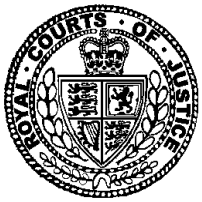

Neutral Citation Number: **[2025] EWHC 953 (Admin)**

Case No: AC-2023-LON-003546

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/04/2025

Before:

MR JUSTICE JAY

- -

Between:

THE KING
(on the application of OCEAN ONE HUNDRED LIMITED) **Claimant**

- and –

NEW FOREST PARK NATIONAL AUTHORITY **Defendant**

- -
- -

Richard Harwood KC (instructed by **Jones Day**) for the **Claimant**
James Findlay KC and Clare Parry (instructed by **Sharpe Pritchard LLP**) for the **Defendant**

Hearing dates: 8 and 9 April 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 16 April 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE JAY

MR JUSTICE JAY:

INTRODUCTION

1. The Claimant in these judicial review proceedings (whom I will refer to throughout this judgment as "Ocean") seeks to challenge a decision made by the Defendant ("the NPA"), as notified to Ocean on 7 November 2023, to revoke the 2008 certificate of lawfulness of existing use or development ("the CLEUD") for the Vernon Dene site at Ringwood Road, North Ripley, Bransgore, Christchurch BH23 8EL ("the Site").

2. This case has a lengthy factual background and has generated a mass of documentation and submissions. In this judgment I will be endeavouring to provide a shorter narrative which nonetheless does justice to the parties' respective cases.

3. In outline, the CLEUD was granted on 1 August 2008 on an application by a previous owner of the Site. It covered an existing use as a caravan site and for the storage of caravans. After a lengthy decision-making process, which the Claimant contends was flawed in many respects, the CLEUD was revoked by the NPA following a meeting of the Full Board. The basis of the decision was that the CLEUD application contained false statements and withheld information which were material to its grant.

4. Ocean has permission to pursue the following Grounds:

   (1) GROUND 1: The 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.

   (2) GROUND 2: the NPA withheld relevant evidence of the condition of the site in 2007/8, of Mr Cox's candour with the NPA, and the NPA's evaluation of the lawfulness of the activities contained in the NPA's enforcement files from Ocean and from the NPA's members. Withholding the information from Ocean – despite its repeated requests – was unfair and prevented Ocean from making representations upon it. Withholding it from the NPA's own members meant that they failed to have regard to relevant facts. Whilst this ground can be made out without fault, the withholding was deliberate.

   (3) 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 Ocean.

   (4) GROUND 5: The NPA has persistently, unfairly and unlawfully withheld information throughout the revocation process:

      (a) it concealed the decision to propose revocation, in breach of the Local Government Act 1972.

(b) the statutory consultation was based on anonymised and redacted statements, violating a very basic principle that a person is entitled to know the case against them. That was only later remedied in part.

(c) the NPA failed to produce the enforcement files from 2007/8.

(d) the NPA continued to withhold highly relevant representations made to it by third parties as well as important documents which it holds, including in both cases concerning the 2021 decision not to revoke the certificate.

(e) the NPA conducted the debate as to whether to revoke the certificate in secret.

5. Ocean seeks to advance the following additional Grounds. Mould J ordered that these be determined on a "rolled-up" basis at the present hearing:

(1) GROUND 7: There was actual bias or the appearance of bias because of collusion with objectors seeking revocation of the lead officer and chair of the NPA; the NPA acted unfairly in its dealings with Ocean (particularly compared to objectors); and the NPA met in secret, unlawfully concealing its decisions from Ocean, but leaking them to objectors.

(2) GROUND 8: The NPA acted irrationally and ignored obviously material considerations being (a) its 2021 decision not to revoke the certificate and (b) concerns of its members when initially proposing revocation that the evidence was inadequate.

(3) GROUND 9: The NPA's exercise of discretion to revoke was unlawful as (a) in considering Ocean's reliance on the 2021 decision not to revoke, the NPA misunderstood the scope of that decision; and (b) bias (Ground (7)) infected the assessment.

6. One way or another, original Grounds 4 and 6 are no longer in issue. The parties have retained the original numbering.

7. At the hearing Ocean was represented by Mr Richard Harwood OBE KC, and the NPA was represented by Mr James Findlay KC and Ms Clare Parry. I am grateful to all counsel for their helpful written and oral arguments.

ESSENTIAL FACTUAL BACKGROUND

The Grant of the CLEUD

8. The Site covers approximately 2.57 hectares and sits just inside the New Forest National Park. It lies within open countryside immediately next to the New Forest SSSI and within the 400 metre buffer area of the New Forest SAC and SPA.

9. Before the late 1970s, approximately 0.1 hectares of the Site was the certified location for a Camping and Caravan club with permission to use up to five caravans. Permission was refused in 1979 for an overspill extension of 20 caravans in the northern part of the Site. According to a planning inspector's letter dated 8 March 1979, it was stated on

behalf of the then owners that the appeal site formed part of a larger holding of which approximately 0.1 ha was already the certified location of the caravan club. Later applications refer to a camp site.

10. Aerial photographs from 2000 show caravans in the northern part of the Site and clustered around the buildings. The number and spread of the caravans during this period is in dispute between the parties. There was a variety of other activities on the Site at various times including storage, car repairs, the hiring out of a mobile mini-crusher, and the keeping of horses.

11. In February 2007 and following complaints the NPA opened planning enforcement files in relation to the Site. A site visit by planning enforcement officers was carried out on 7 March 2007. Photographs were taken and these showed caravans both being stored and occupied. The notes of the site visit referred to someone repairing a car. That person said that he was helping a friend who lived on a mobile home on the Site. The enforcement officers:

> "… counted in excess of 20 caravans stored on the Site, there were more caravans, scrap cars, mounds of earth and rubble in an adjacent field. We were unable to ascertain at this time whether the property was multiple occupancy."

12. On 8 March 2007 the NPA wrote to the owner/occupier of the Site. The letter set out particulars of the alleged breach of planning control. These particulars included:

> "… a car repair business, multiple occupation of residence, storage of caravans and a mobile home on the above land …"

Given that there was no extant planning permission for this development, the owner/occupier was invited to make a retrospective planning application.

13. On 5 April 2007 the operator of the Site, Mr Jonathan Cox, went to the NPA's offices to discuss the case with enforcement officers (on my understanding of the documents, he spoke to Ms Elaine Smalley and Ms Jane Cooper). The officer's note (probably written by Ms Cooper) is dated some days later but nothing turns on this. It refers to Mr Cox's occupation of the bungalow on the Site with his girlfriend, brother and lodgers, and his business hiring out a mobile mini-crusher which was stored on the Site. Mr Cox also admitted that a car repair business of sorts was being conducted on the Site, although he said that would cease in June. Mr Cox said that the field adjacent to the property (i.e. the field to the east of the bungalow) was used as a camping and caravan site. Officers had counted over 20 caravans on the Site and Mr Cox stated that:

> "… some of them are his and some are his brother's, the majority belong to friends and relatives as he lets them store them here and a few belong to other people that pay them to store them on his land."

14. Mr Cox was informed that "it was a change of use to the land from domestic curtilage and that planning permission would be needed". Given that a number of activities were arguably going on in breach of planning control, the "it" might be understood in a

number of ways; but from the context I infer that the enforcement officer was referring to the caravans. The note concluded:

> "He [Mr Cox] states that the caravan storage has been going on for years (over 10) so would like to apply for LDC so agreed that Elaine would send him the forms."

15. On 16 April 2007 Ms Smalley wrote to Mr Cox advising him that the use of the land for the storage of caravans amounted to development in breach of planning control, and enclosing the application form and a user's guide for a LDC.

16. In a later file note dated 20 April 2007 the NPA's enforcement officers concluded that there was no breach of planning control in relation to the multiple occupancy allegation and in relation to the retention on-site of the mobile mini-crusher. There was another Site visit on 22 April which related to an area of land cleared by the electricity board. That note stated:

> "The concerns raised were in relation to unauthorised storage [of caravans] and an untidy site. The site has been known as a campsite and is documented in NFDC correspondence in 1996."

Mr Harwood invited me to infer from this file note that the NPA had no concerns about the use of the Site as a campsite (and that included the use of touring caravans). I certainly agree that this is one possible reading of this document, and it is supported to some extent by a file note written by Ms Smalley at a later stage, on 10 July 2008. A similar inference may be drawn from the NPA's letter dated 23 July 2007 inviting Mr Cox to apply, if so advised, for a CLEUD in relation only to the storage of caravans. On the other hand, Mr Cox did inform the NPA in terms that the caravan and camping site use was limited in extent. It cannot be inferred from the file note that the NPA had no concerns about a camping and caravan use which covered the whole Site.

17. After a delay which I do not regard as material, on 4 July 2007 Mr Jonathan Cox applied for a CLEUD on the standard form. It is not clear when Mr Cox sent the form to the NPA and it bears a later date stamp. Under section 6, the application was expressed to be for "storage of touring caravans". As for section 9:

> "[Q] *If there is more than one existing use of, or operation or activity on, the land at the date of this application, describe fully each of them and, where appropriate, show to which part of the land each use, operation or activity relates.*
>
> [A] touring caravan site + touring caravan store."

18. The application form also stated (under section 12):

> "5 members of the same family have been visiting my site for more than 30 yrs others have been with me since I moved here 12-14 yrs all are happy to confirm is required."

19. Mr Harwood accepted that, whereas the application was only for the storage of touring caravans, Mr Cox's representation in section 9 of the form related to the whole Site. He

further submitted that ancillary or subordinate uses and/or activities would not undermine the correctness of the representation that was being made. That in my view would depend on matters of fact and degree.

20. Mr Findlay submitted that the information provided under section 12 of the application was irrelevant to caravan storage and only relevant to the use of the land as a touring caravan site. I disagree with that analysis. Those visiting the Site may well have stayed in the touring caravans but what Mr Cox was saying was that they could have confirmed the length of the storage use.

21. Attached to the application form was an annotated Ordnance Survey plan which showed only part of the Site (the north-west corner and the eastern part of the overall Site is missing). The curtilage of the whole Site was marked in red (part of it is cut off); the area of the Site is described, correctly, as being 2.57 ha; and an area marked out in what Mr Cox described as "red chequers" showed the caravan storage area. The whole of the area outside this red-hatched area is marked in grey stippling which seems to have been added to the plan. The labelling "Vernon Dene Campsite" is adjacent to the labelling describing the area of the whole Site.

22. Had the application related to the whole Site, Mr Harwood submitted that it would been have been incumbent on Mr Cox to provide a plan which identified the whole site: see Article 39(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015 No 595). My reading of this provision is that Mr Cox should have done so in any event, but the point travels no real distance because the NPA proceeded without a proper plan and must have understood – not least because Mr Harwood made this concession – that the declaration in section 9 related to the Site as a whole. Whether the NPA may in due course have *interpreted* the application for a CLEUD as including an application in relation to the touring caravan site raises a different issue which I will have to consider.

23. Mr Harwood also submitted that there is a difference in planning terms between a caravan site, which is used for human habitation, and a caravan store, which is not physically occupied in that way. I accept that submission.

24. The planning officer handling (but not responsible for determining) the CLEUD application was Ms Liz Young. She conducted a Site visit on 28 August 2007. No note of that visit is available although what appears to be a computer record confirming at least the fact of a visit has been provided. That document describes the proposal as "use of land for storage of touring caravans".

25. Paras 73-74 of Mr Steve Avery's second witness statement (he is the NPA's Executive Director (Strategy and Planning)) are germane to this site visit:

> "73. The exact purpose of the site visit on 28 August 2007 is unclear. The planning officer would have been expected to visit the site at least once in the course of determining the CLEUD application, which would normally take place at the beginning of the application process. The planning officer would also have been required to post a "green site notice" on the application site. The purpose of the site visit on 28 August 2007 could therefore have been either to carry out a site inspection and/or to display

> the green site notice. It may well have been the latter as the date of the site visit coincides with the date of the Parish Briefing Note, most likely to ensure that the publicity and consultation periods were aligned. But whatever the purpose of that visit on 28 August 2007, the CLEUD application would not have been determined solely on the findings of that visit (as a single "moment in time") but rather on the balance of evidence of the use of the site during the preceding 10 years.
>
> 74. Furthermore I am aware that planning officers did not routinely make notes of their site visits at this time and I doubt whether such a note was made of the visit on 28 August 2007."

26. I find this explanation by Mr Avery as somewhat self-serving and lacking perhaps in objectivity. He is rather hinting that Ms Young may not have ascertained what was going on and that the absence of a note is not surprising. The truth is that Mr Avery has no idea, but the purpose of a site visit must have been to see what is going on. In any event, the purpose to which these paragraphs in Mr Avery's witness statement may be put should be carefully confined. The fact of a site visit on 28 August 2007 was not disclosed to members in the officer's report. Mr Avery is not advancing these paragraphs as his reasons for not doing so. It follows that their relevance is very limited.

27. In September 2007 the Sopley Parish Council were consulted on the CLEUD application. Ms Young is the author of the relevant document. The consultation described the proposal as "use of land for storage of existing caravans". That was accurate and no reference was made to the "touring caravan site" use under section 9 of the CLEUD application form. The issues identified by the planning officer were as follows:

> "This proposal seeks to regularise what is stated to be an established use. The application has not been accompanied by any additional evidence although it is stated that family members can confirm the use as being well established. Consideration should be given to the amount and nature of the available evidence and whether this is likely to be regarded as sufficient. **The above comments are made without prejudice and represent the initial issues identified by the planning officer following a site visit. The issues identified may not be comprehensive**." [emphasis in original]

28. Ocean was provided with a copy of this consultation document in May 2022 and again in March 2023. The computer record of the site visit to which I have already referred was provided to Ocean only on 2 March 2025. It should, of course, have been disclosed much earlier.

29. On 10 September 2007 Liz Young provided an internal memorandum in relation to the CLEUD application. Unfortunately, no copy is now available. Its relevance is obvious. The very fact that this memorandum was made tends to contradict Mr Avery's assertion that site planning officers did not routinely make notes. Contemporaneous notes may or may not have been taken, but the memorandum came about when the facts were still fresh in Ms Young's mind.

30. On 18 October 2007 a senior solicitor at the NPA, Ms Julia Mutlow, sent a memorandum in response to Ms Young's. It stated:

> "… Whilst I note the points you make, I am not minded to grant this certificate of lawfulness.
>
> When submitting applications for such certificates, the onus is on the applicant to show that on the balance of probabilities the requisite use has been ongoing for the relevant period (10 years in this instance).
>
> No evidence has been submitted in support of the claim made and I would therefore suggest that we either:
>
> 1) go back to the applicant requesting evidence, providing him with the opportunity to supply evidence in support of his application and also addressing the contrary issued [sic] raised on the face of the file (i.e. what other activities are ongoing on the site).
>
> OR
>
> 2) issue a refusal notice.
>
> I would be grateful if you could discuss this with me when you have had the opportunity to consider my comments and we can decide how to proceed."

31. The "file" referred to is not available. Mr Harwood submitted that at least one interpretation is that this was a reference to the enforcement file, but para 7 of the first witness statement of Mr Avery states that it would not have been standard practice to provide it. In my judgment, the better view (but not necessarily the only reasonable inference) is that the "file", only part of which is available, is the file relating to the CLEUD application. Even so, I accept Mr Harwood's submission that it would be perfectly reasonable to infer that some sort of discussion may have taken place between those responsible for the CLEUD application and the enforcement team. That would have facilitated the formers' work. On the other hand, that inference is far from being irresistible.

32. But it does follow from the above, in my view, that there was something on the file which raised "contrary issues", in other words issues relating to what other activities were ongoing on the Site. Equally, it follows that the source of that information must have been Ms Young, and she must have derived it from her site visit. Finally, I accept Mr Harwood's submission that the concerns must have related to activities beyond the scope of the caravan store.

33. Ms Young and Ms Mutlow subsequently agreed to pursue the first option set out in the 18 October memorandum, which was to request further information from Mr Cox. On 14 November Ms Mutlow wrote to Mr Cox reminding him that he had confirmed the two uses of the Site for in excess of 10 years, and to provide him "with an opportunity to provide further evidence in support of you[r] application, if you wish to do so". Ms

Mutlow made it clear that the evidence thus far provided was insufficient. Mr Mutlow said nothing about the "contrary issues" which had been concerning her.

34. On 14 November 2007 it seems that Ms Mutlow was now treating the CLEUD application as relating both to the caravan store (the red-hatched area on the plan) and the touring caravan site (the remainder, stippled in grey).

35. Further complaints were received on 3 April 2008 about the storage of caravans and cars. Enforcement officers carried out another Site visit on 22 April 2008. Photographs taken show caravans, vehicles, a horse box, a small digger, and a mound of earth and some telegraph poles.

36. On 29 April 2008 Mr Cox had a telephone conversation with Ms Young. On 9 May 2008 Ms Mutlow wrote to Mr Cox recording her understanding that he would be providing further information in support of his application. She gave Mr Cox a final deadline of the end of the month, which Mr Cox then missed.

37. On 12 June 2008 Ms Mutlow sent a further memorandum to Ms Young. She attached a copy of the further information supplied by Mr Cox which "did not provide a great deal more clarity". That information has not been made available: it is presumably lost. Ms Mutlow's inclination was still to refuse the application.

38. On 24 June 2008 Ms Mutlow prepared an attendance note of a conversation she had with Ms Young. It stated:

> "JPM discussing the application with Ms Young. Mr Cox has provided further limited evidence which coupled with the conversation that I had with him and explained that they had stored their caravan for well over 10 years. It appeared that the storages had been going on for 10 years plus. I said that I would have liked detailed evidence. However, I had no evidence to the contrary and therefore, on the balance of probabilities, it appeared that this use had been going on for the period claimed and therefore I had little evidence on which to refuse it.
>
> Furthermore, there was a letter from Mr and Mrs Higgins who lived close to the cottages and indicated that since Mr Cox purchased the property, caravans and boats had been stored on the land.
>
> I therefore said that I would obtain Office Copy Entries to establish when Mr Cox took over the land which would add prudence to the argument that he had been using the land for over 10 years if in fact he purchased it in excess of 10 years ago. On that basis I would issue the certificate."

39. As I have said, the author of this memorandum was Ms Mutlow. She (and not on this occasion Ms Young) had a conversation with Mr Cox in which he claimed that he had been storing caravans on the site for well over 10 years. Ms Mutlow made no reference in this memorandum to Mr Cox providing information in relation to the other activities on the Site which might have assuaged her concerns, nor is there any reference to the

operation of the Site, in whole or in part, as a touring caravan and camping site. I should add that if Ms Mutlow obtained the Office Copy Entries that she said that she would, she would have seen that the owner of the Site was Mr Geoffrey Cox, Jonathan's brother.

40. The CLEUD was issued by Ms Mutlow on behalf of the NPA on 1 August 2008. It provided amongst other things as follows:

> "The NPA hereby certifies that on 4 July 2007 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this Certificate, was lawful within the meaning of the section 191 of the Town and Country Planning Act 1990 (as amended) for the following reason:
>
> The Authority is satisfied that the use referred to in the First Schedule has been in existence for a period of at least 10 years preceding the date of the application for the Certificate of Lawfulness.
>
> **First Schedule** **Use of the land as a caravan site and use of the area cross-hatched in blue for the storage of caravans.**
>
> **Second Schedule** **Land at [the Site] shown edged red on the plan …**"

41. The attached plan shows the area edged in red as the whole of the Site. The area cross-hatched in blue is not quite the same as the area marked in red on Mr Jonathan Cox's CLEUD application. One way or another, the NPA was certifying an established use of the whole land as a caravan site when strictly speaking Mr Cox had not made an application in these wide terms.

42. Thereafter, the enforcement files were marked with the decision and the complainants were also notified. The enforcement officers do not appear to have pursued the possible breaches identified on 3 April 2008. The CLEUD had no relevance to those uses or activities.

43. Both Ms Mutlow and Ms Young were approached by the NPA before the final decision in this case was made in October 2023. Neither was able to assist with any independent recollection of what occurred back in 2007 and 2008.

The Revocation of the CLEUD

44. Mr Harwood's written arguments have provided me with a very detailed examination of the decision-making process which eventually led to the revocation of the CLEUD. In this section of my judgment, I will provide an abbreviated version, leaving any important additional minutiae to my analysis of the individual Grounds.

45. In December 2018 Park One Developments Ltd ("Park One") acquired the Site. A caravan site licence was obtained the following year. During the Easter bank holiday

weekend in 2019 extensive works started to take place at the Site. The NPA's initial conclusion was that there was nothing that could be done about it.

46. On 30 November 2020 a local resident, Lord Manners (who was Official Verderer of the New Forest), set out a case for revocation of the CLEUD and made an FOI request of the NPA directed to the circumstances bearing on the grant of the CLEUD. The NPA responded on 18 December and provided certain relevant information. In May 2022 the then Site owner's legal representatives received most of the information provided to Lord Manners pursuant to their FOI request.

47. On 11 January 2021 Lord Manners wrote to the NPA's Chair, Professor Gavin Parker, asking for the CLEUD to be revoked. He provided the NPA with title information showing that the owner of the Site at the time the CLEUD application was made was not Mr Jonathan Cox but his brother, Geoffrey. Shortly afterwards, Lord Manners also submitted Google aerial photographs of the Site from 2000 to 2007 which he said showed that much of the Site was used for the grazing of livestock. He alleged that there was "incomplete information about its former use". However, Mr Findlay was right to point out that the letter dated 11 January 2021 contended that the certificate should be revoked only on the ownership issue.

48. The matter was reported as a Part 2 (i.e. closed) item to the NPA's planning committee on 16 February 2021. A decision was taken not to revoke the CLEUD. Lord Manners were informed of this in a private briefing the same day. No report of the planning committee's proceedings has been disclosed. Lord Manners said that he was disappointed that revocation was not proposed on the ownership point or on the basis that "it was fraudulently represented that the WHOLE of [the Site] had been used as a caravan site when it had not". On 1 March 2021 the NPA wrote to Park One informing it that on counsel's advice the CLEUD could not be revoked on the basis that ownership of the Site had been misrepresented. Nothing was said about Lord Manners' other points.

49. Mr Harwood advanced various submissions about the February 2021 decision. Although the Part 2 report has not been disclosed, Mr Avery has made it clear, and Mr Findlay confirmed to me, that the decision not to revoke was made solely on the basis of the ownership point. That in my judgment disposes of the issue, because Mr Harwood cannot begin to prove that in February 2021 the NPA had already considered and determined the same matters that formed the basis of the revocation decision in the autumn of 2023.

50. In addition, I take Mr Findlay's point that the way in which Mr Avery dealt with the February 2021 decision rather belies the suggestion that he was biased.

51. On 4 March 2021 the NPA responded to Park One's request for information under the EIA Regulations. Park One was informed that the NPA's records are incomplete and that some have been destroyed.

52. On 9 November 2021 the NPA wrote to Lord Manners acknowledging:

> "[w]ith hindsight we all accept that it would have been helpful if the [CLEUD] could have been more precise in its description and again, I note your reference to the prevailing guidance at the

> time. There are inherent difficulties in reviewing the merits of a decision made some 13 years ago and our case is not helped by the missing and incomplete documentation."

Mr Harwood sought to make something of the choice of language, "our case". I do not think that anything turns on that. The possessive pronoun "our" may appear to personalise this, but all that Mr Avery was saying was that this was the case being put forward by the officers of the NPA.

53. On 23 December 2021 Ocean acquired the Site. Some of the later correspondence refers to Ocean's owner, Time GB Group Ltd, but I will be referring throughout to Ocean.

54. On 3 January 2022 Lord Manners wrote again to the NPA drawing officers' attention to the decision of Holgate J (as he then was) in *R (Ocado Retail Ltd) v Islington London Borough Council* [2021] EWHC 1509 (Admin) ("the *Ocado* case"). Lord Manners referred to the five Google aerial photographs, two additional aerial photographs, the April 2008 site visit photographs, and the original application documents. Subsequently, there were conversations between Mr Avery and Lord Manners, and Professor Parker and Lord Manners, the contents of which have not been disclosed. There were also email exchanges between the same individuals and another objector, Mr Gerald Lewis.

55. On 27 January 2002 a meeting of the Full Board of the NPA took place in Part 2 session. No report or minute of the meeting has been provided. All that is known is that one topic for discussion was the revocation of the CLEUD.

56. On 31 January 2022 the NPA (through Mr Avery) informed Ocean that its attention had been drawn to the *Ocado* case, and:

> "… having reviewed the information set out in the application for the [CLEUD] in light of the *Ocado* case and the further evidence that has come to the [NPA's] attention relating to the Site, there are a number of grounds that would appear to support the case for revocation."

Mr Avery set out in some detail the case for revocation. That case, as distinct from the evidence in support, has not materially changed.

57. On the same day, Mr Avery emailed Lord Manners with the following:

> "Any final decision to revoke will need to be made by our Members, as such action will inevitably expose [the NPA] to risk and cost. That decision will need to be taken in light of the additional evidence we are able to muster and consideration of the landowner's response to our formal stated intention to commence revocation proceedings."

58. Subsequently, Mr Avery was working behind the scenes to finalising his, Lord Manners' and Mr Lewis' witness evidence. On 8 April 2022 Mr Avery wrote to Mr Lewis with the following:

> "In essence, we want to show that the then owner, Mr Cox, withheld information that would have been known to him at the time of making the CLEUD application. We can do this by demonstrating that other uses were taking place on the land, that only a relatively small number of caravans were kept on the Site any one time (c. 20) and that some parts of the Site were never used to keep caravans. If any households can assist with this evidence that would be extremely helpful."

59. On 12 April 2022 Ocean's then lawyers wrote to Mr Avery of the NPA strongly opposing the revocation of the CLEUD. The following points, amongst others, were advanced:

(1) the NPA was in possession of information that it was not sharing with Ocean.

(2) the CLEUD as issued was for a different use and a different area to that shown on the application from and the disclosed application plan.

(3) it is apparent that there must have been further information provided by the applicant and/or obtained by the NPA before it made its decision. However, it cannot be known what all that information was because the NPA has destroyed and/or lost relevant documents.

(4) the NPA must have had aerial photographs in their possession when they considered the CLEUD application.

(5) the very nature of touring caravan sites is such that the number and distribution of the caravans present from time to time will vary. Thus, "it is extremely unlikely that a sufficiently comprehensive photographic record exists to prove the negative that a given part of the land was not used over a period of 10 years".

(6) the obligation in the CLEUD application form was to describe the legal or primary planning use of the land. It is impossible for the NPA to conclude that the then owner was in breach of that obligation. In any case, the grazing of animals is not inconsistent with the primary use of the Site as a caravan touring site.

60. Rather surprisingly in my opinion, Mr Avery then promptly shared this letter with Lord Manners and Mr Lewis under cover of an email headed "legal and privileged information". The recipients were told to keep the information set out in the letter "in confidence at this stage". One of the points Mr Avery made was this:

> "It's helpful to know that they are looking to dismiss other undeclared uses taking place on the Site (as omitted from the application form) as "ancillary" to the "primary use" of the land as caravan site. Our evidence will need to show that these other uses were operating above an ancillary/de minimis level, which I believe it does/will."

61. Lord Manners commented on the solicitors' letter and his comments have been made available in these proceedings.

62. On 25 April 2022 Mr Avery met Lord Manners, Mr Lewis, Mr Henrik Schlegel and Mrs Angela Pease at the latter's home. No notes of the meeting were made. Mr Harwood relied on an email Mr Avery sent in advance of the meeting:

> "Any testimony as to the use and condition of the land in the 200s would be very helpful. In essence, we want to show that the then owner, Mr Cox, withheld information that would have been known to him at the time of making the CLEUD application."

The "we want to show" is not Mr Avery's first use of that choice of words: see his letter dated 8 April 2022.

63. Also in advance of the meeting, Mr Avery shared an early draft of his witness statement which recounted the planning history and summarised some of the material I have already addressed.

64. On 13 May 2022 Mr Avery sent a more developed draft of his witness statement to Lord Manners and Mr Lewis, along with the NPA's reply to Ocean's lawyer's letter. He also said:

> "We should be in a position to commence formal revocation proceedings … by the end of the month if not before … As always I am sharing this with you and Willie [Lord Manners] in confidence and would ask you not to circulate further."

65. On 24 August 2022 Mr Avery emailed Lord Manners to say that the NPA was preparing reports for members "to seek their agreement to formally initiate proceedings to revoke", and referring to the need to consult. On 31 August Lord Manners replied (copying in Professor Parker) expressing his concern that the NPA "might be departing from what was understood to be a settled decision to revoke" and "it was long agreed that this was the only right and proper course of action". He went on:

> "the possibility that the [NPA] might resile from what was understood to be a firm resolution to revoke is causing both concern and anger locally. As you know members of the local community including myself have worked long and hard to provide the [NPA] with information and evidence.
>
> Having worked closely and constructively with the [NPA] I would be reluctant to find myself in a position that was hostile to the [NPA]. However, if the [NPA] were to decide not to revoke the Certificate, I would instruct my retained Solicitors and Leading Counsel to apply for judicial review of that decision. I very much hope that I will not be forced into that legal action."

66. Mr Avery replied on 2 September, also copying in Professor Parker. He said that it was important to engage members along the way, and that he would keep them fully briefed on his position. Mr Harwood submitted that it is relevant that Mr Avery did not dispute what Lord Manners said in his 31 August letter. That may be so, but in my opinion Mr Harwood is reading too much into this. As far as Mr Avery was concerned, the matter

would likely proceed to the Full Board for determination and it was for members to decide what decision to make. It was not his duty to contradict Lord Manners.

67. On 23 September 2022 the NPA's planning committee met in Part 2 session and made the decision to begin the revocation process. No minute of the Part 2 proceedings has been disclosed. Some 14 days beforehand Mr Avery had informed Lord Manners (again copying in Professor Parker) that although the paper for the planning committee contained privileged information, the recommendation was that an enforcement notice be issued and that the owner be invited to make formal representations.

68. On 26 September Lord Manners was given an update. He was told that members agreed resolutions in line with the recommendations in the report. Lord Manners was also told that:

> "During the debate, some Members did express concerns about the strength of the Authority's evidence. This included the brevity of Mr Schlegel's witness statement and the weakness of the phrase "appeared" which is used by Mrs Pease when recollecting the grazing of livestock in the three paddocks. I am not suggesting that these need be changed now …"

69. Lord Manners' reply on the same date said this:

> "I would simply say that we should not forget what I think is the central point namely the withholding of evidence that the whole of the land had not been used for caravans."

As I said more than once during the hearing, this was indeed the central point.

70. Ocean was not aware at the time that this decision adverse to their interests was made in September 2022. The first that they heard about that date was when disclosure was given in 2023, although in my view the date the decision was made is of little relevance.

71. On 18 November 2022 the NPA wrote to Ocean's then lawyers confirming that it remained its intention to revoke the CLEUD and that they would be given an opportunity to make representations in due course. On 24 November an enforcement notice was served against the physical works on the site, requiring their removal. This notice is subject to an appeal which has been stayed pending the outcome of these proceedings.

72. On 13 January 2023 Mr Avery on behalf of the NPA wrote to Ocean advising it that an evidence pack had been assembled which justifies the revocation of the CLEUD, and that Ocean was now being given an opportunity to make representations in response. The pack included redacted witness statements about the Site from local residents. The letter continued:

> "The [NPA] has concluded, having regard to [the *Ocado* case], that if the material in the Pack and the inferences drawn from that information are correct, there would appear to be a justification for revocation under s. 193(7) [of the Town and Country Planning Act 1990] on the following grounds:

1. that JC made a false statement on the extent of the use of the Site as a caravan site.

2. that JC made a false statement that no other use occurred on the Site.

3. that JC withheld information that parts of the Site had been used for grazing/pastures.

4. that JC withheld information that part of the Site was not used for touring caravan site.

5. that JC withheld information about the numbers of caravans."

73. Importantly, the evidence pack also included a copy of Mr Avery's draft witness statement which was the same document put before the Full Board much later that year. This witness statement provides a reasonably balanced account of the planning history, the events of 2007/8, and of the case for revocation. Although it refers to the Sopley Parish Council consultation document, there is no express reference to the August 2007 site visit. What the draft statement does highlight is that there were at least three paddocks on the Site and that these did not house touring caravans.

74. On 16 and 18 January 2023 Mr Lewis made written representations in support of revocation. These were provided to Ocean only after the decision was made. On 26 January 2023 Lord Manners also submitted written representations drafted by leading and junior counsel at Landmark Chambers. These were provided to Ocean in May 2023 (other documents, which in my view are not material, were provided in October). I have of course read the Opinion of Mr David Elvin KC and Ms Isabella Buono with the attention it deserves. It is certainly trenchantly expressed. It makes no reference to the August 2007 site visit.

75. On 30 January 2023 there was a meeting at Lord Manners' home attended by him, Mr Lewis and Mr Avery. The latter did not keep any notes of the meeting, but on 2 February 2023 Lord Manners sent a detailed letter setting out his understanding of what was discussed. Para 47 of Mr Avery's second witness statement confirms that Lord Manners' summary is accurate. There is nothing in the letter which excites any concerns on my part in the context of Ground 7.

76. On 10 February 2023 Ocean's planning consultants filed detailed representations in opposition to the proposed revocation of the CLEUD and requesting documentation and witness statements. I note that Mr Harwood had some input in preparing these representations. It is unnecessary for me to summarise these representations not least because they are largely replicated in Ocean's Grounds and it is clear that – subject to Ocean's point about redacted witness statements and that significant documents were not disclosed – it has been given a full opportunity to advance its case before the relevant decision was made. One aspect that I should address, however, is that although these representations referred to site visits by planning officers in April 2007 and 2008 (I interpolate, within the enforcement team), no reliance was placed on Ms Young's site visit in August 2007.

77. On 26 May 2023 Mr Avery replied to the planning consultants' letter. The NPA released some of the documents requested by Ocean including the unredacted witness statements and the representations drafted by Landmark Chambers. Ocean was also informed that the decision to commence revocation proceedings was taken in Part 2 session in September 2022.

78. On 1 September 2023 Mr Avery sent Lord Manners a draft of the Part 1 report to members for a Full Board meeting then programmed for 21 September 2023. This was done "in the strictest confidence of course". It was not provided to Ocean. In an attachment to an email dated 5 September, Lord Manners made a number of suggested changes. These have recently been made available to Ocean. I will mention the most significant change when I come to summarise the report.

79. Mr Avery's explanation in his witness statement for sharing the draft report with Lord Manners was that the Authority meeting on 21 September was rescheduled for 19 October, and he wanted to reassure Lord Manners that the NPA was still on track. That explanation is not consistent with Mr Avery's email dated 1 September, which indicates that the meeting at that time was still scheduled for 21 September. The rescheduling came later. In my judgment, it is also relevant that Mr Avery deleted the 1 September email as well as Lord Manners' reply. The only reason why we have it at all is because Lord Manners has provided it.

80. During the hearing Mr Findlay accepted on Mr Avery's behalf that the explanation given in his witness statement was wrong, and that he apologises to the Court for the error.

81. On 8 September 2023 Ocean's new solicitors, Jones Day, sent a composite response to the May materials, requested further documentation, and provided a list of the material known to be withheld or missing. I have considered Jones Day's detailed representations with care. They were adhering to the argument that knowledge of the enforcement team within the planning department of the NPA was relevant to the materiality of the representations made by Mr Cox in his CLEUD application form. These representations did not rely on Ms Young's site visit.

82. Mr Avery sent Ocean's responses to Lord Manners on 12 September and offered to share the NPA's reply and updated report before the NPA's 19 October meeting. Lord Manners provided Mr Avery with four pages of "initial comments on the submissions of Mr Harwood" on 18 September. Those were not provided to Ocean until August 2024. The NPA responded to Ocean by letter dated 3 October which in my view warrants detailed consideration.

83. In this letter the NPA summarised the evidence from local residents and third parties, acknowledging that they may have varying recollections of the Site at any given point in time. However, the letter stated that there was a consistent theme: that there was other uses on the Site, and there was never any caravan use in the paddock areas. Further, the aerial photographs and those taken by the NPA in 2007 and 2008:

> ".. evidence a consistent pattern of use which is characterised by a dispersed grouping of caravans in the northeast corner of the site and a more tightly packed grouping if caravans in a smaller area to the rear of the former bungalow, adjacent to the southern

> boundary. This latter area is the same as that crossed-hatched blue in the plan attached to the certificate."

84. With counsels' help I have looked closely at the witness statements that were provided. They are not particularly strong on some of the other issues, in particular the various uses that were summarised in the report under para 4.3(ii) and which I mention below. However, I agree with the assessment that there is a consistent theme in the witness statements that there were no caravans in the paddock areas, the location of which was shown to me on a plan.

85. Further, in the 3 October letter the NPA addressed the argument that its repository of documents is incomplete. It stated that it currently considered that it held sufficient of the CLU records validly to form a view on the issue under consideration. Finally, as for what was known by the NPA at the time the CLEUD was granted in 2008:

> "It is not known how much of the earlier enforcement investigation was known to the [NPA's] solicitor at the time but there is no evidence to suggest that the results of the enforcement investigation were taken into account by the [NPA's] solicitor in deciding to issue the certificate (or that any enforcement file was made available to the [NPA's] solicitor in considering the application)."

86. The NPA's letter dated 3 October 2023 again makes no reference to the planning officer's site visit of 28 August 2007.

87. The final version of the report to members prepared by Mr Avery and dated 19 October 2023 (the date of the meeting) has been subject to close scrutiny in these proceedings. Mr Avery's draft of the report had said that "officers believe there is an arguable case to support the revocation of the CLU". Lord Manners changed the wording to "sound arguable case" and Mr Avery did not demur. The report summarised the case for revocation in these terms:

> "(i) large parts of the Site were not used as either a touring caravan site or for the storage of caravans (the CLU application falsely stated that the whole site had been used as a touring caravan site.
>
> (ii) a variety of other items were stored on the site including horse boxes, trailers, boats, steel containers, plant and machinery, cars, ladders, tools, mounds of rubble and telegraph poles (the CLU application falsely stated that there were no other significant uses of the Site.
>
> (iii) a significant part of the Site was used for grazing and pasture (the CLU withheld this information.
>
> (iv) parts of the site were not used as either a touring caravan site or for the storage of caravans (the CLU application withheld this information.

> (v) the application gave a minimalist description of the use of the land as a caravan site (the CLU application withheld information about the number of caravans on the Site."

88. Paras 4.6 to 4.11 of the report set out the contrary arguments. Further, annexed to the report was a copy of the Jones Day representations of September 2023 (albeit not the planning consultant's representations of February 2023, but the main points were summarised in the body of the report). I set out these important paragraphs in full:

> "4.6 Officers acknowledge that there are some shortcomings in the [NPA's] case. Firstly, the [NPA's] records of the CLU decision are incomplete. From the information that we do hold it is evident that both the planning officer and the [NPA's] solicitor were of the initial view that the CLU application as submitted (in July 2007) could not be supported. The held information confirms a telephone conversation between the applicant and the [NPA's] solicitor in or around June 2008 and this was apparently enough to persuade the [NPA's] solicitor to eventually issue the CLU in August 2008. There is no record, or knowledge, of what was discussed in that telephone conversation. Neither the [NPA's] former solicitor nor the former planning officer have any recollection of what was discussed. …
>
> 4.7 However, in itself this does not detract from the fact that the applicant made false statements and withheld information that would have been known to him in completing the application form and preparing the accompanying site plan.
>
> 4.8 Secondly, the answers to the questions on the application form are inconsistent in so far that in one section of the form the existing use is described as "storage of touring caravans" and in another it is stated as "touring caravan site and touring caravan store. It appears that officers chose to accept the latter description as this is what was shown on the accompanying site plan which annotated the whole site as a "campsite" with a smaller area shown as a storage area.
>
> 4.9 Thirdly, it is evident from notes (February 2007) and photographs (22 April 2008) taken by the [NPA's] enforcement officer that the [NPA] was aware of other uses taking place on the site at the time of determining the CLU application. This information does not appear to have been shared with those officers determining the CLU application. Similarly, the [NPA] would have had access to aerial photographs at the time of considering the CLU application. That said, the onus is very much on the applicant to provide the correct information in support of any application for a CLU. Nor is the [NPA] obliged to exercise its powers to require more information to be provided in order to try and remedy deficiencies in the material submitted by an applicant.

> 4.10 Fourthly, officers note the owners' criticisms of the residents' statements to above. Having carefully considered the residents' statements and met with them, officers are satisfied that weight can properly be attached to them as part of the case in support of revocation, notwithstanding that they and other third parties are pressing for revocation. As more fully detailed in the [NPA's] draft statement and the [NPA's] letter of 3 October 2023 overall they provide support for the case as demonstrated in the photographic evidence. But while the evidence of local residents are important considerations, the decision to proceed with revocation is entirely at the [NPA's] discretion.
>
> 4.11 Despite these shortcomings, which are discussed in more detail in the annexes, officers consider that there is still a sound case for revocation but they will be matters Members will need to consider."

(In para 3.15 of the report, the attention of members was drawn specifically to the Jones Day representations of 8 September 2023 and NPA's response of 3 October 2023)

89. On 19 October 2023 the NPA's members considered the revocation of the CLEUD in a Full Board meeting in both Part 1 and Part 2 sessions. During the Part 1 session, Lord Manners and Philip Emmel spoke in favour of revocation, and Mr Harwood spoke against. Mr Avery gave a PowerPoint presentation to members and answered their questions. Mr Avery accepts in his first witness statement that in answer to a concern expressed by a member he did say that about 90% of the 2007/8 documentation was still available. He says that this was an "off-the-cuff" remark. It is also accepted that there was a "full blooded debate" lasting 49 minutes in closed session, no minutes of which have been produced.

90. The resolution to revoke the CLEUD was passed in the Part 1 session after the Part 2 session had concluded. The formal decision to revoke was made on 7 November 2023 when it was communicated to Ocean. What happened subsequently, to the extent that it is relevant, may best be addressed during the course of my analysis of the individual Grounds.

RELEVANT LEGAL FRAMEWORK

Revocation under the statutory power

91. Section 193(7) of the Town and Country Planning Act 1990 provides:

> "(7) A local planning authority may revoke a certificate under either of those sections if, on the application for the certificate —
>
> (a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld."

92. There is no right of appeal against revocation decisions. Before deciding whether to revoke a CLEUD, the landowner must be given notice of the allegations in issue, and an opportunity to make representations must be given under applicable regulations. There is no statutory requirement to give reasons for an adverse decision but there is a common law obligation to do so. It is no longer in dispute that the NPA's reasons (i.e. the reasons of its members, who were of course the decision-makers in this case) may be inferred from the officer's report, in circumstances where, as here, a recommendation was accepted. It follows that material errors of law in the officer's report infect the members' decision. Further, it is not in dispute that a local authority always has a discretion whether or not to revoke when the statutory criteria are met. Ocean's Ground 9 raises an issue under this rubric.

93. The relevant principles may be distilled from Holgate J's judgment in the *Ocado* case. I summarise these as follows (largely drawing from Mr Findlay's analysis):

(1) 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 he takes a minimalist approach to the provision of information (para 71 of the judgment).

(2) The power of revocation is not to be deployed because a LPA wishes to revisit the merits of an application or has changed its mind about findings of fact (para 81).

(3) The power to revoke may be exercised at any time (para 82).

(4) The test for the first ground of revocation (sc. false in a material particular) is objective. Knowledge is not required (para 84).

(5) In test for the second ground of revocation (sc. withholding of information), is similarly objective: proof of a deliberate decision is not required (paras 85-92].

(6) The revocation power is an important safeguard (para 88).

(7) In respect of the phrase, "in a material particular", a LPA is entitled to consider materiality of matters cumulatively (para 94).

(8) 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 (para 95).

(9) The materiality test can also be met where the relevant information could have resulted in the LPA making a different factual finding, drawing a different inference, or a line of inquiry leading to that outcome (para 96).

(10) 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 (para 101).

94. Mr Findlay also relied on para 102 of the *Ocado* case, the saliency of which I will need to address in the context of my analysis of the first three Grounds.

> "Mr. Brown QC submitted that where an area of doubt or a potential line of inquiry was apparent from the material submitted with the application for a CLEUD, the power in s.193(7) cannot apply where further information becomes available after the grant of a certificate which simply raises the same point or doubt. I do not accept that broad and absolute proposition. At the application stage the applicant only has to satisfy the local authority of the matter to be certified on the balance of probabilities. The local authority may consider, for example, that there is uncertainty on one issue but not to such an extent that further information should be required, or the application refused on the grounds that the applicant had failed to satisfy the civil standard of proof. But if the authority should subsequently discover that information provided with the application was false or other information was withheld, that may increase the uncertainty or doubt on that very same issue to the extent that it is judged that a certificate would not or might not have been issued, for example, without certain questions being raised and investigated. The revocation power in s.193(7) enables that course to be followed if the authority judges that to be appropriate."

95. The parties did not refer to me to paras 106-7 of the *Ocado* case although they feature in the Opinion of Mr Elvin and Ms Buono. I am grateful for their helpful analysis, with which I agree. The upshot is that a local planning authority in exercising its statutory power *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 local planning authority may take into account any planning harm which may flow from not exercising the power.

96. Finally, para 194 of the *Ocado* case is also highly relevant:

> "I regard as wholly untenable the suggestion in paragraph 57 of Ocado's skeleton that an applicant cannot be treated as withholding information in an application for a CLEUD if that information is already in the possession of the local planning authority. An applicant withholds material information if he has it and does not provide it to the authority. That remains the case even if the authority has that information in its records. Ocado's contention is completely at odds with the statutory scheme, which puts the onus on the applicant to justify the grant of a CLEUD with adequate verifying information. The legislation places a clear risk upon an applicant and his successors in title that a CLEUD may be revoked in the future if the conditions in s.193(7) are met. It is a deeply unattractive submission that what would otherwise amount to a material withholding of information justifying the revocation of a CLEUD, should be treated differently simply because the local planning authority did not search through its register of planning applications looking for anything which might undermine the

> application. Ocado's submission transforms the statutory expectation that an applicant will make an adequate and candid disclosure of relevant information into an implicit obligation on the local authority to search through its own records and files before granting a CLEUD."

97. It is clear that a trawl by a LPA through its register of planning applications is not required – in the sense that a failure to undertake that exercise somehow neutralises an applicant's failure to give full and frank disclosure, and not to withhold anything material. In my judgment, this means that knowledge within the enforcement division of the NPA, in the absence of evidence that it was shared, cannot in some way be attributed to the division responsible for the CLEUD application and/or serves to nullify any antecedent breach of obligation perpetrated by Mr Cox. However, it is less clear-cut whether, if the planning officer dealing with the CLEUD application knew what the position was on the ground as a result of her site visit on 28 August 2007, the NPA could still be heard to say that Mr Cox provided information that was false in a material particular or withheld material information. Whether para 102 of the *Ocado* case bears on this question is open to debate. I will be reverting to this key point when I come to address Ocean's Grounds 1-3.

The definition of "caravan site"

98. Mr Harwood raised an issue on section 1(4) of the Caravan Sites and Control of Development Act 1960, which provides:

> "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 land which is used in conjunction with land on which a caravan is so situated."

99. It is clear on House of Lords authority (see *Wyre Forest DC v Secretary of State for the Environment* [1990] 2 AC 357, per Lord Bridge at 365), that the meaning of "caravan site" in the First Schedule to the CLEUD bears the meaning set out in section 1(4). Mr Harwood's point was that the land comprising the caravan site is not just the land on which caravans are physically situated. I agree with that analysis, although it does not avail Ocean in relation to the non-caravan use of the paddocks.

Bias

100. Mr Harwood advanced his case on both actual and apparent bias. In my view, I need not address the former. If Mr Harwood cannot establish apparent bias, that is the end of the inquiry. In any event, he did not apply to cross-examine Mr Avery.

101. The relevant principles were summarised by Dove J in *R (Legard) v Kensington and Chelsea Royal LBC* [2018] EWHC 32 (Admin); [2018] PTSR 1415 and I was taken to other relevant authority. In my view, the following statement of principle derived from the *locus classicus* of *Porter v Magill* [2001] UKHL 67; [2002] 2 AC 357 remains apposite:

> "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

102. The attributes of this hypothetical, fair-minded and informed observer are well-established: see, for example, *De Smith's Judicial Review*, 9th edition, paras 12-010 to 12-023. The law imposes an objective test; a fair-minded and informed observer is a fictional third-party to the proceedings who is not to be confused with a litigant; and in terms of the level of knowledge to be ascribed to this hypothetical individual, she has been said to:

> "… take the trouble to inform herself on all matters that are relevant. She is the sort of person who takes the trouble to read the text of an article as well as the headlines. She is able to put whatever she has read or seen in its overall social, political or geographical context. She is fair-minded, so will appreciate that the context forms an important part of the material which she must consider before passing judgment." (per Lord Hope of Craighead at para 3 of his opinion in *Helow v SSHD* [2008] UKHL 62; [2008] 1 WLR 2416)

103. Mr Findlay advanced a set of submissions directed to the particular facts of *Legard*. Given that the assessment of apparent bias is always fact-sensitive, I am not convinced that this was a useful exercise.

104. It would not be sufficient for Ocean's purposes to prove bias in relation to just member of the NPA's Full Board: see *R (Berky) v Newport City Council* [2012] EWCA Civ 378; [2012] Env LR 35. This is relevant to Ocean's case against Professor Parker, which I have to say is extremely thin evidentially. I do not consider that *Berky* is relevant to Ocean's more compelling case that the officer's report is infected by bias, although it was of course written by one individual. Different principles apply to this situation, which I will now address in the wider context of officer's reports to members.

Officer's Reports

105. During the course of oral argument, it became clear that there are three strands of authority. My task is to ascertain whether they can be harmonised. In my judgment, these strands are complementary rather than discordant.

106. First, there is the general principle in public law that the judicial review court determines for itself whether a submission prepared, for example, by an official for a Minister is fair and balanced: see *B4 v Secretary of State for the Home Department* [2024] EWCA Civ 900; [2024] 1 WLR 5342, per Singh LJ at para 65.

107. Secondly, there is the line of planning cases culminating *in R (Whitley Parish Council) v North Yorkshire County Council* [2023] EWCA Civ 92, where the Court of Appeal made it clear that a planning committee's decision is vitiated by error of law if the effect of the planning officer's report is "significantly to mislead members on a material issue" (per Sir Keith Lindblom SPT at para 37). In that case the Court of Appeal applied its earlier decision in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314; [2019] PTSR 1452, at para 42(2). *Whitley* is also authority for the wider

proposition, which is well-established, that officer's reports must be read as a whole and with a reasonable degree of benevolence.

108. Thirdly, there are specific examples of cases where decisions are quashed for want of objectivity and impartiality in officer's reports. I was taken to *R v Teeside Development Corporation, ex parte William Morrison Supermarkets plc* [1998] JPL 98. In that case, Sedley J held that there was nowhere near a neutral appraisal of the planning case. The bar for proving what is in effect the presence of apparent bias is a high one.

109. In my judgment, these authorities may readily be reconciled. The presence of unfairness or bias in a situation such as the present is always one for the Court to determine on an objective basis. If a report is not fair and balanced on a material issue, its effect may be understood to be significantly misleading. There is no material difference in my opinion between a report which is unfair and imbalanced and a report which is significantly misleading. I note that Singh LJ in *B4* referred to *Whitley* and *Mansell* at para 64, and that he relied on those cases. A report that is not fair and balanced may or may not be infected by bias. Either *Teeside* is merely an example of a case where the report was not fair and balanced, in which event it adds nothing new, or it is an example of a case where the report-writer has exhibited partiality.

110. Drawing these strands together, I would hold that if Ocean were able to prove apparent bias on the part of Mr Avery in his handling of the revocation process, that would not in and of itself bring this judicial review claim home. It would still have to be established that his report was significantly misleading and/or unfair and imbalanced. However, proof of apparent bias would as a matter of common-sense smooth Ocean's path to eventual success because it would be inevitable that the Court would have to examine the officer's report with closer scrutiny and less benevolence. The intensity of the examination would depend on the quantity of bias shown.

THE GROUNDS

Clearing the decks

111. In my judgment the wheat needs to be separated from the chaff in this case. Ground 5 (for which permission has been granted) must be dismissed, and permission must be refused on Grounds 8 and 9.

112. Ground 5 raises a general complaint about disclosure and secrecy. I fail to see how that has prejudiced Ocean in any way. The decision to propose revocation made in September 2022 was not revealed to Ocean until 2023, but the latter has been given a full opportunity to address the merits of revocation after January 2023. This decision merely started the ball rolling, and any breach of the Local Government Act 1972 is neither here nor there. It is true that only redacted witness statements were initially provided, but full versions were disclosed in good time. The enforcement files were not provided until late in the day, but in my view nothing really turns on that. The contents of those files, and their significance, were fully argued by Mr Harwood in these judicial review proceedings, where he is perhaps in a better position than he was in October 2023 to make some headway. Some third party representations were provided only in the course of the judicial review proceedings, but nothing in my opinion turns on that.

The 2021 decision not to revoke is, as I have already said, irrelevant. Finally, in relation to the complaint that the decision to revoke was made in secret (i.e. during the Part 2 phase of the meeting which lasted 49 minutes), I accept Mr Findlay's submission that the primary purpose of this was to discuss legal advice in the context of threatened judicial review proceedings, and the financial consequences of that advice. Mr Findlay accepts that some of the debate on revocation was held during this Part 2 phase, although it would have been "artificial" to separate out the two procedures. It is clear from all the available evidence that most of the discussion was held in public. In any event, there is nothing objectionable in members retiring to consider their decision: see *R v Wandsworth BC, ex parte Darker Enterprises* [1999] 1 LGLR 601, per Turner J.

113. I asked Mr Harwood during the hearing to identify those documents that were either disclosed late or not at all. My assessment is that before the decision was made in October 2023, Ocean had most of the documents that were relevant. The documents that were disclosed in the judicial review take the matter further only in connection with the bias allegation, and that it is now being pursued before me. That allegation could not realistically have been pursued before the NPA. Finally, as for documents which still have not been disclosed, these are said to be either privileged or confidential, and I do not doubt that Mr Findlay has checked that. Overall, I have concluded that any late disclosure of documents could not have had a bearing on the outcome in October 2023, and is not prejudicing Ocean's prospects in these judicial review proceedings.

114. Ground 8 does not advance a tenable argument. The 2021 decision not to revoke the CLEUD was based solely on the ownership issue. The fact that some members were at a relatively early stage concerned about the quality of the evidence is neither here nor there. The evidential picture was not the same in October 2023, and it is reasonable to infer that any previous concerns would have been recollected when the merits of revocation were being discussed.

115. Ground 9 is equally untenable. It repeats the contention that the NPA misunderstood the scope of the 2021 decision not to revoke. Bias is pleaded under Ground 9 but its proper habitat is Ground 7, where it stands or falls on its merits.

The Shape of this judgment

116. In my opinion, it makes sense for me to address Ground 7 and the issue of bias before I address Grounds 1-3. Moreover, I have concluded that Grounds 1-3 constitute different ways of advancing the same point, which in my view should be slightly reformulated. I put my reformulation to Mr Harwood in oral argument and he accepted it. This reformulation is within the envelope of the existing Grounds, in particular Ground 2.

Ground 7: Bias

117. Mr Harwood's case against Mr Avery has been set out clearly in his skeleton argument.

118. He submitted that the actions of Mr Avery give rise to a finding of an appearance of bias by pre-determination and favourable treatment of Lord Manners and the parish council compared to Ocean and the previous owners. Mr Harwood relied on the following:

(1) providing Lord Manners with information from the files in 2020 yet withholding much from Ocean until after the CLEUD was revoked;

(2) telling potential witnesses what evidence the NPA wanted to demonstrate its case, saying witnesses should see Mr Avery's draft first, and proposing changes;

(3) informing Lord Manners of recommendations on Vernon Dene which were to be reported to the NPA or its planning committee on a Part 2 basis and then providing details of the decisions. That information was withheld from Ocean, the owners and the public, as was the fact that it had been communicated to Lord Manners;

(4) (i) reporting members' concerns at the adequacy of the evidence to Lord Manners (but not to Ocean or the public) and proposing to "tighten some of the wording" even though Mr Avery did not know that those factual witnesses' evidence could be "tightened".

(ii) saying what evidence he wanted – in terms of what it said – and advising Mr Lewis to hold off swearing his statement until Mr Avery had provided his.

(iii) offering for the NPA to pay for statements to be sworn;

(5) providing Lord Manners with the draft October 2023 report for comments, not revealing that he had done so. Whilst allowing any participant to comment on the draft report was improper, it is notable that Mr Avery did not give the same opportunity to Ocean;

(6) providing Lord Manners with Ocean's February and September 2023 representations, but not providing Lord Manners and the parish council's representations to Ocean. Receiving comments from Lord Manners on Ocean's representations and not passing them on to Ocean;

(7) giving Lord Manners the impression by August 2022 that the CLEUD would be revoked – an impression which Mr Avery did not dispute;

(8) holding a series of meetings with Lord Manners (at least four, one at his house) and numerous telephone calls without making any notes whatsoever. Whilst some contact might take place, this was excessive and secretive;

(9) doing all this in the context of Mr Avery having the responsibility of considering the statutory representations by Ocean, Lord Manners and the parish council;

(10) pursuing New Forest District Council to revoke the caravan site licence when (a) that was not the NPA's area of responsibility and (b) there was a statutory entitlement to a site licence with the CLEUD in place;

(11) failing to provide 2007/8 and later material to Ocean and the owners despite repeated requests;

(12) recommending revocation despite numerous omissions and deficiencies in the evidence and making implausible assertions about the evidence. Mr Avery overturned conclusions reached by the NPA's solicitor 15 years earlier;

(13) purportedly producing third party correspondence in his 2 July 2024 witness statement "for completeness" without saying that was not complete. That must have been apparent to Mr Avery when he signed his witness statement and the statement of truth appears therefore to have been falsely given;

(14) deleting highly relevant material, for example the communications sending the draft October 2023 report to Lord Manners and his response document showing the proposed changes, particularly when it was obvious that judicial review proceedings were likely.

119. As for the case against Professor Parker, Mr Harwood draws my attention to the fact that he was copied into Mr Avery's emails revealing confidential details of the NPA's discussions and therefore approved it. He had previously authorised Mr Avery to communicate with Lord Manners as far as possible. Professor Parker held at least two meetings with Lord Manners (one without officers present) and had at least one phone call. Professor Parker proposed the resolution for revocation at the October 2023 meeting.

120. Mr Findlay robustly resisted these submissions, not all of which by any means were developed in Mr Harwood's oral argument, although I have considered them all. That said, I do not consider that I need address all these points expressly. Put bluntly, some of them betoken an unduly suspicious mindset and/or do not reflect the underlying material.

121. The parties are agreed that the issue of bias must be assessed with reference to the whole of the available evidence including the witness statements of Mr Avery and Professor Parker served in these proceedings. It would not be appropriate in a case such as this to cherry-pick one's way through the material, although Mr Harwood inevitably latched onto some highlights.

122. I can say at the outset that the case against Professor Parker has no merit. He was copied into several emails and participated in two Microsoft Teams meetings involving Lord Manners. These were in January 2021 and January 2022, being some time before the revocation process was set in train. The purpose of the first meeting was to reassure Lord Manners about the timetable. As we know, in February 2021 the NPA resolved not to revoke the CLEUD, and the first meeting has no possible significance. The purpose of the meeting in January 2022 was to discuss the implications of the *Ocado* case. There is nothing to suggest that Professor Parker's interactions with Lord Manners crossed any line. In my judgment, therefore, the fair-minded and informed observer would not conclude that there was a real possibility of bias in relation to him. In any event, he was no longer the Chair of the NPA at the time the revocation decision was made, and I have already drawn attention to the authority of *Berky* which holds that the bias of one member would be insufficient.

123. The position of Mr Avery is more nuanced, not least because I remain concerned about certain aspects of his approach to this sensitive, unusual and complex decision-making process. First, I do not think that it is good practice that an officer should attend a private meeting at an objector's home without very clearly setting out in an email in advance of the meeting what will be discussed (and, preferably, what cannot be discussed), then after the meeting providing a further email summarising what occurred, and then on a third party's reasonable request immediately disclosing these emails. Secondly, I do not

think that it is good practice to send updates to one "side" and not the other, particularly those which allude to information which will form part of the Part 2 deliberations. Thirdly, I do not think that it is good practice to send a draft report to one "side" and not the other, and then compound that error of judgment by altering the draft on a point of potential substance. There is a difference, maybe not a huge difference, between "arguable case" and "sound arguable case". Mr Avery's routine use of the adjective "confidential" when providing a document to only one "side" in this dispute rather demonstrates that he was aware that what he was doing should not enter the public domain. Fourthly, we know that one important email chain was deleted and in my opinion that should not have happened.

124. Mr Avery was obviously concerned to keep Lord Manners on side, and the latter was threatening judicial review proceedings if the outcome did not go his way. Mr Avery was aware that judicial review proceedings were likely whatever the outcome. He was not on first name terms with the directors of Ocean, they had no connection with the local area, and he may have viewed them through a rather different prism. That makes what Mr Avery did entirely understandable at a human level, but in my opinion it does not justify it. In my judgment, in particular in a case of this sensitivity, an officer in Mr Avery's position must be seen to be completely above the fray.

125. As against this, I accept Mr Findlay's overarching submission that Mr Avery has no personal interest in the outcome and has displayed no animus towards Ocean. He has sought legal advice at virtually every stage of the process, although I suspect that had his lawyers known about some of these communications they would have given him certain advice. He gave Ocean every opportunity to advance its case. I have seen no evidence of Mr Avery attempting to influence any of the witnesses who provided statements to the NPA. He did no more than identify the issues that they should be addressing, and it simply cannot be said that their integrity was undermined in any way. Indeed, although Lord Manners is clearly a lively, astute and persistent personality, I have seen nothing which might indicate that he is not a man of integrity, and I would say the same of Mr Lewis. Moreover, the report that was placed before members on 19 October 2023 falls a very long way short of exhibiting the sort of problems identified by Sedley J in the *Teeside* case. Whether it is a fair and balanced report, or materially misleading in a material way, is a matter I will need to address when considering other Grounds, but the point I am making at this stage is that there is nothing that leaps off the page. Furthermore, the draft witness statement that Mr Avery provided to members is a conscientious and detailed document.

126. A related issue arises as to whether there is evidence of predetermination in this case. The use of language such as "we want to show" is a slight indication in Ocean's favour. However, although officers in these situations must always keep an open mind and show that they are receptive to any changing evidential landscape, the fact remains that in conducting this quasi-enforcement role Mr Avery and others were entitled to advance a "case" for consideration by members. The predetermination argument hits the obvious stumbling block that Mr Avery was never the ultimate decision-maker.

127. I have considered all the available evidence in the round. I have made my criticisms of Mr Avery's practice and have concluded that in some respects what he did was not justified. Had Mr Avery been the ultimate decision-maker in this case, I would have found apparent bias. However, and critically, he was not; and, viewed in the round, the

criticisms I have been driven to make are insufficient in my opinion to found an allegation of apparent bias.

128. In my judgment, the informed and fair-minded observer applying her or his mind and judgment to all the available evidence would share my concerns but would not conclude that the apparent bias allegation has been made out.

129. Overall, therefore, I am unable to conclude that the apparent bias ground has been established in relation to Mr Avery. I grant permission to Ocean to pursue it, because I think that the point was sufficiently arguable to be raised, but I dismiss the judicial review application brought on this basis.

Grounds 1, 2 and 3

The Arguments

130. Mr Harwood submitted that it is clear from the available evidence that much important material has been lost or destroyed. Key witnesses (sc. the CLEUD officers and the Cox brothers) are no longer available. He submitted that Mr Avery underplayed the evidential deficit by telling members that 90% of the documents were available, and I agree with that criticism insofar as it goes. He argued that it was impossible for any reasonable decision-maker to infer that Mr Jonathan Cox gave further incorrect information to CLEUD officers in at least two telephone calls and/or that these individuals did not know what was occurring at the Site. Indeed, submitted Mr Harwood, the available inferences pointed strongly the other way. Whatever Mr Cox did say, it must have been sufficiently compelling to persuade a sceptical Ms Mutlow to proceed to issue the certificate. Furthermore, there was a site visit in August 2007, and it is a more than reasonable inference that at least some of what the enforcement officers knew was shared with the CLEUD team. That would have been good practice, and Mr Avery's report refers in terms to aerial photographs available to the NPA at the time the CLU decision was taken.

131. In his reply Mr Harwood made the potentially powerful point that, given the evidential deficits I have identified, the adverse inferences that the officer's report seeks to draw are not inferences at all but bare speculation. On this logic, there was, in truth, no evidence to support the key assessments in the officer's report. These were presented, without proper foundation, as inferential conclusions, when they were not.

132. Allied to these considerations, Mr Harwood submitted that it was an abuse of process and unfair for the NPA to proceed to revocation in this way. I interject at this point to observe that this submission really adds nothing to his no evidence point. If there were evidence of an inferential nature which *could* properly form the basis of an officer's report, there would in my view be no separate unfairness or abuse of process issue. Mr Harwood did not advance a *Wednesbury* case with reference to paras 106-7 of the *Ocado* case. In my judgment, he was correct not to do so because the effect of these paragraphs is that NPA was not mandated by the statutory scheme to take into account in Ocean's favour the harm to its business and the fact that it had no role in the misstatements made many years ago. There is nothing to suggest that the prejudice to Ocean was not considered by members (this was a blindingly obvious point), or (as a countervailing factor) the potential harm to the public interest in not exercising this statutory power.

133. Mr Harwood's second group of submissions was clustered around the proposition that the officer's report withheld relevant evidence of the condition of the Site from members. This included: Mr Cox's candour with the NPA; the NPA's evaluation of the lawfulness of the activities contained in its enforcement files, and what the CLEUD team knew from the site visit. It followed that the officer's report withheld relevant facts and members consequently failed to have regard to them.

134. These submissions were slightly reformulated in the cauldron of oral argument. The focus shifted onto whether the officer's report was fair and balanced, and whether it omitted key information. This was far from being a paradigm shift: I would describe it as a minor, and permissible, adjustment; and Mr Findlay had no difficulty with it. I may say at once that I do not find the argument that Mr Cox must have been candid with the NPA to be particularly compelling. Putting the point at its height, it is just about possible that he may have been, although I have to say that there is compelling evidence from third parties that the touring caravan site did not cover the whole of the grey-stippled area demarcated on the plan. Furthermore, I rather draw the inference that he was less than forthcoming. He was, for example, slow in answering the CLEUD team's moderate and reasonable requests for further information. On the other hand, Mr Harwood is certainly entitled to adhere to his submission that whatever Mr Cox did say, it somehow changed Ms Mutlow's mind.

135. Further, there is considerably more force in the argument that the CLEUD team was appraised of the true position as a result of the August 2007 site visit, and proceeded to issue the certificate in that knowledge. This brings Mr Harwood's case back to his first group of submissions, albeit with the slight adjustment that I have mentioned. The submission became this: that the officer's report was not fair and balanced because it failed to address the strong inferences to be drawn both from the site visit and the *volte-face* in Ms Mutlow's thinking.

136. Mr Harwood's third group of submissions was that on the information available there was no evidence which could lead to the conclusion that the pre-requisites of section 193(7) were fulfilled, and that in assessing the evidence the officer's report contained material errors of fact. I fail to see how these submissions add materially to the previous ones. Moreover, as this Court has said often enough, the "error of fact" principle is very narrow and is overused in judicial review. It has no application here.

137. Both counsel made detailed submissions on the underlying material. I do not think that it is necessary for me to summarise Mr Findlay's extremely helpful oral argument in this judgment, save to make this observation. Sensing that I was particularly interested in the August 2007 site visit, Mr Findlay submitted that its significance has been overplayed. He made a deft series of submissions about that.

Discussion and conclusions

138. My point of departure is a consideration of the text and purpose of section 193(7). A CLEUD certificate, once granted, is deemed to be lawful unless quashed in judicial review proceedings. The NPA cannot be heard to say, and have not contended, that the CLEUD should never have been issued in August 2008. Nor can the NPA seek to revisit the planning merits of that decision, and it has not sought to do that. There was some discussion at the Bar as to whether the sub-section imposes any burden of proof on the local authority. In my judgment, the correct analysis is that there is no burden of proof

in the strict sense, although it is for the local authority to be satisfied that the statutory criteria for revocation are met. Unless these are fulfilled, the CLEUD must stand. It is the role of this Court to determine whether, in being satisfied in these particular circumstances, the NPA committed a public law error. It is important to underline that it was not incumbent on Ocean to prove a negative. This is an important factor in a case where there were clearly important evidential *lacunae*.

139. The second preliminary point which should be made is that I agree with the generality of Mr Harwood's submission that, if Ms Young and/or Ms Mutlow knew that Mr Cox had made false statements and withheld material information, any act or omission on his part would not have been material and/or it would be irrational to revoke the CLEUD under section 193(7). I put the matter in these terms because some cases are more clear-cut than others. One can imagine a case where the applicant says X and it is quite obvious from a subsequent site visit that X is a lie. However, one may also imagine cases where the issue is far from being so stark, because – for example - the situation on the ground is dynamic and requires interpretation. Those cases will involve assessments of fact and degree, and of planning judgment. Holgate J was, I think, making that point in para 102 of the *Ocado* case. It follows that the generality of Mr Harwood's submission is correct, but its application to a particular factual pattern will inevitably raise case-specific questions.

140. When the hearing started I confess that my provisional view was that this was a stark case. I was troubled by the inferences to be drawn from the site visit. However, as the hearing proceeded, and particularly when I was listening to Mr Findlay's submissions, I started to form the conclusion that the case was more complex.

141. The third preliminary point to be made involves a consideration of whose knowledge is relevant here. When I told Mr Harwood in oral argument that I did not think that the knowledge of the enforcement team was relevant unless it could and/or should be inferred that such knowledge was shared with the CLEUD officers, he did not contest my provisional analysis. My concluded view is that this flows from para 194 of the *Ocado* case. Yet, Ocean's 2023 submissions, as well as its pleadings and skeleton argument in these proceedings, focus on what the enforcement team knew. I will need to return to this point because it is important.

142. My fourth, and last, preliminary point is that an evaluation of whether there was enough evidence to proceed to revocation despite the absence of important evidence raises in my view a purely *Wednesbury* issue. Whether the resulting report fairly reflects the absence of important evidence raises an objective question for my determination. I appreciate, however, that I did not receive submissions on this topic, and I will therefore proceed on the basis most favourable to Ocean.

143. In its letter of 3 October 2023 the NPA opined that there was in its view sufficient evidence on which fairly to proceed. Contrary to one of the manifestations of Mr Harwood's Ground 1, I am unable to conclude that this conclusion was either unreasonable or unfair.

144. Next, I should attempt an analysis of the 2007/8 documents and seek to differentiate, where possible, between inferences which are irresistible, inferences which are reasonable (but where by definition it would be reasonable to draw a different inference) and mere speculation. Throughout this exercise, I will be reminding myself

that these are judicial review proceedings and that it is not the Court's role to find facts, even from secondary evidence. The purpose of conducting this analysis is to build the foundation-blocks for a proper consideration of whether the officer's report was other than fair and balanced.

145. I will also be seeking to identify any respects in which the inferential position is impacted by the absence of evidence.

146. It is clear from all the available evidence that there never was permission for a touring caravan site over the whole of the Site, and on 5 April 2007 Mr Cox did not make that claim. Although the enforcement team had been concerned about possible multiple breaches of planning control (see the letter dated 8 March 2007), it seems that most of these fell away in the succeeding months. In particular, the NPA was satisfied about multiple occupancy and the mobile mini-crusher. The general untidiness of the Site did, however, remain an issue, but whether the mounds of earth, and storage of boats and telegraph poles etc. shown in the April 2008 photographs really amounted to an unlawful use or activity is far more debateable.

147. On 5 April 2007 Mr Cox was advised to apply for an existing use certificate in relation to the storage of caravans. It was not suggested to him that such an application needed to be made for the touring caravan site or indeed could be made in relation to that use. The touring caravan site, as I have said, did not cover anything like the whole of the Site, and Mr Cox was telling enforcement officers that it was a "certified" camping and caravan area. The 1979 document bears him out on that, but its limited scope is important.

148. The CLEUD application is a somewhat scruffy document. There is no evidence that Mr Cox had the benefit of legal or planning advice. My reading of the application form is that the application as such related only to the storage of caravans in the red-hatched area, and that Mr Cox's application reflected the advice he had been given by the NPA. However, Mr Cox was required by section 9 of the form to describe other uses fully. I consider that it would be unduly harsh to blame him for not mentioning the untidy uses to which I have alluded. Conversely, the touring caravan site use was certified but it had to be mentioned, as indeed it was. Unfortunately, the way in which the application form was completed indicated that the touring caravan site covered the whole Site which was stippled in grey on the incomplete plan. I reiterate that the rubric to section 9 required a full and accurate description. The enforcement team – who did not see the CLEUD application - would have known that Mr Cox should not be taken literally, but others would not. I use the adverb "unfortunately" because the inference cannot be drawn that there was any intention to mislead. Section 193(7) does not, however, require that.

149. As I have said, I do not think that anything turns on the fact that the map was incomplete or on the content of section 12 of the form.

150. The site visit on 28 August 2007 is, of course, a key event. The absence of Ms Young's note or memorandum relating to that visit is also an important factor. It is possible that her mind was applied to the whole of the application form and she was checking whether section 9 was correct. If so, it is possible that she would have seen and mentally registered that the paddock areas did not contain caravans. It is possible that she had seen the enforcement file and appreciated the extent of the touring caravan use from

that. It is possible that Ms Young noticed that this was an untidy site and that there may have been other activities going on which might have required planning permission. On the other hand, the computer record for the 28 August site visit referred only to the use specified in section 6 of the form, and that in my judgment is likely to have been Ms Young's primary focus. If that is right, the possibility that Ms Young ascertained on the date of her visit that the touring caravan use was limited and not co-extensive with the site boundaries cannot be discounted, but the probabilities are that she did not apprehend this.

151. Ms Young's memorandum to the parish council is directed only to the issue of caravan storage. That fortifies the inference that the red-hatched area was her primary focus.

152. The absence of any note or memorandum of Ms Young's site visit means that these inferences cannot be resolved. The only inference which I have identified as being probable rather than possible is that Ms Young was thinking about section 6 of the application form.

153. Mr Harwood is, therefore, right to submit that on one interpretation of this material an inference arises in Ocean's favour. If the inferences I have mentioned are, in the main, only possible, it is equally possible that inferences more favourable to Ocean's case may also be drawn. However, in my judgment Mr Harwood has overstated the level of probability of this being so, and he is also incorrect to describe the contrary case as speculation.

154. The 18 October 2007 memorandum remains a mystery. As I said at the very end of the hearing, although I put it less felicitously, it contains a puzzle which cannot be unlocked. The more natural meaning of "other activities", in the context of "contrary issues", is that these relate to what I am calling the untidiness of the Site. However, if that were really the concern of the CLEUD team, it is very difficult to understand why that was not referred to in Ms Mutlow's correspondence with Mr Cox or in any subsequent memorandum, and why the CLEUD was ever issued. This leads me to think that this more natural reading may well be wrong. On the other hand, if "other activities" is a reference to other caravan uses outside the red-hatched area, it is very difficult to understand why this was described as a "contrary issue". It had been mentioned in the application form. If the CLEUD team were saying that this was a "contrary issue" because it was clear to Ms Young that the caravan touring site did not cover the *whole* of the land, it is almost impossible to apprehend why that issue was not raised with Mr Cox and why the CLEUD was ever issued. In addition, it is highly unlikely in my judgment that Mr Cox told Ms Young and/or Ms Mutlow that the touring caravan site covered the whole of the Site, and later documentation supports that conclusion.

155. My overall inferential conclusion on the available evidence is that there is a real possibility that Ms Young was aware following her site visit of the lay-out of the caravans on the Site. However, that was unlikely to have been her main focus, and it is to be emphasised, and here I am *ad idem* with Mr Findlay, that what she saw was a snap-shot of the activities on this Site on one particular day – admittedly a day in late summer when touring caravans would have been in full use and display.

156. I also agree with Mr Findlay that the present case is within the sort of territory described by Holgate J in para 102 of the *Ocado* case. What was observable on the ground, and

its interpretation, were not clear-cut. It might well have led to further lines of inquiry, but the fact that it did not does not neutralise the effect of section 193(7) if its requirements in establishing material misstatement and/or withholding are otherwise met.

157. On 14 November 2007 Ms Mutlow's letter to Mr Cox indicated that she was now treating the CLEUD application as relating to both of the section 9 uses. In my view, that was unduly generous to Mr Cox although it has no impact on the misstatement point. There could be a misstatement under section 9 of the application form regardless of the formal scope of the application.

158. The written information which Mr Cox eventually produced did not in my view add to the evidential mix. I note Ms Mutlow's characterisation of it. There was a telephone conversation between Ms Mutlow and Mr Cox, probably in June 2008, in which he gave her further information about the caravan storage use. The 24 June memorandum is likely to have been the only evidence that ever existed about that conversation. That memorandum is entirely silent about the separate touring caravan site.

159. It remains a (further) mystery why a CLEUD was issued in the broad terms it was. I can quite understand why, taking a benevolent approach, Ms Mutlow may have believed Mr Cox's assertions about caravan storage, and there was some supporting evidence from the Higgins (not available) about that. However, there is nothing to suggest that Mr Cox provided satisfactory evidence relating to the touring caravan site use, and it is a very strong inference – even taking into account absent documents whose contents, logically, are unknowable – that he did not. I draw that inference both from what Ms Mutlow's memorandum says and from the implausibility of Mr Cox telling so blatant a lie.

160. Mr Harwood's submissions were predicated on the assumption that the NPA did not err in fact or in law in granting the CLEUD in August 2008. This led him to submit either that Mr Cox gave relevant information about the extent of touring caravan site use which persuaded Ms Mutlow or that the latter already knew from what Ms Young informed her that the inference to be drawn from the grey stippling on the plan was wrong.

161. I do not dismiss the second of these submissions in particular as weak or untenable; they do have some force. However, I have explained why each of these alternative inferences is unlikely, the first more so than the second. I have to say that the more probable inference is that the CLEUD team erred and that this certificate should not have been issued in the form in which it was.

162. I may now move directly to the officer's report. My quest is to ascertain whether it is fair and balanced, the burden of persuasion being on Ocean to demonstrate that it is not.

163. In my view, the report contains an accurate encapsulation of the law and does not seek to place on impermissible burden of proof on Ocean. However, in relation to para 4.3 of the report, I consider that parts of the case for revocation are plainly unfair. That there were items present on the Site (and para (ii) of para 4.3 appears to be based on the April 2008 photographs) is not something that should have been deployed in favour of revocation without a much closer analysis of the nature, extent and length of time of these disparate uses, and without recognising in terms that whatever certificate of use

was granted the enforcement team would still have a role. It is of course clear that no enforcement action was taken after August 2008. Further, the grazing and pasture use – as a freestanding point - is really clutching at straws, and the failure to specify the number of caravans was a bad point. If section 9 related to the whole of the Site, there could be a large number of caravans. Mr Cox did not have to be specific about that.

164. However, even stripping away these bad points which in my opinion should not have been included in the report, the NPA's officers clearly had a good case, subject to the issue of materiality, in relation to the representation by Mr Cox that the touring caravan site covered the whole area of the Site save for the red-hatched area. There was apparently convincing evidence from third parties that this representation was incorrect, and I repeat that on 5 April 2007 Mr Cox never made that claim. He said in terms that the touring caravan and camping site was on one field.

165. Moreover, I agree with Mr Findlay that it is relevant that members were directed in two places in the report (paras 3.14 and 4.11) to the underlying evidence and representations. Members could have been left in no doubt that attention should be paid to Ocean's representations.

166. Are paras 4.6 – 4.10 fair and balanced? Mr Harwood strongly criticised the superficiality of the officer's analysis and the failure even to refer to the 28 August site visit. This latter point would have considerable force if Ocean had relied on it in its submissions to the NPA at any stage in the decision-making process, and in particular on 8 September 2023. Mr Harwood candidly accepted that the issue was overlooked, but that of course does not avail him. In this context, I have not ignored para 20A of Ocean's draft Amended Statement of Facts and Grounds. This alleges that "NPA's record that the site visit had taken place was disclosed to Lord Manners in 2020 but to Ocean only in July 2024". I cannot reconcile the 2024 date with anything I was told during the course of the proceedings. As I have already said, the parish council consultation document was provided to Ocean in 2022 and again in May 2023. The computer print-out was not provided until it was exhibited to Mr Avery's second witness statement in March this year. Be that as it may, the premise of Mr Harwood's candid acceptance was that his clients had seen the parish council document before the decision was made in October 2023.

167. I make no criticism here because what may strike a judge calmly reading the papers even for the first time after they have been placed in perfect sequence in beautifully presented electronic files bears no resemblance to how Ocean's legal team would have understood the possible relevance of material that was being drip-fed to them over more than one year. Further, Ocean's legal team changed partway through. Nonetheless, these are judicial review proceedings, and if I ask myself whether it was unfair and imbalanced on the part of Mr Avery not to mention the 28 August site visit in light of the parties' submissions and the inferences which I (as the reasonable arbiter) am drawing from the documentation surrounding that visit, I would have to say that it was not. There is nothing to suggest that Mr Avery withheld or suppressed anything.

168. Para 4.6 of the report is incorrect in stating that the planning officer was initially of the view that the application could not be supported. I draw the contrary inference, but in my judgment nothing turns on that.

169. Para 4.8 of the officer's report is correct.

170. Para 4.9 of the officer's report opines that information known to enforcement officers does not appear to have been shared with the CLEUD team. Mr Harwood is of course entitled to submit that we do not know that, and I have already said that – other things being equal - it would have made sense for the CLEUD team to have asked for the enforcement file or to have sent an email seeking a summary. However, on this point I am prepared to accept Mr Avery's evidence that this would not have been standard practice, and for his report to say that the information does not appear to have been shared was not inaccurate. I do not read the sentence - "[s]imilarly, the Authority would have had access to aerial photographs at the time of considering the CLU application" – as referring to what the CLEUD team had in its possession. The use of the adverb "similarly" suggests otherwise. I have seen nothing to suggest that the CLEUD team did see the aerial photographs, but even if they had these were far from conclusive and, taken at their highest, might have led to further lines of inquiry. In such circumstances, Mr Avery was entitled to say that the onus was very much on the applicant to provide accurate information in the form.

171. Of course, Mr Harwood is correct in observing that the level of analysis we see in the officer's report is far from detailed. It may well fall short of the level of analysis I have undertaken, but my task is rather different from that of a planning officer (even one acting under the tutelage of leading counsel). The question, however, is whether the analysis was so superficial as to amount to being unfair and imbalanced. I cannot accept that it was. Maybe Ocean's arguments about the absence of evidence should have been accorded greater prominence; maybe it should have been underscored that the underlying material, which was not shown to members but was summarised in Mr Avery's draft statement, gave rise to a number of possible inferences – and I have itemised those. On the other hand, I would not regard these as being serious criticisms. The report overall could not be a massively lengthy document because it was being considered by an expert tribunal without indefinite time on its hands. Here, a balance had to be struck between the competing virtues of comprehensiveness and succinctness.

172. For all these reasons, I must reject Grounds 1-3.

DISPOSAL

173. Mr Harwood has done his very considerable best to advance a serious and important case under Grounds 1-3 and 7. Although at times during the hearing I was very receptive to aspects of that case, ultimately I have concluded that I cannot accept it.

174. For all the reasons set out in this judgment, the application for judicial review must be dismissed on Grounds 1-3, 5 and 7. The application for permission to apply for judicial review must be refused on Grounds 8 and 9.

175. I now invite the parties to draw up an Order which reflects my conclusions.