

**RYEDALE DISTRICT COUNCIL
PLANNING COMMITTEE**

SCHEDULE OF ITEMS TO BE DETERMINED BY THE COMMITTEE

PLANS WILL BE AVAILABLE FOR INSPECTION 30 MINUTES BEFORE THE MEETING

Item Number: 6
Application No: 17/01522/CLEUD
Parish: Thornton-le-Dale Parish Council
Appn. Type: Cert Lawful exist use or develop
Applicant: Mr Martin Sanderson
Proposal: Certificate of Lawfulness in respect of the building works for erection of a field shelter for horses, siting of a container for storage of hay and formation of a gated vehicular access to Thornton Lane were substantially completed more than four years before the date of this application
Location: Land On West Side Of Thornton Lane Thornton-Le-Dale Pickering North Yorkshire

Registration Date: 18 December 2017
8/13 Wk Expiry Date: 12 February 2018
Overall Expiry Date: 7 February 2018
Case Officer: Anthony Winship **Ext:** 267

CONSULTATIONS:

Parish Council No objection

Neighbour responses:

INTRODUCTION:

The applicant in this case, is Mr Martin Sanderson .

This is an application for a Certificate of Lawful Use or Development, for operational development and existing use in respect of :

- (i) the construction of a field shelter for horses ;
- (ii) formation of a gated vehicular access to Thornton Lane;
- (iii) siting of a container for storage of hay.

SITE:

The application site is on land on the West Side Of Thornton Lane Thornton-Le-Dale Pickering North Yorkshire.

The site is located outside the defined development limits for Thornton-Le-Dale . Accordingly for the purposes of the adopted Development Plan, the site is within the open countryside.

PLANNING COMMITTEE

10 April 2018

BACKGROUND :

Section 191 of the Town & Country Planning Act 1990 provides for anyone to apply to the Local Planning Authority for a Lawful Development Certificate (LDC). A Certificate is a statutory document certifying in the case of an application under Section 191, the lawfulness of existing operations on, or use of land.

Development or other activity on land is lawful for planning purposes if it is within one of a number of categories including:-

1. "the time for taking enforcement action has expired"

TIME LIMITATION PERIODS FOR TAKING ENFORCEMENT ACTION:

The time limits for taking enforcement action in respect of a breach of planning control are specified in section 171 B of the Town and Country Planning Act 1990 as follows :-

- (i) For operational development, the period of four years from the date operations were substantially completed - section 171 B (1);
- (ii) For change of use of any building to use as a single dwelling house, the period of four years beginning with the date of breach - section 171 B (2);
- (iii) In the case of any other breach of planning control, the period of ten years beginning with the date of breach - section 171 B (3).

HISTORY:

There is no planning history for the site.

APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE

A Certificate of Lawfulness is sought in respect of :

- (i) the construction of a field shelter for horses ;
- (ii) formation of a gated vehicular access to Thornton Lane;
- (iii) siting of a container for storage of hay.

SUMMARY OF PRINCIPAL PLANNING ISSUES

The key questions are :

- (a) Whether or not there has been operational development in (i) and (ii) above ;
- (b) If so whether or not the operational development in (i) and (ii) above is lawful;
- (c) Whether or not the siting of the container for the storage of hay is lawful.

The main issues which require consideration to assess these questions are :

- (1) Has there been operational development ?
- (2) If so when the operational development was commenced and substantially completed ;
- (3) The period of time in which the siting of the container for the storage of hay has taken place .

The relevant time periods are as follows ;

- (i) For the operational development it is four years from the date operations were substantially completed;
- (ii) For the change of use it is ten years prior to the date of the application on 18 December 2017.

The implications of and interaction between the different time periods outlined above may be summarised briefly . If no enforcement notice is served, the operational development will become immune from enforcement action 4 years after it was substantially completed, but any change of use of the land (e.g. from agriculture to an equestrian use - "horsiculture") will become immune from enforcement only after 10 years of continuous use for that purpose following the change of use.

Accordingly when operational development becomes immune from enforcement under the 4-year rule, the use of the building and of the land on which it stands does not thereby become lawful, and will still be governed by the 10-year rule.

THE NATIONAL PLANNING PRACTICE GUIDANCE - LAWFUL DEVELOPMENT CERTIFICATES

The National Planning Practice Guidance(NPPG) provides guidance on planning matters including Lawful development certificates. In answer to the question "who is responsible for providing sufficient information to support an application?" the guidance states that :

"The applicant is responsible for providing sufficient information to support an application"

Accordingly the onus of proof in an application for a Lawful Development Certificate is firmly on the applicant. The standard of proof defines the degree of persuasiveness which the evidence in support of an applicant, must attain before a certificate can be granted. The relevant standard of proof in this application is "the balance of probability". This simply means that the applicant must prove that in this case, it is more likely than not to be true.

The NPPG also states that :

In the case of applications for existing use, 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.

The NPPG also provides guidance on what a lawful development certificate must include if it is granted . The guidance is referred to below under the heading "Limitations."

EVIDENCE SUPPLIED BY THE APPLICANT IN SUPPORT OF THE APPLICATION

Evidence has been supplied by Martin Sanderson and Janet Sanderson .

From this evidence the following key facts appear on the balance of probabilities to have been established :

- (i) Martin Sanderson and Janet Sanderson purchased the application site and adjoining land in

- 1996;
- (ii) A container was put on the application site to store hay in 1998 ;
 - (iii) A field shelter was built on the application site in 1999;
 - (iv) Young horses were accommodated in the field shelter which were bought unbroken and trained ;
 - (v) The applications site was in continual use from 1999 - 2006 for the grazing and stabling of between one and three horses ;
 - (vi) In 2006 the application site was used by Sarah and David Walker for the grazing and stabling of horses;
 - (vii) In 2011 the application site was used by Carol Ellis for the grazing and stabling of horses;
 - (viii) The entrance to the field from the road in the digital image was in existence when the applicant bought the field in 1996.
 - (ix) The original gate was wooden which had rotted over the years, which the applicants replaced with a metal one of the same length in 2011 at the same time of a change of tenant.
 - (x) The field was vacated in 2017 ready for sale.

OTHER CONSULTEE RESPONSES:

The Parish Council has no objection .
The local Highway Authority has no objection.

APPRAISAL:

To further clarify the nature of this type of application, this is a certificate of lawful use application and for the avoidance of doubt, the planning merits of the use, works or operations referred to in this application for a certificate of lawfulness are not relevant, and are not therefore an issue to consider in the context of this application.

The decision is based on the 'balance of probability' and rests on the evidence submitted, the facts of the case, and on relevant planning law and takes account of the facts presented both in support of the application and against but is not assessed in relation to its principle, location, design or compliance with current planning policies.

According to the applicant, the following development has taken place on the land comprising the application site :

- (i) the construction of a field shelter for horses ;
- (ii) formation of a gated vehicular access to Thornton Lane;
- (iii) siting of a container for storage of hay.

Against this background the position on the principal planning issues identified above may be summarised as follows :

- (1) Whether the field shelter and the access to the highway constitutes "development"

Section 55(1) of the Act provides that

"Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land".

Section 55 (1A) adds -

"For the purposes of this Act "building operations" includes -

- a) demolition of buildings
- b) rebuilding
- c) structural alterations to buildings
- d) other operations normally undertaken by a person carrying on a business as a builder"

A building is defined in Section 336(1) of the 1990 Act as -

"Any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building."

Clarification has been sought from the applicant on the nature of the construction of the field shelter. One side of the wooden shelter appears to be on a base of breeze blocks with two brick layers above the blocks at one end. The wooden shelter does not appear to be moveable and appears to be a building.

The formation, layout and construction of a road access to is considered to be engineering works.

Therefore the field shelter and the access constitutes development under the 1990 Act.

- (2) If so when the operational development was commenced and substantially completed ;
 - (i) A container was put on the application site to store hay in 1998 ;
 - (ii) A field shelter was built on the application site in 1999;
 - (iii) The entrance to the field from the road in the digital image was in existence when the applicant bought the field in 1996.
 - (iv) The application site has been used for the keeping of horses for equestrian use comprising the keeping of up to three horses for personal use (including the letting of land for that purpose) for more than ten years prior to the date of application on 18 December 2017.
- (3) The period of time in which the siting of the container for the storage of hay has taken place .
 - (i) The application site has been used for the keeping of horses for equestrian use comprising the keeping of up to three horses for personal use for more than ten years ;
 - (ii) For that time the container has been used for the storage of hay in connection with the equestrian use comprising the keeping of up to three horses for personal use (including the letting of land for that purpose).

The evidence presented on behalf of the applicant appears to prove "on the balance of probability" that it appears that the above development has taken place.

It should be noted that the description of the lawful use recommended in this report for inclusion in the certificate of lawfulness is different to the description in the application. The recommended lawful use specifies equestrian use comprising the keeping of up to three horses for personal use (including the letting of land for that purpose) whereas the application does not specify equestrian use. The evidence before the District Council supports the conclusion that the lawful use should specify equestrian use comprising the keeping of up to three horses for personal use. The District Council has a legal power to modify the description of the lawful use under section 191 (4) of the Town and Country Planning Act 1990 as amended. It is recommended that the description of the lawful use is so modified to be

consistent with the evidence.

CONCLUSION

It would therefore appear that the evidence provided by the applicant, in support of the application, is, in the absence of any contradictory evidence, sufficient to prove on the balance of probability, that the following development has taken place on the land comprising the application site :

- (i) the construction of a field shelter for horses ;
- (ii) formation of a gated vehicular access to Thornton Lane;
- (iii) siting of a container for storage of hay.
- (iv) Equestrian use comprising the keeping of up to three horses for personal use (including the letting of land for that purpose) .

and that the lawful use has neither been lost, nor abandoned.

The applicant's evidence is therefore considered to be sufficiently precise and unambiguous to allow the granting of a certificate for the following lawful development :

- (i) the construction of a field shelter for horses ;
- (ii) formation of a gated vehicular access to Thornton Lane;
- (iii) siting of a container for storage of hay.
- (iv) Equestrian use comprising the keeping of up to three horses for personal use (including the letting of land for that purpose) .

RECOMMENDATION: **Approval**