

North York Moors National Park Authority

Parish: Cloughton

App No. NYM/2020/0423/CLE

Proposal: certificate of lawfulness for the use of land for the siting of shipping container and lorry trailer for storage purposes (Use Class B8) in excess of ten years

Location: Paddock to South of Wyke Lodge, Hodgson Hill, Staintondale

Applicant: Mr Keith Dobbie c/o The Agent

Agent: Sanderson Weatherall LLP, fao: Mr Owen Pike, 30 Queen Square, Bristol, BS1 4ND

Date for Decision: 07/09/2020

Extended to:

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 on for more than ten years.

First Schedule - The use of the land described in the Second Schedule for the siting of a shipping container of a maximum size 7.2 metres (length) by 2.5 metres (width) by 2.5 metre (height) for domestic storage and as a store and shelter for lambing, and a lorry trailer of a maximum size 12.39 metres (length) by 2.5 metres (width) by 3.5 metres (height) for the storage of joinery machinery.

Second Schedule – Paddock to South of Wyke Lodge, Hodgson Hill, Staintondale as shown outlined red on the attached plan with the position of the shipping container outline in blue and the position of the lorry trailer outlined in green.

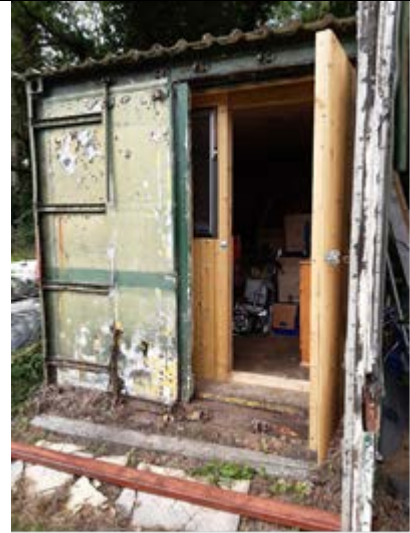
Consultations

Parish - Confirm that both trailer and container have been on site for over ten years and to that end there is probably nothing to prevent the granting a lawful use certificate. However concerns are expressed that the container and trailer (supposedly a mobile structure) are totally inappropriate in the National Park - both trailer and container may have been there a long time but are still little more than scrap, do nothing to enhance the area and really should have been removed long ago.

Others – Kelsall McEwen, Hayburn Dene, Staintondale – makes the following comments:

- This application for a certificate of lawfulness is presumably the start of the process to get planning to construct a dwelling of some sort. Several years ago he applied for a certificate of lawfulness for the old touring caravan in the neighbouring field which he then used as a stepping stone to his log cabin development.
- The old lorry is ugly and can be clearly seen from the road and these facts alone should be enough to stop it from getting permanent planning permission.

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Background

This application for a Certificate of Lawfulness seeks to prove that the land south of Wyke Lodge at Staintondale has been used for the siting of a shipping container and lorry trailer for storage in excess of the past ten years.

The application is supported by statutory declarations from the applicant and also a local sheep farmer/general builder who has used the shipping container as a store and shelter for ewes during the lambing season whilst grazing his sheep on the paddock. There is also a supporting statement from the applicant's agent setting out the situation.

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 constitutes operational development or a material change of use. In this case, as there has been a material change of use of the land for the siting of a shipping container and lorry trailer, the enforcement period is ten years.

The legislation states that the onus is on the applicant to establish that there has been a ten year period in respect of the unauthorised use of the land for the siting of a shipping container and lorry trailer for storage purposes at the time of the application. They must establish this on the test of 'balance of probability'; for example, that it is more likely than not that the land has been used for the siting of a shipping container and lorry trailer for in excess of the past ten 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.

In addition to the statutory declarations submitted in support of the application, the Parish Council have confirmed that both the current trailer and the container have been on site for over ten years and in that time neither have been replaced or repositioned. This is supported by the aerial photographs that the Authority holds and the case officer who has visited the site on numerous occasions since 2014. There is no evidence to contradict the applicant's claims.

In light of the available evidence, the Authority's solicitor is satisfied on the balance of probabilities that the site has been used for the siting of a shipping container and lorry trailer for storage purposes in excess of the past ten years. However any certificate needs to be precise with regard to the size and position of the shipping container and the lorry trailer

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along with the lawful use. Based on the evidence submitted by the agent and from the case officer's site visit it is clear that the shipping container has been used as a store and shelter for lambing and as a domestic store and that the lorry trailer has been used for the storage of joinery machinery. There is no evidence that the lorry trailer has been used for workshop purposes for the past ten years given there is no power to the site and that the trailer still contains the wrapped joinery machinery left there by the previous tenant prior to the applicant's ownership in 2014. Furthermore neither the shipping container nor lorry trailer have been replaced or repositioned in the past ten years and the agent has confirmed the dimensions of these which should be referred to in any certificate.

In conclusion, it is accepted that on the balance of probabilities that the necessary unauthorised period has occurred such as to give rise to a lawful use of part of the site for the siting of a shipping container and lorry trailer for storage in excess of the past ten years and as such a Certificate of Lawfulness should be issued.

**Plan to Accompany Certificate of Lawful Use
Town and Country Planning Act 1990**

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excess of ten years

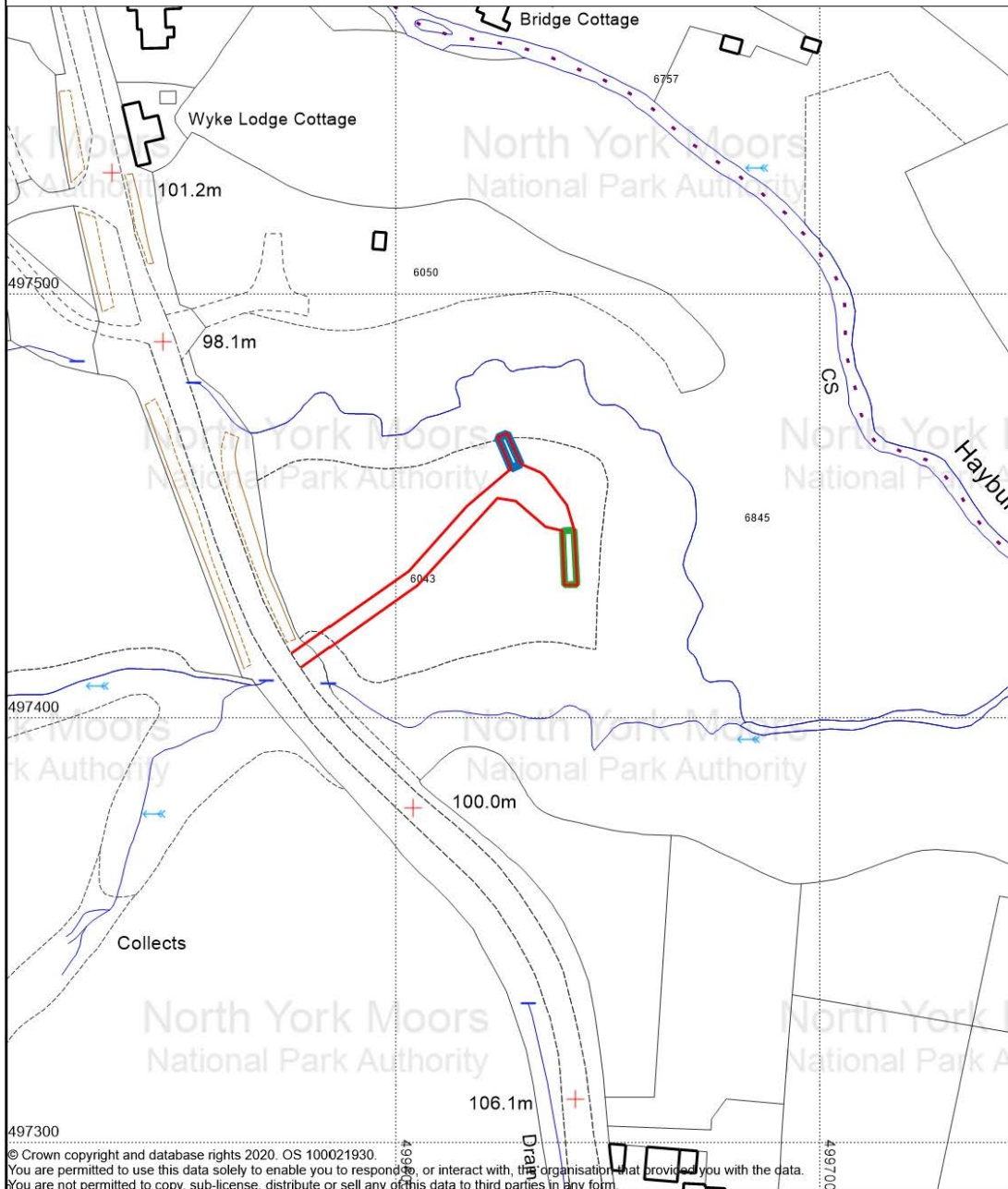
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Paddock to South of Wyke Lodge, Hodgson Hill, Staintondale

North York Moors National Park Authority
The Old Vicarage

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