DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H14-0179-21**	**Applicant:**	**D R & M J Hull**
Proposal:	Retention of dwelling without complying with agricultural habitation clause - Condition 2 of H14-0397-98.		
Location:	Keston House Mill Green Road Pinchbeck		
Terminal Date:	16th April 2021		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01 Spatial Strategy

National Guidance

National Planning Policy Framework 2019

Sections 2, 4 and 5 of the National Planning Policy Framework, 2019.

2 - Achieving sustainable development
4 - Decision making
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

This application at Keston House, Mill Green Road, Pinchbeck is to remove condition 2 of H14-0397-98 (agricultural occupancy condition), which is as follows:

"Condition 2 - 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 336 of the Town and Country Planning Act 1990, 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."

SITE DESCRIPTION

The proposal site is outside of the defined settlement limits of Pinchbeck and is therefore in planning terms located in open countryside. The dwelling North Holland is sited to the north of the site, with the settlement limits of Pinchbeck 18.5 metres away to the east beyond the Spalding to Lincoln railway line. To the south 100 dwellings are under construction under the approved reserved matters application H14-1162-18. To the west is sparse development and arable fields.

HISTORY

H14-0397-98

Full - Proposed chalet bungalow and garage - Approved 23 September 2009.

H14-0394-99

Full - Erection of polytunnels and covered loading area - Approved - 09 June 1999.

H14-0747-99

Full - Erection of polytunnel, glasshouse and covered loading area - Approved - 10 September 1999.

H14-0839-99

Condition Compliance - Details of materials to external walls. (Condition 8 of H14-0397-98) - Approved - 20 September 1999.

H14-0919-03

Full - Partially demolish existing; replace and extend with new green house and form two loading bays - Approved - 08 September 2003.

H14-0942-16

Outline - Proposed residential development - Approved - 30 November 2016.

CONSULTATION RESPONSES

None

PLANNING CONSIDERATIONS

As indicated in paragraph 47 of the National Planning Policy Framework, 2019, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The proposed development is outside a defined settlement limit within the South East Lincolnshire Local Plan, 2019. It is therefore within an area regarded as countryside. Policy 1 of the South East Lincolnshire Local Plan is therefore applicable. 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 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.

The property is a three bedroom, two storey dwelling on a spacious plot. The property was assessed by Winkworth Estate Agents, who suggested a marketing price of £300,000. However, this property was never marketed. The agent has provided the house prices for the plots approved under H14-1162-18 to the south, but this has no relevance to the required 12 month marketing exercise that was incorrectly considered to not be required.

The Local Validation List sets out the requirements:
"For the removal of an agricultural habitation clause, a statement should include: a. Details of all employment on
the agricultural unit (if any); and b. Details of a comprehensive property marketing exercise at a price which
adequately reflects the existence of the agricultural occupancy condition (normally over 12 months but could be
longer depending on circumstances)." A clause cannot be removed until this marketing exercise has been completed.

The covering letter "The approval of the 100 dwellings to the south of the application came too late to be included within the settlement boundary for Pinchbeck as part of the South East Lincolnshire Local Plan. The first review of the local plan is likely to see the settlement boundary amended to reflect the built form and character of the settlement. In granting planning permission for the 100 dwellings, it was acknowledged that the proposal amounted to sustainable development notwithstanding the fact that it was outside the settlement boundary." This statement is speculative and the application must be assessed against current local and national planning policy.

The agent then states "Any proposed development, even when being considered where there is an absence of a demonstrable 5-year housing land supply, is still required to meet the three strands of sustainable development. By any reasonable assessment, a dwelling on the application site, unfettered by an agricultural occupancy condition, also amounts to sustainable development and the absence of its inclusion within the settlement boundary is merely one of timing and the first review of the local plan. The application dwelling will, as a result of the 100 dwelling development now underway, become part of the built-up settlement through this fundamental change in the character of the area forming a stronger association with the settlement than with the open countryside."

At the current time there is not an absence of a 5 year housing land supply in the district as the Local Planning Authority can demonstrate a supply of 9.1 years under the Liverpool Method (as of March 31st 2020). Additionally, an argument that an agricultural clause dwelling is bordered by development, does not justify removal of the clause. Condition 2 of H14-0397-98 states "The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, locally in agriculture". This does mean that the dwelling must be occupied by a worker who tends land immediately adjacent to the site. Planning case law has established that the definition of local is usually taken to mean a 20 to 25 minute travel time for any AHC dwelling. Even if any associated land has long since been sold or put to a different use, the clause is still considered to be in full effect on the property.

To successfully remove the condition, evidence must be shown that there is no longer a demand for the dwelling for agricultural workers. This is outlined in South Holland Policy Guidance note for 'Agricultural Workers Dwelling' and 'Occupational Conditions'. The Council would normally expect to see a period of advertising the property for sale and market value and a report from the Estate Agent to demonstrate the level of interest in the property with the agricultural occupancy clause.

Contact was made with the agent on 04 March 2021 to confirm what evidence was required and help was offered in assisting them with the requirement, however this was declined and the agent felt that they have have submitted enough information to satisfy removal of the clause. On 22 March 2021, the agent stated "You will appreciate I am not able to simply conjure up 12 months of marketing and therefore I would ask that you determine the application having regard to what we have set out in our submission. That will then give my client the opportunity to either appeal a refusal if you consider that the absence of marketing is fatal, or indeed carry out the marketing and

resubmit the application at some point in the future."

PLANNING BALANCE

As the required information is not capable of being provided within a reasonable timeframe, the application is not compliant with the Council's guidance note on this matter, therefore a delegated refusal is considered appropriate in the circumstances. The proposal therefore does not comply with Policy 1 of the South East Lincolnshire Local Plan, 2019 and advice within the National Planning Policy Framework, 2019. There are no material considerations that outweigh factors in favour of the proposal.

CONCLUSION

This application is recommended for refusal.

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.