

North York Moors National Park Authority

Delegated decision report

Application reference number: NYM/2023/0195

Development description: certificate of lawfulness for the conversion of adjoining outbuilding to holiday letting accommodation in excess of ten years

Site address: Underhill Cottage, Blue Bank, Sleights

Parish: Eskdaleside-Cum-Ugglebarnby

Case officer: Miss Lucy Gibson

Applicant: Mr Andrew Hodgson
Underhill Cottage, Blue Bank, Sleights, YO22 5EU

Agent:

Director of Planning's Recommendation

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

1. That the development described in the First Schedule have been carried on for more than ten years in respect of the use of the adjoining outbuilding to the building known as Underhill Cottage.

First Schedule - The conversion and use of the adjoining outbuilding to the building known as Underhill Cottage to holiday letting accommodation in excess of 10 years.

Consultation responses

Parish

No objection – 22 May 2023

Publicity expiry

Advertisement/site notice expiry date- 09 May 2023



This shows the front elevation of Underhill Cottage and the attached outbuilding.



This shows the rear elevation of Underhill Cottage and the attached outbuilding.

Background

Underhill Cottage is a traditional stone and pantile farmhouse accessed via a private track to the east of the A169 and located to the south of Sleights. An attached outbuilding, which is in use as a holiday cottage is located to the south of the main house with a detached stone and slate outbuilding to the east.

An application for the change of use and conversion of the detached outbuilding located to the east of the dwelling into a holiday let was approved in April 2022.

There is no associated planning history in relation to the attached outbuilding. However, the current owners have outlined that when they bought the property in October 2013, the attached outbuilding was already in use as a separate holiday letting unit. As such, the applicant seeks to obtain a certificate of lawfulness to demonstrate that the outbuilding has been in use as a holiday letting unit in excess of 10 years.

The application is supported by a small statement from the applicant, sales details from 2013 and a letter from North Yorkshire Council which details that business rates for the holiday letting unit have been in existence since September 2013 and prior to this, a separate business rate assessment addressed as Underhill Holiday Cottages were in operation. Further evidence that has been submitted includes multiple guest books with reviews in regular intervals from 2014 – 2023. A booking schedule has also been submitted with details of the date and length of stays at the holiday letting unit from November 2013 – 2023.

The attached outbuilding which is used as a holiday letting unit comprises a living room with kitchen to end, bathroom and bedroom.

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 issue to consider therefore in this instance 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, the enforcement period is ten years in respect of the use of the outbuilding as a holiday letting unit.

The legislation states that the onus is on the applicant to establish that there has been a ten-year period in respect of the unauthorised use of the outbuilding as a holiday let. They must establish this on the test of ‘balance of probability’; for example, that it is more likely than not that the outbuilding has been used as a holiday let for in excess of the past ten 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 main pieces of evidence submitted to the Local Planning Authority are the guest book reviews, booking schedule and also a letter from the North Yorkshire Council. Whilst the guest book reviews only date back to 2014 and the booking schedule November 2013, they demonstrate a regular use of the attached outbuilding as a holiday let with no significant breaks to November 2013.

The letter from the Local Taxation Manager at North Yorkshire Council dated 24 March 2023 details that the existing business rates for the unit as a holiday let have been in existence since 13 September 2013. It then outlines that prior to this, the unit was included in separate, now defunct business rate assessment addressed as Underhill Holiday Cottages. As this letter is signed and is from North Yorkshire Council, it carries the most weight in demonstrating that it is likely that the attached outbuilding was in use as a holiday let prior to September 2013.

The sales details submitted from 2013, when the current owners purchased the property in October 2013 also demonstrate that the property was sold with the attached outbuilding in use as a holiday let with the relevant business rates. Unfortunately, the applicant has advised that they were unable to obtain any evidence from the previous owners.

A signed letter from the applicant's neighbour Mr Lawn at Ravenstone, Bluebank, Sleights has also been submitted which states that the outbuilding has been let as a holiday cottage for a period of over 10 years and that they have 'witnessed the influx of holiday makers over the years'. Whilst this is signed, it is ambiguous in relation to the number of people visiting the holiday let and the period of time in which this has occurred. As such, this would hold relatively little weight.

Whilst the evidence submitted does not explicitly state that the attached outbuilding has been used as a holiday let prior to June 2013, it is the combination of the evidence submitted, with the guest book reviews, booking schedule, sales details and letter from North Yorkshire Council that demonstrate, on the balance of probability, the outbuilding has been continuously used as a holiday let in excess of 10 years. There is also no evidence to contradict the applicant's version of events.

As such, the Case Officer is satisfied that the attached outbuilding at Underhill Cottage has been used as a holiday let in excess of 10 years.

In view of the above, it is recommended that a Certificate of Lawfulness should be issued.