DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H08-0347-19**	**Applicant:**	**Mrs Stella Dutchyn**
Proposal:	Occupation of dwelling by persons not employed in agriculture (Condition 4 of H08-0965-95)		
Location:	Braemar North Gate Gosberton		
Terminal Date:	23rd 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
PARISH COUNCIL	0	0	1	0
WARD MEMBER	0	0	0	0

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. Affidavit of Stella Elaine Dutchyn, the applicant and current owner with exhibits (payslips)
3. Planning Statement in support,
4. Decision notice H08-0640-96
5. Decision Notice H08-0965-95
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 1995 for a dwelling in connection with agriculture at Braemar, North Gate, Gosberton, Spalding, PE11 4LJ under planning reference H08/0965/95. Condition 4 of that permission restricted the occupation of the dwelling to those solely or mainly employed in agriculture as defined at s.336 of the Town and Country Planning Act 1990.

The applicant, Stella Elaine Dutchyn purchased Braemar with her then husband in October 2007, the Statutory Declaration confirms that shortly after the purchase the marriage broke down and as part of the settlement the applicant kept the property and moved into it as sole owner in April 2008. At that time the applicant did not comply with the occupancy condition and the affidavit and employment records confirm this. The applicant has confirmed that her 2 children resided at the property with her and again did not comply with the occupancy condition at any time.

The site plan submitted outlines the whole of the site within which the dwelling is located. The applicant has confirmed that the land has been used in conjunction with the dwelling as the garden and the stables used for the keeping of a horse for domestic use and family enjoyment only. On this basis it is considered reasonable to consider the dwelling and curtilage together in this determination as it stands to reason that the breach of agricultural use would apply to the dwelling and the domestic curtilage.

The applicant has provided both employment confirmation and a sworn affidavits to evidence the application 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 since at least April 2008 until present day it appears that no person residing in Braemar 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.