
Appeal Decisions

Hearing held on 22 March 2022

Site visit made on 22 March 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal A Ref: APP/H2733/C/21/3272750

Appeal B Ref: APP/H2733/C/21/3272751

Land adjacent to The Dotterel Inn, Reighton, Filey YO14 9RU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act") by Mr Antonio Cervone (Appeal A) and Ms Lorraine Carol Burgess (Appeal B) against an enforcement notice issued by Scarborough Borough Council.
- The enforcement notice was issued on 8 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of the land to use for the mixed use of agriculture and as a camping and caravanning site beyond the scope of what is permitted by Class B and BA of Part 4 to Schedule 2 and Class A of Part 5 [to Schedule 2] of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order").
- The requirements of the notice are: (i) Cease the use of the land as a caravanning site beyond the scope of what is permitted by Class A of Part 5 to Schedule 2 of the Order; (ii) Cease using the land as a camping site beyond the scope of what is permitted by Class B and BA of Part 4 to Schedule 2 of the Order; and (iii) Remove from the land all buildings, equipment and materials associated with the use of the land as a camping and caravanning site during any period beyond the scope of what is permitted by Schedule 2 of the Order as specified in (i) and (ii) above.
- The period for compliance with the requirements is: One month from the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d) and (f) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeal B is proceeding on the grounds set out in section 174(2) (b), (d) and (f) of the Act.

Summary of Decisions: Both appeals succeed in part on ground (f) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decisions. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act in respect of Appeal A.

Appeal C Ref: APP/H2733/W/21/3278314

Land to the west of The Dotterel Inn, Bridlington Road, Reighton, Filey YO14 9RU

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
- The appeal is made by Mr Gary Riddiough against the decision of Scarborough Borough Council.
- The application Ref 21/00618/FL, dated 5 March 2021, was refused by notice dated 8 June 2021.
- The development proposed is retention of existing use of land and existing building as camping/caravan site in association with existing tourist/holiday facilities within the Dotterel Inn.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. Appeal C seeks planning permission for development already carried out and the postcode has been amended to match Appeals A and B.

Appeals A and B - the enforcement notice

2. No appeal was made on ground (e)¹ but I was told Mr Riddiough should have been served with a copy of the notice because he had formed a company with an interest in the land. I was not told when the company was formed, but it was confirmed that the Land Registry's records had not been altered at the time the notice was issued.
3. While adequate prior investigation should be carried out, contemporary details provided by the Land Registry should normally be sufficient to ensure proper service on any person with an interest likely to be materially affected. Without evidence that the Council had any reason to question the Land Registry's information, I do not see what more it could or should have done.
4. In view of this, and as the nature of the company's interest has not been explained, I have no reason to believe the notice was not correctly served. In any event, the 3 appellants have the same professional representation, so it is reasonable to assume that any evidence Mr Riddiough might have presented in an appeal against the notice could have been made available to Mr Cervone and Ms Burgess. Accordingly, it has not been shown that any party was substantially prejudiced.
5. The description of the alleged breach of planning control acknowledges the provisions of Class BA of Part 4 to Schedule 2 of the Order, which only had effect during the calendar year 2021, during which the notice was issued. It would now be appropriate, and would not cause injustice, to vary the notice by deleting reference to Class BA in the description of the breach.

Appeals A and B – the appeals on ground (b)

6. Appeals on this ground must relate to matters of fact and may succeed if the breach of planning control alleged in the notice has not occurred or has been incorrectly described. For the appeals on this ground to succeed, the appellants need to show that, on the balance of probability, there was no agricultural use of the land, either exclusively or alongside any other use, in the period leading up to the issuing of the notice and on the date of issue.
7. The appellants contend the land has not been in agricultural use for over 50 years, or since 1893 or 1922. Planning permissions for operational development granted between 1961 and 1993 do not confirm that an agricultural use was not also undertaken on the land. More detail, including a copy of the site layout, was provided in respect of a permission for the residential occupation of 6 static caravans on the land for a limited period ending 31 January 1974². While that permission may have been incompatible with agriculture, it only had effect for 7 months and it has not been shown that it caused any agricultural use to be abandoned or prevented it from resuming.
8. In contrast, a ward councillor had advised that the land had been used for grazing horses and the Parish Council had advised it had been a pasture for

¹ That copies of the enforcement notice were not served as required by section 172 of the Act

² K.1291C, granted 13 July 1973

raising livestock. In each case, this was prior to the use as a camping and caravanning site being instituted.

9. While none of the foregoing evidence is definitive, it has not been shown, on the balance of probability, that there was no agricultural use of the land, or that any such use had been abandoned when the notice was issued. The appeals on ground (b) therefore fail.

Appeals A and B – the appeals on ground (d)

10. The question to be determined in the appeals on this ground is whether, on the balance of probability, the use of the land as stated in the notice is immune from enforcement action by reason of passage of time. Specifically, whether it can be shown that the use began on or before 8 March 2011 (the Relevant Date), 10 years before the notice was issued, and continued thereafter without significant interruption.
11. Mr and Mrs Spaven owned The Dotterel Inn (the Inn) for 9½ years before selling it to the appellants. They wrote that they had touring caravans and tents on an adjacent field “during that time” and that it had been advertised as such online. They also wrote that the previous tenants had said the land had been used in the same way for 40 years, with a local person keeping a touring caravan there from 1986 to 1996. Mr and Mrs Spaven did not attend the Hearing, so I could not ask them if the adjacent field they referred to is the appeal site or whether “during that time” meant throughout the 9½ years or at one or more points in that period. Neither could I ask where, and for what purpose, the touring caravan had been kept at the Inn.
12. A caravan site at the Inn was listed online for 10 years beginning in September 2010. While this is not, of itself, proof of use, it is unlikely the listing would have continued if there had been no business. However, no record of the listing description, or precisely what land it referred to, was provided.
13. Mr Hunter stayed in his touring caravan on the Inn car park at weekends before he moved to the area 30 years ago and he saw caravans and tents on the land in summer when visiting the Inn after then. Mrs Sellers saw caravans and tents on the land over the 25-year period preceding the Hearing. In contrast, 2 ward councillors and the Parish Council wrote that the camping and caravanning use had begun in 2019 and that they had no awareness or recollection of any such use of the land in the preceding 10 years.
14. Mr and Mrs Spaven also wrote that there were 2 static caravans on the land throughout their 9½ years of ownership. While 2 such caravans can be seen in Google Street View images from between October 2008 and January 2009, only one is within the red line of the plan accompanying the notice. Furthermore, I was told Mr Spaven and his son had occupied the static caravans, suggesting this was more likely to be a permanent residential use, or use for purposes incidental to the Inn, than part of any camping and caravanning site use.
15. Images taken from Google Street View dated December 2008 and January 2009 show a touring caravan on the appeal site. 3 images from April 2011 show a touring caravan and one of them may show other touring caravans but the detail is insufficient to be certain. None of these images indicate whether any caravan was occupied at the time or on the land for some other purpose. A similar image from September 2011 shows 4 touring caravans on the site and

attached awnings and cars parked nearby suggest they were occupied. However, all the images from 2011 were taken after the Relevant Date.

16. While none of the presented images show tents on the land before the notice was issued, there is no reason to deny Mr Hunter's recollections of many tents being there some 30 years ago or that he and Mrs Sellers saw tents there since. However, it has not been demonstrated that camping occurred on more than 28 days in any calendar year, as permitted by Class B of Part 4 of Schedule 2 to the Order, which the notice allows for.
17. Aerial images dated 1 January 2005, 7 May 2007 and 1 July 2018 show no tents or caravans on the land. The 2007 and 2018 images were taken at times of the year when camping and caravanning are commonly undertaken and while it is possible that aerial images taken at other times would show caravans and tents on the land, none were presented.
18. The absence of documentation and the contradictory evidence presented cast doubt on how the land had been used over the years before the notice was issued. While caravans were on the land at various times, compelling evidence that they were inhabited, and that this was not incidental to the occupation or operation of the Inn is lacking. While evidence was presented at the Hearing in good faith, it does not confirm use beyond what the Order permits.
19. It has therefore not been shown, on the balance of probability, that the use of the land as a camping and caravanning site beyond what is permitted by the Order began on or before the Relevant Date and continued without significant interruption for 10 years thereafter. Thus, the appeals on ground (d) must fail.

Appeals A and C – the appeal on ground (a) and the section 78 appeal

The submitted drawings

20. Drawings 1909S/10C (drawing 10C) and 1909S/11B (drawing 11B) were not considered by the Council when it refused the application now the subject of Appeal C. The main changes proposed by drawing 10C are a reduction in the number of caravan pitches, from 14 to 10, and the erection of a fence that, if retained, would prevent caravan access to the part of the site nearest an adjacent terrace of dwellings. However, the drawing is ambiguous because the cross hatching representing the area for caravans extends beyond the fence.
21. Regardless of the ambiguity, these are substantial changes from what members of the public were able to comment on at the planning application stage, for which further publicity would normally be expected. It would therefore not be appropriate to consider drawing 10C in Appeal C.
22. However, section 177(1) of the Act provides that, in an appeal against an enforcement notice on ground (a), permission may be granted in relation to the whole or any part of the matters alleged in the notice or in relation to the whole or any part of the land to which it relates. In view of this, and as there is no expectation of consultation or publicity prior to a decision to issue an enforcement notice, I shall consider drawing 10C in Appeal A.
23. Drawing 11B shows more toilets and washbasins in the existing building in response to concerns expressed by the Council's Environmental Health Service. Those comments were made in the context of caravan site licensing, which the Service administers separate from the planning process, and seem unlikely to

be of interest to nearby residents. Accordingly, no injustice would arise from considering drawing 11B in Appeals A and C.

Main issues

24. The main issues are:

- The effect of the use on the character and appearance of the area.
- The effect of the use on the living conditions of nearby residents.

25. The consideration of these issues should take account of any similar effects that might arise from uses permitted by the Order and which may be exercised as a fallback. Class B of Part 4 of Schedule 2 to the Order permits the use of land for purposes including a camping site for not more than 28 days in total in any calendar year but specifically excludes use as a caravan site. This fallback for camping must be taken into consideration.

26. Class A of Part 5 of Schedule 2 to the Order permits use of land as an unlicensed caravan site in the circumstances specified in paragraphs 2 to 10 of Schedule 1 to the Caravan Sites and Control of Development Act 1960. However, the appellants do not claim any of those circumstances and, accordingly, no fallback has been identified for caravanning.

Reasons

Character and appearance

27. The relatively level nature of the site and the surrounding area, combined with existing landscape planting, serves to limit distant views of camping and caravanning on the land. However, the northern boundary is partly open, so any tents and caravans at the western end of the site would be exposed in views from the road leading to Reighton.

28. The exclusion of caravan pitches from the western end of the site in drawing 10C, to be considered in Appeal A, might reduce the degree of exposure. Nevertheless, due to the ambiguities in that drawing and the lack of clarity regarding the siting of tents, an open boundary would not be appropriate to the use or its setting.

29. Additional screening could be achieved by means of a new section of conifer hedge, shown on drawing 1909/10B (drawing 10B) and drawing 10C. When established, it would be like the hedge currently on much of the same boundary, but neither is characteristic of the wider rural landscape.

30. The camping and caravanning site is also exposed in views from the roads to the east, either in glimpses when travelling to or from Reighton, or more plainly when turning into and using the road leading to the Inn and the terrace of dwellings. Annotations on drawings 10B and 10C indicate that an existing 1.2 m fence and hedge on the eastern boundary could be thickened up, although there only appears to be a fence at present. However, this would only partially screen tents and caravans on the land.

31. While other means of providing screening might be possible, it has not been shown that the use, as set out on drawings 10B or 10C, could be successfully integrated into the surrounding landscape due to the natural topography and established screening. Even allowing for the limited fallback permitted by the

Order, the use of the land is visually obtrusive, with an unacceptable impact on the character and appearance of the open countryside and does not enhance the natural environment. This is contrary to policies DEC2, TOU4 and ENV6 of the Scarborough Borough Local Plan (the SBLP) and Part 15 of the National Planning Policy Framework (the Framework).

Living conditions

32. The site layout shown on drawing 10B allows caravans and tents to be sited close to the boundary with the nearest dwelling, 1 Hunmanby Road. There is an earth mound on this boundary and while photographic evidence indicates that vegetation growing on it provides screening in summer months, it was relatively bare at the time of my visit. Drawings 10B and 10C indicate that this could be addressed by additional planting on and adjacent to the mound.
33. By their nature and the times of year when they are most popular, camping and caravanning involve significant outdoor activity, including cooking and, in some instances, open fires. While such matters may be subject to regulation through site licensing, the land is currently unlicensed and therefore no such safeguards can be assumed.
34. Nearby residents have referred to the effects of barbecues, fires and noise and the risk of disturbance posed by the layout shown on drawing 10B is substantial. While the layout shown on drawing 10C may reduce this, the ambiguities already mentioned and the uncertainty over the siting of tents mean that this concern remains significant. While I was advised that planning permission has been granted for camping and caravanning close to dwellings on other sites, no details were provided, so I cannot make a comparison.
35. For these reasons, and even with the measures proposed in drawings 10B and 10C, the use would give rise to unacceptable impacts by reason of disturbance from noise and emissions including smoke and cooking smells. This is so, even when the fallback permitted by the Order is considered, and the use is therefore contrary to policy DEC4 of the SBLP and Part 12 of the Framework.

Other matters

36. The camping and caravanning site would diversify the Inn's contribution to the local tourism industry such that the appeals draw support from SBLP policy TOU1. While SBLP policy TOU4 also provides support for tourism uses, that is subject to their being visually unobtrusive and successfully integrated into the surrounding landscape. For the reasons noted, neither of those requirements can be achieved in this instance, so the use cannot draw support from the policy. While I have considered the broader support provided by policy TOU1 it does not alter or outweigh my findings on the main issues above.
37. I saw touring sites approximately 1.5 km to the west, on the B1229, and at Graffitoe Farm, a similar distance to the northwest. However, I was not provided with any information on their status including, if they have planning permission, when and under what policy framework the decision was made. Consequently, I afford little weight to the existence of those sites.
38. Planning permissions have been granted for a 20-caravan touring site and more recently for a holiday park, including lodge-style caravans and camping pods, at Reighton Nurseries, approximately 0.5 km to the west. However, I was not provided with the reasoning for those decisions, and it is unclear from the

information presented whether the second permission was for development in addition to, or as a replacement for, the first. In view of this, I attach little weight to those decisions.

Conclusions

39. For the reasons given, the schemes illustrated on drawings 10B and 10C are harmful in terms of their effect on the character and appearance of the area and the living conditions of nearby residential occupiers. The existence of other camping and caravanning sites and development plan policies promoting tourism provide only limited support and do not individually, or cumulatively, outweigh the harm I have identified.
40. Accordingly, the planning application in Appeal C should not be granted and the deemed planning application in Appeal A should not be granted.

Appeals A and B – the appeals on ground (f)

41. For the appeals to succeed on this ground, it must be demonstrated that the steps required to comply with the notice are excessive and that lesser steps could overcome the alleged breach of planning control. The notice defines the alleged breach of planning control as the change of use of the land to use for the mixed use of agriculture and as a camping and caravanning site beyond the scope of what is permitted by the Order. Its requirements are intended to remedy the breach of planning control rather than mitigate injury to amenity.
42. Conformity with drawing 10C was suggested as a lesser step but that would not cease the mixed use constituting the breach of planning control. Although the intention of drawing 10C appears to be to remove caravan pitches, if not camping, from the western portion of the land, the ambiguities noted in that drawing introduce uncertainty. Even if there were no caravans or tents on the western portion, it would remain associated with the camping and caravanning use, not least in terms of the landscape planting intended to make the use acceptable. Accordingly, the use illustrated in drawing 10C would not be a lesser step that would overcome the breach of planning control.
43. Requirement (iii) of the notice is to remove all buildings, equipment and materials associated with the use, insofar as they are beyond what the Order permits, from the land. However, the building intended to serve as an amenity block is recorded on Ordnance Survey maps from 1971 onward. The Council accepts this building, which it calls Building 1, has been on the land since at least 1980. It therefore suggests the notice could be varied to exclude this building from requirement (iii). I am satisfied the notice could be varied accordingly, as a lesser step, without injustice.
44. The appeals on ground (f) therefore succeed to this limited extent.

Appeals A and B - Conclusion

45. For the reasons given above, I conclude that the appeals on grounds (b) and (d) and the appeal on ground (a) should not succeed and the appeals on ground (f) should succeed. I shall therefore vary the enforcement notice prior to upholding it and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Appeals A and B – Formal Decisions

46. The appeals are allowed on ground (f) and it is directed that the notice be varied by:

- The deletion of the words “and BA” in section 5 (ii).
- The deletion of the word “Remove” and the substitution of the words “Save for the building (Building 1) highlighted yellow on attached plan A2 and identified on photograph P1, remove” in section 5 (iii).
- The attachment of plan A2.

47. Subject to these variations the appeals are dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act in respect of Appeal A.

Appeal C – Formal Decision

48. The appeal is dismissed.

Mark Harbottle

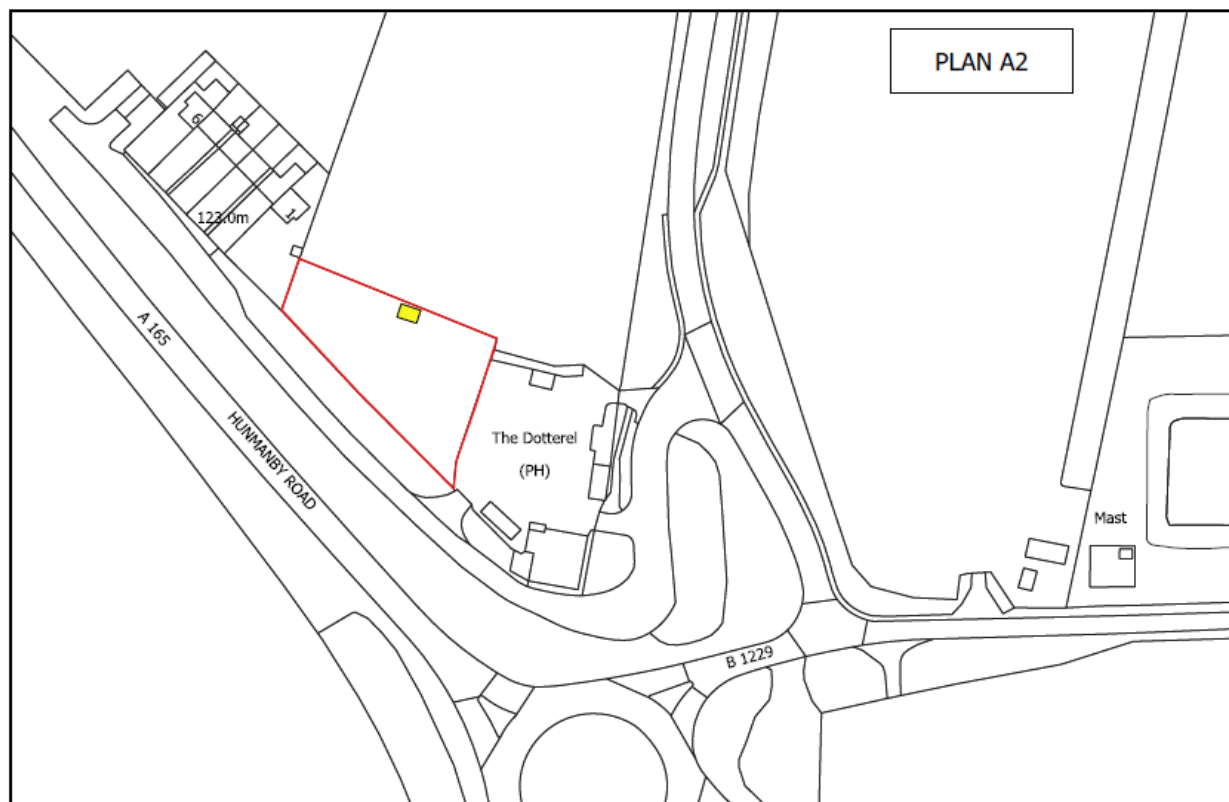
INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/H2733/C/21/3272750	Mr Antonio Cervone
Appeal B	APP/H2733/C/21/3272751	Ms Lorraine Carol Burgess
Appeal C	APP/H2733/W/21/3278314	Mr Gary Riddiough

Appendix 2

Plan A2



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APPEARANCES

FOR THE APPELLANT:

Richard Dixon FRICS C.BuildE FCABE, Richard Dixon Associates Ltd.

FOR THE LOCAL PLANNING AUTHORITY:

Bob Power, Locum Solicitor, Scarborough Borough Council

Daniel Metcalfe MRTPI, Senior Planning Officer, Scarborough Borough Council

INTERESTED PARTIES:

Edward Hunter, local resident

Elaine Sellers, local resident