

# SUPPORTING STATEMENT

Ryedale district council

## Certificate of Existing Lawful Use

At: High Mitten Cottage,

Low Hawsker

NYMNP/PA

22/02/2021

Cheryl **Ward**  
Planning

**For: Mr I Davies**  
**At: High Mitten Cottage, Low Hawsker**

Cheryl Ward Planning  
MSc MRTPI

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### Table of revisions

Rev/version no.	Date	Amendment details	Revision prepared by

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## 1.0 Introduction

- 1.1 Acting on behalf of the applicant Cheryl Ward Planning has been instructed to submit an application for a Certificate of Existing Lawful Use Development (CLEUD) with respect to the non-compliance of a planning condition restricting the aforementioned unit in ownership and holiday letting or annexe purposes for members of the family of the main dwelling. The site is outlined in red on the attached location plan at High Mitten Hill Farm, Low Hawsker.
- 1.2 The application is supported with evidence to show that the owner/occupier has not occupied the dwelling in compliance with Condition 01 of planning permission NYM/2009/0334/FL for a period in excess of 4 years before the date of the application.
- 1.3 The Statement demonstrates that there is a breach of planning control and therefore makes the applicant immune from enforcement action and on these grounds a lawful development certificate should be granted.
- 1.4 The application is submitted with the necessary supporting evidence confirming what has taken place and when to prove unfettered occupation has taken place without complying with the relevant condition.
- 1.5 This Statement is prepared by Cheryl Ward Planning who holds an MSc in Town Planning and is a Chartered Member of the Royal Town Planning RTPI) and associated ICN and PERN networks.

## 2.0 Planning History

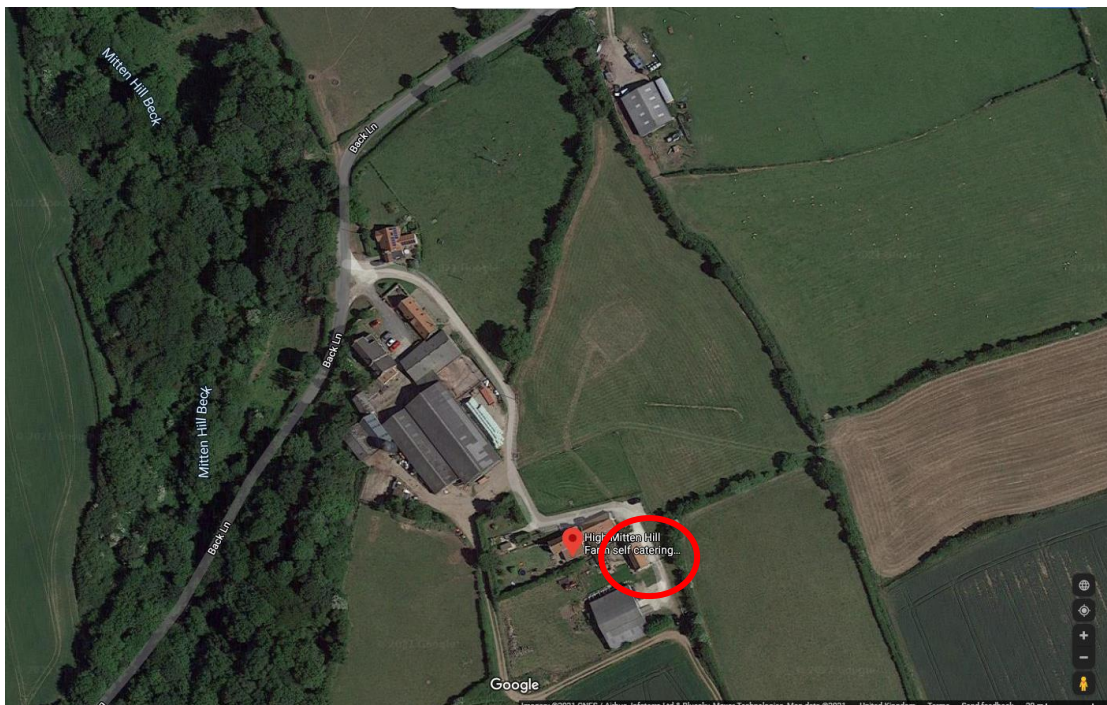
- 2.1 A search of the North York Moors National Park's online planning records has been undertaken and the following planning history is identified with the site.

**NYM2009/0334/FL** – Removal of condition 4 of planning permission NYM/2003/0848/FL to allow residential use at High Mitten Cottage, High Mitten Hill Farm, Low Hawsker - Approve.

**NYM/2003/848/FL** – Conversion of a farm building into a holiday cottage at High Mitten Hill Farm, Low Hawsker - Approve.

2.2 Condition 01 of planning approval NYM/2009/0334/FL confirms:

*“The dwelling unit hereby approved shall not be occupied as a separate independent dwelling unit and shall remain ancillary to the use of the main dwelling known as High Mitten Hill Farm and shall form and remain as part of the curtilage of this main dwelling as a single planning unit and shall only be used for members of the family of the occupier of the main dwelling or for holiday purposes. For the purpose of this condition “holiday letting” means the letting to the same person, group of persons or family for periods not exceeding a total of 28 days in any one calendar year.”*



**Fig 1. – Site location - High Mitten Cottage, Low Hawsker - Source:**  
<https://www.google.co.uk/maps/place/High+Mitten+Hill+Farm+self+catering+holiday+cottages/@54.4500764,-0.5823994,316m/data=!3m1!1e3!4m8!3m7!1s0x487f17cb80aa348f:0x565a8e86f9ecec51!5m2!4m1!1i2!8m2!3d54.4492473!4d-0.5809557> - for illustrative purposes only as at 17 Feb 2021.

## 3.0 The Site

### Site context and surroundings

- 3.1 High Mitten Cottage is a small, yet well-equipped cottage situated to the south east side of High Mitten Hill Farmhouse and holiday cottages. It is a detached property with its own vehicle access and parking. Wider access is shared across the site with High Mitten Hill, Mitten Hill Farm and Greenacre. The latter is under separate ownership.
- 3.2 The property lies in the open countryside, albeit that there are other properties around the site and the area known as High and Low Hawsker. The site vaguely runs parallel with Mitten Hill Beck to the west albeit on much higher ground. The risk of flooding is exceptionally low.
- 3.3 In a wider context the site is located within the NYM Moors National Park approximately 500 metres south of Hawsker village, 1.8 miles south of Whitby, 13.6 miles north west of Scarborough and is only a short distance from the east coast.
- 3.4 The site lies within easy reach of the NYM Moors and the wider east coast. The area is well linked to a network of rural roads, footpaths, bridleways and cycle paths. The site can be sustainably linked from one site to another with necessarily using a car although it is classed as being with the 'open countryside' from a planning perspective.
- 3.5 A Landscape Character Assessment of the North York Moors was published in 2003 (White, Young, Green) identified nine landscape character areas. The local landscape surrounding the application site is described as 'Coast and Coastal Hinterland'. It also falls on the moorland and the central valley.
- 3.6 The key characteristics of this landscape type can be described as a rolling coastal landscape, steeply incised valleys, winding becks, broad bays interspersed with an indented line of high, crumbling or tumbling cliffs. Elevated areas allow panoramic and long distance views.
- 3.7 It is an elevated site with far reaching views down to Whitby and is a place that contributes to a sense of calm and tranquillity, hence why it is a desirable place to live.
- 3.8 The topography that surrounds High Mitten Hill can be described as a patchwork of arable and grass fields separated with native hedgerows. Despite the name, Mitten Hill, the property lies on a fairly level footing and is well screened from view by buildings and the landscape topography.

## 4.0 Assessment – Supporting Evidence

- 4.1 High Mitten Cottage (the subject of this application) has been occupied by the applicant (Mr Ian Davies) for a period in excess of 4 + years.
- 4.2 Mr Davies moved into the cottage following completion of the conversion work and has lived there continuously since that time (March 2005) and is the sole owner of the property.
- 4.3 High Mitten Cottage is used as his sole residence without complying with Condition 01 (above) and lives completely separate and independently to High Mitten Hill Farm, the adjacent property.
- 4.4 The condition seeks to control the occupation of the unit in order that:
- a) it cannot be occupied as a separate independent dwelling, and
  - b) it shall remain as part of the curtilage of High Mitten Hill Farm (known as the main dwelling) as a single planning unit, and
  - c) it shall only be used for members of the family of the occupier of the main dwelling (High Mitten Hill Farm) or for holiday purposes.
- 4.5 Failure to comply with Points a – c above has taken place on all three points and the application has breached the condition and the reason for the condition.
- 4.6 The ‘Reason for Approval’ is non-binding although it confirms that *‘The barn has already been converted into living accommodation as it was considered to be suitable for conversion and worthy of retention. Consequently, it is considered that its use as either a family annexe or holiday accommodation would be in accordance with Development Policy 8 of the Local Development Framework’*.
- 4.7 Development Policy 8 is no longer relevant and is superseded as part of the recently adopted NYM Local Plan
- 4.8 The evidence that is relied upon for this Certificate of Existing Lawful use is taken in the main from the applicants utility bills, Scarborough and Whitby Constituency records, employment records and sworn statements which prove that High Mitten Cottage is occupied separately and independently to the adjacent High Mitten Hill Farm.
- 4.9 The owner, Mr I Davies (applicant) is seeking a Lawful Use Certificate to prove the case for a period in excess of 4 years.
- 4.10 The applicant does not work at High Mitten Hill Farm and for the last 25 years has worked for North Eastern Inshore Fisheries and Conservation Authority (NEIFCA). This is his sole and only employment.



- 4.11 Cheryl Ward Planning acts on behalf of Mrs I Davies to ascertains a Lawful Development Certificate to regularise the lawful occupation of the dwelling as a separate and independent residential dwelling unit in ownership and occupancy without a connection to the adjacent to High Mitten Hill Farm.

Summary of Evidence (all accounts are to be treated in strictest of confidence)

- 4.12 The evidence in support of the Lawful Development Certificate application comprises:

- BT Phone Bill – paid by NEIFCA – **Appendix A**
- Oil Bill – **Appendix B**
- DMC Letter of appointment/work contract – **Appendix C**
- Appointment of services letter – Patrick Cuddy – **Appendix D**
- Electricity bill (N Power) – **Appendix E**
- Home insurance (NFU) – **Appendix F**
- Polling cards for (Mr I Davies and partner) – **Appendix G**

- 4.13 All of the above provides a sample range of evidence (further information and genuine copies can be obtained on request if needed). The evidence confirms the applicants name and address and validity of various roles and appointments that have taken place over a period in excess of 4 years.

Other Supporting Documents

- 4.14 Copies of relevant documents:

- A copy of the original planning permission – NYM/2009/0334/FL - **Appendix 1**
- Sworn Statement by the applicant – Mr I Davies – **Appendix 2**
- Sworn Statement by Mr R Davies (occupier of the adjacent High Mitten Hill Farm) - **Appendix 3**

## 5.0 Analysis

- 5.1 The 1991 Act amended the 1990 Act by substituting new ss 191 to 194. Sub-section (1) of s 191 provides that if any person wishes to ascertain whether any existing use of buildings or other land is lawful; any operations which have been carried out in, on, over or under land are lawful; or 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 apply to the local planning authority specifying the land and describing the use, operations or other matter.
- 5.2 In this case the applicant wishes to prove the lawfulness of non-compliance with a planning condition restriction to the occupation of High Mitten Cottage as a separate independent dwelling unit severed from High Mitten Hill Farm for a period in excess of 4 years. The applicant acknowledges that the relevant test of proving the lawfulness of existing development rests with them.
- 5.3 The Courts have held that the applicant's own evidence does not need to be corroborated by 'independent' evidence in order to be accepted. In this case the applicant has provided evidence in a Statement to confirming that he has continuously owned and occupied the dwelling since March 2005 as per title deed NYK 140215 and NYK 284621 and has resided as a principal resident within the National Park in this time.
- 5.4 The available evidence provides a proportionate yet detailed account of the applicant's claim to a breach of a planning condition.

## 6.0 Conclusion

- 6.1 On the basis of the evidence included as part of the application, it is submitted that the breach of planning control, through the non-compliance with Condition 01 of planning permission NYM/2009/0334/FL has been substantially breached for more than 4 years before the date of this application. As such this identifies a proven breach is therefore immune from enforcement action.
- 6.2 It is therefore submitted that the available evidence clearly supports the applicants claim that High Mitten Cottage has been occupied completely and independently and continuously as a sole residence by the applicant.
- 6.3 The evidence before the LPA proves when the timing of occupation began (as a principal residence) and that ownership of the unit is independent to High Mitten Hill Farm.
- 6.4 The relevant test relating to the balance of probability is therefore satisfied and we would invite the Authority to approve the application for a Lawful Development Certificate with immediate effect.



Fig 2. – Mitten Hill Cottage, Low Hawsker



Fig 3. – Stone name plate in front wall of cottage.

# Cheryl Ward Planning

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