

The Planning Inspectorate

QUESTIONNAIRE SECTION 195 AND SECTION 26K LAWFUL DEVELOPMENT CERTIFICATE APPEAL (Online Version)

You must ensure that a copy of the completed questionnaire, together with any enclosures, is sent to the appellant/agent. **You must include details of the statutory development plan, even if you intend to rely more heavily on some other emerging plan.**

This and any documents which you have indicated as 'To follow' should also be sent to the case officer by the date given in the start letter.

If notification or consultation under an Act, Order or Departmental Circular would have been necessary before granting permission and has not yet taken place, please inform the appropriate bodies of the appeal now and ask for any comments to be sent direct to us by the date your statement is due.

Appeal Reference

APP/W9500/X/23/3321210

Appeal By

MS LISA TROTTER

Site Address

Haggit Howe Farm
Hawsker
Whitby
YO22 4JY

PART 1

1.a. Do you agree to the written representations procedure? Yes No

*Note: If the written procedure is agreed, the Inspector will visit the site **unaccompanied** by either party unless the relevant part of the site cannot be seen from a road or other public land, or it is essential for the Inspector to enter the site to check measurements or other relevant facts.*

2a. If the written procedure is agreed, can the relevant part of the appeal site be seen from a road, public footpath, bridleway or other public land? Yes No

2.b. Is it essential for the Inspector to enter the site to check measurements or other relevant facts? Yes No

2.c. Are there any known health and safety issues that would affect the conduct of the site inspection? Yes No

2.d. Would the Inspector have to go onto any privately owned adjoining land as well as the appeal site itself? Yes No

3.a. Are there any other matters (for example appeals, applications or orders) relating to this land, which are now before the Secretary of State? Yes No

Please give our reference number(s) and if necessary attach details

NYM/2023/0292

Certificate of Lawfulness for the use of land as a holiday park comprising 6 static caravans in excess of 10 years (re-submission following withholding a certificate under NYM/2022/0780) - Undecided

see 'Questionnaire Documents' section

3.b. Do you consider that it would be preferable to decide all the matters together? Yes No

PART 2

4. Was a valid application and any fee required, received and accepted for the development appealed against?	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
5. Does the appeal relate to a planning condition?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
6. Is there a planning officer's report to committee or delegated report and any other relevant document/minutes? Please provide a copy. <input checked="" type="checkbox"/> see ' Questionnaire Documents ' section	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
7. Was there an enforcement notice in force at the date of the application?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
8. Are there any related reasons you may have for questioning the validity of the appeal?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
9. Are there any related applications now before the local planning authority (LPA)? Please provide a copy <input checked="" type="checkbox"/> see ' Questionnaire Documents ' section	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
10.a. if any Development Plan Document (DPD) or Neighbourhood Plan relevant to this appeal has been examined and found sound/met the basic conditions and passed a referendum, the date the DPD or Neighbourhood Plan is likely to be adopted and, if you consider this date will be before the Inspector's decision on this appeal is issued, an explanation of the Council's policy position in respect of this appeal upon its adoption. You should also include an explanation of the status of existing policies and plans, as they relate to this appeal, upon adoption and which (if any) will be superseded; Date the DPD/Neighbourhood Plan is likely to be adopted:	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
10.b. if any DPD or Neighbourhood Plan relevant to this appeal has been submitted for examination, or in the case of a Neighbourhood Plan has been examined and is awaiting a referendum, an explanation of any substantive changes in the progress of the emerging plan, and their relevance to this appeal if it is considered that the plan will not be adopted before the Inspector's decision on this appeal is issued;	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
10.c. your Authority's CIL charging schedule is being/has been examined;				<input type="checkbox"/>
10.d. your Authority's CIL charging schedule has been/is likely to be adopted.				<input type="checkbox"/>
10.e. are there any other matters relevant to determining the appeal which you think we should know about at this stage?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
11. Do you wish to attach your statement of case?	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
12. This appeal is made under section:				
Section 191				<input checked="" type="checkbox"/>
Section 192				<input type="checkbox"/>
Section 26H				<input type="checkbox"/>

LPA Details

I certify that a copy of this appeal questionnaire and any enclosures will be sent to the appellant or agent today.

LPA's reference

Completed by

On behalf of

North York Moors National Park Authority

Please provide the details of the officer we can contact for this appeal, if different from the Planning Inspectorate's usual contact for this type of appeal.

Name

Mrs Hilary Saunders

Phone no (including dialling code)

01439 772700

Email

planning@northyorkmoors.org.uk

Please advise the case officer of any changes in circumstances occurring after the return of the questionnaire.

QUESTIONNAIRE DOCUMENTS

Appeal Reference APP/W9500/X/23/3321210

Appeal By MS LISA TROTTER

Site Address
Haggit Howe Farm
Hawsker
Whitby
YO22 4JY

The documents listed below were uploaded with this form:

Relates to Section: PART 2

Document Description: 6. A copy of the planning officer's report to committee, the delegated report, or any other relevant document/minutes.

File name: 2022-12-15 Public - Officer Delegated Report.pdf

The documents listed below are to follow by post:

Relates to Section: PART 1

Document Description: 3.a. Details of any other matters (for example appeals, applications or orders) relating to this land, which are now before the Secretary of State.

Relates to Section: PART 2

Document Description: 9. Details of any related applications now before the local planning authority (LPA).

Completed by Not Set

Date 09/06/2023 15:14:39

LPA North York Moors National Park Authority

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2022/0780

Development description: certificate of lawfulness for the use of land as a holiday park comprising six static caravans in excess of ten years

Site address: Haggit Howe Farm, Hawsker

Parish: Hawsker-Cum-Stainsacre

Case officer: Mrs Hilary Saunders

Applicant: Mr Lisa Trotter

Highgate Howe Holiday Home Park, Saltwick , Whitby, YO22 4JY

Agent: Barrs & Co Chartered Surveyors

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

Director of Planning's Recommendation

Refusal for the following reason(s)

Reason(s) for refusal

Refusal reason code	Refusal reason text
1.	From the available evidence and applying a balance of probabilities test, for the period from 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.

Consultation responses

Parish

None received

Third party responses

Name

H. Koll & S. Mills, Haggitt Howe, Hawsker, Whitby – have provided the following evidence, objections and supporting photos:

1. Problem with the maps and address given on the application - our house, Haggitt Howe, our permanent residence where we have lived for 22 years, is not in any way associated with this site and, until this application we were not aware that it was known as Haggitt Howe Caravan Site. The address of 'Haggitt Howe Farm' given in the application further confuses this issue as there is NOT a farm called Haggitt (or Haggitt) Howe here. Our address is the only one that uses Haggitt Howe registered to this postcode.

In 2018, when there were no caravans at this site and had not been for some time, we enquired about purchasing part of the field in which the site lies, and later that year we bought land adjoining the site, meaning that our boundary now runs within a few metres of it. Thus neither the map of the site given in appendix 1 of the application nor any other supplied by the applicant shows the correct fence-line of our adjoining land.

2. We dispute the fact that the site has been in continuous use or that removal of caravans was temporary. Historically, Brian Dixon of Brook House Farm who owned the site had 6 caravans at this site, initially these were small tourers of their which then became statics. Mr Dixon died in July 2009. As far as we understand it, his wife Anne did not want to reapply for permission and gradually the site was closed, including the removal of all caravans, fences and gate, returning the site to being a field on which cows grazed. The applicant's insistence that there is evidence of the existence of the site 'up to current day' suggests that the caravans have been continuously there to date, but this is not true. There have not been ANY caravans or visible pitches at the site for 5½ years and it was even before 2016 that 6 caravans were in use. [see timeline below :

Timeline:

2009 Brian Dixon died.

The number of caravans began to dwindle and it was our understanding that Anne Dixon did not alter the permissions to her name as she did not want the site to continue.

2016 Our recollections are that by 2016 only about 3 caravans remained and this is suggested also by the applicant's photo of Oct 2016 showing 2 statics and a tourer.

By 2017 The fence around the site and the gate to it were removed allowing cows to graze, in effect returning the site to an agricultural field.

2017 no caravans as evidenced by 17th June 2017 Google Earth satellite image. Anne Dixon died.

2018 no caravans as evidenced by 1st July 2018 Google Earth satellite image and Nov 2018 CNES image. As we were purchasing land from Anne Dixon's family adjacent to the site we took further online satellite screenshots during this period which can be supplied. We can also supply correspondence from Richardson and Smith who described the site as a 'potential caravan site' NOT an existing one.

2019 no caravans as evidenced by 8th Sept 2019 Google Earth satellite image.

2020 no caravans

2021 no caravans as evidenced by photos of the flooded site in January 2021 and Google Earth satellite image of March 2021.

2022 no caravans as evidenced by photos from Dec 2022.

This site has NOT had ANY caravans or pitches for over 5½ years. Prior to that there were fewer than 6 static caravans for at least a further year. This is clearly not a case of them being 'temporarily removed' as stated in the application. The site was abandoned, fences etc. removed and we believe it was the intention of Anne Dixon to close the caravan site. In our opinion, just because those selling the land after her death referred to it as a 'potential caravan site' it does not prove that 'clearly that there was never an intention by any party to abandon the use' as stated in 2.10 of the application.

To our knowledge no more recent permission has been granted for this site by North York Moors National Park (that was properly advertised with a chance of objection) since that time, so we do not agree with the applicant's suggestion that just because SBC has reissued a permit this should automatically force NYMNP into approval of the caravans.

Just because there was the legal existence of a site from 1967 to 2009 it should surely not mean the NYMNP must automatically grant this in 2023.

Publicity expiry

Site notice expiry date – 14 December 2022

Aerial photo of site from 2015 showing 5 static caravans and possibly one touring caravan.



Arial View of site dated 2017, provided by a third party



Arial photo of site from 2019 showing all caravans removed.



View of site from lane November 2022



Background

The land to which this application relates is located just to the east of a property known as Haggit Howe, which is in separate ownership from the application site.

The application site itself comprises a piece of grassland in a small hollow that may once have been some form of quarry.

The site was previously used as a small caravan site by previous owners of the land, with aerial photos showing up to 5 static caravans on the site and possibly one touring caravan. It appears that use dates back to the 1960s with a number of caravan licenses issued by Scarborough Borough Council with a March to October occupancy period. However, there are no records of any planning permissions being granted and no such evidence has been submitted.

The previous owner fell ill in 2017 and the caravans were gradually removed from the site. 2015 aerial photos show caravans on site, but by the 2019 aerial photos, no caravans were in existence, the Authority does not have any aerial photos for the intervening period.

This application seeks to obtain a Certificate of Lawfulness for the continuous use of land as a holiday park comprising six static caravans in excess of ten years.

Main issues

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future use, operations or other matters. The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. This issue of the certificate depends entirely on factual evidence about the history and planning status of the building or land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

In this case, whilst there is clear evidence that a caravan site has previously operated here, the use clearly ceased more than 3 years ago and most probably before that, therefore there has not been a 10 year continuous use at the time of the application, which is what is required for a Certificate of Lawful use to be approved.

Historical aerial photos do not show 6 static caravans on the site, and the 2019 aerial photos clearly show all caravans removed from the site. The Case Officer visited the site on 23 November 2023 and there was no evidence of any development on the site or any caravans, the site was completely returned to grassland.

Third party written evidence and information outlined above corroborates this further.

The agent has submitted supporting evidence s citing case law in terms of the issuing of site licences. The Authority's Solicitor has advised as follows: -

My conclusion on the case law is that the Ellis case from 2010 remains the relevant law, and I believe that case establishes that, -as per T&CPA 1990- S171 B)3) and S191(1) and S191(4)

-where there has been 10 years unlawful use in breach of a condition or limitation, but that unlawful use does not exist at the time of application, immunity is lost and the application should be refused

-where there has been 10 years unlawful use by virtue of some other material change of use, immunity is only considered lost at the time of application if there has been either abandonment of the unlawful use, a new planning unit has formed, or there has been some further material change of use.

In conclusion, the Authority's solicitor has advised that from the available evidence and applying a balance of probabilities test, 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.

Conclusion

In view of the above assessment of the evidence provided by the applicants, it is not considered that sufficient evidence has been provided to demonstrate that, on the balance of probability, the land adjacent Haggit Howe has been used for the siting of 6 static caravans in excess of 10 no. years. Therefore, a certificate cannot be granted, and refusal is recommended.