

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0947-25 **Applicant:** Miss S Holmes
Proposal: Removal of agricultural occupancy condition (Condition 3 of H16-0517-88)
Location: Hollies Rangell Gate Low Fulney
Terminal Date: 1st December 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01 Spatial Strategy

National Guidance

National Planning Policy Framework December 2024

National Planning Policy Framework Para 84.

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0

CASE OFFICER ASSESSMENT

Description of Proposal

This is a section 73A application, seeking to remove Condition 3 of H16-0517-88.

That condition stated:

'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 290(1) of the Town and Country Planning Act 1971, or a dependent of such a person residing with him, or a widow or widower of such a person.'

The reason given for the condition was:

'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 site lies outside of any of the settlement boundaries outlined within the South East Lincolnshire

Local Plan, 2019, and is therefore defined, in planning terms, as being located in the open Countryside. It sits to the east of the Coronation Channel between the A16 and Low Fulney.

To the east is an agricultural field, although beyond is Low Fulney Industrial Estate. To the south is another agricultural field, west of which is Flamingo, a company that deals with flowers and horticultural produce within large buildings. To the north is Spalding School of Dance (according to Google 2025) and opposite, again on the western side of the road, is a large agricultural storage building used by David Bowman Pumpkins.

Relevant History

H16-0517-88. Outline - Develop land to provide building plot for bungalow with garage and vehicular access'. The application form states the applicant and his son are in a farming partnership pertaining to approx. 500acres of land of which 125acres is adjoining. The application was to enable the applicant to semi-retire so that his son can occupy an existing residence at a nursery.

H16-1152-88. Reserved Matters - Erect bungalow with garage and new vehicular' access'.

H16-0292-12. Hollies, Rangell Gate, Low Fulney. Extension to rear of dwelling. Approved. Conditions relate to time to implement, plans and external materials.

H16-1058-19. Rangell Gate, Low Fulney. This application sought a Certificate of Lawful Use in breach of condition as a result of occupation of the dwelling by persons not employed in agriculture (condition 3 of H16-0517-88). It was stated that the breach began in 2000, and had continued since. The application was approved.

Consultation Responses

No consultation responses received

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Key Planning Considerations

Evaluation

Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The adopted South East Lincolnshire Local Plan 2011-2036, adopted March 2019 (SELLP), is the development plan for the district, and is the basis for decision making in South Holland. The relevant development plan policies are detailed within the report above.

The policies and provisions set out in the National Planning Policy Framework, 2024 (NPPF) are also a material considerations in the determination of planning applications, alongside adopted Supplementary Planning Documents.

Evaluation - Section 73

The proposal relates to the removal of Condition 3 of H16-0517-88 (agricultural occupancy condition), utilising section 73 of the Act. The purpose of an application made under section 73 of the Town and Country Planning Act 1990 is to vary or remove conditions associated with an existing planning permission. These applications are used to allow for amendments to an approved scheme and can be made both retrospectively and prior to a permission being implemented, as long as the permission is extant.

The Act is clear that: "On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted." As such, the Local Planning Authority are not able to revisit the principle of development and only matters

relevant to the specific conditions can be considered.

The effect of granting permission would be to issue a new permission with the relevant condition removed, together with any other relevant conditions from the original permission, or subsequent relevant revisions since this permission.

Principle of Development

Policy 1 of the South East Lincolnshire Local Plan (SELLP) sets out the settlement hierarchy in respect of delivering sustainable development, which meets the social and economic needs of the area whilst protecting and enhancing the environment; in order to provide enough choice of land for housing to satisfy local need, whilst making more sustainable use of land, and to minimise the loss of high-quality agricultural plots by developing in sustainable locations and at appropriate densities.

Policy 1 expresses this sustainable hierarchy of settlements, ranking the settlements deemed to be most sustainable in descending order. The most sustainable locations for development are situated within the 'Sub-Regional Centres', followed by 'Main Service Centres'. Lower down the hierarchy are areas of limited development opportunity including Minor Service Centres, with areas of development constraint comprising 'Other Service Centres and Settlements'. The countryside is at the bottom of the settlement hierarchy and represents the least sustainable location.

The proposed development lies outside a defined settlement limit within the SELLP. It is therefore within an area regarded as countryside. Where a site would be located within the Countryside, Policy 1 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."

The property was constructed in about 1988 and occupied in accordance with the condition until the applicant's demise in 2000, when it became occupied by his daughter and son in law and granddaughter, none of whom worked in agriculture. The applicant's daughter passed away in 2019 followed by his son in law in June 2025.

The principle of development was accepted by the original host application; however, this was only accepted and granted on the basis of horticultural need. The policy circumstances remain the same, and should an application be received today, the requirement for essential agricultural need would need to be demonstrated. On that basis the need for the condition would arguably remain as a new planning approval would not be granted without it.

However, the approach to considering applications to remove an occupancy clause is not solely whether it would be appropriate to grant planning approval for that development without it, but whether there is still a demand for the property by anyone employed in agriculture.

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. This should be in an appropriate publication, including in related agricultural publications such as "The Grower" or "Farmers Weekly", and not just the local press. It states that the value would normally be expected to fall in the range of 25-40% below open market value and the property must be actively marketed.

It should be noted that this guidance note is outdated. However, this offers guidance and appropriate direction as to the appropriate route to explore.

Notwithstanding this, a further material consideration would be the planning history of the site, and in particular the previously determined Certificate of Lawfulness of Existing Use or Development ("CLEUD"). This Lawful Development Certificate was granted in 2012, which confirmed that condition 2 of SR103/69 had been breached for a continuous period in excess of 10 years (Ref: H22-0849-12). The CLEUD confirms that occupation of the property, in breach of the agricultural occupancy clause (AOC), is now lawful and immune from enforcement action. The CLEUD and the benefits it provides are transferable to subsequent owners and occupiers therefore, the property can be occupied in breach of the agricultural occupancy clause in perpetuity.

Although re-occupation of the property by a qualifying person (agricultural worker) would technically

reactivate the agricultural occupancy condition, the fact that it would significantly reduce the value and saleability of the property means that it is extremely unlikely that the property would ever be occupied by a qualifying person in the near future.

Within the intervening years between the granting of the CLEUD and this application, based upon the evidence provided, the occupants of the dwellinghouse have not been employed in agriculture. To this end, at the time of this application, the clause has not been reactivated.

Evidence has been put forward that changing market trends have reduced demand for agricultural workers dwellings, and as a result there is no need for the clause to remain. However, the evidence provided takes the form of broad statistical trends, rather than locational specific data and as such is of little material weight. There has been no information put forward to state that there is no need for housing for agricultural or horticultural workers in this location, and given the nature of the surrounding land uses, it is quite possible that a need could exist.

Other usual methods of demonstrating a lack of need such as unsuccessful attempts of sale has not been provided; and therefore, it cannot be said unequivocally that there is a lack of need for the dwelling to have the condition attached. This point therefore only carries limited weight.

Arguably, there is no reason to allow removal of the condition - from a policy perspective it would remain relevant; a lack of need for housing for agricultural workers has not been demonstrated; and as the property could continue to be lived in, in non-compliance of the condition, then the removal of the condition does not change the existing status quo.

However, the existence of a CLUED has been found in appeal cases to be the overriding material consideration. Rather than considering whether the condition is or was necessary, greater weight was given to the test of enforceability as a result of the CLUED.

In APP/Y1138/W/23/3325463 - Mid Devon District Council the Inspector concluded "Although I have found that condition (e) is necessary having regard to planning policies which seek to restrict housing development in the countryside, it fails the test of enforceability set out in the Framework. The appeal should therefore be allowed.

APP/R3325/W/20/3255645 - South Somerset District Council. The Council's reason for refusal were that the application fails to demonstrate that the dwelling is no longer required within the local agricultural, forestry, or equestrian community and no marketing has been undertaken for the requisite time period. It has not been demonstrated that the occupancy condition serves no useful purpose - The Inspector disagreed and stated that the presence of the Certificate of Lawful Existing Use was a material consideration to which he gave significant weight. He considered the contention made by the Council that it would be able to take enforcement action following a break in occupation or subsequent occupation by a qualifying person, however he stated that given the immediate impact on capital value such action would cause, it was highly unlikely to occur.

APP/M9496/W/19/3233160 - Peak District National Park Authority. The Inspector identified the main issue to be whether the condition continued to meet the 6 tests for planning conditions contained in the National Planning Policy Framework. The Inspector stated that: "whilst it may be possible that the appeal dwelling could be occupied in the future by a person who complied with Condition 5, or that the appeal dwelling could be left vacant for a significant period of time, thereby extinguishing the CLUED, these situations are both hypothetical. They may not take place for a considerable period of time and may not take place at all. At present, the appeal condition has no function with regard to the existing lawful use of the dwelling and is currently immune from enforcement action." He therefore concluded that the Agricultural Occupancy Condition was: "not necessary, enforceable or reasonable and so does not meet three of the six tests for planning conditions contained in the Framework. As such its removal would be acceptable".

In light of the considerations outlined above, including that of the CLEUD, it is considered that the agricultural occupancy condition is no longer enforceable. This carries significant weight as a fall-back position and is a material consideration. As such, in this instance, whilst not conforming to Policy 1 of the South East Lincolnshire Local Plan, the principle of development is acceptable, and has been established.

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

As detailed above, Section 38 (6) of the Planning and Compulsory Purchase Act 2004, as amended, requires that the Local Planning Authority makes decisions in accordance with the adopted Development Plan, unless material considerations indicate otherwise.

The Certificate of Lawfulness (Ref: H22-0849-12) and the benefits it provides are transferable to subsequent owners and occupiers, therefore the property can be occupied in breach of the AOC in perpetuity. This carries significant weight as a fall-back position and is a material consideration in this application.

Recommendation

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