

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0926-25 **Applicant:** Mr G F Healey & Mrs T P Healey

Proposal: Occupation of dwelling by persons not in agriculture - Condition 1 of SU181/65 & Condition 3 of SU52/70

Location: Cleylands Burr Lane Spalding

Terminal Date: 26th November 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the occupation of a dwelling in breach of condition 1 of permission SU181/65 and condition 3 of permission SU52/70. The conditions restrict the occupation of the dwelling, Cleylands, to someone employed or last employed in agriculture. Condition 3 of permission SU52/70 is more specific as this condition restricts the occupation to a person associated directly with the agricultural engineering business on the site.

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

Site Description

The site comprises land at Cleylands, located to the south of Burr Lane which is located to the south of Spalding. The site is surrounded by agricultural land; however, there are some scattered dwellings located within the vicinity of the site in addition to some commercial businesses and agricultural buildings.

Planning History

SU181/65: House, garage and vehicular access at Burr Lane, Spalding (revised siting involving the revocation of permission granted under SU22/65) - approved 05 May 1966

SU52/70: (Full Application) Change of use of implement store to light industry at "Cleylands", Burr Lane, Spalding - approved 09 April 1970

H16-0027-76: (Full Application) Fence (150 Long and 4 high) along frontage of paddock at "Cleylands", Burr Lane, Spalding - approved 11 February 1976

H16/0079/80: (Full Application) Extension to house at "Cleylands", Burr Lane, Spalding - approved 08 February 1980

H16-0932-82: (Full Application) Extension to dwelling to provide dining room and porch - approved 09 December 1982

H16-1180-02: (Full Application) Change of use to Romany Museum - approved 10 December 2002

H16-0912-02: (Section 73) Modification of Condition 2 of SU52/70 (use limitation) to allow for the cold storage, preparation and distribution of prepared vegetables and salad products - approved 23 December 2002

H16-0318-07: (Full Application) Proposed detached double garage with room above for residential use - refused 23 May 2007

H16-0959-07: (Full Application) Proposed detached double garage - approved 31 August 2007

H16-1292-08: (Full Application) Proposed side extension to workshop - approved 13 February 2019

H16-0536-10: (Full Application) Erection of light engineering workshop to replace existing - approved 20 August 2010

H16-0167-11: (Section 73) Erection of light engineering workshop to replace existing. Modification of Condition 2 of H16-0536-10 to allow amendment to design of building approved under dwg. nos. ADH/002/02/10, ADH/002/03/10A and ADH/002/04/10 - approved 19 April 2011

H16-0409-13: (Full Application) Proposed extension and alterations - approved 17 June 2013

H16-0977-13: (Full Application) Proposed extension (re-submission of H16-0409-13) - approved 16 December 2013

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

"(2) 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); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out that:

"(4) 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."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). 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.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

Planning Practice Guidance sets out that:

"In most cases, development becomes immune from enforcement if no action is taken:

-within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024;

-within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024;

-within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;

-within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024; or

-within 10 years for any other breach of planning control (essentially other changes of use)."

However, the time limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:

-Section 171B(4)(b) of the Town and Country Planning Act 1990, which provides for the taking of "further" enforcement action in respect of any breach of planning control within 4 years of previous enforcement action (or purported action) in respect of the same breach. This includes the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. It also includes the situation where an enforcement warning notice is issued within the relevant time limit but further enforcement action is subsequently required. This is known as the "second bite" provision.

·where there has been deliberate concealment of a breach of planning control, local planning authorities may apply for a planning enforcement order to allow them to take action after the time limits in section 171B have expired.

·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.

Assessment of Evidence

Condition 1 of planning permission SU181/65 states the following:

"The occupation of the house shall be limited to persons employed or last employed, legally in agriculture or to their dependents.

Reason

This building is sited in an area, in which buildings, other than those connected with an agricultural need, would not be permitted."

Condition 3 of planning permission SU52/70 states the following:

"The occupation of the dwelling shall be limited to persons associated directly with the agricultural engineering business.

Reason

To preserve the agricultural character and uses in the locality."

Firstly, it should be noted that permission SU52/70 was updated in 2002 when a section 73 application was approved under reference H16-0912-02. This allowed for the modification of condition. Condition 3 was not carried over within permission H16-0912-02. This has been discussed with the applicant's agent, and they have set out that the applicant is unsure if permission H16-0912-02 has been implemented. As such, condition 3 from the original permission is still considered to apply.

In this case, it needs to be demonstrated that the conditions have been breached for more than 10 years (since November 2015) as this is the basis on which the application has been submitted. The application is accompanied by supporting statements from the current owners and a former owner of the site. According to the submitted statements from the current owners, the applicants have lived at the property since November 2016. Since this time, the applicants have run a self-storage business called Spalding Self Store and the applicants, therefore, claim that they have not been employed in agriculture. Planning permission does not appear to have been granted for this business; however, this is subject to a separation consideration from the current application.

The applicants also set out that they have not previously been employed within the agricultural sector, nor has the site been used for agricultural purposes since they moved to the site. The statements do not refer to any other employment nor has any additional information been provided such as bank statements or accounting information to demonstrate that the current owners have not been employed in agriculture. Notwithstanding this, the statements set out that the owners have not been employed in agriculture and planning guidance clearly sets out the following (Paragraph: 006 Reference ID: 17c-006-20140306):

"...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, there is no good reason to refuse the application..."

In this case, the LPA has no evidence itself or from others that suggests the applicants have been employed in agriculture.

As the applicants moved to the site in November 2016 and the application is currently subject to determination in November 2025, this does not cover a period of 10 years. Therefore, it is also necessary to consider if the breach of the conditions covered the period from November 2015 to November 2016, prior to when the current owners moved into the property.

The application is also accompanied by a statement from a previous owner of the site who lived within the site from 28th February 2003 to 3rd November 2016. The statement later sets out that the property was sold in October 2016. Whilst this is a discrepancy, regardless as to whether the property was sold in October or November, as the next owners moved into the site in November 2016, it is not considered that there would have been a significant break in the occupation of the site.

According to the former owner's statement, the previous owner was also not employed in agriculture. The former owner sets out that when they moved to the site, they were employed as a company director in Promech UK Ltd which at that time specialised in providing engineering and fabrication support to the food, horticultural and civil engineering industries. Promech was run from land at the side of the house at Cleylands. According to the statement, Promech was no longer operating from the site by May 2015. The LPA has checked Companies House and it appears that Promech was dissolved on 01 September 2015.

According to the statement, the LPA's planning department provided advice in 2002 setting out that the owners could reside within the site despite the restrictions of the conditions as one of the owner's had customers within the agricultural trade. It is presumed that this refers to the Promech business; however, this is not clarified, nor is any written information provided setting out the advice that was received from the LPA. Notwithstanding this, it appears that the business Promech was no longer operating from the site from May 2015 onwards and the remaining owner of the site was not

employed in agriculture after this point. The LPA does not have any evidence to suggest otherwise. As such, it is considered that on the balance of probability the site has been occupied in breach of the relevant conditions for at least the past 10 years.

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 LPA 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.