

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H03-0955-18 **Applicant:** Ms Bowden

Proposal: Occupation of dwelling by persons not employed in agriculture (Condition 3 of SR236/72)

Location: Lonsdale Bungalow Main Road Deeping St Nicholas

Terminal Date: 21st November 2018

Planning Policies

Local Plan July 2016:

National Guidance

National Planning Policy Framework 2018

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

This is a legal determination and planning Policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

This application seeks the granting of a Lawful Development Certificate (LDC) for the occupation of a dwelling by persons not employed in agriculture which is in breach of condition associated with the land.

The applicant has submitted the following evidence in support of the claim:

1. Site Plan
2. Affidavit of Annette Bowden, the applicant and current owner
3. P60 of Annette Bowden
4. Statement of Talieh Ward, friend of the applicant since 2011
5. Affidavit of John Couchman, previous owner 1998 until July 2011
6. Letter from Skanska confirming Annette Bowden's employment
7. Council Tax confirmation
8. Planning Statement in support, Decision notice SR/256/72 appended
8. Application form

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

The background to the case is that planning permission was granted in 1972 for a dwelling in connection with agriculture at Lonsdale Bungalow, Main Road, Deeping St Nicholas, PE11 3DG

under planning reference SR 256/72. Condition 3 of that permission restricted the occupation of the dwelling to those solely or mainly employed in agriculture as defined in the Town and Country planning Act 1968.

The applicant, Annette Bowden moved into Lonsdale Bungalow with her partner in July 2011, at that time neither complied with the occupancy condition and the affidavit and employment records confirm this. The applicant then confirms that her then partner, Mr Callegin left the property in 2014 and the applicant remarried in December 2015 to her current partner; again the affidavit confirms that neither have complied as her husband is serving in as a member of a non-UK air force.

The legislation requires 10 years of and the applicant has provided convincing evidence to support 7 years. As part of the application an affidavit has been provided by the previous owner, Mr Couchman who has confirmed that during his time at the cottage from 1998 until 20011, he was a prison custody officer and his wife a housewife. The affidavit confirms that until they sold the property to the current owner they was not aware of the restriction and certainly never complied with it by working in agriculture.

The applicant has provided both employment confirmation, sworn affidavits, Council tax confirmation and a planning statement in support of the application, which carries legal weight and element of independent verification by 3rd parties. Since at least 1998 until present day it appears that no person residing in Lonsdale bungalow has complied with the agricultural occupancy condition.

The Council has no evidence or records to dispute the claim, therefore on the balance of probabilities the case has been proved that the agricultural restriction has been in breach for a period exceeding 10 years. The breach is now, as a result of this, immune from planning enforcement.

A delegated approval is considered appropriate in the circumstances.