

## North York Moors National Park Authority

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Parish: Hawsker-Cum-Stainsacre

App No: NYM/2021/0113/CLE

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**Proposal:** certificate of lawfulness for the independent use of the dwelling unit in excess of four years and severing of ties from High Mitten Hill Farm in excess of ten years in breach of condition 1 of planning approval NYM/2009/0334/FL

**Location:** High Mitten Hill, Back Lane, Hawsker,

**Applicant:** Mr I Davies, High Mitten Hill Cottage, Hawsker, Whitby, YO22 4LW

**Agent:** Cheryl Ward Planning, 5 Valley View, Ampleforth, YO62 4DQ

**Date for Decision:** 19/04/2021

**Extended to:**

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### Director of Planning's Recommendation

That a Certificate of Lawfulness be GRANTED for the following reasons:

1. That the developments described in the First Schedule have been carried on for more than four years in respect of the use of the building and ten years in respect of the ties to High Mitten Hill Farm in breach of condition 1 of planning approval NYM/2009/0334/FL.

First Schedule - The use of the building edged red on the attached plan as a separate dwelling, occupied independently of High Mitten Hill Farm as described in the Second Schedule

Second Schedule – High Mitten Cottage, Hawsker, Whitby YO22 4LW

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## **Consultations**

**Parish – No objection**

**Site Notice/Advertisement Expiry Date – 6 April 2021**



**Image courtesy of agent**

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**Background**

Planning permission was originally granted in January 2004 (NYM/2003/0848/FL) for the conversion of a farm building at High Mitten Farm into a holiday cottage with a condition which restricted the use of the dwelling unit to holiday letting purposes only; however the applicant occupied the dwelling unit on a full-time basis upon its completion in 2005. Planning permission was subsequently granted in July 2009 (NYM/2009/0334/FL) for the removal of the holiday letting condition and this was replaced by a condition allowing the occupation of the dwelling either as ancillary accommodation to High Mitten Hill Farm for family members only or for holiday purposes as follows:

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.

This application seeks a Certificate of Existing Lawful Use Development (CLEUD) with respect to the non-compliance of the aforementioned condition which restricts the ownership and occupation of the cottage to holiday letting or annexe purposes for members of the family of the main dwelling (High Mitten Hill Farm) only. The application is supported by 4 sworn statements from the applicant, his son (who occupies High Mitten Hill Farm) and 2 other local residents which all confirm that the applicant has continuously resided at High Mitten Cottage, independently of High Mitten Hill Farm, until the present. In addition utility bills, invoices, insurance claims and polling cards are submitted in the applicants name with High Mitten Cottage as the address.

**Main Issues**

The legislation, under Section 191 of the Town and Country Planning Act 1990, provides that uses and operations are "lawful" if no enforcement action can be taken against 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 they are not in contravention of any enforcement notice which is in force. The first issue to consider therefore is whether the use of the building constitutes operational development or a material change of use. In this case, as there has been a material change of use of the building for use as a separate dwelling, occupied independently of High Mitten Hill Farm, the enforcement period is four years in respect of the use of the building and ten years in respect of the ties to High Mitten Hill Farm in breach of condition 1 of planning approval NYM/2009/0334/FL.

The legislation states that the onus is on the applicant to establish that there has been a four year period in respect of the unauthorised use of the building as an independent dwelling and a ten year period in respect of the breach of condition regarding the ties to High Mitten Hill Farm. They must establish this on the test of 'balance of probability'; for example, that it is more likely than not that the building has been occupied as an independent dwelling for in

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excess of the past four years. Independent evidence is not required in order to substantiate an applicant's claim however the applicant's evidence should be sufficiently precise and unambiguous in order to lead to the conclusion that, based on the balance of probabilities, the existing use is lawful and a duty is placed on the Local Planning Authority to issue a Certificate of Lawfulness. If there is no evidence to contradict the applicant's version of events then there is no good reason to withhold the certificate; the Authority must proceed on the basis that neither the identity of the applicant nor the planning merits of the use or activity are relevant to the consideration of the purely legal issues which are involved in determining an application.

The statutory declarations submitted in support of the application confirm that the applicant is the sole legal owner of High Mitten Cottage, that the property has been his primary residence since 2005 until the present and it is occupied independently of High Mitten Hill Farm, although it is understood that both properties remain in the same ownership. In addition supporting evidence has been provided in the form of telecommunications bills, fuel bills, invoice for installation of stove, utility bills, insurance statements and polling card, all addressed to the applicant at High Mitten Cottage.

With regard to a possible breach of condition 1 of planning permission NYM/2009/0334/FL Hill Mitten Cottage, being in the same ownership as the main dwelling High Mitten Hill Farm and occupied by a family member, could be considered as forming part of a single planning unit and ancillary to the main dwelling. The fact that High Mitten Cottage is capable of being used as a separate dwelling does not necessarily mean it has been used as such. However having looked further into case law if the applicant is able to demonstrate that he lives a wholly independent life to his son and family in High Mitten Hill Farm and that the nature and character of the accommodation is such that it is occupied as a separate independent dwelling then there may be reason to grant a Certificate of Lawful Use in breach of the occupancy condition. The evidence submitted in support of this application identifies that High Mitten Cottage, despite being in the same ownership as High Mitten High Farm, is in all other respects a separate, independent dwelling with separate utility meters, postal address and telephone lines. This is also confirmed by the statutory declarations detailing the nature and character of the occupation of the accommodation.

The case officer has previously visited the site and met with the applicant and is satisfied that the dwelling has been occupied by the applicant as a separate dwelling independently of High Mitten Hill Farm despite remaining in the same ownership and being occupied by a family member and as such is in breach of condition 1 of NYM/2009/0334/FL.

In conclusion, it is accepted that on the balance of probabilities that the necessary unauthorised period has occurred such as to give rise to a lawful use of the building for use as a separate dwelling, occupied independently of High Mitten Hill Farm, the enforcement period is four years in respect of the use of the building and ten years in respect of the ties to High Mitten Hill Farm in breach of condition 1 of planning approval NYM/2009/0334/FL and as such a Certificate of Lawfulness should be issued.