



## STATEMENT OF CASE FOR APPEAL

Certificate of lawfulness for the use of land as a holiday  
park comprising six static caravans in excess of ten  
years at Haggit Howe Caravan Site  
Decision Notice No. NYM/2022/0780

Haggit Howe Caravan Site  
Saltwick, Whitby YO22 4JY

APPELLANT: Lisa Trotter  
LOCAL PLANNING AUTHORITY:  
North York Moors National Park Authority

PREPARED BY  
ROBERT C BARRS BSc (Hons) MRICS  
BARRS & CO CHARTERED SURVEYORS

DATED: 24 April 2023

# **1 Introduction**

- 1.1 This statement of case accompanies an appeal against the refusal of an application for a Certificate of Lawfulness for the use of land as a holiday park comprising six static caravans in excess of ten years at Haggit Howe Caravan Site.
- 1.2 A Decision Notice (NYM/2022/07800) was issued on 15 December 2022 giving the following reason for refusal:

1. From the available evidence and applying a balance of probabilities test, for the period 1 November 2018 (and most probably prior to that date) until the date of application of 25 October 2022 the claimed caravan use has not occurred or existed, following the sale of the site and separation from the earlier planning unit, and the site has during that period been used as bare land (grassland). Therefore, any earlier period of immunity that may have accrued for the site has been lost and there is no reasonable scope for the Authority to modify the description of the application. Therefore, the present application is refused.

Copy of the Decision Notice No.NYM/2022/07800 is provided at RCB1.

- 1.3 This Statement of Case will review the application and address the grounds for appeal.

# **2 The Application Background**

- 2.1 Haggit Howe Caravan Site, Saltwick, near Whitby, is a small holiday static caravan site providing pitches for 6 caravans. The site has been in existence since at least 1960 to site 6 holiday static caravans with a March to October occupancy period.

A plan of the site, which is shown edged red, is provided at RCB2.

- 2.2 In 2017 the previous owner fell ill, was unable to operate the site and the caravans were gradually removed. This temporary cessation of use was merely the result of the retiring owner being unable to continue to run the site until the new operator was to take over the running of the site. In 2019 the current owner Ms L Trotter, the applicant, purchased the site and the adjoining dwelling.

- 2.3 Ms Trotter's family have owned and run the neighbouring caravan park, known as Highgate Howe Holiday Home Park for many decades and know Haggit Howe Caravan Site well. Upon purchasing the site it was always the applicant's intention to reinstate holiday static caravans on the land. Unfortunately the applicant was mistakenly informed by NYNP immediately after the purchase that she was unable to do this without making a new planning application.

A copy of this letter is provided at RCB3.

- 2.4 In response to this Ms Trotter made an application for a Certificate of Lawfulness, providing evidence of the use of the land as a caravan park over many decades leading up to the sale in 2019. A Supporting Statement was prepared which contains this evidence and the LPA have acknowledged that sufficient evidence exists to prove the use of the caravan site over a number of decades. This is not in dispute.

A copy of the Supporting Statement is provided at RCB 4

### **3 Planning/Licensing Background**

- 3.1 When considering the planning history for this site we considered the planning situation on other local caravan sites and we concluded that the original planning consents were issued by Whitby Rural District Council and that it appears that details of these consents have been lost under Local Government reorganisation. However planning must have existed, either by virtue of an actual planning consent or a deemed planning consent under Section 13 of the Caravan Sites and Control of Development 1960 Act in order for all the caravan sites in that area to be issued with Site Licences.
- 3.2 S13 Caravan Sites and Control of Development Act 1960 (Original Act) provided that a site without planning permission could apply for a Site Licence, where upon the Local Authority would either give planning permission specifically or if they failed to do this but issued the Site Licence the site would be deemed to have planning permission by virtue of the new Site Licence. This deemed permission applied to many caravan parks developed in the 1950's and early 1960's.
- 3.3 A valid Site Licence for the caravan park in the names of the previous owners was transferred to Ms Trotter by Scarborough BC in October 2020. From our research the earliest Licence available from the archives at Scarborough BC is a site Licence dated 1980 for permanent use of the site for 6 holiday static caravan with a March to October season. There has been a valid Site Licence in relation to the caravan site since that time.

A copy of the 1980 Site Licence is provided at RCB 5.

A copy of the current Site Licence is provided at RCB 6.

- 3.4 The LPA refused to consider the caravan site had actual or deemed consent without Ms Trotter providing the documentary proof, accordingly the only option open to Ms Trotter was to make an application for a Certificate of Lawfulness.

## 4 Grounds For Appeal

4.1 The LPA clarified the reasons for refusal in an exchange of emails between Robert Barrs of Barrs & Co Chartered Surveyors and Hilary Saunders, Planning Team Leader (Development Management) North York Moors National Park. These are summarised as follows:

1. That the LPA felt there had been a period of non-use from 2018 to 2022.
2. The LPA felt the Planning Unit had changed following the lotting of the sale of Brook House Farm.
3. The LPA felt that during the period of non use there had been a material change of use to bare grassland.

We will look at each of these grounds in turn:

### **1. Period of Non-Use (Abandonment)**

It is contested that there has been a period of non-use as a caravan park.

- 4.2 When planning consent for a caravan site is obtained the permission is for the use of land for the siting of caravans. The temporary removal of the caravans upon the site does not give rise to the cessation of the use of the land which is the principle planning use. Caravans are chattels for planning purposes unlike buildings. Planning permission is for pitches to be used for the stationing of caravans. The caravans could have been moved and replaced at any time as is the case on any working caravan park and whilst the caravans were removed the pitches remained in situ, i.e they were not redeveloped for any other purpose. The infrastructure of a caravan site also remains in situ i.e the water supply, septic tank and grass pitches remain. Further the Site Licence necessary to operate the site has continued to run with the park being transferred to Ms Trotter.
- 4.3 When the executors for previous owners decided to sell the caravan site the caravans were removed. The property was marketed during 2018 and Ms Trotter purchased the caravan site and the adjoining property known as Brook House Barn in 2019. Ms Trotter intended to run the caravan from the start of the next season i.e. March 2020, however due to COVID19 restrictions this was impossible and it was not until October 2020 that Ms Trotter made enquiries of the LPA and the Licensing Department with a view to reopening the park at the start of the following season, March 2021. The initial period of non use was only to be from the time of the marketing of the caravan park to the start of the season following the sale. The period was extended by COVID19 restrictions and the LPA's direct instructions not to site caravans, given in October 2020.
- 4.4 It is not unusual for caravans to be removed from a working caravan site during a period of transition or redevelopment, however this is not considered a period of non-use.

4.5 The matter of non-use is however not a relevant consideration following the Judgement given in Ocado Retail Ltd v London Borough of Islington.

Ocado Case 2021 - High Court

4.6 In the recent case of Ocado Retail Ltd v London Borough of Islington Rev1 2021, it was clearly established that a lawful planning right which had accrued upon the expiry of a time limit in section 171B of the TCPA 1990 is not lost merely because subsequently that right is not exercised for a period of time. The judgement examines in detail the principle that S171B lays down the time limits for taking enforcement action in respect of a breach of planning control, after which no such action may be taken in respect of that breach.

4.7 The High Court stated (para 135) ‘ ..... once the relevant time limiting S171B expires the question of whether the authority would be able to take enforcement action is completely irrelevant. The taking of enforcement action is prohibited by the legislation itself and not by any principle that such action cannot be taken when a breach has ceased. The continuity principle is defunct so far as the former breach of planning control is concerned. There is therefore no reason why this judicial principle should govern the entitlement to enjoy the right which has accrued. Once the immunity period for a breach of planning control is satisfied, it is the time bar in S171B which prevents any enforcement action being taken thereafter, irrespective of whether what was formerly a breach of planning control continues.’

4.8 In relation to the siting of caravans at Haggitt Howe Caravan Site even if there were to be considered a period of non-use the LPA cannot take enforcement action. The LPA never took enforcement action within the first 10 years of the land being used to site caravans and thus the use became legal at the end of that initial 10 year period. The fact the use then continued for decades longer or that the caravans were cleared prior to the sale is irrelevant as S171B prevents enforcement action irrespective of whether the use continues.

**2. Change in Planning Unit**

4.9 It is contested by the LPA that there has been a change in the planning unit as a result of the 2019 sale of the site. We dispute this and from walking the site it is clear that there are a number of separate planning units in the area and has been for many years. It may be that in the 1950’s it could be argued that Brook House Farm was a single planning unit but over the decades the situation has changed and different planning units created which are physically separate, with substantial and different unrelated uses. These include:

1. Haggitt Howe Caravan Site - A licensed caravan site in operation since 1960’s with its own access, services and infrastructure. Site licence history showing defined site area and boundary. A separate hereditament in the VOA rating list dating back to the 1970’s.

A copy of the last Business Rates bill 2017/18 is provided at RCB 7.

2. Brook House Barn - Substantial detached dwelling approved in 1990 with separate access and services. Separate planning history.

3. Haggit Howe Cottage with approximately 10 acres of farmland - Separate access and services and has been in separate private ownership (Koll and Mills) for over 30 years.

4. Brook House Farm House - Approximately 200m east of Haggit Howe Caravan Site, physically separate property with defined boundary. Separate planning history.

4.10 There are three tests to determine what is a planning unit, as established in the Burdle (1972) case:

4.11 First test: Ancillary Use - Whole unit of occupation

Relates to a small use that is ancillary to the main use e.g. a small office within a large retail store. This does not apply to this case as the caravan site is a separate business, different land use with separate access and permanent defined boundary.

4.12 Second test: Composite Use - Whole unit of occupation

Relates to a mix of uses over a whole site that can change at various times. This is not the case as the caravan site was clearly its own entity and allocated area. Again this is evidenced by the Site Licence and accompanying plan and the fact that the caravan site was classed as a single hereditament for the purposes of Business Rates.

4.13. Third Test: Separate planning units

Relates to parts that are physically separate with separate uses in distinct areas, used for different purposes that create separate planning units. The caravan site has for decades been a separate distinct area, used for a different purpose and meets the criteria of this third test. We refer to our comments at 4.9 above.

4.14 The caravan site has been a separate planning unit for many decades and the sale of the caravan site in 2019 made no change to the planning unit.

### **3. Material change of use to bare grassland**

It is contested that there has been a change of use to bare grassland.

4.15 The caravan site has always been grassed, there have never been hardstanding pitches. Accordingly there has been no change to bare grassland. Ms Trotter has continued to maintain the site as a caravan park for siting caravans. There has been no intervening use. The site still has the water supply and septic tank for sewerage treatment and Ms Trotter and would be capable of siting holiday static caravans immediately.

4.16 The matter of material change of use is however not a relevant consideration following the Judgement given in Ocado Retail Ltd v London Borough of Islington and we refer to paragraphs 4.6 to 4.8 above.

## 5 Summary and Conclusion

- 5.1 The application was submitted with evidence showing the established use of the land as a caravan site. The LPA have accepted that there is sufficient evidence of this use and hence we understand that if the use had continued, without disruption the Certificate of Lawfulness would have been granted.
- 5.2 The LPA claim that the application for the Certificate of Lawfulness failed for three reasons; that there had been a period of non-use from 2018 to 2022, that the Planning Unit had changed following the lotting of the sale of Brook House Farm and that there had been a material change of use to bare grassland. We have explained above why all three of these grounds are contested.
- 5.3 The LPA have refused to consider the High Court case of Ocado Retail Ltd v London Borough of Islington Rev1 2021. This stated that it was clearly established that a lawful planning right which had accrued upon the expiry of a time limit in section 171B of the TCPA 1990 is not lost merely because subsequently that right is not exercised for a period of time.
- 5.4 The LPA, by refusing to allow Ms Trotter to site caravans on the land in late 2020 when she discussed this with them, clearly extended the period of non use, following on from the period of enforced caravan park closure over much of the 2020 season due to COVID19.
- 5.5 Having consideration of all the above we believe that the application should have been granted and a Certificate of Lawfulness issued by the LPA.
- 5.6 This appeal Statement of Case sets out the grounds for appeal in relation to the reasons given for refusal and we respectfully request that the appointed inspector allows this appeal.
- 5.7 A schedule of supporting documents is attached at appendix 1 to this statement.

Statement of Case For Appeal  
Prepared By



**Robert C Barrs MRICS BSC(Hons)**  
**Barrs & Co Ltd**  
[www.barrsandco.com](http://www.barrsandco.com)

## **Appendix 1**

### **Supporting Documents**

Planning Decision Notice NYM/2022/07800 - RCB1

Location Plan - RCB2

Letter dated 15 October 2020 from North York Moors National Park Authority - RCB3

Supporting Statement Prepared by Barrs & Co Chartered Surveyors - RCB4

1980 Site Licence for Haggit Howe Caravan Site - RCB5

Current Site Licence for Haggit Howe Caravan Site - RCB6

Business Rates Bill 2017/18 Haggit Howe - RCB7