

# North York Moors National Park Authority

## Delegated decision report

**Application reference number:** NYM/2024/0053

**Development description:** certificate of lawfulness to confirm that the use of the existing car park as a public pay and display car park does not amount to a material change of use (resubmission following withholding of certificate under reference NYM/2023/0574)

**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

The North York Moors National Park Authority hereby certify that on 18 January 2024 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate was lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed use of land is not considered to be a form of development that requires planning permission.

### First Schedule

That the use of the existing car park as a public pay and display car park, as described in the application, does not amount to a material change of use and is permitted development under the Town and Country Planning Use Classes Order 1987 (as amended)

### Second Schedule

Car park at Victory Mill, Thornton le Dale

### Consultation responses

#### Parish

None received.

### Third party responses

#### Name

S Stow, Kirkby House, Priestman's Lane - Despite addressing some concerns from the original proposal, I still feel a pay and display car park with access down a narrow lane unsafe, hazardous and far from ideal. The village has a more than adequate car park which is never at capacity so do we need another one?

'No overnight parking' may be ignored.

The access lane is my real concern as so many large groups of walkers use it plus the many visitors. The numbers very much increased over the last 20 years. No pavements or verges to escape to. Winter parking between October and March means more hazards with some parked cars.

A study of how many pedestrians use Priestman's lane, traffic use, highway safety, noise disturbance and road access all need to be studied before any thought of a car park is introduced as surely safety is a priority.

#### Publicity expiry

Advertisement/site notice expiry date – 11 February 2024

Existing car park at Victory Mill



## Background

This application relates to an existing car park located on Priestman's 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.

An application for a Lawful Development Certificate was refused earlier this year. That sought to confirm that a material change of use had not occurred, and planning permission was not required to use the car park as a public pay and display car park.

The certificate was withheld for the following reason:

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. The use therefore represents a material change of use which requires planning permission.

In support of that application the applicant 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.

This revised application is proposing a less intensive use of the car park as follows:-

The car park will be for use by passenger and small vehicles only, excluding use by camper vans, caravans, large high-sided vehicles. Notices and online will be displayed to that effect and ANPR cameras.

The car park would only allow parking from 07.30 to 20.30 and there would be 24 hour surveillance and out of hours contact lines provided.

All of this would be communicated via signage.

## 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 of the previous application the advice of the Authority's Solicitor was 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 was that: -

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 the case of the previous proposal, the Solicitor advised that it was finely balanced and that 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. He went onto advise that:-

"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.”

The Authority’s Solicitor has been consulted on this revised and more restricted proposal and has advised as follows:-

“With those amendments, if they can confirm that there will still be some degree of monitoring and control (similar to when it was staff parking), with a sign giving a 24hrs contact number to report any inappropriate behaviour (which will be dealt with as promptly as when it was staff parking), then I am satisfied there will not be a “material” change of use and the certificate can be granted.”

#### Conclusion

In view of the above, it is recommended that the certificate be issued.

#### **Public Sector Equality Duty imposed by section 149 of the Equality Act 2010**

The proposal is not considered to unduly affect any people with protected characteristics.