

Case Name: *Ocean One Hundred Ltd, R (On the Application Of) v New Forest Park National Authority [2025] EWHC 953 (Admin) (16 April 2025)*

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Commentary: The claimant in this case sought, ultimately unsuccessfully, to challenge a decision by the New Forest Park National Authority ("**the NPA**"), notified to the claimant on 7 November 2023, to revoke a certificate of lawfulness of existing use or development ("**the CLEUD**").

This case serves as an important reminder, particularly in the context of due diligence on land acquisitions, of the grounds on which CLEUDs can be revoked and it is important to seek assurances from sellers that (a) all statements made on the CLEUD application were accurate and (b) no material information was withheld from the CLEUD application.

Background: The CLEUD for the existing use of the Vernon Dene site at Ringwood Road, North Ripley, Bransgore, Christchurch BH23 8EL ("**the Site**") as a caravan site and for the storage of caravans was granted on 1 August 2008 on an application by a previous owner of the site. The CLEUD was subsequently revoked by the NPA.

Grounds: The claimant had permission to pursue the following grounds:

- **Ground 1:** Material lost or destroyed by the NPA means that there was no evidence upon which a conclusion could lawfully be reached that there had been materially false statements or material information had been withheld and it was unfair and an abuse of process to revoke a certificate held by subsequent owners in those circumstances.
- **Ground 2:** The NPA withheld relevant evidence, including evidence relating to the condition of the site in 2007/8, and the NPA's evaluation of the lawfulness of the activities contained in the NPA's enforcement files from the claimant and from the NPA's members. This prevented the claimant from making representations upon it and meant that members failed to have regard to relevant facts.
- **Ground 3:** On the information which was available there was no evidence which could lead to a conclusion that there had been materially false statements or that material information had been withheld. In assessing the evidence, the NPA made errors of fact, and persisted in those despite warnings by the claimant.
- **Ground 5:** The NPA has persistently, unfairly and unlawfully withheld information throughout the revocation process. However, the Court failed to see how the claimant was prejudiced and dismissed this ground immediately.

As part of a "rolled-up" hearing, the claimant also sought to advance the following grounds:

- **Ground 7:** There was actual bias or the appearance of bias. The Court concluded that, based on the NPA's Executive Director (Strategy and Planning) pre-determination and favourable treatment of objectors compared to the claimant

and previous owners of the Site, apparent bias was sufficiently arguable so granted permission for the ground to be pursued. However, because the Executive Director was not the ultimate decision-maker in this case, the Court concluded that the apparent bias ground could not be established and dismissed the claimant's judicial review application brought on this basis.

- **Ground 8:** The NPA acted irrationally and ignored obviously material considerations being (a) its earlier decision in 2021 not to revoke the certificate and (b) concerns of its members when initially proposing revocation that the evidence was inadequate. The Court refused permission to apply for judicial review on this ground on the basis that the evidential picture was different in 2021 and it is reasonable to infer that any previous concerns would have been recollected when the merits of revocation were being discussed.
- **Ground 9:** The NPA's exercise of discretion to revoke was unlawful as in considering the claimant's reliance on the 2021 decision not to revoke, the NPA misunderstood the scope of that decision. The Court refused permission to apply for judicial review on this ground for the same reasons as Ground 8.

Discussion of Grounds 1-3: The Court considered the text and purpose of section 193(7) of the Town and Country Planning Act 1990, which provides that a local planning authority ("LPA") may revoke a CLEUD if on the application for the certificate:

- a statement was made or document used which was false in a material particular; or
- any material information was withheld.

The judgment states that the correct analysis of section 193(7) does not impose any burden of proof on the local authority in the strict sense, although it is for the local authority to be satisfied that the statutory criteria for revocation are met.

The judgment goes on to apply the principles established in the case of *Ocado Retail Ltd, R (On the Application Of) v Islington London Borough Council* [2021] EWHC 1509 (Admin), namely:

- An applicant assumes a risk (which passes to successors in title) that any certificate obtained may be revoked if materially inadequate or false information was provided in connection with the application. That risk is likely to be greater if the applicant takes a minimalist approach to the provision of information.
- The tests for the grounds of revocation in section 193(7) are objective. Knowledge of a statement being false is not required nor is proof of a deliberate decision to withhold information.
- The phrase refers to information the falsity or withholding of which *could* (not necessarily *would*) have resulted in the application being refused or granted on different terms.

- Where a LPA identifies a false statement or withheld information, the essential legal question is whether its reasoning on why that matter was material was rationally incapable of supporting that judgment
- In exercising its statutory power, a LPA *may* take into account the harm or prejudice to the landowner and in particular any successor-in-title, but it is not obliged to do so. Likewise, a LPA may take into account any planning harm which may flow from not exercising the power.
- An applicant withholds material information if he has it and does not provide it to the authority even if that information is already available to or in the possession of the LPA.

For these reasons, the application for judicial review was dismissed.

Case summary prepared by Nikita Sellers