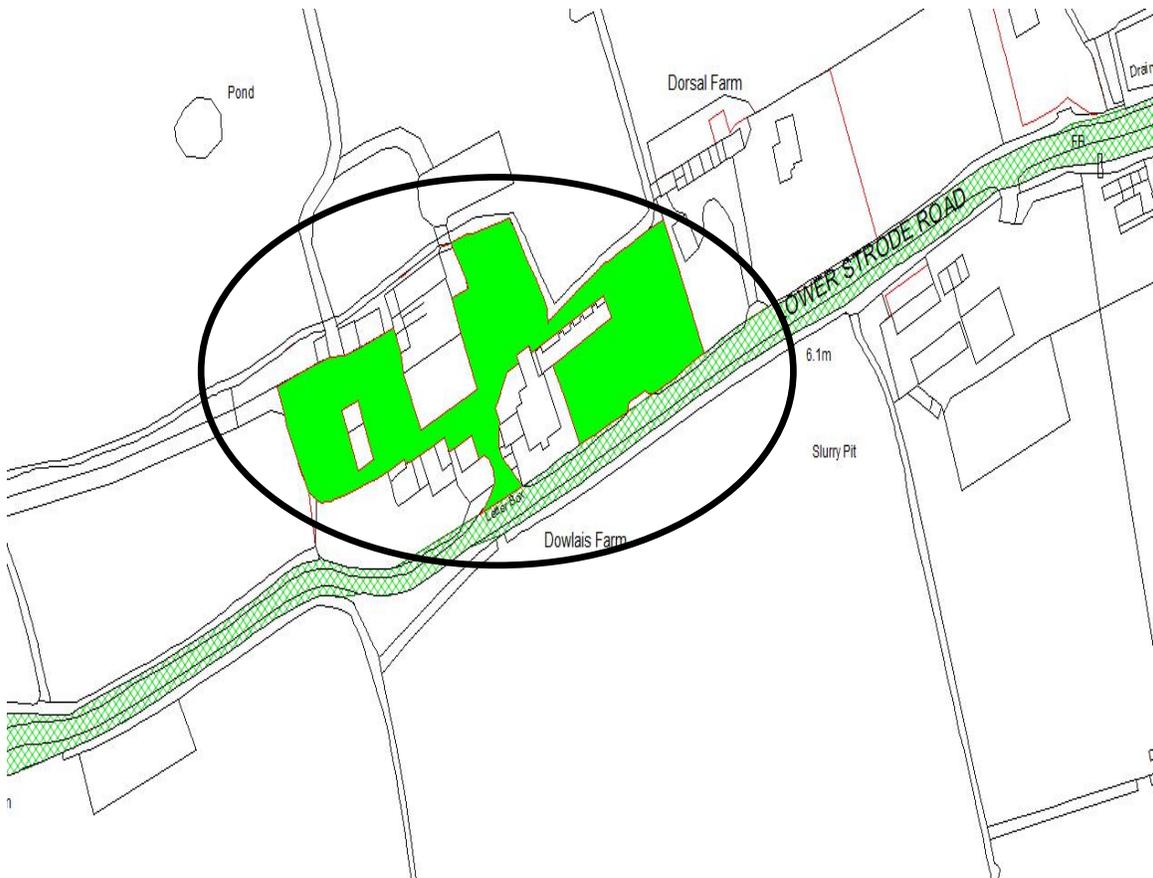


Planning and Regulatory Committee 12.04.17

SECTION 2

<b>APPLICATION NO:</b> 17/P/0356/LDE	<b>CASE OFFICER:</b> Scott Britnell
<b>APPLICANT:</b> North Somerset Council	
<b>PARISH/WARD:</b> Clevedon/Clevedon Yeo <b>WARD COUNCILLOR(S):</b> Councillor Mrs E Blades	<b>TARGET DATE:</b> 31 March 2017
<b>SITE ADDRESS:</b> Dowlais Farm, Lower Strode Road, Clevedon, BS21 6UU	

LOCATION PLAN: The following plan shows the general location of the site only and is for illustrative purposes. The circle identifies the location of the site and is not a representation of the site boundaries. The site boundaries and other details submitted with the application can be viewed on the council's website at [www.n-somerset.gov.uk](http://www.n-somerset.gov.uk). This map is based upon Ordnance Survey material with the permission of Ordnance Survey on behalf of the controller of Her Majesty's Stationery Office © Crown copyright and database rights 2016 Ordnance Survey 100023397. You are not permitted to copy, sub-license, distribute or sell any of this data to third parties in any form



**SECTION 2**

- 8. Section 2 17/P/0356/LDE Application for certificate of lawfulness for existing use of land for commercial storage of caravans and motor homes at Dowlais Farm, Lower Strode Road, Clevedon, BS21 6UU**

**COUNCIL APPLICATION**

**Summary of recommendation**

A certificate should be granted for the “existing use of land for the commercial storage of caravans and motor homes”

**The Site**

The application site comprises a number of outbuildings and areas of hardstanding at Dowlais Farm situated on the north side of Lower Strode Road, Clevedon. Dowlais Farm is owned by North Somerset Council and has been let since 1984 to tenant farmers.

**The Application**

The application dated 3 February 2017 is for a Lawful Development Certificate for an Existing Use, Operation or Activity for an existing use of the land for the commercial storage of caravans and motor homes. The application says the use began 10 years before the date of the application.

The application has been submitted as part of establishing the historic use of the site before taking the property to the market for sale.

**The Evidence**

Drawings submitted with the application identify areas of the site where it is claimed that caravan and motor home storage has taken place.

Documents have been submitted by the applicant in support of their application. These have been submitted to show that for a period of no less than 10 years prior to the submission of the application, the site has been used continuously for the purposes of commercial caravan and motor home storage. The documents are summarised as follows:

- A letter from the occupants of Dowlais Farm dated 6 January 2017 stating that the land has been used for the purpose described above without interruption for over 10 years preceding that date.
- Copies of payment records for the period 2004 to 2012 for customers for the storage of caravans and motorhomes at the site.

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- Copies of representative invoices for the period May 2011 to October 2016.
- Images of aerial photography showing the application site in use for the storage of caravans and motor homes in 2005, 2009, 2013, 2014, 2015, and 2016.
- Photographs of the site taken on 21 October 2016 by the agent acting for the applicants.

**Relevant Planning History**

There is no relevant planning history.

**Law and Procedure**

Section 191 of the Town and Country Planning Act allows for any person to ascertain whether a use is lawful by making an application to the local planning authority identifying the land and describing the use, or other development. Uses and operational developments are lawful at any time if –

- (a) no enforcement action may be taken in respect of them (e.g.: because they did not involve development or require planning permission or because the time for enforcement action has expired); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Section 191(4) states:

“If, on an application under this section the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.”

The burden of proof in these applications is on the applicant and the relevant legal test is on the ‘balance of probabilities’. However, if there is no evidence that the local planning authority have of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided the applicant’s evidence is sufficiently precise and unambiguous to justify the grant of a certificate.

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National guidance

The NPPG provides additional guidance. This makes clear that other planning policies and advice are not relevant when considering applications for Certificates of Lawful Use.

NPPG advice is that if the local planning authority is satisfied that the appropriate legal tests have been met, it must grant a lawful development certificate. Where an application has been made under s191, the statement in a lawful development certificate of what is lawful relates only to the state of the land at the date of the application.

Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force. The granting of a certificate does not remove the need to comply with other legal requirements such as The Building Regulations.

An application needs to precisely describe what is being applied for (not simply the use class) and the land to which the application relates. Without sufficient or precise information, a local planning authority may be justified in refusing the certificate. This does not preclude another application being submitted later on, if more information can be produced.

The applicant is responsible for providing sufficient information to support an application, although a local authority always needs to cooperate with an applicant who is seeking information that the local authority may hold about the planning status of the land. A local planning authority is entitled to canvas evidence if it so wishes before determining an application. If a local planning authority obtains evidence, this needs to be shared with the applicant who needs to have the opportunity to comment on it and possibly produce counter evidence.

If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than 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'.

A local planning authority needs to consider whether on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

A local planning authority may choose to issue a lawful development certificate for a different description from that applied for, as an alternative to refusing a certificate altogether. It is however, advisable to seek the applicant's agreement to any amendment before issuing the certificate. A refusal is not necessary

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conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

**Consultations**

**Clevedon Town Council** – “No objections”.

**Assessment of the evidence**

The consideration of applications for Lawful Development Certificates is a legal determination based on the submitted evidence. The assessment of the evidence and the application of the relevant legal requirements are addressed as follows:

1. Does the use, operation or other matter involve development or require planning permission?  
S55 of the Town and Country Planning Act defines “development”. The lawful use of the land was agriculture. The commercial storage of caravans and motorhomes is a material change of use of the land for which planning permission is required.
  
2. Are there any extant enforcement notices and if so, does the use, operation or other matter contravene any requirement of that/those enforcement notices?  
  
There are no extant enforcement notices on the site which prevent the use for the storage of caravans and motorhomes.
  
3. When did the material change in use/operational development in breach of planning control occur?  
The submitted evidence suggests the material change of use occurred no later than 2004.
  
4. What is the relevant time for taking enforcement action (4 or 10 years)?  
The time limits determining when a use is immune from enforcement action are set out in on 171B of the Act and are:
  - (1) where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
  - (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

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- (3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The time limit for taking enforcement action in this case is therefore 10 years.

5. What is the date of the application and has the time for taking enforcement action expired?

The date of the application is 3 February 2017 and therefore the relevant start of the claimed 10 year period is 3 February 2007.

**Analysis and conclusions**

The applicant claims that the area edged red on the submitted drawing has continuously been used for the commercial storage of caravans and motorhomes for a continuous period of 10 years.

The evidence provided by the applicant is considered clear and unambiguous. It demonstrates through the use of aerial photography, contemporaneous business records and a letter from the occupants of the site that its use for the purpose applied for has been continuous for at least 10 years.

A review of the Council's records (aerial photography and planning enforcement records) has not found any evidence to contradict that provided by the applicant in this case and there is no good reason why the certificate of lawfulness should not be issued.

The council therefore has no conflicting evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable. The applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate 'on the balance of probability.

**RECOMMENDATION:** The application be **GRANTED** for the "existing use of land for commercial storage of caravans and motor homes".