

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H05-0363-19 **Applicant:** Mrs M Owen

Proposal: Occupation of dwelling by persons not employed in agriculture (Condition 1 of EE86-68)

Location: All-Mar Ravens Gate Holbeach

Terminal Date: 28th May 2019

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Representations:

	Object	Support	No Obj.	Comments
--	--------	---------	---------	----------

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. Letter from current owner, Mrs Owen
3. Letter from neighbours Mr and Mrs Pearce,
4. Decision notice H05-0086-68
5. Google Earth Images
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 1968 for a bungalow in connection with agriculture at All-Mar, Ravens Gate, Fleet Fen, Holbeach under planning reference H05-0086-68. A condition of that permission restricted the occupation of the dwelling to those solely or mainly employed in agriculture as defined in the then Town and Country Planning Act 1962.

The applicant, Mrs Owen, built All-Mar with her husband following the grant of the permission in 1968. At that time, Mr Owen complied with the condition as he worked in agriculture and did so until his death in 1994. Mrs Owen has confirmed in writing that, since her husband passed 24 years ago, she has worked in catering for the duration and not agriculture. Mrs Owen has confirmed working in Roffes Catering (Lincs) Ltd since the loss of her husband and that her daughter and partner, whom also resides in the property with her for the past 12 years, have also worked in catering and not agriculture for a period exceeding the required 10 years.

The evidence has been submitted by a hand written signed letter and is not a sworn document, however the facts as described by the applicant have been confirmed by an independent third party. Mr and Mrs Pearce have submitted a letter to confirm that since being a neighbour of the applicant for 30+ years they have known that all occupiers of the dwelling have worked in catering for the minimum of 12 years to date. They have personal knowledge of the family and have used Roffe's butchers on frequent occasions. On this basis the breach of the agricultural condition has been confirmed independently and demonstrates a breach by all parties residing in the dwelling for at least 12 years and for Mrs Owen specifically, at least 24 years.

The applicant has provided their own evidence and independent evidence to demonstrate the breach of condition for the required 10 years. No objections have been received to contradict the evidence given by the applicant, therefore it would appear that for at least 12 years from until present day it appears that no person residing in All-Mar, Ravens Gate 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, deemed immune from planning enforcement.

A delegated approval is considered appropriate in the circumstances.