DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H14-0338-24**	**Applicant:**	**Mr J Bolton**
Proposal:	Use of land from agricultural to domestic garden		
Location:	Oak Cottage Small Drove Lane West Pinchbeck		
Terminal Date:	3rd July 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Representations:

	Object	Support	No Obj.	Comments
BLACK SLUICE INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This is a Section 191 application seeking the granting of a Certificate of Lawfulness for agricultural land to be operated as domestic garden at Oak Cottage, Small Drove Lane.

Site Description

The site is located outside any defined settlement limit as outlined in the South East Lincolnshire Local Plan, 2019 (SELLP). Oak Cottage is a dwelling made from brickwork with a tiled roof and white uPVC windows and doors, large fields directly abut this site.

History

No relevant planning history,.

Consultation Responses

Black Sluice Internal Drainage Board

No objections.

Planning Considerations

This application seeks the granting of a Certificate of Lawfulness for the use of land from agricultural to domestic garden at Oak Cottage.

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

1. Site Location Plan
2. Evidence & Sworn Affidavit
3. Letter from neighbour

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 submitted by the applicant shows a letter from a neighbour who has written in support stating 'We have lived here for over 22 years opposite Oak Cottage. In that time we have only seen the land used for recreation. It had been our assumption that the land was part of the curtilage of Oak Cottage we have never seen any activities on that land that led us to believe anything different'. Furthermore, they have also submitted their own statement detailing that since April 1990 Oak Cottage has been their main and primary residence and the garden land has been used for the 'enjoyment and benefit of myself and my family as Oak Cottage's primary residential garden (and for no other purpose) and continues to do so at the date of this declaration'. From this it can be presumed that they have used this as a garden throughout, however, on the balance of probabilities it is clear that there is minimal substantia evidence submitted within this application to believe this has been used as garden continuously for a 10 year period.

Imagery from Google Street View shows that in 2017 the land appears to be used as a paddock with multiple horses and fences separating the paddock land throughout. Therefore, this is the only substantial evidence the LPA have which outlines what the land has been used as as recent as 2017 which, in the case officers opinion, shows that the land has not been used as domestic garden for a period of 10 years.

Conclusion

The Council has evidence to dispute the claim that the site has not been used as a domestic garden for a period of 10 years, therefore on the balance of probabilities the case cannot be proved to be in breach.

It is therefore considered inappropriate 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.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.