DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H14-1255-25**	**Applicant:**	**Mrs M Tate**
Proposal:	Occupation of dwelling by persons not employed in agriculture - Condition 4 of SR10/65		
Location:	Netherlea Dozens Bank West Pinchbeck		
Terminal Date:	11th February 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application seeks consent for a lawful development certification for the occupation of Netherlea, a dwelling formerly known as Rooperew, in breach of condition 4 of planning permission SH 10/65.

The condition restricts the occupation of the dwelling to applicant of SH 10/65, or should the applicant vacate, to an individual employed or last employed in agriculture.

The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

Site Description

Netherlea is situated approximately 3.5km west of Spalding. The property is a detached two-storey dwelling, set within gardens and grounds of 0.18 hectares.

Planning History

SH 10/65 - Planning permission was granted on 8th February 1965 by Holland County Council for the erection of a house and garage at Dozens Bank, Pode Hill subject to a number of conditions, of which condition 4 stated:

"The occupation of the house shall be limited to the personal use of the applicant and his

dependents but if vacated its occupation shall be limited to persons employed or last employed locally in agriculture or to their dependents."

Consultation

There is no statutory obligation for the Local Planning Authority (LPA) to publicise an application for a certificate of lawful development. A site notice has, however, been displayed next to the site for 21 days in the interests of transparency.

Key Planning Considerations

Relevant Legislation

Section 191(2) of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

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).

Section 191(4) sets out that:
If, on an application under this section, the local planning authority is 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.

Section 171B(3) of the TCPA sets out the following:
In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application. The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Planning Practice Guidance sets out that:
The time limits do not prevent enforcement action after the relevant dates in certain circumstances. These include where an enforcement notice has since been discovered to be defective; or where there has been deliberate concealment of a breach of planning control. Neither circumstance applies in this case.

Where a person has deliberately concealed a breach of planning control, the courts have found that in these circumstances, the time limits in section 171B do not engage until the breach has been discovered (see Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council and Bonsall / Jackson v Secretary of State for Communities and Local Government).

Therefore, in cases of deliberate concealment, a local planning authority may decide to serve an enforcement notice 'out of time' or apply for a planning enforcement order. It is for the local planning authority to decide which approach is appropriate in each case.

Established practice requires the Local Planning Authority to grant a Certificate on the basis of the "Balance of Probabilities". This test is a civil standard of proof under which there is no requirement for the applicant to prove their claim beyond all reasonable doubt. The decision must be made based on the available evidence and provided the Council are satisfied that the event is more likely than not to have occurred, then the test has been met. There is no requirement to consider the planning merits of the case.

If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, it is established that there is no good reason to refuse the application.

Assessment of Evidence

Condition 4 of planning permission SH 10/65 states as follows: *'The occupation of the house shall be limited to the personal use of the applicant and his dependents but if vacated its occupation shall be limited to persons employed or last employed locally in agriculture or to their dependents.'*

In this case, it needs to be demonstrated that the conditions have been breached for more than 10 years and this is the basis on which the application has been submitted.

The application is accompanied by the following supporting evidence:
·Title register
·Valuation office records
·Statutory Declaration of owner
·Bank Statements showing rental payments
·Details from 192.com
·Accountants letter
·Employment letter for Mr Sinilo from Freshlink
·Correspondence and Companies House records for Sinilo Trans Limited
·Extracts from Social media regarding Dorothy and Mark Hair Salon.

The information provided shows:

Melanie Tate is the owner of the property;

That Mr and Mrs Tate received regular payments of an amount of money that could be reasonably considered as rent; although the documentation does not say who from or what it is for. However a letter is included from Moore Thompson Chartered Accountants confirming that rental income from the property Netherlea has been included in the self assessment tax returns from 2007 to 2023, but it does not state who made those rental payments.

Melanie Tate's affidavit confirms that she bought the property in 1995 and rented it out under a standard periodic tenancy from 2007 to 2024. The occupants were a husband and wife, Mr and Mrs Sinilo and their two children. Mr Sinilo was in employment as an HGV driver and Mrs Sinilo as a hairdresser. Neither were employed in agriculture. The property was vacated in June 2024 and has since been undergoing repairs.

That the address is linked to Dorota and Krzysztof Sinilo on 192.com.

That Mr Sinilo was employed full time as an HGV driver for Freshlink from 2005 to 2017 as verified by his former employer.

That Mr Sinilo started a new freight transport company in 2017 and that the address of that company was Netherlea, Dozen's Bank.

That Mrs Sinilo works/owns a hairdressers.

In this case, the LPA has no evidence itself or from others that suggests the applicants have been employed in agriculture, or that the information detailed and submitted is inaccurate.

It is considered that there is sufficient evidence, on the balance of probability, that the premises has been occupied for a period of 10 years or more continuously in breach of the agricultural occupancy condition.

Time Period

Case law has shown that the breach of planning control does not necessarily have to be evident at the time of the application for a certificate of lawfulness. Once the immunity period had been reached, then such immunity cannot be lost unless that use is abandoned, another lawful use commences (e.g. by way of a planning approval), or in the case of breach of condition, compliance of the condition recommences; such as the dwellings being occupied by an individual that would fulfil the requirements of the agricultural tie condition.
R (Ocado) v Islington LBC (2021); Thurrock BC v SoS for the Environment and Holding(2002).

In this case, although currently unoccupied there is no evidence to suggest that the breach has not

ceased by an intervening use or abandonment.

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

It is considered that on the balance of probability, the site has been occupied by persons not employed in agriculture for at least the past 10 years. As such, the local planning authority would not be able to pursue enforcement action against the relevant breaches and it follows that the certificate of lawfulness should be granted on this basis.

Recommendation

It is recommended that a certificate of lawfulness should be issued under S191 of the Town and Country Planning Act, 1990.