

North York Moors National Park Authority

District/Borough: Scarborough Borough Council
Parish: Egton

Application No. NYM/2019/0368/CLE

Proposal: certificate of lawfulness for the completion of an extension to the summerhouse in excess of four years

Location: Egton Manor, Barnards Road, Egton Bridge

Decision Date: 17 July 2019

Consultations

Parish - No objection.

Site Notice Expiry Date - 03 July 2019.

Director of Planning's Recommendation

That a Certificate of Lawfulness be GRANTED for the following reasons:

1. That the development described in the First Schedule has been carried out for more than 10 years.

First Schedule

The construction of a shower room and store extension to the building described in the Second Schedule for domestic purposes in excess of four years.

Second Schedule

Summerhouse on land south of Egton Manor as shown edged in red on the attached plan.

Application Number: NYM/2019/0368/CLE

Background

The building is a timber summerhouse with area of raised decking at the front overlooking the River Esk. The building obtained retrospective planning permission in 2004 and this Certificate of Lawfulness application has been submitted to confirm that a subsequent rear extension to provide a shower room, store and external flue has been in situ for the last four years.

In support of the application a letter has been submitted from the builder who constructed the original building confirming the development was completed in 2004 and the extension was constructed 6 months later. A second letter has been submitted from the applicants; Mrs Foster confirming that she first saw the river hut in 2009 and the extension was in place at that time and her husband (whose family home it is) can confirm the building and extension has been in situ since 2004. Further confirmation has provided by the applicant's sister in law who has stated that the bathroom was installed around the same time as the building of the shed which has been over ten years.

Main Issues

The legislation, under Section 191 of the Town and Country Planning Act 1990, provides that uses and operations are "lawful" if no enforcement action can be taken against them and they are not in contravention of any enforcement notice which is in force. The first issue to consider therefore is whether the use of the land and building constitutes operational development, a material change of use or breach of condition. In this case, as the application seeks clarification of the existence of an extension at the rear of the building, the enforcement period is four years as operational development.

The legislation states that the onus is on the applicant to establish that there has been a four year period in respect of the unauthorised extension to the building. They must establish this on the test of 'balance of probability'; for example, that it is more likely than not that the development has been in place in excess of the past four years. Independent evidence is not required in order to substantiate an applicant's claim however the applicant's evidence should be sufficiently precise and unambiguous in order to lead to the conclusion that, based on the balance of probabilities, the existing use is lawful and a duty is placed on the Local Planning Authority to issue a Certificate of Lawfulness. If there is no evidence to contradict the applicant's version of events then there is no good reason to withhold the certificate; the Authority must proceed on the basis that neither the identity of the applicant nor the planning merits of the use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

The applicant's agent has submitted a statement in support of the application, supplemented by letters from the builder who carried out both phases of the development together with written confirmation from the applicants and their family members. At the time the original (retrospective) application was considered (2004), it was clear that the extension was not in place, as demonstrated by the case officer's site visit photographs. However, since dealing with that application, the Authority has not made any subsequent visits to the summerhouse and therefore has no evidence from the preceding four year period to contradict the applicant's claims.

The Parish Council has advised they have no objection to the application and no third part representations have been received.

Application Number: NYM/2019/0368/CLE

The Authority's solicitor has considered the detail of the application and has confirmed he has no information for or against this application. It is noted that the older parents can't/won't corroborate the claims in the application. Whilst it may not be necessary, it would, in my view, be reasonable if we wanted to investigate a bit further.

Officers have considered the information provided and in view of the confirmation provided by the builder/contractor, together with no other recent contradictory evidence available, it is accepted that on the balance of probabilities that the necessary unauthorised period has occurred such as to give rise to a lawful extension and flue to the building which is in ancillary domestic use and as such a Certificate of Lawfulness can be issued.