

Parish: Stokesley
Ward: Stokesley
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Committee date: 23 August 2018
Officer dealing: Mrs H Laws
Target date: 24 August 2018

18/01298/CLE

Application for Lawful Development Certificate for an existing use of part of the workshop building and land adjoining as B2 use for vehicle repair workshop and associated parking
At Tanton Grange Farm, Stokesley
For Messrs H and D R Bainbridge

This application is referred to Planning Committee at the request of a Member of the Council

1.0 LEGISLATIVE BACKGROUND

- 1.1 The application seeks certification that an existing use is lawful. Under Section 191(2) of the Town and Country Planning Act 1990 an existing use is lawful if enforcement action cannot be taken in respect of it because one of four grounds applies: (a) it did not involve development; or (b) it did not require planning permission; or (c) because the time for enforcement action has expired; or (d) "for any other reason"; and provided the use is not in contravention of any requirement of any enforcement notice that may be in force.
- 1.2 The Council's decision must therefore be based on evidence relating to grounds (a) to (d) above. These grounds do not include assessment of the desirability of the use, which could only be considered through the determination of an application for planning permission or by determining whether to take enforcement action where those options are available. For these reasons, the policies of the Development Plan and the National Planning Policy Framework are not directly relevant in this case. The decision must be made on the balance of probability; therefore it is not necessary for an applicant to prove their case beyond reasonable doubt.
- 1.3 In respect of ground (c) the time for enforcement action would have expired if the use began more than ten years ago and has occurred continuously since. Once the time limit has been passed and if a certificate is issued, no enforcement action may be taken in respect of the breach. If granted, the certificate remains valid for the precise use, operation or activity described in it, on the land it describes and provided there is no material change in circumstances.

2.0 SITE, CONTEXT AND SUBMITTED EVIDENCE

- 2.1 The application site lies on the northern side of Stokesley on the western side of the B1365 and forms part of the complex of buildings at Tanton Grange Farm.
- 2.2 A shared access from the B1365 extends through a wooded area into the site to a group of agricultural style buildings. The application site is the first of the buildings within the farmyard. The building is a part blockwork, part metal sheeting and part Yorkshire boarding structure with a profile sheet roof. A hard surfaced area lies around the building.
- 2.3 Part of the building is used for business purposes in association with the repair and renovation of vehicles, mainly classic cars and a hardstanding area is used for the parking of vehicles in association with the business. The remaining part of the building, outside of the application site boundary, is used by the farmer and owner for

agricultural purposes in connection with Tanton Grange Farm. The two parts of the building have separate entrances.

2.4 Two Statutory Declarations have been received to accompany the application; one from the business operator, Mr Marsh, and the other from Mr Bainbridge, who is part owner of the site and who farms at Tanton Grange Farm.

2.5 The Statutory Declarations state that the premises have been occupied and in use continuously in connection with the commercial repair and restoration of vehicles with associated parking since 1999. The basis of the claim for the certificate is therefore that the time for enforcement action has expired, ground (c).

2.6 In summary, Mr Marsh's Statutory Declaration is:

- He carries out vehicle repair and restoration at the premises, which comprise the larger part of the building, under the name of Northern Renovations;
- He uses the land at the front and rear of the building principally for parking vehicles on which he is working and he occasionally undertakes work on vehicles within this area;
- He first moved to the premises in 1999 and has occupied them ever since and remains working there; and
- Throughout the whole of this period he has used the premises as a commercial vehicle workshop with associated parking.

2.7 In summary, Mr Bainbridge's Statutory Declaration is:

- He is the joint owner of the premises, which he bought in 1999;
- The larger part of the building has been occupied by Mr March, operating under the name Northern Renovations, since 1999;
- The remainder of the building is occupied by Mr Bainbridge's family farming partnership of H & DR Bainbridge;
- Mr Marsh uses the building to undertake works of vehicle repair and restoration and the land at the front and rear of the building principally for parking vehicles in connection with his business; and
- Mr Marsh has used the premises for the purposes of his business continuously since 1999 and remains working there.

2.8 Mr Bainbridge's Statutory Declaration also refers an adjacent yard area, which he claims has been occupied continuously by another business, J M Barnfather Limited. However, this is excluded from this application and the agent had indicated that this would be the subject of a separate application to the County Council because it involves processing and recycling of construction waste.

3.0 RELEVANT PLANNING AND ENFORCEMENT HISTORY

3.1 17/00186/CAT3 – Enforcement investigation into an alleged vehicle repair workshop operating without planning permission; Case opened 12 June 2017, currently awaiting determination of this application.

3.2 No enforcement notices are in effect that apply to the application site.

4.0 CONSULTATIONS

4.1 Parish Council – Members would like to request a site visit and also evidence of the work that has been undertaken over the previous ten years.

- 4.2 Highway Authority – Advises that the visibility available at the access is substandard but acknowledges that a refusal of planning permission may be difficult to sustain given the length of time the business has been in operation.
- 4.3 Public comments – None received to date.

5.0 OBSERVATIONS

- 5.1 The application is for a certificate of lawfulness for existing development. It is a matter on which the burden of proof is on the applicant to demonstrate that the use, which is claimed, has been carried out during the period identified. The test of evidence in determining such applications as directed by the Secretary of State is on "the balance of probability" and the High Court has held the applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted.
- 5.2 The onus is on the applicant to produce sufficient evidence to demonstrate, on the balance of probability, that the building and the associated area to front and rear have been used for the repair and restoration of vehicles for a period of at least ten years.
- 5.3 The Statutory Declarations state that the vehicle repair and restoration use has operated continuously at the site since 1999 and there is no evidence to suggest that is not the case. As indicated in paragraph 3.1, the Council began to investigate the alleged use in June 2017 and investigation records confirm that the use has been undertaken since then. Business Rates records for the property only date back to 2017 but the absence of records before then is not considered to prove that the use was not in operation before this time. Based on the submitted Statutory Declarations and in the absence of any evidence to the contrary, it appears that the continued use of the premises for vehicle repair and restoration for ten years has been demonstrated.
- 5.4 Notwithstanding the comments of the Highway Authority, the merits of the development in this location are not relevant and the Council could not refuse to grant a certificate on grounds of highway safety.
- 5.5 It is concluded that the evidence demonstrates, on the balance of probability, that the application premises has been used for the commercial repair and restoration of vehicles with associated parking for at least ten years. The building is therefore immune from enforcement action due to the passage of time and the Lawful Development Certificate should be granted.

6.0 RECOMMENDATION

- 6.1 That the certificate is **GRANTED** for the following reason:
 - 1. It is concluded on the basis of the available evidence, and on the balance of probability, that the land edged red on the location plan and the plan attached to the Statutory Declaration of John March and also edged blue on the plan attached to the Statutory Declaration of David Bainbridge has been used for the commercial repair and restoration of vehicles in breach of planning control for at least ten years and it is therefore now lawful for that use to continue.