

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2023/0574

Development description: certificate of lawfulness to confirm that the use of the existing car park as a public visitor pay and display car park does not amount to a material change of use

Site address: car park at Victory Mill, Thornton le Dale

Parish: Thornton Le Dale

Case officer: Mrs Hilary Saunders

Applicant: Burgess Group PLC

fao: Mr Thomas Roberts, Victory Mill, Thornton le Dale, YO18 7RT

Director of Planning's Recommendation

Withhold the granting of a certificate of lawfulness certificate for the following reason

Reason(s) for refusal

Refusal reason code	Refusal reason text
	<p>The Local Planning Authority considers that the use of the land as a pay and display public car park would result in material changes to the character and activity levels of the permitted use as a private office car park, by reason of the increase in numbers and type of users of the car park; the increase in the days and times of use and the change in the nature of the users and their actions.</p> <p>The use therefore represents a material change of use which requires planning permission.</p>

Consultation responses

Parish

No comments received.

Third party responses

Name

C Webb, Beck Hall, Priestman's Lane, Thornton Dale

Have the following concerns-

- This isn't the same as when the mill was functioning, decades ago. Road traffic has changed, the village has changed, and employees' cars arriving once and departing once a day are totally different from a public car park catering to tourists.
- A public car park is very different to an office car park.
- If one was looking to build a car park you wouldn't choose a lane with significant constrictions and difficult access at both ends, and a problematic turning to Ellerburn half way?
- If Highways and NYMNPA want a car park, a reasonable compromise might be to allow a public car park on the condition that no camper vans or similar are allowed overnight; the entire carpark to be pre-booked online only, so there would be no signage or encouragement for drivers to cruise past it "on spec".
- Spaces to be booked for a minimum three hours.
- Signage advertising the car park on the Lane to be removed.
- Vehicle size restrictions to be imposed.
- The village car park is often underused. Many visitors still seemingly don't know or believe it is as close to the centre as it is.
- Previously, this was a private car park. It has become a public car park. The difference in this situation is fundamental.
- It was previously barred to any users at weekends, and at night. Now (in spite of the assurances by the applicant) you can book it 24/7, including overnight, and certainly at weekends.

J Harrison, Brook House, Priestman's Lane, Thornton Dale

The accesses to the lane from Church hill and Whitby gate are difficult, parts of the lane are virtually single car width. The lane is frequently used by people to avoid heavy traffic in the village often travelling at excessive speed.

The car park has been used by Motorhome's for overnight stays and some of these vehicles do not have the facilities on board for this.

The size of some of these vehicles are inappropriate for the lane and the lane is regularly used by walkers. There are no foot paths and we believe the added traffic would cause unnecessary additional danger to said walkers with the increase in traffic the car park would potentially create.

J Sanderson, Walnut Cottage, Priestman's Lane, Thornton Le Dale

- The original planning application for the car park was to service the use of one single building, Victory Mill. The current use opens up the car park to anyone visiting the area.
- The changes of use from offices and apartments limited the traffic movement to what was for the most part, two vehicle movements a day and the occasional visitor. The current use requires and encourages many more traffic movements by people parking at the site for shorter periods but also by those speculating on finding a parking space at the site.
- There have been no regular heavy goods vehicles requiring access to the mill other than deliveries since the business was redeveloped around twenty years ago.
- I do not believe there has been any history of overnight parking for living accommodation such as camper vans and there are no facilities to support this type of parking.
- To my knowledge, no visitor has ever been charged for parking and so in effect the car park has become a business and not an amenity for visitors to the mill building.
- The car park since being formalised in 2003, was locked evenings and weekends. The new public car park is opened all day every day.

S Stow, Kirkby House, Priestman's Lane, Thornton Dale

- It was fifty or so years being the car park for the mill, and latterly offices. Very different to the now commercial, corporate and 24 hour public parking facility it has become.
- 'works' car park employees would arrive in the morning leave at night and the car park was locked overnight and at weekends. Very different from now.
- On the 'just park' app it clearly states that overnight parking is allowed and that it is suitable for minibuses and small vans.
- There are no pavements in Priestman's Lane and is not suitable for an increase in traffic. It attracts lots of walkers.
- Finally I feel there should be a number of things looked into - Highway safety, Traffic generation, Noise and disturbance, Effect on conservation area, Road access.

If more parking is required in the village, it should be done via the correct channels.

Publicity expiry

Advertisement/site notice expiry date – 26 October 2023

NYM/2023/0574

Existing car park



New parking charge signs



New pay machine



Background

This application relates to an existing car park located on Priestmans Lane which has historically been associated with Victory Mill (Burgess Mill) located on the opposite side of the road.

Victory Mill comprises a substantial mill building and Mill House which have mainly been converted into apartments, with Burgess Group Head Offices also being on site.

The car park provides over 70 spaces and provided parking for the Office staff and visitors to the offices and apartments.

This application seeks the issuing of a Lawful Development Certificate to confirm that a material change of use has not occurred, and planning permission is not required to use the car park as a public pay and display car park.

In support of the application the applicant has stated the following: -

The existing use of the area in question is as a car and vehicle park. It has been a car and vehicle park for many years (over 50).

Over that period, the car park has been open seven days a week. Historically, it was a busy site used by wagons, vans, and all staff and visitor vehicles for the victory mill feed plant. Laterally, it has served the site and office staff, as well as all forms of visitors to Victory Mill, as well as local needs such as additional parking for the bowls club, and by requesting visitors to the local area. At all points in this time, though, a car and vehicle park has had high intensity use and been open year-round; the only proposed amendment is to allow public visitors via P&D as opposed to the previous system of appointment booking.

The car park will continue to also serve all the uses previously noted. The land in question is not materially changing its use. It has long been a car park and is proposed to remain a car park.

I can confirm that we intend to place overnight restrictions on caravans, campervans and any other 'sleepover' vehicle. This can be enforced with the site CCTV, three cameras pointing over the parking area.

Main issues

A Lawful Development Certificate is a legal document stating the lawfulness of past, present or future use, operations or other matters. The certificate is not a planning permission. The planning merits of the use, operation or activity in the application are not relevant. This issue of the certificate depends entirely on factual evidence about

the history and planning status of the building or land and the interpretation of any relevant planning law or judicial authority. The responsibility is on the applicant to provide evidence to support the application.

In this case the advice of the Authority's Solicitor has been sought in order properly assess the nature of existing and proposed uses and establish whether a material change of use in planning terms has occurred.

The advice is as follows: _

Need 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,

- i) 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;
- ii) 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.
- iii) 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.

In this case it is considered to be finely balanced and there does not appear to be any legal case law that deals with these specific or similar circumstances. However, a consistent point in case law, though, is that these subjective assessments are very much for the Local Planning Authority to make, and Courts will not intervene unless the assessments are clearly unreasonable.

Consequently, considering the above elements of change and applying a balance of probabilities test, the Authority's Solicitors concludes that the use as a public pay and display car park view does amount to a material change of use, therefore does constitute "development", and therefore would require express planning permission.

Conclusion

In view of the above, it is recommended that his applicant is refused, and a Lawful Development Certificate withheld.