DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H17-1024-22**	**Applicant:**	**Mr & Mrs R Hart**
Proposal:	Retention of dwelling without complying with agricultural habitation clause (Condition 4 of H17-1306-91)		
Location:	The Burrells Stockhouse Lane Surfleet		
Terminal Date:	16th December 2022		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

2 - Achieving sustainable development
4 - Decision making
5 - Delivering a sufficient supply of homes

Representations:

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

CASE OFFICER ASSESSMENT

PROPOSAL

This is a Section 73A Continuation application at The Burrells, Stockhouse Lane, Surfleet for the retention of a dwelling without complying with the agricultural habitation clause (Condition 4 of H17-1306-91).

SITE DESCRIPTION

The site is outside of defined settlement limits and the surrounding area is predominately rural, characterised by non-nucleated linear development of varying ages and designs.

RELEVANT HISTORY

H17-0271-91

No documents held by Local Planning Authority.

H17-1306-91

Outline - Proposed new dwelling for agricultural purposes and farmstead inc. means of access (Registered as H17/0271/91) - Approved - 04 February 1992

H17-0249-92

Reserved Matters - Erect 3 bed bungalow - Approved - 02 June 1992.

H17-0587-93

Full - Proposed garage - Approved - 23 July 1993.

H17-0601-22

Section 191 Lawful Use Certificate - Occupation of dwelling by persons not employed in agriculture (Condition 4 of H17-0271-91 - re-registered as H17-1306-91) - Approved - 11 August 2022

CONSULTATION RESPONSES

None

PLANNING CONSIDERATIONS

As indicated in paragraph 47 of the National Planning Policy Framework (2021), planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.

The dwelling is outside a defined settlement limit within the South East Lincolnshire Local Plan (2019). It is therefore within an area regarded as countryside. Policy 1 of the South East Lincolnshire Local Plan is therefore applicable. It 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.

In this case, permission was only granted because there was an essential agricultural need. Consequently, before approving an application to remove an agricultural occupancy clause, the Authority needs to be satisfied that there is no longer a demand for the property by the agricultural workforce.

The applicant applied for a Lawful Use Certificate (LUC) for the occupation of a dwelling by persons not employed in agriculture which is in breach of the condition. The LDC was granted on the 11 August 2022, under reference H17-0601-22, as the evidence submitted on the balance of probabilities proved that the agricultural occupancy condition had been breached for a period in excess of the required 10 years. The Council held no records or evidence to dispute the claim. Therefore, the occupation of the house in breach of the condition is considered lawful and immune from enforcement.

The granting of a LUC does not automatically lead to the grant for the removal of the condition but when considering the length of time the applicant has lived in the property and the lack of any material or demonstrable harm arising from the occupation of the property in breach of the condition, it is felt appropriate to grant the application as applied for. No objections have been received to the application therefore on the balance of probabilities it is considered that the need for the condition has sufficiently diminished the actual need for the restriction and the application, on this occasion, should be a delegated approval.

In the context of a LUC already having been granted, Paragraphs 3.5 and 3.6 from the Agricultural Workers' Dwellings and Occupancy Conditions Policy Guidance Notice (2006) are considered to be no longer relevant.

PLANNING BALANCE

The granting of a LUC does not automatically lead to the grant for the removal of a restrictive occupancy condition but when considering the length of time the applicant has lived in the property and the lack of any material or demonstrable harm arising from the occupation of the property in breach of the condition, it is felt appropriate to grant the application as applied for.

CONCLUSION

That Condition 4 of H17-1306-91 should be removed.

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.