DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H04-0840-24**	**Applicant:**	**Mr & Mrs Craven**
Proposal:	Retention of dwelling without complying with agricultural habitation clause (Condition 2 of SR61/64)		
Location:	The Meadows Town Dam Lane Donington		
Terminal Date:	2nd December 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 4 - Decision making.
Section 5 - Delivering a sufficient supply of homes.

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	1	0	0

CASE OFFICER ASSESSMENT

Description of Proposal

This is a section 73A application, seeking to remove Condition 2 of planning permission SR61/64, which restricted the occupancy of the dwelling to a person employed or last employed in agriculture. The relevant condition read as follows:

"The occupation of this dwelling shall be limited to persons employed in agriculture, or their dependents."

Site Description

The site is outside of any settlement boundaries outlined within the South-East Lincolnshire Local Plan, 2019 and as such is considered to be within the countryside from a planning perspective. The dwelling is a relatively isolated property, located approximately 200 metres outside of Donington.

Relevant History

H04-0627-24 - S191. Occupation of dwelling by persons not employed in agriculture and to allow the continued use of the gardens and grounds at The Meadows for residential use with that property - Condition 2 of SR61/64. Lawful 25/09/24.

H04-0127-91 - S73. Retention of dwelling without complying with 'agricultural habitation clause' - Refused 18/02/91.

SR99/67 - Reserved matters. Bungalow and garage with provision of vehicular access at Towndam lane, Donnington. Approved 06/04/67.

SR61/64 - Outline. Erection of a dwelling - Approved 10/04/64.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

Cllr Bingham

Support

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Key Planning Considerations

Evaluation - Section 73

The proposal relates to the removal of condition 2 (agricultural occupancy condition), utilising section 73 of the Act. 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 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 the relevant condition removed, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended. It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and or nature results "in a development which is not substantially different from the one which has been approved".

Principle of Development and Sustainability

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, December 2023 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

The proposed development lies outside a defined settlement limit within the SELLP. It is therefore within an area regarded as countryside. Policy 1 of the SELLP is therefore relevant. It states that development will be permitted in the countryside that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

Given the nature of this proposal, the development has been long established, with the dwelling having been resided in for a notable period of time following its initial grant of permission under reference SR61/64. The principle of development was accepted by that host application; however, this was only accepted and granted given its assessment of an essential agricultural need. Consequently, before approving an application to remove an agricultural occupancy clause, the Authority would typically need to satisfied that there is no longer a demand for the property by the agricultural workforce as a minimum.

The recommended procedure is contained within the Council's Policy Guidance Note entitled "Agricultural Workers' Dwellings and Occupancy Conditions". Essentially, the applicant needs to show that a genuine attempt has been made to sell the property "over a reasonable period of time" (usually a minimum period of 12 months) at a value which reflects the existence of the occupancy condition. This should be in an appropriate publication, including in related agricultural publications such as "The Grower" or "Farmers Weekly", and not just the local press. It states that the value would normally be expected to fall in the range of 25-40% below open market value and the property must be actively marketed.

Notwithstanding this, a further material consideration comprises a recently determined Certificate of Lawfulness of Existing Use or Development ("CLEUD"). This Lawful Development Certificate was granted on 25th September 2024, which confirmed that condition (2) of Planning Permission Ref: SR61/64 has been breached for a continuous period in excess of 10 years (Ref: H04-0627-24).The CLEUD confirms that occupation of the property, in breach of the agricultural occupancy clause (AOC), is now lawful and immune from enforcement action.

The Certificate of Lawfulness (Ref: H04-0627-24) and the benefits it provides are transferable to subsequent owners and occupiers, as illustrated within the applicants submission; therefore, the property can be occupied in breach of the agricultural occupancy clause in perpetuity. Although re-occupation of the property by a qualifying person (agricultural worker) would technically reactivate the AOC, it would significantly reduce the value and saleability of the property. Consequently, it is extremely unlikely that the property would ever be occupied by a qualifying person in the near future.

In light of the considerations outlined above, including that of the CLEUD, it is considered that the agricultural occupancy condition is no longer enforceable, or relevant. This carries significant weight as a fall-back position and is a material consideration. As such, in this instance, whilst not conforming to Policy 1 of the South East Lincolnshire Local Plan, the principal of development is acceptable, and has been established.

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.

Conclusion

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The Certificate of Lawfulness (Ref: H04-0627-24) and the benefits it provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of the AOC in perpetuity. This carries significant weight as a fall-back position and is a material consideration in this application.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.