

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2023/0292

Development description: certificate of lawfulness for the use of land as a holiday park comprising six static caravans in excess of ten years (resubmission following withholding of certificate under NYM/2022/0780)

Site address: Haggit Howe Caravan Site, Saltwick

Parish: Hawsker-Cum-Stainsacre

Case officer: Hilary Saunders

Applicant: Ms Lisa Trotter

Haggit Howe Caravan Site , Saltwick, Whitby, YO22 4JY

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

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 10 May 2023 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

No objection

Environmental Health

Insert

Third party responses

S Mills & H Koll, Haggitt Howe, Hawsker, Whitby - In the applicant's last submission (NYM/2022/0780) they implied the static caravan site had been in continuous use to the current day, but it is clear now that the site ceased to be a static caravan site in 2016/2017 - over six years ago.

Given the length of time since then when the field was returned to agricultural use (when all fences, gates, pitches, caravans, and evidence of a site were removed and cows grazed on the land), this abandonment of the site should mean that the previous permissions should not be automatically granted but rather the case should be examined under the current requirements for gaining permissions. Just because there was the legal existence of a site in the past should surely not mean the NYMNP must automatically grant this in 2023, given the site goes against their National Park Local Plan. Our understanding was that a site had to have been in continuous use, which this site clearly was not.

We again submit the evidence we provided previously:

1, Problem with the maps and address given on the application. Our address is the only one that uses Haggitt Howe registered to this postcode. The inevitable confusion regarding the names, should the application ultimately be successful, is a significant concern for us. 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 original application (2022/0780) nor any other supplied by the applicant shows the correct fence-line of our adjoining land.

2. The site has not been in continuous use Historically, Brian Dixon of Brook House Farm who owned the site had permission for six caravans at this site, initially small tourers of their time 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 diminished and was closed, including the removal of all caravans, fences and gate. The site returned to being a field in 2017 on which cows grazed. The applicant's insistence in their original application (para 1.2 - 2022/0780) that there was 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 six years and it was even before 2016 that all six caravans were in use. We stress again that all fences and gate were removed over six years ago, strongly suggesting that the site was relinquished.

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 three caravans remained, and this is suggested also by the applicant's photo of Oct 2016 showing two 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. [See evidence of fences and gate in 2016 photos on p14 of application]

2017 no caravans as evidenced by 17th June 2017 Google Earth. 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 screengrabs 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 [Appendix A].

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 six years. Prior to that there were fewer than six static caravans for at least a further year. This is clearly not a case of them being 'temporarily removed' as stated in 2.5 of the original application. The site was abandoned, fences etc. removed and thereby closing the caravan site.

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

Advertisement/site notice expiry date – 13 June 2023

Aerial photo of site from 2015 showing five 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 five 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.

An application for a Certificate of Lawfulness for the continuous use of land as a holiday park comprising six static caravans in excess of ten years was refused in 2023 and an appeal submitted in June 2023. No decision has yet been issued in relation to that appeal.

This application was submitted in May 2023 just prior to the submission of the appeal but does not provide any additional evidence. The application has not yet been determined as we were awaiting the outcome of the appeal, but a significant amount of time has passed. The applicant's agent was advised of the following in a letter sent on 22 February 2024:-

“In view of the above, I would be grateful if you would advise me how you would like me to proceed with this application, i.e. would you prefer to withdraw it, or for me to determine it (which would be a refusal).

I look forward to hearing from you regarding this matter before 5 March 2024”

No response has been received to this letter.

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 three years ago and most probably before that, therefore there has not been a ten 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 (NYM ones usually taken around August when the site would be expected to be occupied for holiday use) do not show six 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 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 ten 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 ten 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.