



Appeal Decision

Site visit made on 21 October 2025

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2026

Appeal Ref: APP/U2750/X/24/3356725

Throstle Nest Farm, Manor House Farm and Throstle Nest, Summerbridge, North Yorkshire HG3 4JS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Nicholas Scott against the decision of North Yorkshire Council.
 - The application ref ZC24/02559/CLEUD, dated 14 May 2024, was refused by notice dated 18 September 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which a certificate of lawful use or development is sought is for change of use of cabin to residential dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's deemed refusal of the LDC application was well-founded.

Reasons

3. Section 191(2)(a) of the Act provides that uses and operations are lawful at any time if 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.
4. With regard to use of land section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. Therefore, in this case, in order to be lawful the use described must have commenced at least 10 years before the application date (hence before 14 May 2014) and continued without any significant interruption thereafter for at least a 10-year period of time.
5. The burden of proof is on the appellant, and the relevant test is the 'balance of probability'. If the local planning authority has no evidence itself to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided that the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probabilities. It is therefore necessary to consider whether, on the facts of the case and relevant planning law, the specific use for which a certificate is sought was lawful at the date of the application.
6. The appellant claims that the use of the cabin has been a permanent residential dwelling since 2009 and that the current occupier, a Mr Richard Kerby, has been

renting the property since at least 2014. The submitted evidence to establish this includes the history of the site, email correspondence, statutory declaration (SD) including from Mr Kerby and a signed Shorthold Assured Tenancy Agreement (the Lease). The evidence is examined in the following paragraphs.

7. Mr Kerby's SD states that the appeal property has been his permanent home for over 13 years and that he has nowhere else to live. The SD does however begin by stating "*I, Richard Kerby of 4 Mill Cottages, Wath, Pateley Bridge, HG3 5PP*", detailing further that he continues to receive correspondence at this address in Wath. There is no explanation as to why all his correspondence has been sent to a different address to the appeal site during the 13 years he alleges he has lived there. The SD describes the services that the appeal site has, including water, electricity, gas, toilet facilities, washing and drying machine, and that Mr Kerby has undertaken alterations such as installing a wood burning stove and chimney, alterations to the walls and roof, an extension and installed decking, and also that there is parking and the grass is regularly mowed. The SD further contends that Mr Kerby pays for electricity and bottled gas, and that the water is metered with the septic tank looked after by the company that maintains the farm's tank.
8. Whilst the SD by Mr Kerby states that the appeal property has been his permanent home for over 13 years, there are discrepancies given that he states all his correspondence is sent to an address in Wath, with also an email from the appellant detailing that Mr Kerby is registered for Council Tax and Electoral Register at this address in Wath. Mr Kerby states that he pays for electricity and gas, however, no details of these payments, for example bills, receipts, invoices, bank statement etc, have been provided which confirms that electricity and gas bills have been paid for at the appeal site. Similarly, there is no substantial evidence, again in the form of receipts, invoices etc, confirming that the appeal property is on a water meter or that a company looks after the septic tank. I am not convinced from the evidence presented in this SD that the appeal site has been used as a permanent residential dwelling uninterrupted for a continuous period of 10 years before the application date.
9. The submitted Lease details that the agreement is between a Robin and Christina Scott, and Mr Kerby, stating that Mr Kerby will have the property and the furniture for three months from 16 September 2011 to 11am on 16 December 2011. Whilst the Lease does indicate that the contract will carry on as a monthly contractual agreement if notice is not given to end the tenancy, this Lease does not provide specific evidence that Mr Kerby continued living in the caravan on a permanent residential basis. This Lease does not provide substantial evidence that the appeal site has been in permanent residential use as a dwelling for a continuous 10-year period of time.
10. The email correspondence details evidence from the appellant stating that the appeal property has been used solely for human habitation purposes since 2009. There is also reference to extracts from the Fixed Assets Register of the Partnership Accounts for the period 2009 and 2024 which details the creation of hardstanding in the balance sheets as well as the accounts showing the appeal property as an asset for the farm partnership. The evidence submitted with regards to these emails and the Partnership Accounts do not provide compelling justification that the appeal property has in permanent use as a residential dwelling for a continuous period of 10-years. I also note that some plans of the site has

been submitted but again, these do not give any clear indication that the site has been in permanent residential use.

11. Accordingly, having regard to all of the evidence before me in this appeal, I find as a matter of fact and degree and on the balance of probability, that the appeal site has not been in permanent use for residential for more than 10 years before the date of the planning application.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for change of use of cabin to residential dwelling is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Chris Baxter

INSPECTOR