

North York Moors National Park Authority

District/Borough: Scarborough Borough Council
(North)
Parish: Fylingdales

Application No. NYM/2017/0333/CLE

Proposal: certificate of lawful use for use of land as a car park in excess of ten years

Location: Ings House
Station Road
Robin Hoods Bay

Decision Date: 04 July 2017

Consultations

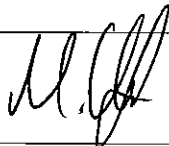
Parish –

Highways - The below comments are based on the assumption that vehicles will gain access from Station road at the existing access between Ings House and Ings Cottage. The local highway authority has no evidence to prove or disprove the applicants claim that the site has had occasional use as a car park for the last ten years. The local highway authority has no evidence to prove or disprove how regular or frequent this use has occurred. The applicant has not provided any details to show the parking layout to indicate how many spaces would be available or to demonstrate the safe manoeuvring space within the site. There are no recorded collisions at this junction within the last 5 years. The access from the Highway on Station Road is a single width access for the first 20 metres preventing vehicles to pass one another over this length. The design standard for the site is Manual for streets and the required visibility splay is 2 metres by 25 metres. The available visibility looking downhill surpasses this a driver can look over the adjacent wall. The available visibility looking uphill to view oncoming traffic surpasses this amount by the driver looking through the adjacent railings. Consequently the Local Highway Authority recommends Conditions

Site Notice Expiry Date – 15 June 2017

Others – Mr A Duncalfe, Glen-lyn, Station Road – The entrance is not suitable for the many cars that use it – which can be in excess of 60 cars per day. I object to the constant noise that the car park creates. We suffer constant noise from door slamming, people shouting, dogs barking, car clubs, wedding parties etc. Initially it was run as a very low key business with occasional weekend sand but over the last 2 years it has been operating almost every day over the summer period.

Signature:



Date:

4th July 2017

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Director of Planning's Recommendation

Approval subject to the following condition(s):

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 car park, at weekends, bank holidays and daily during school holidays during the Easter to October period in the same year for a period in excess of 10 ten years.

Second Schedule

Ings House, Station Road, Robin Hoods Bay as shown edged in red on the attached plan.

Background

This application seeks a Certificate of Lawfulness for the continuous use part of the garden of the residential dwelling known as "Ings House" for use as overflow car parking for visitors to Robin Hoods Bay, for a continuous period in excess of 10 years.

The applicant has submitted evidence in the form of a sworn statement and letters from four local residents confirming the use as a car park in busy times.

Aerial photos over the last 10 years also demonstrate some use of the site for the site for parking.

It is considered that adequate evidence has been submitted.

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

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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, on a balance of probabilities, it is considered that the requirements for issuing a Certificate of Lawfulness have been met and it is recommended that a Certificate is issued.

Whilst the objections received from the neighbour, can't be considered in relation to a Certificate of Lawful application, the comments made do provide evidence of the use. The Highway Authority has requested conditions regarding access but these cannot be added to a certificate of lawful use.

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