

North York Moors National Park Authority

District/Borough: Scarborough Borough Council
(North)
Parish: Fylingdales

Application No. NYM/2020/0299/CLE

Proposal: certificate of lawfulness for the established use of tracks within the agricultural unit for in excess of 10 years and remedial works to repair and maintain tracks in excess of four years

Location: Hogarth Hill Farm, Boggle Hole Road, Fylingdales

Decision Date: 22 June 2020

Extended to:

Consultations

Parish - 18 May 2020 - Object to this application. The work carried out can be seen from many houses around, tracks/roads are now very noticeable, the works carried out to tracks/roads has continued after the applicant was asked to stop by NYM planning department. The Parish Council do not see retrospective planning as suitable for such extensive works.

Site Notice/Advertisement Expiry Date – 28 May 2020

Director of Planning's Recommendation

That a Certificate of Lawfulness be **GRANTED**:

Schedule 1 The creation of tracks within the agricultural unit described in the Second Schedule for in excess of 10 years and remedial works to repair and maintain tracks in excess of four years

Schedule 2 Land at Hogarth Hill Farm, Boggle Hole Road, Fylingdales, shown edged in red (surfaced tracks) and blue (grass track) on the attached plan.

Application Number: NYM/2020/0299/CLE





Background

This application seeks a Certificate of Lawful Development for the use of land as agricultural tracks for a period in excess of 10 years and the undertaking of hard surfacing works on the tracks more than 4 years ago.

Evidence has been put forward including sworn statements by himself and two different contractors who undertook laying hardcore and rolling hard core between 2003 and 2005 and also between 2014 and 2015.

In support of the application it is stated that:-

“tracks which have evolved with the farm and farming practices over time ...and are established roadways which have been in existence for a long time and as farm machinery has advanced and become larger the tracks too have developed over time.

The outer track shown on Plan 1 (blue) skirts around the farm’s perimeter at a total distance of 2.34 km (1.45 miles) and links up with another farm track on the east side of Hogarth Hill. Plan 2 (yellow) shows the extent of internal tracks in situ within the farm unit. These tracks have also been in situ and completed in their entirety since 2005 but also established long before this.

The majority of tracks follow closely to the existing field boundaries and at the lower levels of the farm they run alongside the woodland edge.

Evidence is relied upon from OS Mapping data resources that are available together with sworn statements from people with whom the applicant called upon for help with remedial works to repair and maintain the tracks (in 2003 – 2005) and are therefore able to verify the case.

Additional information has also been submitted which specifies the current width of the tracks.

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 is whether the use and surfacing of the tracks to which this application relates constitutes operational development or a material change of use. This is because the enforcement period which applies to each differs. In this case, as there has been a material change of use, (i.e. the use of the land as vehicular access tracks) so the enforcement period is 10 years. However, the tracks have also been hard surfaced with hard core, so this constitutes operational development, so the enforcement period is 4 years.

The onus of proof for applying for a certificate of lawfulness is on the applicant. Therefore the applicant must establish on a “balance of probabilities”, (i.e. is it more likely than not), that the use has been in existence for at least ten years before the date of the application and the repair and maintenance works commenced more than 4 years ago.

Guidance on evidence is provided in Circular 10/97: Enforcing Planning Control. This provides that the applicant's own evidence does not need to be corroborated by independent "evidence" in order to be accepted.

If we have no evidence of our own or from others, to contradict or otherwise make the applicant's version of events less probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. We should proceed on the basis that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the consideration of the purely legal issues which are involved in determining an application.

Based on the evidence submitted, on a balance of probabilities, it is considered that the requirements for issuing a Certificate of Lawfulness have been met and it is recommended that a Certificate is issued.