

## DECISION DELEGATED TO HEAD OF PLANNING

**Application No:** H13-0346-24      **Applicant:** P & D Haines

**Proposal:** Retention of dwelling without complying with agricultural habitation clause  
- Condition 2 of H13-0266-74 and H13-0231-75

**Location:** St Albans House Fen Gate Moulton Chapel

**Terminal Date:** 11th June 2024

### Planning Policies

#### South East Lincolnshire Local Plan - Adopted: March 2019

01                      Spatial Strategy

#### National Guidance

#### National Planning Policy Framework 2023

Section 2. Achieving sustainable development.  
Section 4. Decision making.  
Section 5. Delivering a sufficient supply of homes.

### Representations:

|                | Object | Support | No Obj. | Comments |
|----------------|--------|---------|---------|----------|
| PARISH COUNCIL | 0      | 0       | 0       | 0        |
| WARD MEMBER    | 0      | 0       | 0       | 0        |

### CASE OFFICER ASSESSMENT

#### Proposal

The application has been made under S73A for retention of the dwelling (St Albans House) without complying with an agricultural habitation clause (condition 2 of H13-0266-74 and H13-0231-75).

It should be noted that a certificate of lawfulness has previously been granted for occupation of St Albans House by persons not employed in agriculture (ref. H13-0132-24).

#### Site Description

The site is located in countryside on the western side of Fen Gate, Moulton Chapel and is occupied by a large house, plus buildings at the rear.

## **Relevant Planning History**

H13-0266-74 - Outline - Mr J W Walkers - Dwelling and garage - Approved 11 September 1974

H13-0231-75 - RM - Mr A Pearce - House and garage - Approved 23 April 1975

H13-1323-07 - S192 - Mr K German - Determination to comply with agricultural occupancy clause - Approved 15 November 2007.

H13-0981-12 - S73A - Mr & Mrs W Price - Retention of dwelling without complying with agricultural habitation clause (Condition 2 of H13-0266-74 and Condition 2 of H13-0231-75) - Refused 17 January 2013

H13-0132-24 - S191 Lawful Use Certificate - St Albans House, Fen Gate, Moulton Chapel - Approved 3 April 2024

## **Material Considerations**

### Evaluation

The purpose of an application made under Section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

Section 38 (6) of the Town and Country Planning Act, as amended by the 2004 Act, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

In this case, the South East Lincolnshire Local Plan 2011-2036, adopted March 2019, forms the development plan for the District, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework (updated December 2023) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents.

The Authority is able to demonstrate a supply of deliverable sites equivalent to in excess of 5 years through the latest Housing Land Supply Assessment.

### Housing Policy

The proposed development is outside a defined settlement limit within the South East Lincolnshire Local Plan (SELLP), 2019. It is therefore within an area regarded as countryside. Policy 1 of the SELLP is therefore relevant. It states that development will be permitted in the countryside that is necessary to such a location and/or where it can be demonstrated that it meets the sustainable development needs of the area in terms of economic, community or environmental benefits.

In this case, permission was only granted because there was an essential agricultural need. Consequently, before approving an application to remove an agricultural occupancy clause, the Authority normally needs to be satisfied that there is no longer a demand for the property by the agricultural workforce.

The recommended procedure is contained within the Council's Policy Guidance Note entitled "Agricultural Workers' Dwellings and Occupancy Conditions". Essentially, the applicant needs to show that a genuine attempt has been made to sell the property "over a reasonable period of time" (usually a minimum period of 12 months) at a value which reflects the existence of the occupancy condition. This should be in an appropriate publication, including in related agricultural publications such as "The Grower" or "Farmers Weekly", and not just the local press. It states that the value would normally be expected to fall in the range of 25-40% below open market value and the property must be actively marketed.

However, in this case a Certificate of Lawfulness of Existing Use or Development ("CLEUD") was

granted on 3 April 2024, which confirms that condition (2) of Outline Planning Permission Ref: H13-0266-74 and condition (2) of Reserved Matters Consent Ref: H13-0231-75 have been breached for a continuous period in excess of 10 years (Ref: H13-0132-24). The CLEUD confirms that occupation of the property, in breach of the agricultural occupancy clause (AOC), is now lawful and immune from enforcement action.

The Certificate of Lawfulness (Ref: H13-0132-24) and the benefits it provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of the agricultural occupancy clause in perpetuity. Although re-occupation of the property by a qualifying person (agricultural worker) would technically reactivate the AOC it would significantly reduce the value and saleability of the property. Consequently, it is extremely unlikely that the property would ever be occupied by a qualifying person again.

In light of the CLEUD, it is considered that the agricultural occupancy condition is no longer enforceable, necessary or relevant. This carries significant weight as a fall-back position and is a material consideration that overrides Development Plan Policy. This principal has been established and clarified at appeal and in appeal decisions.

## **Conclusion**

A Certificate of Lawfulness has been granted in relation to the property (Ref: H13-0132-24) for the occupation of the dwelling without complying with the agricultural occupancy clause (AOC). This follows a continuous breach of the agricultural occupancy condition for a period in excess of 10 years.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the Development Plan unless material considerations indicate otherwise (our emphasis).

The Certificate of Lawfulness (Ref: H13-0132-24) and the benefits it provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of the AOC in perpetuity. This carries significant weight as a fall-back position and is a material consideration in this application which overrides Development Plan Policy. This principal has been established and clarified at appeal many times and in appeal decisions.

## **Recommendation**

For the reasons outlined above, therefore, it is recommended that the application be approved under delegated powers.