

**Item Number:** 7  
**Application No:** 22/00421/CLEUD  
**Parish:** Brawby Parish Meeting  
**Appn. Type:** Cert Lawful exist use or develop  
**Applicant:** Mr S Thackray  
**Proposal:** Certificate of Lawfulness in respect of the building works were substantially completed more than four years before the date of this application and the use of the building as identified on Fusion 13 Drawing No. 001 dated Feb 2022 for a range of activities to include storage of the "shed door", cabaret (shed) tables and sound and lighting equipment used by The Shed venue, performance venue, recording/radio broadcast studio, workshop for the carving and skinning of African drums for dance teacher/choreographer and drummer and storage of chairs and other furniture for the applicants property rental business for a period greater than 10 years before the date of this application  
**Location:** Land at Moor Lane Moor Lane Brawby Malton North Yorkshire

**Registration Date:** 25 April 2022  
**8/13 Wk Expiry Date:** 20 June 2022  
**Overall Expiry Date:** 13 June 2022  
**Case Officer:** Alan Goforth **Ext:** 43332

#### CONSULTATIONS:

**Brawby Parish Meeting** No response received

#### Representations:

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#### BACKGROUND:

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

The application seeks a Lawful Development Certificate (LDC) which is a legal document stating the lawfulness of past, present or future building use, operations, or other matters. If granted by the Local Planning Authority (LPA), the certificate signifies that enforcement action cannot be carried out against the development referred to in the certificate.

#### SITE:

The application site is within the village of Brawby. The building the subject of this application is a detached building situated to the front (west) of Sweet Pea Cottage (under the applicant's ownership). Moor Lane is to the west of the site and Chapel Yard to the north.

The building, known as 'The Stage', is situated within the domestic curtilage of Sweetpea Cottage and within the same planning unit as the main house. The building is of steel frame construction with a rectangular footprint measuring 11.23 metres in length by 6.06 metres in width. The building is single storey with a monopitched roof standing to a height of approximately 3.9 metres above ground level at its highest point.

## **PROPOSAL:**

A certificate of lawfulness is sought in respect of building works substantially completed more than four years before the date of this application and the use of the building as identified on Fusion 13 Drawing No. 001 dated Feb 2022 for a range of activities to include storage of the "shed door", cabaret (shed) tables and sound and lighting equipment used by The Shed venue, performance venue, recording/radio broadcast studio, workshop for the carving and skinning of African drums for dance teacher/choreographer and drummer and storage of chairs and other furniture for the applicants property rental business for a period greater than 10 years before the date of this application.

## **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 ('the Act') 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 of the Act, the lawfulness of existing operations on, or use of land.

Section 191 of the Act 'Certificate of lawfulness of existing use or development' states:-

*"(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".*

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"

The time limits for taking enforcement action in respect of a breach of planning control are specified in Section 171 B of the Act 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).

2. “Did not involve development requiring planning permission”

Section 55(2) (d) of the Act states:

*“The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land:*

*(d) The use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such”.*

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.

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."*

There is no statutory requirement to consult third parties including parish councils or neighbours.

**APPRAISAL:**

To further clarify the above and for the avoidance of doubt, since this is an application for a certificate of lawfulness, 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, environmental impact or compliance with current planning policies.

If the Local Planning Authority has no evidence of their own, or 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 relevant test on considering such claims is the 'balance of probability' and the burden of proof lies with the applicant and not with the Local Planning Authority. As such, should a case be more likely to be true than less likely to be true it should meet 'the balance of probability' test. Furthermore, should the Local Planning Authority have no evidence to counter the applicant's assertions it should accept the applicant's case.

The application is made on the basis that the building (operational development) was substantially completed more than four years before the date of this application and the use of the building for the purposes described in the application description has been for a period greater than 10 years before the date of this application.

A statement detailing the site history has been submitted as part of the application. In summary, the document includes the following information:-

- The building was erected by J. Thackray & Sons (Steel Structures) Limited in April/May 2001.
- The building has been/is a performing arts venue used by 'The Shed' hosting various performers and acts since 2001 as shown by a number of photos contained within the submission.
- Part of the building has been/is used for storage of chairs and other furniture for the applicant's property business in addition to storage of equipment used by 'The Shed' including lighting rigs, cabaret tables and sound and bar equipment.
- Part of the building has been/is used as a recording studio, office and workshop for the applicant.

This application for a certificate of lawfulness has two parts: (1) the operational development (erection of the building) and (2) the use of the building.

Firstly, the building known as 'The Stage' is stated to have been erected by J. Thackray & Sons (Steel Structures) Limited in April/May 2001. The building is shown in photographs provided by the applicant relating to 'The Shed' events dating back to 2001. It is also shown in a photograph from the applicant's wedding party in 2001.

Furthermore, whilst not wholly conclusive evidence in its own right, it is relevant to note that a building of this size in the current position appears in Google Earth satellite imagery/aerial photos dating back to 2002. The building is also shown on Google Earth satellite imagery/aerial photos from 2007, 2015, 2018 and 2020.

To conclude in respect of this aspect of the application, it is considered that, on the balance of probability, the information submitted is compelling and undisputed and sufficiently proves that the operational development comprising the construction of the building known as 'The Stage' was substantially completed in excess of 4 years before the date of this application.

The second part of the application relates to the use of the building known as 'The Stage'.

The use of the building can be summarised as a performing arts venue and studio, storage space and workshop.

The various uses listed within the application description amount to a sui generis use (not falling within any particular use class) but also include uses which could be regarded as being incidental to the enjoyment of a dwellinghouse (Sweet Pea Cottage).

Firstly, it is apparent from the evidence provided and the evidence available to the LPA that the building has a long running use associated with performing arts. There is evidence of various events and gigs by artists, musicians and poets held at the building over a period of time exceeding 10 years. Furthermore there is no evidence that the use of the building as a performing arts venue (with ancillary storage space for associated paraphernalia) has been abandoned or supplanted by some further change of use.

It is considered that, on the balance of probability, the information submitted is compelling and undisputed and sufficiently proves that the use of the building known as 'The Stage' as a performing arts venue and associated storage for a period greater than 10 years before the date of this application.

With regard to the other uses encompassed by the application description it should be noted that purposes incidental to the enjoyment of a dwellinghouse have been held to include those connected with the running of the dwellinghouse or with domestic and leisure/hobby activities of its occupants.

Taking account of the circumstances of this particular case and the site context it is reasonable to conclude that there are elements of the use comprising the storage of domestic furniture and other paraphernalia and the studio and hobby workshop which can be deemed to be for purposes incidental to

the enjoyment of the dwellinghouse. As a result those elements of the use are lawful on the basis that planning permission is not required by virtue of Section 55(2)(d) of the Act (set out earlier in this report) and no enforcement action can be taken in respect of it (see Section 191(2)(a) of the Act set out earlier in this report).

### Conclusion

The Local Planning Authority has no specific evidence of its own to contradict any of the applicant's evidence and there has been no responses to either the site notice or the notification to local residents nor any comments made by the Parish Council.

Having reviewed and carefully considered all the available evidence, and, in the absence of any contradictory evidence, it is considered that on the balance of probabilities the lawfulness of the building and its use can be confirmed. It is therefore concluded that the identified operational development comprising the erection of the building for the identified period of more than four years and its identified use for the purposes described above (performing arts venue with ancillary storage space for associated paraphernalia) for the identified period of more than 10 years are lawful.

The elements of the use deemed to be incidental to the enjoyment of the dwellinghouse (storage of domestic paraphernalia; studio; and hobby workshop) are lawful on the basis that planning permission is not required and no enforcement action can be taken in respect of it.

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

### **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 existing building was substantially completed in excess of 4 years before the date of this application. In addition the Local Planning Authority is satisfied that the building has been used as performing arts venue with ancillary storage space for associated paraphernalia for the identified period of more than 10 years before the date of this application. The remaining elements of the use have been deemed to be incidental to the enjoyment of the dwellinghouse (storage of domestic paraphernalia; studio; and hobby workshop) and therefore lawful on the basis that planning permission is not required and no enforcement action can be taken in respect of it.

### **Notes**

- (1) In granting this lawful development certificate no permission is given for the use of the building for any commercial/industrial workshop purposes. The workshop use is strictly limited to hobby/leisure use incidental to the enjoyment of the dwellinghouse.
- (2) An LDC is not a replacement for planning permission. Planning permission must still be acquired separately for any development or use which is not covered by an LDC.

