DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H15-1291-21**	**Applicant:**	**Mr A Fedoryszyn**
Proposal:	Occupation of dwelling by persons not employed in agriculture (Condition 1 of SR-0068-68)		
Location:	Goose House Cold Hurn Lane Gosberton Westhorpe		
Terminal Date:	7th February 2022		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Not applicable.

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

S191 LAWFUL USE CERTIFICATE - Occupation of dwelling by persons not employed in agriculture (Condition 1 of SR-0068-68).

Site Description

The dwelling is located in the open countryside at the corner of Gravecoat Lane and Cold Hurn Lane/Sandy Gate.

History

SR-0068-68 - House and garage, with provision of vehicular access. Approved 9.3.1969.

Consultation Responses

SHDC Legal Services

Hass reviewed the application and agree this application should be approved.

Planning Considerations

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.

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

1. Application Form
2. Site Location Plan
3.Letter from Agent ref. DDW/Goose House dated 10.12.21
4. Decision Notice SR-0068-68 - House and garage, with provision of vehicular access. Dated 9.3.1969.
5. Statutory Declaration of Andrew Fedoryszyn dated 2.12.21

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.

In the absence of any evidence to the contrary, it is concluded that sufficient evidence has been produced which demonstrates that "on the balance of probability" the occupation of the dwelling in breach of Condition 4 of H07-1090-87 and Condition 1 of H07-0536-94 has continued for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

It is therefore considered appropriate to issue a certificate of lawfulness.

Conclusion

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.