DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H05-0559-25** | **Applicant:** | **P Wilkins** |
| **Proposal:** | Siting of 4 Buildings | | |
| **Location:** | Strongs Bank Holbeach Fen Spalding | | |
| **Terminal Date:** | 28th August 2025 | | |

**Planning Policies**

**South East Lincolnshire Local Plan - Adopted: March 2019**

**National Guidance**

**National Planning Policy Framework December 2024**

**Representations:**

| | Object | Support | No Obj. | Comments |
|---|---|---|---|---|
| SOUTH HOLLAND INTERNAL DRAINAGE BOARD | 0 | 0 | 0 | 1 |
| OTHER STATUTORY BODIES | 0 | 0 | 1 | 0 |

## CASE OFFICER ASSESSMENT

### Proposal

The application seeks consent for a lawful development certificate for the siting of four buildings. The submitted site plan (4390-25 01B) shows that the buildings include a stable and storage block, a garage for lawnmower storage, a bathroom / storage building and a chicken coop. The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended). The applicant considers that the buildings were completed prior to 25 April 2024 and have been in place for at least four years. As such, the applicant considers that the buildings are immune from enforcement action and the certificate should be granted on this basis.

### Site Description

The application site comprises a strip of land covering approximately 0.56 hectares. The site is located approximately 175m to the south-west of Strong's Bank, at Holbeach Fen. There is an access track which runs from Strong's Bank to the site. The site is surrounded by agricultural fields. The buildings are located within the eastern side of the site.

## Planning History

No planning applications have previously been submitted within the site.

## Consultation

There is no statutory obligation for the Local Planning Authority (LPA) to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days.

Although no consultation requests have been issues, National Grid and South Holland Internal Drainage Board have commented as follows:

National Grid: No observations.

South Holland Internal Drainage Board: I cannot see that the applicant has identified a drainage strategy for the site within their application. We recommend a drainage strategy is provided for the site. If the applicant proposes to discharge surface water to a watercourse, consent would be required under Byelaw 3. I note that the applicant has not indicated how they propose to dispose of foul water from the development. If the applicant proposes to discharge treated foul water to a watercourse, consent would be required under Byelaw 3. Please note that any consent granted for the discharge of treated foul water is likely to be subject to a Treated Foul Water Development Contribution fee (TFWDC) as outlined within our Development Control Charges and Fees. I note the presence of a Board Maintained watercourse (DRN197P3202 - F32 Guide Post Drain) adjacent to the eastern site boundary. Additionally, I note the presence of a watercourse which is not maintained by the Board (a riparian watercourse) adjacent to the southern site boundary. Whilst not currently proposed, should the applicant's proposals change to include works to alter the watercourses, or if works are proposed to alter the watercourses at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4). Whilst not currently proposed, should the applicant's proposals change to include works within 9 metres of the aforementioned Board Maintained watercourse, or if works within 9 metres of the watercourse are proposed at any time in the future, consent would be required under Byelaw 10.

## Key Planning Considerations

Relevant Legislation

Section 191 of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

"(2) For the purposes of this Act uses and operations are lawful at any time if:
- (a) 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); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out that:

"(4) If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without

planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:
(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

Planning Practice Guidance sets out that:

*"In most cases, development becomes immune from enforcement if no action is taken:*

*-within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024;*
*-within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024;*
*-within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;*
*-within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024; or*
*-within 10 years for any other breach of planning control (essentially other changes of use)."*

*However, the time limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:*

*-Section 171B(4)(b) of the Town and Country Planning Act 1990, which provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the "second bite" provision.*
*·where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.*
*·where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered (see Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council and Bonsall / Jackson v Secretary of State for Communities and Local Government).*

Therefore, in cases of deliberate concealment, a local planning authority may decide to serve an enforcement notice 'out of time' or apply for a planning enforcement order. It is for the local planning authority to decide which approach is appropriate in each case.

Assessment of Evidence

For the certificate to be granted, the applicant could attempt to show that the buildings were constructed using permitted development rights and as such, planning permission was not required. The correct procedure would need to have been followed for development rights to apply. The applicant is not claiming this has occurred in this instance.

Alternatively, it needs to be demonstrated that the buildings were substantially completed and in place for at least four years, as the applicant claims the buildings were erected prior to 25 April 2024. As such, the buildings would be immune from enforcement action.

Although the council's enforcement team visited the site in August 2021 and investigated the placement of two of the buildings (the stable and garage building), enforcement action was not taken. For example, an enforcement notice was not issued.

The application is accompanied by a Justification Statement, which has been prepared by the applicant's agent. The statement includes an overview of when the buildings were constructed and aerial imagery to support this. No additional information has been provided such as signed statements from third parties or photographs of when the buildings were first constructed.

According to the Justification Statement, the "original stables shown on the drawing have been in

position for more than 25 years". The stables are currently used for animals and storage. The statement includes an aerial image dated 1999. The Local Planning Authority has checked Google Earth aerial imagery from 1999 and this appears to show the stable block within the site. Although the image is slightly unclear, it appears that the dimensions within the aerial imagery matches the dimensions of the stable block. Therefore, it appears that the stable block has been in place since 1999 and as such, the building is immune from enforcement action.

According to the Justification Statement, the garage building was erected in 2015. The month is not confirmed. The building is used for storing a lawnmower which according to the applicant is required for the up-keep of the paddock. The statement includes an aerial image dated July 2016. The LPA has checked Google Earth and the stable block appears to be on site in 2016. There is no Google Earth imagery available for 2015. Notwithstanding this, the building appears to be immune from enforcement action as it was constructed at least prior to 2021.

According to the Justification Statement, the bathroom and storage block were erected in 2019. The building is used for bathroom and welfare facilities. A google earth image from 2020 is provided to support this. The LPA has checked Google Earth, and this appears to show the bathroom and storage block was in place in May 2020. The image is relatively blurry and furthermore, the building is not seen within the photos taken by the enforcement team during their visit to the site in August 2021, nor is this building referred to by the enforcement team or the owner of the site within the recorded correspondence of the enforcement case. Therefore, it is unclear if the building was substantially completed in 2019.

According to the Justification Statement, the chicken coop has been in place for four years. The statement does not clarify exactly when the coop was erected. The statement refers to an aerial image dated July 2022. The application was validated in July 2025 and it needs to be demonstrated that the structure was substantially completed by July 2021 for the structure to be immune from enforcement action. It appears that the coop was not in place as of August 2021 when a site visit was undertaken. According to the notes from an enforcement officer, the coop had been installed by the time of their next visit which took place in September 2022. Therefore, the coop does not appear to be immune from enforcement action and retrospective consent is required for the structure.

The aerial imagery provided is not particularly clear. Whilst the stable and garage buildings appear to have been in place prior to July 2021, the evidence is not conclusive that the other buildings were in place at this time. As such, it is considered that retrospective planning permission is required for these buildings.

In terms of the matter of deliberate concealment, whilst the site is relatively well screening through existing trees and fencing, the buildings are visible from the surrounding area. As such, it is not considered that deliberate concealment has taken place.

The Justification Statement refers to occasional overnight stays within the site: "My client has spent the odd night at the site; this is due to an animal being poorly and needing round the clock medical attention". The current application only seeks consent as to whether the siting of the buildings is lawful. The use of the buildings is therefore not clarified. An application for the use of the land might be required, depending on the intended use of the land.

## 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

On the basis of the submitted information and the LPA's enforcement notes from 2021 and 2022, it appears that the stable building and the garage building have been in place for at least four years and are immune from enforcement action. Insufficient evidence has been provided to demonstrate that the bathroom and storage block building and the chicken coop have been in place for at least four years. As such, it is considered that retrospective planning permission is required for these buildings.

## Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under delegated authority.