DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H09-0239-24**	**Applicant:**	**Mr G Atkin**
Proposal:	Occupation of dwelling by persons not employed in agriculture (Condition 4 of H09-1023-81)		
Location:	York Place Dam Gate Holbeach		
Terminal Date:	20th May 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 191 of the Town and Country Planning Act 1990 (TCPA 1990)

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Description of Proposal

This is a lawful development certificate, under section 191, seeking the granting of a Certificate of Lawfulness for the occupation of York Place, Dam Gate, Holbeach by a person not employed in agriculture (Condition 4 of H09-1023-81).

Site Description

The site is outside of any settlement boundaries outlined within the South-East Lincolnshire Local Plan, 2019 and as such is considered to be within the countryside from a planning perspective. It is approximately 1km south of Holbeach, within a distinctly rural area. York Place is one of a small grouping of residential properties along Dam Gate.

Relevant History

H09-0217-02 - Full. Erection of a flat-roof rear extension. Approved 09/05/02.

H09-1023-81 - Full. Residential development (1 plot) at Damgate Road, Holbeach. Approved 22/12/81.

Consultation Responses

No consultation responses received.

Key Planning Considerations

The application seeks the granting of a Certificate of Lawfulness for occupation of York Place, Dam Gate by a persons not employed in agriculture.

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

1.Location Plan
2.Block Plan
3.Two statutory declarations
4.Covering letter
5.P45 and annual tax summary
6.P60 information X2
7.Companies house information relating to G.Atkin Limited

This is a legal determination and planning policy is not therefore relevant to the determination as to whether the claimed use is indeed lawful. The test which the application must meet is that the use has been on-going for a continuous period of 10 years, although it is not necessary for the use to be on-going at the time of the application provided the use has not been lost by operation of law (ie by way of abandonment, the formation of a new planning unit, or a further material change of use). The evidence submitted must be considered on the balance of probability.

The evidence accompanying the application indicates that the applicant, since 2014, have not complied with the Agricultural Restriction. 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 the agriculturally occupancy condition has continued for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

Conclusion

The applicant has provided their own evidence and independent evidence 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 for at least 10 years no person residing in York Place 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, immune from planning enforcement. It is therefore considered 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.