DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H03-1045-22**	**Applicant:**	**R C Tinsley Ltd**
Proposal:	Retention of dwelling without complying with agricultural habitation clause (Condition 2 of H03-0532-76)		
Location:	Tinsley Bungalow Campains Lane Deeping St Nicholas		
Terminal Date:	26th December 2022		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Sections 2, 4 and 5

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application seeks to remove condition 2 of planning permission H03-0532-76 (agricultural occupancy condition).

Site Description

The property is a detached bungalow that is located within the settlement of Deepings St Nicholas on the south west side of Campain's Lane.

History

H03-0532-76 - Two bungalows and garages with provision of vehicular access at Campains Lane, Deeping St Nicholas - Granted 16 June 1976

Consultation Responses

None.

Planning Considerations

The proposal relates to the removal of condition 2 (agricultural occupancy condition), through seeking permission via a section 73 application. The purpose of an application made under section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is very clear that: "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with condition 2 removed, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

As indicated in paragraph 47 of the National Planning Policy Framework, 2021, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The property is within Deeping St Nicholas Settlement limit as defined within the South East Lincolnshire Local Plan (SELLP), 2019. Policy 1 (Spatial Strategy) of the South East Lincolnshire Local Plan is therefore applicable. It states that in Minor Service Centres such as Deeping St Nicholas development will be permitted that supports their role as a service centre for the settlement itself, helps sustain existing facilities or helps to meet the service needs of other local communities. Development will normally be limited to allocated and committed sites and infill.

There has been a change of circumstance since planning permission was granted for an agricultural dwelling in 1976 in the sense that the site is no longer in open countryside, but rather inside Deeping St Nicholas Settlement Limit. Any application for residential development in the present day would comply with Policy 1 of the SELLP on grounds of infill within Deeping St Nicholas settlement boundary. Consequently, an agricultural restriction can no longer be justified since its essential purpose is to restrict development in the countryside to that related to agriculture.

Conclusion

There has been a change of circumstance since the original planning permission (ref. H03-0532-76) because the property is now within Deeping St Nicholas Settlement limit as defined within the South East Lincolnshire Local Plan, 2019. Consequently, an agricultural restriction can no longer be justified. No objections are therefore raised to removal of condition 2 of planning permission ref. H03-0532-76.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.