
From: Richard Smith1

Sent: Tuesday, October 24, 2023 1:33 PM

To: Mark Hill ; Hilary Saunders

Subject: RE: NYM/2023/0574, car park at Victory Mill, Thornton le Dale

As discussed, my views are,

- the Use Classes angle does not help us,
- the "accrued PD" angle doesn't help us,
- so we are left having to assess, as a matter of fact & degree, whether the proposed change of use is "material" in planning and land use terms,
- in making that assessment we should consider the impacts within the site and the impacts on the area around the site,
- where matters are finely balanced we should apply a 'balance of probabilities' test.

There appear to be three elements of change with this proposed use,

- the increase in numbers of users of the car park- from a 'class' of people- those involved with the connected buildings- to an unlimited number of people- the general public,
- the increase in the days and times of use- from those days and times associated with the connected buildings- to potentially 24hrs/day, 365 days/year,
- the change in the nature of the users and their actions- from persons involved with the connected buildings- for whom there would be some degree of inherent regulation and control- to the general public without that same element of inherent regulation and control.

As I said, I think this is finely balanced. I cannot find any case law that deals with these specific or similar circumstances. A consistent point in case law, though, is that these subjective assessments are very much for the LPA to make and Courts will not intervene unless the assessments are clearly unreasonable.

So, looking at the above elements of change and applying a balance of probabilities test, my view is that this probably does amount to a material change of use, therefore does constitute "development", and therefore would require express planning permission.

If the applicant disagrees with our assessment they are able to Appeal under S195 T&CPA 1990.

Richard Smith - Authority Solicitor