

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2022/0355

Development description: certificate of lawfulness for the use of four agricultural buildings, including two glasshouses, as an agricultural worker dwelling house in excess of four years, use of land as domestic garden and use of access to serve the dwelling and farm in excess of ten years

Site address: Stag Hall Farm, Harwood Dale Road, Burniston

Parish: Newby and Scalby

Case officer: Mr A Muir

Applicant: D W Foster

fao: Mr Foster, Stag Hall Farm , Harwood Dale Road, Burniston , Scalby, YO13 0DN

Agent: Ian Pick Associates Ltd

fao: Mr Sam Harrison, Station Farm Offices, Wansford Road, Nafferton, Driffield, YO25 8NJ

Director of Planning's Recommendation

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

1. That the developments described in the First Schedule have been carried on for more than four and ten years.

First Schedule - Use of four agricultural buildings, including two glasshouses, land and the access described in the Second Schedule as an agricultural workers dwellinghouse.

Second Schedule – Stagg Hall Farm, Harwood Dale Road, Burniston as shown outlined red on the attached plan dwg no IP/JF/01 and with the precise location of the four buildings shown hatched red on the plan dwg no. IP/JF/02

Consultation responses

Parish

Parish confirmed that it does not hold any evidence to contradict that laid before the Authority and has withdrawn initial objection

Third party responses

None received

Publicity expiry

Site notice expiry date 10 June 2022



View of southern building of dwelling complex



Southern building with attached glass house



Glass house attached to southern building with northern building in view



Northern building with glass house attached



Glass house attached to northern building and boundary with Low Moor Farm

Background

Stag Hall Farm lies approximately 1.4km west of the village of Burniston on the Harwood Dale Road and immediately south of Low Moor Farm.

This application for a Certificate of Lawfulness seeks to prove that a portion of the property known as Stag Hall Farm has been occupied as an independent residential dwelling for more than four years.

The application is supported by sworn declarations from the applicant and the owners of Low Moor Farm. These declarations confirm that the property edged in red on the application form has been used continuously as a dwellinghouse since 01 June 2006. Also included are various letters to HMRC and current home insurance provider and invoices/receipts from various companies including utilities dating back to 2006. The evidence provided show that the property operates as a single dwellinghouse and not as agricultural buildings. Officers have since contacted the landowner who has confirmed that the dwellinghouse subject to this application is in fact an agricultural worker dwelling associated with the farm land and buildings within the area of land outlined in blue on the submitted plans.

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 building constitutes operational development, or a material change of use. In this case, as there has been a material change of use of the building from a guest house to dwelling, the enforcement period is four years.

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 occupation of the building as a dwelling 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 building has been occupied as an independent dwelling for more than the past four years. Independent evidence is not required to substantiate an applicant’s claim however the applicant’s evidence should be sufficiently precise and unambiguous to not 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 statutory declaration provided by the applicant confirms that the property has been occupied, without substantial interruption, as a single dwellinghouse since 01 June 2006, which is significantly more than the required period of four years. However, in conversation with the applicant, it was agreed that the dwelling was used in association with the adjoining farm buildings and land and as an agricultural worker dwelling house.

Neither the National Park Authority nor any interested third party such as the Parish Council has observations or evidence to contradict the applicant's claims as an agricultural worker dwelling house

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 the buildings and land as outlined in red on the submitted plan as an agricultural worker dwelling house in association with the adjoining land and buildings as outlined in blue on the submitted plan and as such a Certificate of Lawfulness should be issued.