DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H07-0253-21**	**Applicant:**	**Mrs V Croft**
Proposal:	Occupation of dwelling by persons not employed either directly or engaged in a management capacity with the adjacent racehorse stabling facility, together with their family / persons not employed directly or engaged in a management capacity with the stabling of horses on the site, together with their family. (Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94).		
Location:	42 Mole Drove Gedney Hill Spalding		
Terminal Date:	6th May 2021		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Not applicable.

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the occupation of the dwelling by persons not employed either directly or engaged in a management capacity with the adjacent racehorse stabling facility, together with their family / persons not employed directly or engaged in a management capacity with the stabling of horses on the site, together with their family (Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94).

Site Description

The application site is located in the countryside with built development in the vicinity being limited. The site covers a large area, accommodating the dwelling known as 'Miltescens House', a menage, stables and paddock land.

Relevant History

H07-1324-05 - Full application - Construction of menage for domestic use (approved November

2005)

H07-1189-01 - Full application - Erection of a garage and store (approved December 2001)

H07-0536-94 - S73a application - Occupation of dwelling in connection with stables (without complying with Condition 4 of H07-1090-87) (approved August 1994)

H07-1090-87 - Full application - Stables, equine pool and bungalow (approved November 1987)

Consultation Responses

Not applicable.

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. Site Location Plan
3. Statutory Declaration of applicant
4. Decision Notices for H07-1090-87, H07-0536-94 and H07-1324-05
5. Land Registry Title
6. Correspondence from Mackrell Turner Garrett
7. Correspondence from M & M Services
8. Correspondence from Master Farrier
9. Supporting Statement (prepared by Roythornes Solicitors)

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 1987 for a commercial stables, equine pool and bungalow (in connection with the business) under planning reference H07-1090-87. Condition 4 of that permission restricted the occupation of the dwelling to a "person or persons employed either directly or engaged in a management capacity with the adjacent racehorse stabling facility as outlined in the plans accompanying this application, together with their family". A further application was made in 1994 (s73a ref. H07-0536-94) for the occupation of the dwelling in connection with the stables without complying with that Condition 4. Subsequently, permission was granted with the condition being revised to refer to a "persons or persons employment directly or engaged in a management capacity with the stabling of horses on site, together with their family". Thus a restrictive condition was still in place.

It has been indicated that the applicant and their late husband purchased the property on 14th August 2001, have continued to occupy it continuously since that time as their main residence and have used to stables for recreational use for their two horses until 2018 when their last horse passed away. The applicant states in the statutory declaration that neither the stables nor the house have been used for an equestrian business since they purchased the land.

It is noted that in November 2005, an application (submitted by the applicant's late husband) for the construction of a menage for domestic use was approved at 42 Mole Drove.

Correspondence from a skip hire company and Master Farrier has also been submitted as evidence, however this does not specifically state that the stables etc. weren't in commercial use.

Notwithstanding this, in the absence of any evidence to the contrary, it is concluded that sufficient evidence has been produced which demonstrates that "on the balance of probability" the occupation of the dwelling in breach of Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94 has continued for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

It is therefore considered appropriate to issue a certificate of lawfulness.

Planning Balance

On the balance of probabilities, it has been demonstrated that the occupation of the dwelling in breach of Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94 has continued for in excess of 10 years since the breach of planning control, and it would be appropriate to issue a certificate of lawfulness.

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

Given the evidence submitted and in the absence of contrary evidence, it is considered that the applicant, on the balance of probability, has demonstrated that the occupation of the dwelling in breach of Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94 has continued for in excess of 10 years since the breach of planning control, therefore it is appropriate to issue a certificate of lawfulness.