DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H09-0712-19**	**Applicant:**	**Mr Dale Allwood**
Proposal:	Occupation of dwelling by persons not employed in agriculture (Condition 4 of H09-1018-88)		
Location:	Inglenook Lodge Frogs Abbey Gate Holbeach		
Terminal Date:	18th September 2019		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019
National Guidance **National Planning Policy Framework 2019**

Representations:

	Object	Support	No Obj.	Comments

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. Planning Statement

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 evidence that has been submitted is a Planning Statement by the Agent and is not a sworn document.

No other corroborating evidence has been submitted and there is no independent evidence to demonstrate that the condition has been breached for the requisite 10 years.

The Council has to take a decision on the balance of probabilities as to whether the case has been demonstrated to its satisfaction.

In this instance, the lack of evidence, records, affidavits, or other corroborating evidence means that on the balance of probabilities, the Council is not convinced that the breach has been proven.

Therefore on the balance of probabilities the case has not been proved that the agricultural restriction has been in breach for a period exceeding 10 years. The breach is not deemed immune from planning enforcement.

A delegated REFUSAL is considered appropriate in the circumstances.

Recommendation - REFUSE.

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 to grant permission is considered to be a proportionate response to the submitted application based on the considerations set out in this report