

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2021/1025

Development description: certificate of lawfulness for use of land to site campervans, motorhomes and tents for holiday use throughout 12 months of the year in excess of ten years

Site address: Middlewood Farm Holiday Park, Middlewood Lane, Fylingthorpe

Parish: Fylingdales

Case officer: Mrs Hilary Saunders

Applicant: Middlewood Farm Holiday Park

fao: Mr Peter Beeforth, Middlewood Farm, Fylingthorpe, Whitby, YO22 4UF

Agent: Barrs & Co Chartered Surveyors

fao: Mr Rob Barrs, Barrs & Co Chartered Surveyors , One Embankment, Neville Street, Leeds, LS1 4DW

Director of Planning's Recommendation

That a Certificate of Lawfulness be GRANTED for the following reasons:

1. That the development described in the First Schedule has been carried out for more than 10 years.

First Schedule

The use of land described in the Second Schedule to site campervans, motorhomes and tents for holiday use throughout 12 months of the year.

Second Schedule

Middlewood Farm Holiday Park, Middlewood Lane, Fylingthorpe, shown edged in red on the attached plan.

Consultation responses

Parish

31/01/2022 The Councillors objected to the application on the grounds that campervans and caravans would increase traffic, eliminate a 'green' area and change the ambiance of the site.

07/02/2022 I am a new clerk and was not aware of this [Certificate of Lawful Use procedure], neither I nor the Councillors had picked this up from the consultation letter, my apologies.

I have forwarded your email to the Councillors for discussion at the next Parish Council meeting on 16 February.

Third party responses

Name

Mr Andrew Simpson, 18 Middlewood Close, Fylingthorpe

As a long term resident I have walked and cycled countless times for decades along the adjacent disused railway line and on the public paths. Campers have been visiting the site for as long as I can remember and in the last twenty years or so we as a family have on many occasions remarked wryly among ourselves as to the hardiness of those involved because of the visitors there in the winter months. Warmer winters plus heaters in camper vans and the odd intrepid in a tent but definitely people staying during the winter months on that site for years. Well established site without problems that I am aware of.

Mrs Maria Fox, Church House, Church Lane, Fylingthorpe

We are aware the site behind Middlewood Lodge and adjoining the Cinder track has been used for many years. This has been mainly for tents and a small number of Campervans/Motorhomes, as is evident on the early photos accompanying the application. The number and size of such vehicles now using the site however is far greater in relation to tents (again evidenced by photos eg: 2014 and by the recent installation of more hardstanding areas and hook up points.)

As planning was granted in 2021 (Ref: NYM/2020/0792/FL) increasing the capacity for Campervans/Motorhomes on the larger additional site at Middlewood Farm, we feel that a restriction on the number of such vehicles on this smaller site is necessary and it should be predominantly for tents. Assuming this application is granted permission, we do not think it would be unreasonable to limit the number of Campervans/ Motorhomes allowed on this smaller site, as there is already adequate provision on the larger site.

Publicity expiry

Site notice expiry date – 2 February 2022

1995 aerial photo demonstrating use of site for tents/motorhomes



2014 aerial photo demonstrating use of site for tents/motorhomes



Most recent aerial photo demonstrating use of site for tents/motorhomes



Background

This application seeks a Certificate of Lawfulness for the continuous use of a field at the caravan site known as Middlewood Farm Holiday Park to site campervans, motorhomes and tents for holiday use throughout 12 months of the year in excess of ten years

The applicant has submitted evidence in the form of statements from holiday makers, local residents and staff referring to use over winter as well as summer, along with photographs.

Aerial photos over the last 25 years also demonstrate the use of the site for the pitching of tents and motorhomes.

It is considered that adequate evidence has been submitted to demonstrate a use for 12 months of the year for more than 10 years

Main Issues

The legislation under Section 191 of the Town and Country Planning Act 1990 provides that uses and operations are “lawful” if no enforcement action can be taken against them and they are not in contravention of any enforcement notice which is in force.

The first issue to consider is whether the use of the area within the application site constitutes operational development or a material change of use. This is because the enforcement period which applies to each differs. In this case, as there has been a material change of use, (i.e. the use of the land has intensified sufficiently to alter the character of the land) the enforcement period is 10 years.

The onus of proof for applying for a certificate of lawfulness is on the applicant. Therefore the applicant must establish on a “balance of probabilities”, (i.e. is it more likely than not) that the use has been in existence for at least ten years before the date of the application.

Guidance on evidence is provided in Circular 10/97: Enforcing Planning Control. This provides that the applicant’s own evidence does not need to be corroborated by independent “evidence” in order to be accepted.

If we have no evidence of our own or from others, to contradict or otherwise make the applicant’s version of events less probable there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. We should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

Based on the evidence submitted, on a balance of probabilities, it is considered that the requirements for issuing a Certificate of Lawfulness have been met and it is recommended that a Certificate is issued.