further representations in rebuttal of any such claim should it be made.
3. Paragraph 1.37 states the LPA's appendices to their Statement of Case have not been received. The Council received the e-mail below from the Planning Inspectorate confirming that the appendices had been received by them:-

RE: Planning Enforcement Appeal - APP/D1265/C/22/3313965



TeamE4 <TeamE4@planninginspectorate.gov.uk>
To: Mark Hitchcott

 Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Start your reply all with: [Thank you for your confirmation.](#) [Thank you!](#) [Great, thanks for confirming!](#)  [Feedback](#)

Hi Mark,

I confirm receipt of all 5 emails with the LPA's statement and all appendices.

Thank you.

Kind Regards,



The Planning
Inspectorate

Faiza Kanwal | Enforcement Case Officer
The Planning Inspectorate
0303 444 5595 | teame4@planninginspectorate.gov.uk

The Council would be happy to forward copies of its appendices again if it would assist.

4. Paragraph 2.2 of the Appellant's statement of case states *"The Appeal site and the surrounding area of New Forest Court comprise a single ownership, under the Appellant's Freehold, with the title register DT9807."* This is not entirely accurate. The Appellant also owns a strip of land along the northern boundary under title deed number DT411217. A copy of this title deed and plan can be found at appendix B of the LPA's statement of case.
5. Paragraph 2.3 of the Appellant's Statement of Case includes an aerial photograph with a redline which in the words of the Appellant shows the approximate location of the Enforcement Notice area. This is not accurate, as the plan includes fields to the West of the area covered by the Enforcement Notice. This incorrect area is duplicated in plans at paragraphs 2.11 and 2.14 of the statement. This does appear to be a drafting error only and the correct area is shown earlier in the Appellants Statement of Case at paragraph 1.2 where a copy of the Enforcement Notice plan is shown.
6. Paragraph 2.25 of the Appellant's Statement of Case includes a Google Earth image from July 2022, this is just a snapshot of what was going on at this point in time, the Appellant goes on to say they will be providing more aerial imagery later on in the Statement of Case and in proofs. No further images have been provided in the Statement of Case. The Council has provided in its Appendix F aerial imagery of the site between 2005 and 2018 which better represents the history of the site over this period of more than ten years. Further aerial imagery may be provided in the Council's Proofs.
7. Paragraphs 2.63 to 2.69 of the Appellant's Statement of Case refers to the Council's previous approach and a Planning Inspector's initial comments in a previous enforcement appeal regarding this site. It is accepted that previously the Council did consider that the land in ownership of the Appellant formed a single planning unit. However, the Council is entitled to change its position and make a case that there is more than one planning unit following further site visits and changes in circumstances since these opinions were given; for instance, donkeys have been introduced on to the land covered by the Notice. The Council will provide further evidence in its Proofs why it considers more than one planning unit exists.
8. Paragraph 2.69 of the Appellants Statement of Case refers to Appendix 24 this appears to be a typo and should refer to Appendix 21 a copy of the 2018 enforcement notice.

9. Paragraph 2.72 of the Appellant's Statement of Case refers to an "Environment Notice" this again appears to be a typo and should read "Enforcement Notice" as the paragraph goes on to reference the enforcement notice served in relation to this matter in 2021.
10. In paragraphs 3.10-3.17 the Appellant appears to attack some of the planning policies referred to in the reasons for serving the Notice as being out of date or irrelevant/in conflict with the National Planning Policy Framework 2021(NPPF). The Council will provide evidence in its Proofs why these policies are still in date and relevant to the breach of planning control.

Ground a)

11. In paragraphs 3.23-3.25 and 3.58 the Appellants seek to make a distinction between 'residential development' and use of caravans on the site. The caravan site use which is the subject of the Notice involves the use of caravans for human habitation and therefore it is the Council's position that these are units which fall within the definition of 'residential development' albeit that the residential use by visitors is of limited duration.
12. In relation to the NPPF, the Appellant suggests in paragraphs 3.46- 3.50 that the Council has cited paragraphs 174 to 182 and 185 of the NPPF as being relevant to the Enforcement Notice. The Appellant's paragraph 3.37 is incorrect by saying; the Council cited paragraphs 174 and 182-185 of the NPPF as relevant.
13. At paragraph 3.58 the Appellants suggest that with reference to permitted development that the Dorset Heathlands Planning Framework (DHPF) refers only to dwellings as having significant effects, but the relevant paragraph of that document, 4.23, notes that '*development, which enables residential dwellings/occupation can still have likely significant effect on the Dorset Heathlands...*'. The development that is the subject of the Enforcement Notice includes residential occupation of caravans. Any reliance on permitted development rights which would increase residential occupation on the site would be subject to the requirement at Regulation 73 of the Conservation of Habitats and Species Regulations 2010 that prior approval of the Local Planning Authority under Regulation 75 should be obtained.
14. In relation to the Appellant's ground a) arguments the Council will set out its case further in its Proofs of Evidence and in the light of the anticipated Environmental Statement which may require specialist representation.

Grounds (b), (c), (d)

15. The Appellant appears to be arguing under their ground (b) appeal that there has not been a change of use. The Council considers there has been a material change of use which is clearly stated in the Enforcement Notice. Evidence of the change of use has been provided in the Council's Statement of Case and other evidence will be provided in its Proofs. Whilst it is accepted that the Appellant has the right to appeal on as many grounds as they wish it is notable in their ground (d) they have stated *"Evidence will be provided In the Proofs of Evidence regarding the use of the land by people who are not members of any exempt organisation regularly for over 10 years"*. This is at odds with their statement in ground (b). If it is the case that no breach has occurred it cannot be the case that the breach is immune due to the passage of time. There appears to be an acceptance that to prove immunity evidence of use of the land as a caravan site by non-exempt organisations continuously is required.
16. Under Ground (c) the Appellant is making the case that the introduction of Donkeys is not a material change of use. This clearly cannot be the case. Donkeys are of the Equae family and they are not being bred for their meat or fur, they are therefore not on the land for agricultural purposes nor do they constitute a land use akin to a caravan site, or an ancillary use to a caravan site. Paragraph 4.68 in the ground (c) appeal states *"the site has been occupied by caravans other than by exempt organisations. That is not a material change of use from it being occupied by those who are from exempt organisations."* The Appellant appears to be trying to make the argument that because there is a permitted development right to use as a caravan site for exempt organisations a use by non- exempt organisation is not a material change of use from the permitted development use. This is missing the point that Schedule 2 Part 5 of the Town and Country Planning (General Permitted Development) (Order) 2015 as amended (GDPO) grants deemed consent for a material change of use under certain criteria. When those certain circumstances cease but the same use remains then an unauthorised material change of use is occurring. The Council will provide further evidence in its Proofs why a breach of planning control does occur when the criteria set out in Part 5 of the GPDO which permits the use as a caravan site is no longer applicable.
17. Furthermore, in the ground (d) appeal in paragraph 4.73 it is indicated *"Evidence will be provided In the Proofs of Evidence regarding the use of the land by people who are not members of any exempt organisation regularly for over 10 years"*. This further indicates that the Appellant is also trying to prove immunity from a change of use.
18. Additionally in the ground (c) appeal the Appellant is quoting case law relevant to intensification. It is not clear why the Appellant has brought

intensification up but the Council may decide to provide evidence and refer to case law relating to intensification in its Proofs.

19. The Appellant also asserts in ground (c) that a material change of use does not occur when the land goes from being used as a caravan site by an exempt organisation to a use as a caravan site not by an exempt organisation. This appears to be missing the point of the legislation. Whilst the land is in use by an exempt organisation no breach is occurring that enforcement action could be taken against because no breach is occurring. By indicating the belief that a material change of use does not occur when the land changes from a use by an exempt organisation to a use by non-exempt organisation simply is making the argument that enforcement action could still not be taken, therefore allowing the land to be used by anyone as a caravan site thereafter. The Council will provide further evidence in its Proofs why this is not the case.
20. Under ground (d) the Appellant is making the case that the 4 year rule applies to the operational development carried out although it is not clear to the Council why this development is not integral to the material change of use. This appears to be an attempt to get around the principle established in the Murfitt case. The Council will provide further evidence in its proofs why the Murfitt principle applies in this case.
21. Under ground (f) the Appellant is saying the requirements of the Notice are not clear. The requirements state:-
- 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*

The Council considers the requirements of the Notice are completely clear.

22. Underground (g) the Appellant is making the case that the period of compliance should be 1 year. The Council considers this unjustifiably long. The site is not anyone's sole residence and does not provide the sole income of the Appellant. Ceasing the use may prove an inconvenience to those who have booked a pitch but alternative sites are available. The justification that the shorter period is going to spoil someone's holiday has no credence. In the absence of any other information this appears to be a blatant attempt to keep trying to make money from an unauthorised development.

23. The Council reserves the right to provide new evidence in its Proofs and the right to make its own claims for costs against the Appellant given some of the contradictory statements they appear to have made, as set out above.