

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H09-0872-25 **Applicant:** Mr N John

Proposal: Occupation of dwelling by persons not in agriculture - Condition 6 of H09-0942-87 and to allow the continued use of the garden at 'Trees', for residential use with that property

Location: Trees Dam Gate Holbeach

Terminal Date: 12th December 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This application is for a Lawful Development Certificate for an existing use submitted under Section 191 of the Town and Country Planning Act 1990. The applicant seeks confirmation that the dwelling 'Trees' has been occupied in breach of Condition 6 of H09-0942-87, which attached an agricultural occupancy condition as well as the continued use of land as residential to be tied with this property.

Site Description

The site is located outside any defined settlement boundary and is therefore in the open countryside as outlined within the South East Lincolnshire Local Plan, 2019. It is directly south of the settlement of Holbeach with multiple residential properties directly opposite. 'Trees' has an abundance of mature trees and hedges around the border of the site with agricultural fields to the north south and east.

History

H09-0533-81 - Demolition of old cottage and erection of dwelling at Damgate Road, Holbeach - Approved

H09-0681-85 - Change of use of existing house from store to dwelling - Approved

H09-0947-86 - Outline consent to demolish cottage and build new house on agricultural unit -

Approved

H09-0942-87 - Proposed house and garage - Approved

Consultation Responses

No consultation responses received.

Planning Considerations

Relevant Legislation

Section 191 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if

(a) the time for applying for an order under section 171BA (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4) If, on an application under this section, the local planning authority are 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.

(5) A certificate under this section shall

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission

(a) section 3(3) of the M1 Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;
(b) section 5(2) of the M2 Control of Pollution Act 1974; and
(c) section 36(2)(a) of the M3 Environmental Protection Act 1990."

Therefore, the local planning authority (LPA) needs to be provided with sufficient information to demonstrate that there the site has been in breach of the relevant conditions, as referenced above, for the requisite period of time, so that the LPA are unable to take enforcement action.

Assessment of Evidence

For the certificate to be granted, it needs to be proven that the condition was breached more than 10 years ago, and was continually breached for a period of 10 years or more.

The application seeks the local authority's consideration as to whether:
'Occupation of dwelling by persons not in agriculture - Condition 6 of H09-0942-87 and to allow the continued use of the garden at 'Trees', for residential use with that property'

The condition states:

'The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture as defined in Section 290(1) of the Town and Country Planning Act 1971, or a dependent of such a person residing with him, or a widow or widower of such a person.'

Reason: The site is in a rural area where it is the policy of the Local Planning Authority not to permit residential development except in the interests of agriculture or where related to the use of the land. The circumstances of this case relate to an agricultural need, and permission is therefore confined to it.

Whilst no condition was attached which limited the agricultural/residential curtilage, the approved plans list shows that a red line boundary was identified. Since this, the applicant claims that the area of land has been used in connection with the residential dwelling rather than agriculture.

The application has provided:

- Site Location Plan
- Planning Statement
- Decision Notices for H09-0947-86 and H09-0942-87
- Photographs of Site
- Pension Income Figures
- P60 & HMRC Documents
- Copy of Driving Licence
- Aerial Photograph of Site (2006)
- Aerial Photograph of Site (2016)
- Aerial Photograph of Site (2025)

The following information has been taken from the Planning Statement.

An application was submitted in 1986 to demolish the derelict cottage on site and build a new house in connection with their plans to set up a fish farming enterprise which eventually led to the use being expanded to include a horticultural business. Prior to this the applicant ran a hardware business. Construction of the house began in 1988 and was near to completion around the middle of 1989 with the work to start the horticultural/agricultural unit not yet starting due to personal issues meaning help could not be received from their son to set up the business. This carried on for a few years and rather than leaving the site, part of it was used as garden with the remainder being let to a local farmer.

Mr David John, at the time was working for BT and retired in 1992 before working part time at Workforce in Holbeach and then moving to Boston Borough Council at the Crematorium from 1995 until retirement in 2005. During these years Mrs John *'ran the house'* and began drawing from her pension in 2006. Whilst the statement outlines both residents have been taking from their pensions since this date, records have been provided from 2015 showing each year's pensions.

Mr and Mrs John lived together at 'Trees' from 1989 until 2025, it should be noted that whilst Mr

John is currently not living at the property he '*officially resides at Trees and expects to move back there shortly*'. Finally, the incomes of both residents have not been from agriculture during the whole period of their ownership/occupation with '*Records show Mr and Mrs John have had their income from Pensions since 2006. They had no dependents living with them at the property since 1999*'.

Moving on to an actual assessment of the documentation provided, it is clear that both Mr and Mrs John have been drawing from their pensions since at least 2015 with no breaks up until the present day. From this information, it can be inferred that they have not been employed in agriculture for at least the last 10 years.

It must then be determined whether or not they were last employed in agriculture as per the wording of the condition attached to the decision notice. Mr John retired for the final time in 2005 after working for Boston Borough Council at the Crematorium and would have been claiming from his pension since this date. Alongside this, Mrs John does not appear to have ever been able to set up the agricultural business due to issues with their personal life around 1989 until eventually drawing from her pension in 2006. It can therefore be assumed she was last employed in the hardware business prior to applying for the permission for the house/business in 1986.

It is therefore considered that both occupants, Mr and Mrs John, on the balance of probabilities have been in breach of Condition 6 of H09-0942-87 for a continuous period of 10 or more years with the evidence provided clearly outlining and supporting this claim.

Beyond this, the assessment of the agricultural land being in breach for more than 10 years must also be assessed. Three aerial photographs of the site from above have been submitted within this application, these being from 2006, 2016 and 2025. Google Earth Imagery, from which these images have been taken, show that from at least 2006 the land outlined in red within the location plan has been used as residential with a clear boundary between this parcel and the agricultural land to the rear being identified via a mature hedge. Images since then, including the ones provided (2016 and 2025) show that this has remained the case. The LPA can therefore assume that on the balance of probabilities there has been a continuous breach for a period of 10 years with the Google Earth photos clearly identifying this.

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

The applicant has shown, on the balance of probabilities, that the agricultural occupancy condition was breached for a continuous period of 10 years immediately preceding the date of the application. Furthermore, the use of the land as residential has also been in breach for a continuous period of 10 years as per images provided from Google Earth with the first being in 2006.

It is therefore considered that the certificate should be granted.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be deemed lawful.