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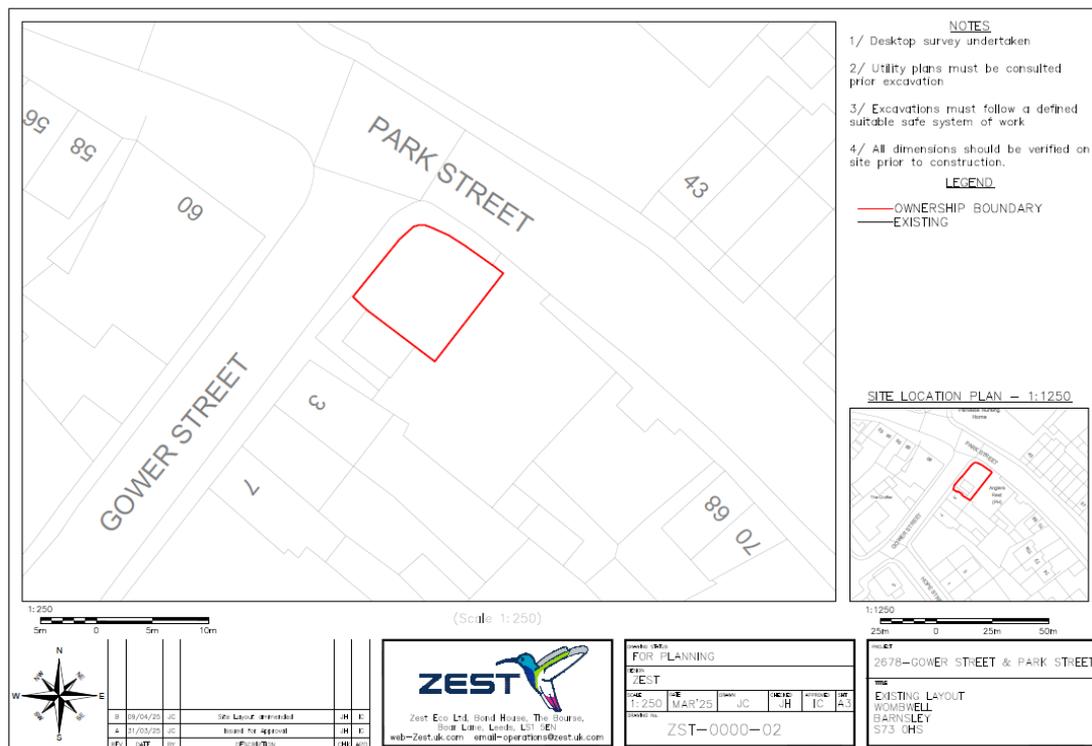
Applicant: c/o Matthew Stimpson at Zest

Development: Certificate of Lawfulness for land used for the parking of motor vehicles (Existing)

Address: Existing parking area accessed from Park Street, Wombwell, Barnsley

Site Description

The site is located on the corner of Park Street and Gower Street in Wombwell, Barnsley. The site is an area of hard standing that is currently used as a parking area. The site is directly adjacent to the car park associated with the Anglers Rest public house to the east and appears to be an extension of this car park. There is an existing substation located adjacent to the southern boundary.



Proposed Development

There are 2 types of lawful development certificate. A local planning authority can grant a certificate confirming that:

- (a) an existing use of land, or some operational development, or some activity being carried out in breach of a planning condition, is lawful for planning purposes under section 191 of the Town and Country Planning Act 1990 or;
- (b) a proposed use of buildings or other land, or some operations proposed to be carried out in, on, over or under land, would be lawful for planning purposes under section 192 of the Town and Country Planning Act 1990.

This application is for a certificate of lawfulness to regularise the use of this land as a parking area under Section 191 of the Town and Country Planning Act 1990. Section 191 determines that if any person wishes to establish whether any existing use of land is lawful, may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.

Section 191 then provides that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful, they shall issue a certificate to that effect; and in any other case shall refuse the application.

The applicant has submitted the following photographs and plan in support of their LDC application:

ZST-0000-02 Existing Layout
ZST-2678-NO1 Planning Statement
Street View 2009
Street View 2011
Street View 2018
Street View 2019
Street View 2021

The street view photographs show the site being used as a car park between 2009 and 2021.

History

None

Policy Context

Section 191 of the Town and Country Planning Act 1990: Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether—

- (a) any existing use of buildings or other land is lawful;
 - (b) any operations which have been carried out in, on, over or under land are lawful; or
 - (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
- he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations, or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

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

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—

- (a) the time for applying for an order under section 171BA(1) (a “planning enforcement order”) in relation to the matter has not expired,
- (b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
- (c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) 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.

(5) A certificate under this section shall—

- (a) specify the land to which it relates;
- (b) describe the use, operations, or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations, or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations, or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission—

- (a) section 3(3) of the Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;
- (b) section 5(2) of the Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the Environmental Protection Act 1990.

Consultations

Highways – No objections subject to conditions

Legal – No comments received.

Assessment

The area of land is adjacent to the Anglers’ Rest public house, and it is evident from historic images on Google Streetview that the site has been used informally for parking for more than 10 years. It has been noted that the site already benefits from a lowered kerb.

The Council’s Traffic department were consulted to ascertain if any complaints have been received regarding the use of the site and its proximity to nearby junctions. It was concluded that there is no history/ evidence of any traffic issues arising from the use.

The evidence has been assessed, and it is clear from the historical photographs that this site has been used as a car park since 2009.

Given the above, the scheme is acceptable from the perspective of highway safety and the existing use of the land has been established for at least the last 15 years therefore the lawful development certificate should be granted.

Recommendation

Approved subject to condition