DECISION DELEGATED TO DEVELOPMENT MANAGER

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H14-0093-19**	**Applicant:**	**Mrs Jane Stevenson**
Proposal:	Use of land as domestic garden		
Location:	Hawthorn Cottage Glenside North Pinchbeck		
Terminal Date:	8th April 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. Statutory Declaration of Jane Elizabeth Stevenson
3. Statutory Declaration of Philip John Stevenson.
4. Land Title
5. Planning Statement in Support.
6. Application form

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 background to the case is that a Lawful Development Certificate was granted for the dwelling known as Hawthorn Cottage in September 2108 (planning reference H14-0864-18), as it was

proved, on the balance of probabilities, that the agricultural restriction had been in breach for a period exceeding 10 years. The restriction was later removed by a section 73 application under planning reference H14-0968-18.

At the time the applicants appeared to have been unaware that the land associated with the Cottage was not 'red edged' as part of the application plans therefore the consideration of the land fell outside of the previous Certificate application and the subsequent removal of agricultural condition.

It is the applicants case that the area of land associated with the cottage and considered as being agricultural land (as shown on the application plan), has, since April 2005, been used as domestic garden and used continuously as such to present day. Statutory Declarations from both owners at that time have been submitted which confirm the following:
·Joint owners purchased the cottage with the land in December 2001
·It has been used as an extension to the existing garden, continuously since April 2005.
·It has been mown regularly and maintained as a domestic garden since that date.
·It is used by the family generally and for family events such as BBQ's
·The family gardened, relaxed and read and dried their clothes on the area of garden.
·Used for general amenity and enjoyment.
·Boundaries enclosed to create the garden area.
·Planted as a garden with a vegetable plot.
·Contains domestic outbuildings and keep chickens and domestic animals
·Greenhouse on site for vegetables and plants.

The applicants has concluded that since 2005 the area of land subject to this application and which directly adjoins the cottage and enclosed as such, has been used as a domestic garden and used for domestic purposes.

It is noted that the area of land is quite large to be considered as the average sized domestic garden however, the Council has no evidence or records to dispute the claim of the use and intention since 2005. There are concerns with the size of the land which would normally be considered as comparable to a small paddock, however it is enclosed and has no physical separation from the dwelling. This, along with the evidence of the use of the land by the owners for a period exceeding 10 years weighs favourably in the balance. What is also a consideration here is that the dwelling directly adjoin this area of land has been released from its agricultural tie.

No objections have been received from any parties 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.

A delegated approval is considered appropriate in the circumstances.