

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H18-0193-25 **Applicant:** Mr & Mrs Andrews

Proposal: Occupation of dwelling by persons not employed in agriculture - Condition 5 of H18-1886-88 & H18-0910-89

Location: New House Nursery Hospital Drove Long Sutton

Terminal Date: 22nd April 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 191 of the Town and Country Planning Act 1990 (as amended)

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	3	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application is for a lawful development certificate for an existing use, submitted under S191 of the Town and Country Planning Act 1990. The applicant seeks confirmation that the dwelling 'New House Nursery' has been occupied in breach of a condition 5 of planning permission H18/0910/89, which attached an agricultural occupancy condition.

Site Description

The application site is located on the eastern side of Hospital Drove (north of the junction with Woad Lane/Ave Farm Road). The application site is located to the east of Long Sutton and North West of Sutton Bridge located outside of any defined settlement boundary and in the open countryside.

The boundaries are set back from Hospital Drove where there is a grass verge with a number of cars parked to the fore. This site abuts an application for a separate certificate at 'Lords Manor' which is located north of the site shown in red on the location plan.

History

H18/1886/88 - Outline Planning Permission - One Residential Dwelling House - New House Farm, Hospital Drove, Long Sutton, Spalding, PE12 9EN - Approved.

H18/0910/89 - Full Planning Permission - One Residential Dwelling House - New House Farm, Hospital Drove, Long Sutton, Spalding, PE12 9EN - Approved.

H18/0931/99 - Use of land for siting of caravan for animal food storage - New House Nursery, Hospital Drove, Long Sutton, Spalding, PE12 9EN - Approved.

H18/0700/01 - Continuation of permission without complying with agricultural occupancy conditions - New House Nursery, Hospital Drove, Long Sutton, Spalding, PE12 9EN - Approved.

Wider Site

H18-0941-23- S191 - Use of building as a residential dwelling. Certificate not issued

H18-0943-23 - S191 - Conversion of barn into residential dwelling. Certificate not issued

H18-0611-24 - Confirmation that The Lords Manor, The Lords Manor Barn & The Lords Manor Static all have an established use (beyond relevant periods for immunity) as individual residential dwellings - Lords Manor, Hospital Drove, Long Sutton, Spalding, PE12 9EN - Approved.

Consultation Responses

This application has been advertised in accordance with the Development Management Procedure Order 2015 (as amended). It has been subject to a number of comments and objections which can be summarised as:

- House has been vacant for a number of years.
- Used as storage.
- False and inaccurate information.

Planning Considerations

Relevant Legislation

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

"Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether

- (a) any existing use of buildings or other land is lawful;
- (b) any operations which have been carried out in, on, over or under land are lawful; or
- (c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if

(a) the time for applying for an order under section 171BA (a "planning enforcement order") in relation to the matter has not expired,
(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

(4) If, on an application under this section, the local planning authority are 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.

(5) A certificate under this section shall

- (a) specify the land to which it relates;
- (b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
- (c) give the reasons for determining the use, operations or other matter to be lawful; and
- (d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission

- (a) section 3(3) of the M1Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;
- (b) section 5(2) of the M2Control of Pollution Act 1974; and
- (c) section 36(2)(a) of the M3Environmental Protection Act 1990."

Therefore, the local planning authority (LPA) needs to be provided with sufficient information to demonstrate that there are no planning conditions within previous planning permissions within the site which restrict the operating hours of the petrol filling station.

Assessment

The application seeks the local authority's consideration as to whether:

New House Nursery has been lived in breach of condition 5 attached to planning permission H18/0910/89

The condition states:

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 & Country Planning Act 1971, or a dependant of such a person residing with him, or a widow or widower of such a person.

The applicant has provided :

- A planning statement
- Land Registry details confirming Mr & Mrs Andrews own the property.
- Decision Notices for H18-0910-89 & H18-1886-88

Key to this consideration above all else is the permission granted under H18-0700-01. This application removed the agricultural occupancy condition from planning permission H18-1886-88.

This application was supported by a marketing exercise to demonstrate that there was no longer a requirement for the agricultural occupancy condition to be attached. Subsequently permission was granted on 14th August 2001 allowing the dwelling to be lived in with out the agricultural occupancy condition attached to H18-1886-88.

It should be noted that this application was in Outline form. As such, whilst the aforementioned application, under reference H18-0700-01, did permit the removal of this condition, the timeframe for a subsequent reserved matters submission had comfortably passed. It was advised, through prior discussions, that a lawful use would need to be sought in relation to the Full Planning

Permission which was subsequently permitted under reference H18-0910-89.

Planning Application H18-0910-89

This application contained the same condition, applied to the same dwelling. This was a full application submitted 1 year following outline approved (which in effect replaced the reserved matters). Despite this condition remaining, it is considered that the process of removing the agricultural occupancy condition from the outline permission (H18-1886-88) sufficiently demonstrated that the condition at the time the decision was issued in 2021 (relating to H18-0700-01) was no longer required.

NPPF paragraph 57 states that *Planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Agreeing conditions early*

This is considered pertinent as to retain/apply the occupancy condition on planning application H18-0910-89 after 14th August 2001 when H18-0700-01 was approved (which demonstrated that the occupancy condition was no longer required on this dwelling) would be unreasonable. It is therefore likely then that the condition 5 of H18-0910-89 (agricultural occupancy condition) stopped having an effect when on 14th August 2001 when the condition was removed as part of planning permission H18-0700-01.

On this basis alone, the certificate should be issued and adherence with the occupancy condition attached to planning permission H18-0910-89 is demonstrated as being breached well beyond immunity.

Immunity

Whilst it is likely that the occupancy condition still attached to H18-0910-89 is unreasonable. The applicant has submitted a S191 application to suggest that the dwelling has been occupied in breach.

The time limits for taking enforcement action are set out in section 171B of the Town and Country Planning Act 1990. It states that In most cases, development becomes immune from enforcement if no action is taken:

- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024
- within 10 years for any other breach of planning control (essentially other changes of use)

New House Nursery needs to demonstrate a 10 period where this dwelling has been lived in in breach of the condition. Planning Practice Guidance (Paragraph: 006 Reference ID: 17c-006-20140306) states that *In the case of applications for existing use, 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, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.*

South Holland DC issued a recent lawful development certificate on the wider site under H18-0611-24. As part of the supporting evidence of this application many neighbours had signed that Mrs Ann Andrews lived in a property named 'the Lords Manor Barn' which is located adjacent to New House Nursery. The planning statement whilst making it clear that both Mr & Mrs Andrews have lived in breach for over the requisite period of time does not provide recent dates.

The LPA therefore consider that whilst there may be some conflicting evidence provided under H18-0611-24, that is reinforced by comments received under this application, the strength of this evidence does not precisely contradict that New House Nursery has been occupied in breach of the occupancy condition for a number of years, beginning in 1999 when the Andrews first bought the property. The LPA do not pose sufficient information to discount that this dwelling was not lived in for a continuous 10-year period from 1999 up until today, even if it was only Mr Andrews himself living in the property. Despite the evidence submitted as part of H18-0611-24 and the comments received as part of this application.

On the balance of probability therefore there is justification to issue the certificate.

Other Matters

Whilst some of the evidence therefore submitted under H18-0611-24 may be conflicting, it does not disprove that the Andrews have lived in New House Nursey for a 10 year period from 1999 when they purchased the dwelling.

In terms of any potential enforcement during that period, a material consideration is that an occupancy condition has previously been considered no longer necessary (as per the decision of H18-0700-01). It would have been likely that the Andrews would have been requested to regularise the scenario through the submission of a S73 to remove the condition from the full permission also.

Conclusion

New House Nursey has already established that the agricultural occupancy condition is not necessary, and the LPA have agreed by issuing a reflective permission under H18-0700-01. It is likely then since the issue of that permission condition 5 (the occupancy condition) has unreasonably been applied to H18-0910-89.

Since 14th August 2001 it is highly likely that the dwelling has continually been lived in by at least one of the Andrews, beyond a period of immunity and therefore the use in breach of condition 5 of planning permission H18/0910/89 began more than 10 years before the date of this application.

Recommendation

It is recommended that a certificate is issued.

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.