

SCHEDULE 8

TOWN AND COUNTRY PLANNING ACT 1990 SECTION 192 (as amended by section 10 of the Planning & Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)(ENGLAND) ORDER 2010 ARTICLE 35

CERTIFICATE OF LAWFUL USE OR DEVELOPMENT

YORKSHIRE DALES NATIONAL PARK AUTHORITY

To: Mr R Howson
Davis & Bowring

Decision No: C/19/56C/LDC

The YORKSHIRE DALES NATIONAL PARK AUTHORITY (as Local Planning Authority) hereby certify that on 03/01/2018 the use described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and edged RED on the plan attached to this certificate, would be lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The existing lawful use falls within Class C3 (dwellinghouses) of the Town and Country Planning (Use Classes) Order 1987. The proposed use as a holiday home is also considered to fall within Class C3 and as such would not amount to development requiring planning permission.

FIRST SCHEDULE

certificate of lawfulness for change of use from private dwelling to holiday cottage accommodation in accordance with the information supplied in support of the application including the following:

- The maximum number of guest would be 10 persons
- The dwelling would be let out as a whole to one group of people.

SECOND SCHEDULE

Thack Cottage, Mark House Lane, Bell Busk

REDACTED BY YDNPA

Signed:

SOLICITOR

On behalf of the YORKSHIRE DALES NATIONAL PARK AUTHORITY (as Local Planning Authority)

Date: **09 MAR 2018**

FOR NOTES AND RIGHTS OF APPEAL SEE OVERLEAF

NOTES AND RIGHTS OF APPEAL

1. This Certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use specified in the First Schedule taking place on the land described in the Second Schedule would have been lawful on the specified date and thus, would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

3. This Certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described or which relates to other land may render the owner/occupier liable to enforcement action.

4. The effect of the certificate is also qualified by the proviso in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of a described use or operation is only conclusively presumed when there has been no material change, before the use is instituted or the operations begun, in any of the matters relevant to determining such lawfulness.

If the applicant is aggrieved by the decision of the Local Planning Authority they may appeal to the Secretary of State for the Environment (The Planning Inspectorate) in accordance with Section 195 of the Town and Country Planning Act 1990.

If you wish to exercise your right of appeal as mentioned above, you can do so online at: <https://www.gov.uk/planning-inspectorate>. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Inspectorate will publish details of your appeal on the internet (on the Appeals area of the Planning Portal). This may include a copy of the original planning application form and relevant supporting documents supplied to the local authority by you or your agent, together with the completed appeal form and information you submit to the Planning Inspectorate. Please ensure that you only provide information, including personal information belonging to you that you are happy will be made available to others in this way. If you supply personal information belonging to a third party please ensure you have their permission to do so. More detailed information about data protection and privacy matters is available on the Planning Portal.

LOCATION PLAN IN RESPECT OF LAWFUL DEVELOPMENT FOR
CHANGE OF USE FROM PRIVATE DWELLING TO
HOLIDAY COTTAGE ACCOMMODATION

AT THACK COTTAGE, MARK HOUSE LANE, BELL BUSK

C/19/56C/LDC

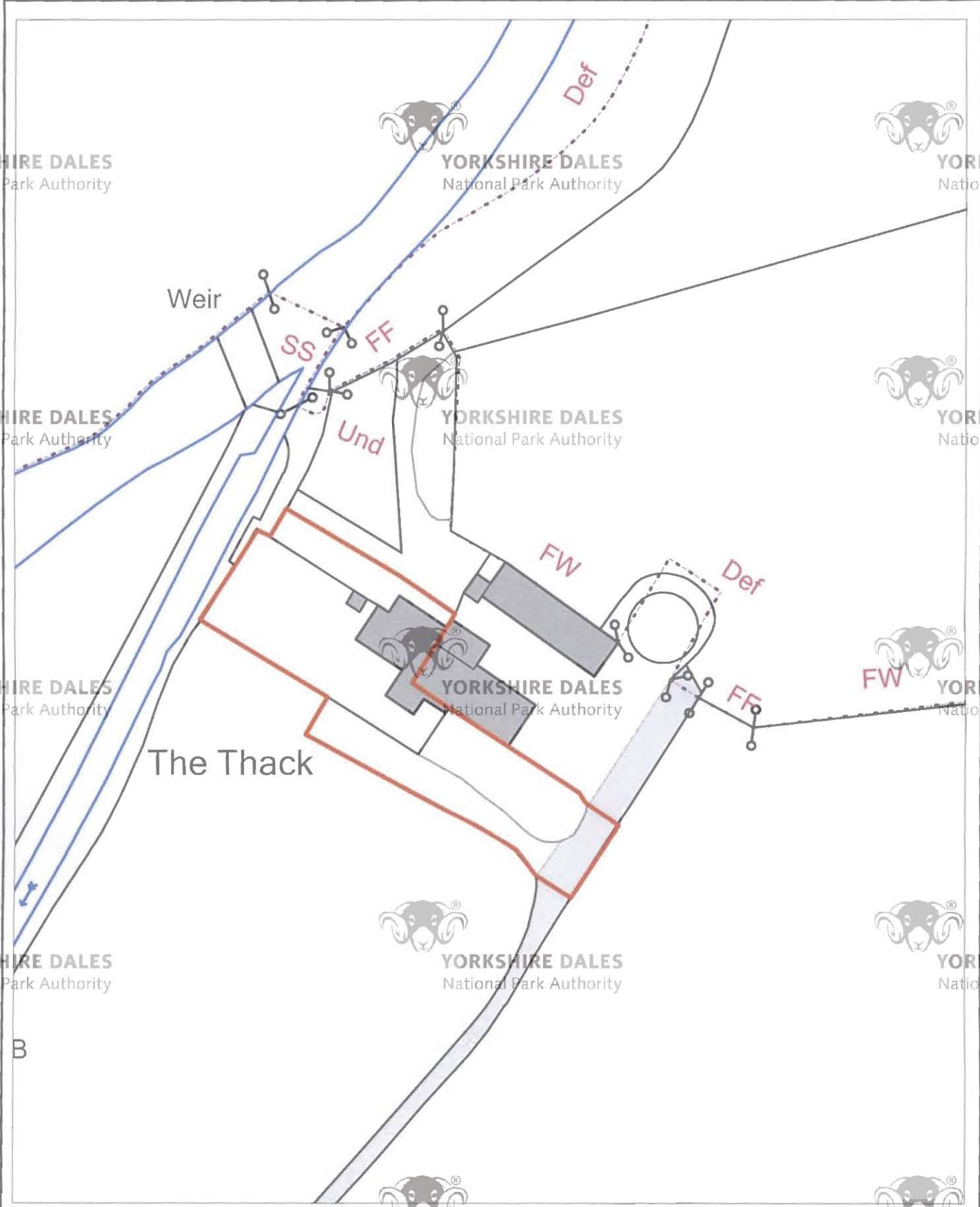
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SCALE 1:800



YORKSHIRE DALES
National Park Authority

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Application No:	C/19/56C/LDC	
District:	Craven	
Parish:	Conistone Cold	
Applicant's Name:	Coniston Hotel	
Grid Ref:	SD90705647	
Received by YDNP:	03/01/2018	Officer: Janet Bainbridge

PROPOSAL: certificate of lawfulness for change of use from private dwelling to holiday cottage accommodation

LOCATION: Thack Cottage, Mark House Lane, Bell Busk

CONSULTEES

PUBLIC RESPONSES

None to date.

RELEVANT PLANNING POLICIES

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OFFICERS' OBSERVATIONS

THE SITE

Thack Cottage is located on the southern boundary of the Yorkshire Dales National Park in the small hamlet of Bell Busk. The property stands alone and is the only residential property located down a track off the main road. The dwelling is a substantial 5 bedroomed house and is currently advertised as a holiday cottage on various websites and on the Coniston Hotel Website. The current owners and applicant is The Coniston Hotel and Country Estate.

RELEVANT PLANNING HISTORY

YD5/19/56 - Full planning permission for conversion of adjoining barn and construction of garage block at Thack Cottage, Bell Busk. Refused: 19-Feb-1991

YD5/19/56A - Full planning permission for conversion of adjoining barn for domestic use at Thack Cottage, Bell Busk. Conditional Approval: 20-May-1991

YD5/19/56B - Full planning permission for erection of garages, boiler room and utility room at Thack Cottage, Bell Busk. Refused 23-Jul-1991

THE APPLICATION

This application is for a Certificate of Lawful Development for a proposed use or development under Section 192 of the Town and Country Planning Act 1990 (as amended).

The application proposes the use of the private dwellinghouse to holiday cottage accommodation.

The applicant considers that such a change of use would not amount to a material change that constitutes development requiring planning permission within the meaning of Section 55 of the Town and Country Planning Act 1990 (as amended).

The onus is on the applicant to prove, on the balance of probabilities, that the proposed use of the land would be lawful at the time of the application.

The above application is supported by the following information submitted on 3rd January 2018:

1. Application form;
2. Location plan;
3. Photographs of the property
4. Information regarding use and booking of the property

RELEVANT LEGISLATION

The Town and Country Planning Act 1990 (as amended) (TCPA)
The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO)
The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010

ASSESSMENT OF EVIDENCE

This application seeks a certificate of lawfulness to ascertain whether the proposed use would be lawful under the Town and Country Planning (Use Classes) Order 1987 (as amended). In order to prove, on the balance of probabilities, that the change of use would be lawful it is necessary to ascertain that a) would there be a change of use from use class C3 (dwellinghouses) and b) if there would be a change of use is it "material".

a) Would there be a change of use from use class C3?

Existing Lawful use of the Property

The common feature of all premises which can generally be described as a dwelling house is that they are buildings that ordinarily afford the facilities required for day to day private domestic existence.

The property known as Thack Cottage is a detached building of domestic appearance. The documentary evidence from the planning application approval granted in May 1991 (ref: YD5/19/56A) that the dwelling was extended into the adjoining barn, permission was granted to convert the barn into additional domestic living accommodation. It appears that these works were implemented. There is no evidence to suggest that the property has been used for any other purpose than a dwellinghouse.

Thack Cottage contains rooms or spaces identified as being: kitchen with dining area, sitting room, hall; landing; bedroom; en-suite; bathrooms; shower room; wc; utility room; boiler house; storage room and; internal staircase connecting the three floor levels. The property has therefore the functional spaces for cooking, eating, sleeping and other activities associated with a use as a single dwellinghouse.

The property has the features for compliance with the description of a self contained dwellinghouse as set out in The Town and Country Planning (Use Classes) (Amendment) (England) Order 2010 where at section 2(3) the following has been substituted in Part C of the Schedule:

"Class C3. Dwellinghouses

Use as a dwellinghouse (whether or not as a sole or main residence) by—

(a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Interpretation of Class C3

For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004(a)."

Therefore on the balance of probability the lawful use of the identified property is considered to fall within Use Class C3 of The Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO 1987). The existing use of the premises identified by the red line boundary in the application is that of a dwellinghouse within use class C3.

Proposed Use of the Property

The proposed use is for the occupation of the building by up to 10 people at any one time as a holiday home. Assessing whether the use of the property, as a commercial holiday let is a material change of use is a question of fact and degree depending on the particular characteristics of the proposed use as holiday accommodation. The property would be used as a whole by one group of people on a weekly or weekend basis. The property will still be laid out in the same way as a private dwelling with a kitchen, living area, bedrooms and bathrooms. No services such as meals provided will take place. The property will be used as a whole by a group of people and will be self contained. The property could be used a one large family group or a group of friends. Off road parking is available for the occupiers of the property in the same way it would be if it were a private residential property.

Any dwelling containing up to 10 people would be above the average number of residents for a dwellinghouse in England. However, the proposed use would not in itself mean that the level of noise and activity would result in a material change in the character of the use of the premises and activities undertaken within and from it.

The proposed use, as a holiday let, could be expected to generate the activity, noise, parking and other requirements that would not be materially different or greater than those that would be expected from a similar sized family household using the property as a permanent family home. Thack Cottage is a large house with the number of bedrooms and facilities to accommodate a larger household than 6 persons.

Thack Cottage is situated in the small settlement of Bell Busk and has an extensive curtilage with no immediate neighbours. The proposal would not significantly impact on the residential amenity of any other dwellinghouse over and above that of its current use as a dwellinghouse. Similarly the proposal would not be incompatible with any other land use in the area which is predominantly agriculture. Off road parking is available at the property and refuse and recycling collection is available on a domestic residential basis.

The proposed use as a holiday home therefore bears a great degree of similarity to the current use of the property as a family dwelling. The activity associated with the proposed use would not result in a significant or discernible level of change from the current use of the property and that could reasonably result from ten people living together as a single household.

CASE STUDIES

Moore v. SSE [1998] 2 PLR 65. In this case, the outbuildings of a large country house had been converted into 10 single self-contained units of residential accommodation for the purpose of holiday lettings. Nine of the units were in use by May 1991. In May 1995 the LPA issued an enforcement notice alleging a material change of use from residential to mixed use for residential and as 10 units of holiday accommodation. If the change of use of each of the units was a change of use to a single dwelling, then the enforcement notice was not served within the 4-year time limit prescribed by section 171B(2).

In the section 174 appeal in that case, the inspector had found as a matter of fact and degree that each unit was self-contained and was supplied with the facilities necessary for daily life, including living, sleeping and eating space, kitchen, bathroom and WC. The units were each available for short term lets. However, he concluded that they were not used in the normal sense as independent residential units. Their use for holiday accommodation was, in his opinion, materially different to the use of premises by a household as a long term home. The High Court rejected an appeal against this decision, but the Court of Appeal overturned the Secretary of State's decision. The Court accepted the approach taken in *Gravesham*, and held that there is no requirement that before a building can be described as a dwellinghouse it must be occupied as a permanent home.

Comments: This appeal decision relates to a case where one large house was split into several smaller residential units to be used as holiday accommodation. This differs from the current case as the house the subject of this LDC is to be used still as one unit, providing accommodation for either an extended family or a group of friends. The Court did accept in the above case that the dwelling does not need to be occupied as a permanent dwelling for the use to still remain as C3.

(*Blackpool BC v. SSE* (1980) 40 P&CR 104). A house had been used by the owner as a second home for holidays by himself and his family, by members of his office staff, and by "family groups"

who paid rent. There were lettings for a rent for 10 out of 18 weeks in the four-month holiday season; for the remainder of the year the premises were left empty. The LPA had served an enforcement notice alleging change of use from use as a private dwellinghouse to use for holiday lettings on a commercial basis. In the appeal against the enforcement notice, the inspector accepted that there had been no change of use and the enforcement notice was quashed. The LPA appealed against this decision to the Divisional Court, but their appeal was dismissed. The LPA argued that the inspector was wrong in approaching the matter on the basis that "if the house is occupied by one family, the house is residential and therefore in accordance with the permitted use as a dwellinghouse". However Ackner LJ held that what the inspector had found as fact here was that the character of the user from a planning point of view had not been changed by the fact that the premises were being occupied not only by the owner and his family but also by his friends or by members of his office staff or by paying tenants on short holiday lets. This was a finding of fact that was not open to challenge.

After reviewing these judgments in the present case, Sullivan LJ held that whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions – that use of a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a material change of use - is correct. However, the inspector was entitled to find (as a matter of fact and degree) in this case that the way in which the property was being used fell outside the definition of a C3 use in the Use Classes Order.

Comment: The question of whether a change of use has occurred is a matter of fact and degree. The fact that a dwellinghouse is being used for commercial holiday lettings will not always amount to a material change of use. It is a judgement to be made based on how the property will be used. In the current case, the dwelling will be used in a similar way to how a private dwelling of this size would be used. Occupiers will come and go from the property throughout the day, however this is not unusual from a private dwelling where the occupiers would leave for work/school, return, go out in the evening. Parking is available at the site as it would be if it were a private residence and refuse and recycling collection would be exactly the same. No commercial waste bins or collection will be provided. Although unusual, there are cases in the UK where up to 10 family members may live together or 10 friends living together as a house share or student accommodation.

Moore v SSCLG and Suffolk Coastal District Council [2012] EWCA Civ 1202; [2013] JPL. This case concerned St Audry's House, which is located on a site which had previously been a small hospital with extensive grounds. In the late 1990s the whole site was redeveloped to provide some 200 dwellings with associated business, sports and social uses. St Audry's House is an eight-bedroom dwelling forming part of a listed building known as The Clubhouse. From 1999, when it first became available for occupation, until 2007 it was the home of a family with children. The current owner then acquired it and from 2008 onwards used it for commercial holiday lets. A room originally used for another purpose became a ninth bedroom. The property was let for the majority of weekends during the year and sometimes also on weekdays. Groups came for reunions, parties and celebrations of one sort or another, including large groups (e.g. a yoga group of some 15 people and a cycling group of around 20). Stag and hen parties occurred in earlier years but were discouraged by the owner in response to complaints from neighbouring residents, who nonetheless continued to be very unhappy about the use. Suffolk Coastal District Council issued a planning enforcement notice in November 2010 alleging the following breach of planning control "without planning permission the change of use of premises from the C3 dwelling to use as commercial leisure accommodation which does not fall within class C3 (a)-(c) and which therefore constitutes a sui generis use." In her appeal to the Secretary of State the owner argued that the alleged breach as framed was misconceived, practically unintelligible, and did not describe any recognised land use for planning purposes. However this appeal was unsuccessful, as was her appeal to the High Court under Section 289 of the 1990 Act heard by Frances Patterson QC sitting as a Deputy High Court judge.

Comment: This case involved a larger property, sleeping up to 20 people and the property had been used as a 'party house' rather than a holiday home for family groups. The way this property had been used differs from the dwelling the subject of this LDC.

In summary the above Court of Appeal Judgement and planning appeal decisions are not all directly relevant to the subject matter of the current LDC application. Those decisions that are comparable do however conclude that although a change of use would take place it would not represent a 'material'

change of use for planning purposes requiring authorisation through the making of a planning application.

CONCLUSION

There being no other evidence to the contrary it is considered that the proposed use of the property as a holiday homewould not amount to a 'material' change of use for the purposes of The Town and Country Planning Act (1990) (as amended) and therefore the use is considered to be lawful. The Lawful Development Certificate should therefore be granted.

RECOMMENDATION

That a Certificate of Lawful Development be issued.

REDACTED BY YDNPA

Signed by Case Officer

Date 8 March 2018

REDACTED BY YDNPA

Principal Planning Officer

Savick

Date 8/3/18