

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H06-0074-22 **Applicant:** Mr L Elston
Proposal: Use of land for residential use
Location: Damrack Ryefield Lane Gedney
Terminal Date: 22nd April 2022

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Not applicable.

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	1	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the use of land at Damrack, Ryefield Lane, Gedney, for residential use.

Site Description

The application site forms part of a wider paddock/field on the south-eastern side of Ryefield Lane. The overriding character of the area is rural agricultural with limited sporadic built development. The site is served by an independent vehicular access and a farm gate near the carriageway. There is a static caravan located on the site with timber enclosures to the side. A red metal container stands further to the rear.

Relevant History

H06-1129-20 - Full - Erection of a two stall stable block, tack room and barn together with a gravel driveway and a paved yard (refused February 2021)

Enforcement Appeal (ref: APP/A2525/C/19/3221019) against Enforcement Notice (ref:

SHCD.EN12) dated 17 December 2018. The breach of planning control as alleged in the notice was without planning permission the change of use of the land from use for agriculture to a use as a caravan site and associated access occurred. The Appeal was dismissed and the Enforcement Notice remains in place.

Consultation Responses

Public (2 objections/comments received, summarised) -

- Object due to ongoing investigation by Environment Agency and breach of planning enforcement already on site
- Another attempt by applicant to avoid leaving site
- Applicant was living at Foxes Lowe Road, Holbeach in 2015 and only moved onto site after property in Holbeach was sold
- Query regarding when water was connected to the caravan and on the drainage boards views on the sewage disposal system currently in place
- Has it been asked when 'Damrack' formally became a postal address

Planning Considerations

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.

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

1. Application Form
2. Council Tax Bills 2015-2019
3. Enforcement Notice for Council Tax
4. Signed affidavit of applicant
5. Signed statement from local resident
5. Supporting evidence from two other individuals
6. Google Earth images and photographs

Case law has established that in order to become immune from enforcement and therefore lawful, the use of land for residential purposes must have begun more than ten years before the date of the application.

It is contested that the use of the land for residential use began on 1st May 2008 and has continued without significant interruption for more than 10 years from the date of the breach.

Notwithstanding the above, there is a history of planning enforcement relating to the site, which is of relevance in this instance. An Enforcement Notice (ref: SHCD.EN12) was issued on 17 December 2018 for an alleged breach of planning control - Namely that, without planning permission, the change of use of the land from use for agriculture to a use as a caravan site and associated access took place. This Enforcement Notice was appealed and subsequently dismissed, with the Notice being upheld (as varied), on 12 November 2019. A valid Enforcement Notice therefore remains in place. As such, a Certificate of Lawfulness of Existing Use cannot be issued, in line with the provisions of the Town and Country Planning Act 1990 (TCPA).

Section 191(2) and (3) of the TCPA provides that lawful development is development:

- Against which no enforcement action can be taken.
- Not in contravention of any planning enforcement notice or breach of condition notice which is in force.

A Certificate of Lawfulness of Existing Use cannot therefore be granted as the Enforcement Notice remains in force.

Conclusion

In accordance with the provisions of the Town and Country Planning Act 1990, a Certificate of Lawfulness of Existing Use cannot be granted as an Enforcement Notice remains in force.

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.