

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H11-0613-23 **Applicant:** Mr D Mackie

Proposal: Occupation of dwelling by persons not employed in agriculture (Condition 2 of H11-1093-78)

Location: Tralyn Tydd Low Road Long Sutton

Terminal Date: 30th August 2023

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Not applicable for a Lawful Development Certificate section192 application as it is a legal determination.

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This is an application for a Lawful Development Certificate seeking the granting of a Certificate of Lawfulness for occupation of Tralyn, Tydd Low Road, Long Sutton, PE12 9AR by persons not employed in agriculture (Condition 2 of H11-1093-78).

Site Description

The application site is a detached bungalow and is located west of Tydd Low Road, Long Sutton. The site lies outside any defined settlement boundary and therefore lies within the countryside in policy terms. The immediate area is characterised by mainly open countryside with neighbouring dwellings to the north.

History

H11-1093-78 - Erection of bungalow

H11-1586-88 - Proposed extension and double garage

Consultation Responses

No consultation responses have been received.

Planning Considerations

The application seeks the granting of a Certificate of Lawfulness for occupation of Tralyn, Tydd Low Road by persons not employed in agriculture.

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

1. Site Location Plan
2. Statutory Declarations
3. Evidence to Verify Application
4. Decision Notice H11-1093-78

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 indicate that the applicant, since 1984 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 39 years from until present day it appears that no person residing in Tralyn 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.