

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2023/0075

Development description: certificate of lawfulness for use of land as a leisure plot and use of three buildings on site for bird watching and storage purposes (no overnight sleeping) in excess of ten years

Site address: Mosslea, land west of Lowmoor Farm, Barmoor Lane, Scalby

Parish: Newby and Scalby

Case officer: Mrs Hilary Saunders

Applicant: Michael Woodyatt
63 High Street, Burniston, Scarborough, YO13 0HH

Agent:

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 use of land described in the Second Schedule as a leisure plot and use of three buildings on site for bird watching and storage purposes (no overnight sleeping and no commercial use) for a period in excess of 10 ten years.

Second Schedule

Mosslea, land west of Lowmoor Farm, Barmoor Lane, Scalby, shown hatched in red on the attached plan.

Consultation responses

Parish

The above application has been considered by Newby and Scaly Town Council. While no objections are offered, Council request a condition of no overnight occupation/sleeping be placed on any consent.

Third party responses

Name

Paul Lockey, Suffield Farm, Suffield - I have grazed and made hay on the surrounding grass land for over 20 years on friendship basis with Mr Woodyatt watching the wonderful work in encouraging wildlife he has undertaken, it really is a true oasis for nature.

I can confirm the said cabin is used for close family and friends only and certainly not a business venture.

Rev Liz Kitching, 31 Osgodby Cres, Scarborough - I have known Mr and Mrs Woodyatt and Moss Lea for 18 years when I was Vicar of the village where they live. Moss Lea land and buildings has always been used as a leisure plot for family and friends, and the cabin is only slept in 3/4 nights per year.

Publicity expiry

Advertisement/site notice expiry date – 31 March 2023

Parcel of land, which is primarily wooded, with pond in the middle and buildings to southern side of pond





Background

This application seeks a Certificate of Lawfulness for the continuous use of land west of Lowmoor Farm, Barmoor Lane, Scalby as a private leisure plot and the use of three buildings on site for bird watching and storage purposes (with no overnight sleeping and no commercial use) for a period in excess of 10 ten years.

The applicant has submitted evidence in the form of written information and photographs stating the following: -

Bought the land in 1992 and sought ideas from forestry commission (FC) regarding tree planting. FC gave them a tree planting plan and they have since planted hundreds of trees and dugout a pond. Consequently, they put a small caravan on site. During 2004-2006 put in replacement cabin and buildings for equipment such as grass cutter, quad bike, log cutter etc. Do not use any of this for tourism accommodation.

Two letters of support, including one from a local vicar have been submitted stating aware that has been used as a leisure plot since at least 2009.

Aerial photos also demonstrate the siting of buildings in the locations referred to since at least 2009.

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 of the area within the application site 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 has intensified sufficiently to alter the character of the land) the enforcement period is 10 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.

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, albeit no legal sworn statements have been submitted, and on the basis of historical case officer site visits and details shown on aerial photos, it is considered that , on a balance of probabilities, the requirements for issuing a Certificate of Lawfulness have been met and it is recommended that a Certificate is issued.

However, it is recommended that the Certificate makes it clear that there is no lawful use for any commercial activity or for overnight accommodation.