

RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 23 SEPTEMBER 2014

Report of the Development Manager

Canadian Fields, Gale Lane, Nawton

Purpose of the Report

To advise Members of an alleged breach of planning control and recommend an appropriate course of action.

1. SITE LOCATION

- 1.1 The site is located approximately 1km to the south of Nawton village within the open countryside and an Area of High Landscape Value.
- 1.2 Planning permission was granted for change of use of agricultural land to form a campsite providing 'glamping' style accommodation for no. 19 safari type tents in 2011 (11/00686/MFUL). The permission also included the formation of a vehicular access, provision of a store for the tents and the erection of a toilet, reception block and a 'canteen' marquee.

2. ALLEGED BREACH OF PLANNING CONTROL

- 2.1 Change of use of 'canteen marquee' ancillary to campsite (Sui Generis Use Class) to restaurant (A3 Use Class) named 'Gi Sukawaka Restaurant'. Details of the restaurant, including an advertisement in the 'Yorkshire Advertiser' and an example menu can be found in the Appendix of this report. In addition, Members are directed to the website for the campsite (<http://canadianfields.co.uk/>).
- 2.2 A number of events have been held on the site, connected to the 'canteen marquee'. These have included weddings and race days.
- 2.3 An additional 'kitchen unit' has been located on the site to provide for the restaurant. Members will note that a further retrospective planning application had been submitted (on 29 August 2014) to regularise this development. The application has not been validated because it was not accompanied by the required fee. The development therefore remains unauthorised.

3. WHEN ALLEGED BREACH FIRST OCCURRED

- 3.1 The Local Planning Authority was first made aware of the 'Gi Sukawaka' Restaurant on the 2 June 2014.

#### 4. HISTORY AND EVIDENCE OF BREACH

- 4.1 On the 3 June 2014, a letter was sent to the site owner identifying the breach of planning control. A response was received on the 11 June 2014, which identified that a Planning Consultant had been instructed to submit a retrospective planning application.
- 4.2 On the 4 July 2014, further correspondence was sent to the property owner as no planning application had been submitted. On the 17 July 2014, Planning Application ref. 14/00777/FUL was validated. The application sought planning permission for:

*Change of use from canteen tent ancillary to the campsite for customers staying on the campsite to canteen tent not ancillary to the campsite that is open to customers both from the campsite and customers not staying on the campsite (retrospective application).*

A copy of the public consultation responses received to this application can be found in the Appendix of this report.

- 4.3 On the 19 August 2014, planning application reference 14/00777/FUL was withdrawn. The Planning Consultant advised the Council that he had taken legal advice and considered that the development did not require planning permission. A copy of the withdrawal letter received from the Planning Consultant can be found in the Appendix of this report.

#### 5. REQUIRES PLANNING PERMISSION?

- 5.1 The canteen marquee, named the 'Gi Sukawaka' Restaurant, currently provides a range of different meals, drinks and events to both residents of the campsite and customers located from outside of the site. The view of Officers and the Council's Solicitor is that the current operation of the 'ancillary canteen marquee' is more in keeping with those associated with a restaurant use (Class A3).

- 5.2 In considering the need for planning permission, and determining if a material change of use has occurred, it is important to refer to planning application reference 11/00686/MFUL. This application granted planning permission for:

*"Change of use of agricultural land to allow the siting of 19 no. tents on decking bases, erection of toilet and reception block and canteen marquee, change of use of agricultural building to winter tent store, formation of vehicular access, gravel site roads and paths, car parking and landscaping."*

- 5.3 Members will note that as part of the approval, a 'canteen marquee' was granted permission. However, to determine exactly the extent of what was approved, account should be made of the provisions of the use classes order. This identifies the use of a canteen is not ancillary to another use as an A3 Use Class. Therefore, the question is whether the permitted use of the canteen marquee is ancillary to another use.
- 5.4 Reference is made to the application form for planning application 11/00686/MFUL (see Appendix). Section 18 of the form identifies that the applicant did not apply for any distinct A3 use within the site. It is clear, therefore, that canteen marquee was intended to be ancillary to the wider campsite use only. By virtue of the provisions of the use classes order, the permitted use of the canteen marquee is therefore sui generis, and a material change of use of the canteen marquee into a restaurant has therefore occurred.

- 5.5 With regards to the events held on the site, such as weddings and race days, Members are advised that these do require planning permission as Class B, Part 4 of the GDPO 1995 does not provide permitted development for temporary uses if the land in question is a building, or is within the curtilage of a building.

## 6. PLANNING POLICY CONTEXT

- 6.1 The relevant planning policy considerations are:

### National Planning Policy Framework (NPPF)

Paragraph 14	–	Achieving Sustainable Development
Section 2	–	Ensuring the vitality of town centres
Section 3	–	Supporting a prosperous rural economy
Section 11	–	Conserving and enhancing the natural environment

### Ryedale Plan - Local Plan Strategy

Policy SP7	–	Town Centres and Retailing
Policy SP8	–	Tourism
Policy SP13	–	Landscapes
Policy SP16	–	Design
Policy SP19	–	Presumption in Favour of Sustainable Development
Policy SP20	–	Generic Development Management Issues

## 7. APPRAISAL

- 7.1 The issues surrounding the breach of planning control are:

### i) The Principle of the Development

- 7.2 As identified in the Ryedale Local Plan, the application site is situated within the open countryside and outside any of the Town Centre Commercial Limits of the District. To ensure the continued vitality and viability of Ryedale's Market Towns, the introduction of town centre uses outside of town centre locations is discouraged in both National and Local Planning Policy.
- 7.3 In terms of National Planning Policy, Section 2 (Ensuring the vitality of town centres) of the NPPF is relevant. Paragraph 24 seeks to protect the viability and vitality of town centres through the sequential test process. It states that '*Local Planning Authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to-date Local Plan. They should require applications for main town centre uses to be located in town centres, then in edge of centre locations and only if suitable sites are not available should out centre sites be considered...*'
- 7.4 The aims of the NPPF are reflected in the requirements of Policy SP7 of the Ryedale Plan - Local Plan Strategy which seeks to ensure that the town centres will be the focus for a diverse range of uses in the District.

7.5 In this case, the site owner has not provided a sequential test for the restaurant and as a result it has not been demonstrated that the development would not harm the vitality or viability of Ryedale's town centres. Paragraph 27 of the NPPF states '*Where an application fails to satisfy the sequential test or is likely to have significant adverse impact on one or more of the above factors, it should be refused.*' In light of this, it is officers view that the development has failed to meet the requirements of NPPF and Policy SP7 the Ryedale Local Plan Strategy.

ii) Sustainability

7.6 A fundamental objective of current planning policy is the issue of sustainability. Paragraph 14 of the NPPF and Policy SP19 of the Ryedale Local Plan Strategy, seek to ensure a 'Presumption in Favour of Sustainable Development'. In this case, the introduction of an A3 restaurant use which is clearly in the open countryside would potentially detract and draw trade from the District's town centres. It can also only be accessed through private transport and considered to constitute an unsustainable form of development contrary to the requirements of the NPPF and Policy SP19 of the Ryedale Local Plan Strategy.

7.7 Paragraph 28 of the NPPF does provide support for the sustainable growth and expansion of all types of business and enterprise in rural areas; and support for sustainable rural tourism that benefit businesses in rural areas. In this case, the proposal is not considered to be a sustainable form of development and the development is considered to be contrary to the provisions of Paragraph 28 of the NPPF.

iii) Other Concerns

7.8 Policy SP13 of the Ryedale Local Plan Strategy seeks to protect Ryedale's landscapes. In considering landscape character Policy SP13 states that '*Development proposals should contribute to the protection and enhancement of distinctive elements of landscape character that are the result of historical and cultural influences, natural features and aesthetic qualities including the ambience of the area, including nocturnal character, level and type activity and tranquillity, sense of enclosure / exposure.*'

7.9 With regard to residential amenity Policy SP20 of the Ryedale Local Plan Strategy is relevant. This states '*New development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location and proximity to neighbouring land uses. Impacts on amenity can include, for example, noise, dust, odour, light flicker, loss of privacy or natural daylight or be an overbearing presence.*' In this case Members will note that this site is located adjacent to 'Wrens Caravan Park'. The impact of the development on the neighbouring caravan park, its visitors, and the adjacent residential property needs to be considered.

7.10 A key concern relating to both the landscape character and residential amenity is that of noise. By virtue of its construction the restaurant / canteen marquee provides little protection to the surrounding environment. When in use, or when events are held, this activity results in a level of noise being omitted. This will have a greater impact on the surrounding environment, and nearby residents, compared to a building of more permanent construction. It is clear from the objections received to planning application (14/00777/FUL) that the issue of noise is of great concern to nearby residents. It is also the view of officers that the levels of activity associated with the use, the comings and goings of customers to the restaurant, result in harm to the nocturnal character of this quiet country and the overall tranquillity of this part of the Area of High Landscape Value. The development is therefore contrary to the requirements of Policy SP13 of the Ryedale Local Plan Strategy.

7.11 Members will note that the Local Planning Authority has also received concerns that a Class A5 takeaway use is operating from the site. The use of the site for these purposes is likely to generate higher and more frequent levels of activity that would impact further on the character of the surrounding area and the amenity of nearby residents. An update will be provided to Members at the Planning Committee Meeting in respect to the take away services currently offered at the site.

## 8. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?

8.1 The harm created by this development, and the reasons why it is considered expedient to serve an enforcement notice are outline below:

1. The principle of siting the restaurant use in an open countryside location is unsustainable and therefore contrary to the requirements of the Paragraph 14 and 28 of the NPPF and Policy SP19 Ryedale Plan - Local Plan Strategy.
2. The site owner has not provided a sequential test argument or any persuasive evidence for the A3 restaurant use to be located on the site outside of a town centre. As a result, it has not been demonstrated that the development would not be materially harmful to the vitality or viability of Ryedale's town centres. The development is therefore contrary to the requirements of Section 2 of the NPPF and Policy SP7 of the Ryedale Local Plan Strategy.
3. The restaurant use and associate events and activities result in harm to the overall ambience of the area impacting upon the nocturnal character and tranquillity of the open countryside. As a result, the landscape character of the surrounding area, and the amenity levels of nearby residential properties are materially harmed. As such, this proposal would be contrary to the requirements of Policy SP13 and Policy SP20 of the Ryedale Local Plan Strategy.

## 9. STEPS NECESSARY TO REMEDY THE BREACH

9.1 This report seeks authorisation to serve a formal enforcement notice for the cessation of the use of the canteen marquee as a restaurant and return it to that of campsite (sui generis) use. In order to ensure the use is ceased the following steps shall take place:

1. Discontinue the use of the land for any purpose related to the A3 use of the canteen marquee including temporary uses, including events such as weddings and race days.
2. Remove any operational development associated to the A3 use, including the kitchen unit, from the land.

## 10. SUGGESTED PERIOD FOR COMPLIANCE WITH THE NOTICE

10.1 The suggested period for compliance is two months.

Recommendation

The Council Solicitor be authorised in consultation with the Head of Planning and Housing Services to issue an enforcement notice pursuant to section 172 of the Town and Country Planning Act 1990 (as amended) requiring the conformation with the requirements of the enforcement notices.