

RYEDALE DISTRICT COUNCIL

PLANNING COMMITTEE - 18 NOVEMBER 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. INTRODUCTION

- 1.1 Members will recall that this matter was originally presented on the agenda for the Planning Committee meeting dated 23 September 2014. At that time, the item was deferred as planning application ref. 14/00949/FUL had been recently validated.
- 1.2 The public consultation period for the submitted planning application has expired therefore the matter is re-presented to Members for consideration. This report should be read in conjunction with the Planning Officer report for this planning application. Members will note that 88 letters of support and 7 letters of objection have been received to the application.

2. SITE LOCATION

- 2.1 As identified by the Ryedale Local Plan, the site is located approximately 1km to the south of Nawton village within the open countryside and the Edge of the Moors Area of High Landscape Value.
- 2.2 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.

3. ALLEGED BREACH OF PLANNING CONTROL

- 3.1 Change of use of campsite (Sui Generis Use) to a mixed use comprising a campsite (Sui Generis Use) and 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/>).
- 3.2 An additional 'kitchen unit' has been located on the site to provide for the restaurant which is considered as part of planning application ref. 14/00949/FUL.

4. WHEN ALLEGED BREACH FIRST OCCURRED

- 4.1 The Local Planning Authority was first made aware of the ‘Gi Sukawaka’ Restaurant on the 2 June 2014.

5. HISTORY AND EVIDENCE OF BREACH

- 5.1 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.

- 5.2 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.

- 5.3 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 he 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.

6. REQUIRES PLANNING PERMISSION?

- 6.1 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 that of a restaurant use falling within Class A3.

- 6.2 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. Planning permission, was granted pursuant to this application 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.”

- 6.3 Members will note that as part planning application 11/00686/MFUL, a ‘canteen marquee’ was granted permission. The use classes order identifies that a canteen which is not ancillary to another use, is an A3 Use Class. Therefore, in determining the need for planning permission for the restaurant, the question is whether the permitted use of the canteen marquee is ancillary to the campsite use.

6.4 To demonstrate this, 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 or separate 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 campsite (sui generis use) to a mixed use comprising a campsite (sui generis use) and a restaurant (use class A3) has therefore occurred.

6.5 At this point reference is also made to planning application 14/00949/FUL. As part of the public consultation process of the application a significant number of responses have been received. In total 88 letters of support have been received, however Members will note that only 2 of those letters were from residents who identified they live outside of Ryedale or the surrounding area. This is significant as it identifies that the vast majority of people who have written in support of the development live in the surrounding area therefore are more likely to use be using the facility as a restaurant rather than the permitted campsite use. The following examples of the comments received from local residents identify the use of the restaurant:

“We have visited the restaurant over 20 times during the summer”

“Friends and family visit the restaurant on a regular basis”

“My daughter organised a surprise party for me at Canadian Fields which was wonderful and nearly 50 of our friends and family joined us in an amazing three course meal”

“We held my daughters christening here”

“We visit the restaurant on weekly basis”

“I booked the whole venue for my retirement party”

6.6 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 and temporary uses if the land in question is a building, or is within the curtilage of a building.

7. PLANNING POLICY CONTEXT

7.1 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

8. APPRAISAL

8.1 The issues surrounding the breach of planning control are:

i) The Principle of the Development

8.2 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 or Service Villages, the introduction of town centre uses outside of town centre locations is discouraged in both National and Local Planning Policy.

8.3 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...'*

8.4 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.

8.5 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 or village 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.

8.6 Members will note a letter of objection has been received to planning application 14/00949/FUL from a local business owner in Nawton. He identifies that since the opening of Canadian Fields his level of trade has fallen to such an extent that is detrimental to his business. Whilst direct competition is not in itself a material planning consideration, the aim of planning policy is to protect businesses which are located within more sustainable settlements and locations.

ii) Sustainability

8.7 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 / service village centres. It can also only be realistically accessed through private transport and it is considered to constitute an unsustainable form of development contrary to the requirements of the NPPF and Policy SP19 of the Ryedale Local Plan Strategy.

- 8.8 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

- 8.9 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.*'
- 8.10 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 also needs to be considered.
- 8.11 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 for example. It is clear from the objections received to planning application (14/00949/FUL) that the issue of noise is of great concern to nearby residents and visitors to the adjacent caravan park. 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 road 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 and SP20 of the Ryedale Local Plan Strategy.
- 8.12 In terms of highway safety, NYCC Highway Authority have verbally raised concerns with regards to the restaurant use on the site. In particular concerns are raised to the lack of on site parking available to serve the restaurant, and that the public highway would require improvements (passing spaces) to accommodate the additional traffic. The written comments of the Highway Authority are awaited and will be reported in the Committee late pages or at the Planning Committee Meeting.
- 8.13 Members will note that the Local Planning Authority has also received concerns that a Class A5 takeaway use is operating from the site. The full extent of this service has not been determined, however the use of the site for these purposes is likely to generate even higher and more frequent levels of activity that would impact further on the character of the surrounding area and the amenity of nearby residents.

9. WHY IS IT CONSIDERED EXPEDIENT TO SERVE A NOTICE?

9.1 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 or Service Villages, in particular Nawton Beadlem. 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.
4. As a result of insufficient on-site car parking facilities and the impact on the unclassified road known as Gale Lane without necessary highway improvements, the restaurant use would result in conditions that are detrimental to highway safety contrary to the requirements of Policy SP20 of the Ryedale Local Plan Strategy.

10. STEPS NECESSARY TO REMEDY THE BREACH

10.1 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 and A5 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.

11. RECOMMENDATION

11.1 In light of the above report, officers recommend that an enforcement notice is served to meet the steps identified in section 10 above

11.2 Members will note that because the restaurant use has been implement without receiving planning permission or the submission of a retrospective planning application, the level of control the Local Planning Authority can have on the development is limited. An enforcement notice should not provide for later approval of details.

Therefore it is important for Members to note that significant concerns are raised by officers that the necessary requirements in terms of highway safety could not be provided by virtue of an enforcement notice.

11.3 However, if Members were minded to allow the continued operation of the restaurant use, it is recommended that the following restrictions are applied to any enforcement notice that is issued:

- The A3 restaurant use / canteen marquee shall not operate for any use outside the hours of:
 - 07:00 – 22:00 Mondays – Thursdays.
 - 07:00 – 23:00 Fridays - Saturdays
 - 07:00 – 22:00 Sundays and Bank Holidays
- No person who is not a customer of the permitted campsite use (except for employees) shall be permitted to be on the premises outside the following times:
 - 07:00 – 22:00 Mondays – Thursdays.
 - 07:00 – 23:00 Fridays - Saturdays
 - 07:00 – 22:00 Sundays and Bank Holidays
- No music of any kind shall be played on the premises outside the following hours:
 - 07:00 – 22:00 Mondays – Thursdays.
 - 07:00 – 23:00 Fridays - Saturdays
 - 07:00 – 22:00 Sundays and Bank Holidays
- No A5 take-away use shall operate from the premises.

12. SUGGESTED PERIOD FOR COMPLIANCE WITH THE NOTICE

12.1 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 cessation of the restaurant use (A3 use class) and the removal of the pre-fabricated kitchen building from the land.