

Item Number: 15
Application No: 19/00735/CLEUD
Parish: Kirkbymoorside Town Council
Appn. Type: Cert Lawful exist use or develop
Applicant: D E & R A Cussons (Mr Richard Cussons)
Proposal: Certificate of Lawfulness in respect of the works to install the 121 kw biomass boiler and external flue subject of this application within the building as shown in red on the submitted site location plan were substantially completed more than four years before the date of this application
Location: High Hagg Farm Hagg Road Kirkbymoorside North Yorkshire YO62 7JF
Registration Date: 27 June 2019
8/13 Wk Expiry Date: 22 August 2019
Overall Expiry Date: 31 July 2019
Case Officer: Alan Goforth **Ext:** Ext 43332

CONSULTATIONS:

Kirkbymoorside Town Council No comment

Neighbour responses: No response received

BACKGROUND

The applicant is related to an elected Member of the Council and as a result the application is outside of the Council's Scheme of Delegation and is reported to Planning Committee for determination.

SITE:

The farm is located approximately 2km north-west of Kirkbymoorside. Access is gained off Hagg Road to the south.

HISTORY:

06/00242/FUL- Change of use, alteration and extension of agricultural buildings to form 2 no. two bed and 1 no. one bed holiday cottages, 2 no. holiday letting rooms, reception/office and 1 no. three bed owners dwelling with associated parking areas. APPROVED 10.05.2006.

PROPOSAL:

A certificate of lawfulness is sought in respect of works to install the 121kw biomass boiler and external flue within the building shown in red on the submitted site location plan.

The application is made on the basis that the building works were substantially completed more than four years before the date of this application.

The applicant states that the building works (installation of biomass boiler and external flue within existing agricultural building) were substantially completed on 7 April 2015. The biomass boiler provides heat to the farm house and the holiday cottages.

The applicant seeks to ascertain that the existing biomass boiler and external flue is lawful for planning purposes under Section 191 of the Act. The applicant requires the certificate to comply with Ofgem Renewable Heat Incentive (RHI) requirements.

POLICIES:

Planning policies contained in the Ryedale Local Plan (2013) and other material considerations such as impact on residential and visual amenity are not applicable in this case as the assessment of whether to grant a certificate of lawfulness is dependent on the facts of the case and relevant planning law.

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).

National Planning Practice Guidance (NPPG) - 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.

APPRAISAL:

To clarify the nature of this type of application, this is a certificate of lawful development application and for the avoidance of doubt, the planning merits of the development 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, environmental impact or compliance with current planning policies.

The applicant states that the current boiler, which was installed over 4 years ago, was a replacement for a boiler than had been installed approximately 10 years ago. The application is accompanied by invoices from April and May 2015 and dated photographs from the same period showing the

installation of the boiler. The application is also accompanied by an emissions certificate dated 30 March 2015.

The Local Planning Authority has no specific evidence of its own, there has been no response to the site notice and the Town Council have confirmed that they have no comments to make on the application.

It is considered that the substance of the information submitted, demonstrates that the operational development comprising the installation of a biomass boiler and external flue within existing agricultural building was substantially completed in excess of 4 years before the date of this application.

The evidence is significant and on the balance of probabilities more likely to be true than not. It is therefore considered that the identified operational development comprising the installation of a biomass boiler and external flue within the existing agricultural building is lawful.

Conclusion

Having reviewed and carefully considered all the available evidence, and, in the absence of any contradictory evidence, it is concluded that on the balance of probabilities there has been a breach of planning control in relation to the biomass boiler and external flue for the identified period of more than four years.

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

RECOMMENDATION: Approval

Reason: On the balance of probabilities, after carefully considering all the available evidence, the Local Planning Authority is satisfied that the operational development comprising the installation of a biomass boiler and external flue within the existing agricultural building was substantially completed in excess of 4 years before the date of this application.