

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H11-1162-25 **Applicant:** Mrs A Hoey
Proposal: Confirmation of the use of the land as residential curtilage for a period in excess of 10 years
Location: Seagate Farm 184 Seagate Road Long Sutton
Terminal Date: 22nd January 2026

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

171B and 191 of the Town and Country Planning Act 1990 (as amended)

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This is an application submitted under section 191 of the Town and Country Planning Act 1990. It seeks a certificate of lawfulness in respect of the use of the land in question as residential curtilage for in excess of 10 years.

The applicant has provided a planning statement with two signed statements, as well as a location plan.

Site Description

The application site is visible from the A17 which runs along the northern boundary of land associated with the applicant. To the east is Seagate Road. Number 184 fronts this road and has a domestic access to the front. Another access is located slightly to the north on Seagate Road and this serves the agricultural planning unit, within this unit there is an existing barn. Also, within the wider agricultural unit (and to the rear of the existing curtilage of number 184) is a building which is being habited, this area is subject to the change of use sought through this application.

The application site is located outside of any defined settlement limit and within the countryside for policy purposes.

History

H11-0960-23 - Change of use of land to form residential curtilage. Refused 26-06-24 (dismissed at appeal)

Consultation Responses

None consulted

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 M1Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;
(b) section 5(2) of the M2Control of Pollution Act 1974; and
(c) section 36(2)(a) of the M3Environmental Protection Act 1990."

Therefore, the local planning authority (LPA) needs to be provided with sufficient information to demonstrate that there are no planning conditions within previous planning permissions within the site which restrict the operating hours of the petrol filling station.

Planning Considerations

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process.

Assessment

The Local Planning Authority is not satisfied, on the balance of probability, that the land to the rear of 184 Seagate Road has been in continuous use as residential curtilage for a period of at least ten years prior to the date of the enforcement enquiry in 2023.

The evidence submitted, including aerial photography and signed statements, does not sufficiently demonstrate that the land has been used primarily and continuously for domestic purposes incidental to the enjoyment of the dwelling. In particular:

- The aerial imagery does not establish the nature of the land's use as residential curtilage, nor does it demonstrate continuous domestic activity over the relevant period;
- The signed statements are general in nature and lack sufficient detail regarding the frequency, intensity and specific domestic character of the use. There is an undisputed rear amenity space and this area of land sits beyond that. The nature of the statements do not accurately describe that this relates to the land 'beyond' the undisputed residential curtilage.
- The material submitted fails to clearly distinguish the claimed residential curtilage use from other possible lawful uses, such as amenity land, paddock or incidental land associated with a former agricultural holding.

Furthermore, the Authority notes that the land has previously been the subject of a refused planning application and dismissed appeal for change of use to residential curtilage, which materially undermines the claim that the land was already in lawful use as residential curtilage prior to that time. Within the application form of that submission, the land in question describes this site as "Agricultural land with residential annex."

Accordingly, the Local Planning Authority concludes that the applicant has failed to demonstrate that the use of the land as residential curtilage is lawful and immune from enforcement action under Sections 171B and 191 of the Town and Country Planning Act 1990 (as amended).

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

For the reasons set out above, the Local Planning Authority is not satisfied that the land to the rear of 184 Seagate Road has been used continuously as residential curtilage for the requisite ten-year period. The evidence provided is insufficient to demonstrate a lawful and immune use, and accordingly the claimed use is not considered to be established under Sections 171B and 191 of the Town and Country Planning Act 1990 (as amended).