DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H06-0335-26**	**Applicant:**	**J & A Cross**
Proposal:	Occupation of dwelling by persons not employed in agriculture - Condition 3 of H06-0711-73 and Condition 2 of H06-0134-74		
Location:	Lawsonia Fishergate Sutton St James		
Terminal Date:	11th June 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the occupation of a dwelling in breach of condition 3 of outline permission H06-0711-73 and condition 2 of reserved matters approval H06-0134-74. The conditions restrict the occupation of the dwelling Lawsonia, to someone employed or last employed in agriculture, or their dependents or widow / widower.

The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

Initially, the application only related to condition 2 of reserved matters approval H06-0134-74. After reviewing the outline permission H06-0711-73, it became apparent that there was also a restrictive occupation condition within this approval. This was discussed with the applicant and the applicant was given the opportunity to also apply to seek confirmation that the dwelling can be occupied in breach of this condition also. The applicant agreed and as such, the application has been determined on this basis.

Site Description

The application site comprises land at Lawsonia which is a detached single storey bungalow located to the east of Ravens Bank and approximately 1km to the north-east of Sutton St James. The dwelling is set back from the road frontage and there is a front driveway and a garden located around the dwelling.

Planning History

H06-0711-73: (Outline Application) Bungalow and garage, with provision of vehicular access at Raven's Bank, Gedney Fen - approved 06 December 1973.

H06-0134-74: (Reserved Matters) Bungalow, garage and vehicular access at Raven's Bank, Sutton St James - approved 11 May 1974.

Consultation

There is no statutory obligation for the local planning authority (LPA) to publicise an application for a certificate of lawful development; however, a site notice has been displayed next to the site for 21 days. In this instance, no representations have been received from members of the public.

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."

Assessment of Evidence

Condition 3 of outline permission H06-0711-73 states the following:

"The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person."

Reason
This building is sited in an area in which buildings other than those connected with an agricultural need, would not be permitted."

Condition 2 of reserved matters approval H06-0134-74 states the following:

"The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971 or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person."

Reason
This building is sited in an area in which buildings other than those connected with an agricultural need, would not be permitted."

In this case, it needs to be demonstrated that the conditions have been breached for a continuous period of more than 10 years as this is the basis on which the application has been submitted.

Initially, the application was only accompanied by some information which appeared to show records of the employment history of the occupants. This included payments received by the applicants from employers, including tax information; however, no supporting statement was provided to provide additional information and background context explain the submitted financial information. This was discussed with the applicant as it was considered that insufficient information had been provided to allow for an assessment of the proposals. Whilst the onus is on applicants to provide sufficient information, it is considered appropriate to request additional information to provide an opportunity for this to be considered.

A supporting statement was subsequently provided from the current owners of the site. According to the statement, the occupants have lived in the dwelling since 1975 and neither has been employed in agriculture since 2000. The statement also sets out that the bungalow and its associated land has not been used for any agricultural use to include the keeping of animals or for housing an agricultural worker since 2000.

The information outlined within the supporting statement appears to be in line with the financial information that was initially submitted and the payments received from the applicant's employers appears to align with the summary of the applicant's employment history.

Planning guidance clearly sets out the following (Paragraph: 006 Reference ID: 17c-006-20140306):

"...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application..."

In this case, the LPA has no evidence itself or from others that suggests the applicants have been employed in agriculture.

Based on the information that has been provided, it is considered that the applicants have not been employed in agriculture since at least 2000, which covers a period of more than 10 years. As such, it is considered that on the balance of probability the site has been occupied in breach of the relevant conditions for at least the past 10 years.

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

It is considered that on the balance of probability, the site has been occupied by persons not employed in agriculture for at least the past 10 years. As such, the LPA would not be able to pursue enforcement action against the relevant breaches and it follows that the certificate of lawfulness should be granted on this basis.

Recommendation

It is recommended that a certificate of lawfulness can be issued under S191 of the Town and Country Planning Act, 1990.