

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H18-0428-25 **Applicant:** Mr & Mrs Andrews
Proposal: Removal of agricultural occupancy condition (condition 5) of H18-0910-89
Location: New House Nursery Hospital Drove Long Sutton
Terminal Date: 3rd July 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Section 4 - Decision-making

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is an application made under Section 73 of the Town & Country Planning Act 1990 (as amended) seeking the removal of agricultural occupancy condition (condition 5) of H18-0910-89.

The applicant has provided a Planning Statement, site location plan and additional supporting information.

Site Description

The application site is located on the eastern side of Hospital Drove (north of the junction with Woad Lane/Ave Farm Road) close to number 219. 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 site is closed off with high gates at two accesses and tree lined. The boundaries are set back from Hospital Drive where there is a grass verge with a number of cars parked. 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.

The current owners benefit from an LDC that confirmed that they have lived in breach of this condition, over a period of which, the council can take enforcement action.

History

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

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

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

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

H18-0193-25 - Occupation of dwelling by persons not employed in agriculture - Condition 5 of H18-1886-88 & H18-0910-89. Certificate Issued 25th April 2025

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 Drive, Long Sutton, Spalding, PE12 9EN - Approved.

Consultation Responses

No responses received

Representations

The application has been advertised in accordance with the Development Management Procedure Order 2015, no comments have been received.

Development Plan

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, December 2024 (NPPF) are also a material consideration in the determination of planning applications, alongside adopted Supplementary Planning Documents. There are no adopted Neighbourhood Plans for the area within which the site is located.

Evaluation - Section 73

The proposal relates to the removal of Condition 5 of H18-0910-89, through seeking permission under 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 very 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 removed an occupancy restriction, together with the reattachment of any other relevant conditions from the original permission, or subsequent relevant revisions since this permission. Planning practice guidance highlights that where less substantial changes are proposed, amending a proposal can occur through 'Amending the conditions attached to the planning permission, including seeking to make minor material amendments'. The PPG clarifies that "Permission granted under Section 73 takes effect as a new, independent permission to carry out the same development as previously permitted subject to new or amended conditions. The new permission sits alongside the original permission, which remains intact and unamended.

It is open to the applicant to decide whether to implement the new permission or the one originally granted". There is no statutory definition of a 'minor material amendment'; but this is likely to include any amendments where its scale and/or nature results "in a development which is not substantially different from the one which has been approved".

In the case of R (Vue Entertainment Limited) v City of York Council, it was concluded that the decision gives clear support for use of s.73 in respect of changes to conditions which go beyond 'minor' amendments. It places a clear emphasis on preserving the precise terms of the grant. If an amendment to a condition can be made which keeps the description of the development intact it may well be appropriate to make such an application under a s.73, even if the affect of the change will be significant".

Planning Considerations

This application is supported by a planning statement, reference to the application sites extensive planning history and permissions achieved as well as a site location plan. The property is a dwelling, obliged by condition to be occupied by someone working (or related to such a person) within agriculture. The local plan (SELLP) has no bespoke policy on the process for justifying the removal of occupancy related conditions, however the standard approach is for applicant to carry out a scheme of marketing, at a reflective price (acknowledging the occupancy restriction). This case is somewhat different, the applicants have previously been through this marketing process (under planning permission H18-0700-01) where the occupancy condition was removed from Outline Planning Permission H18-1886-88. An error was made by the applicants as this outline permission was never implemented, the proposal should have been to remove the condition from the full permission instead (the one subject to this S73 application).

In effect then whilst the applicants under H18-0700-01 demonstrated that there was no requirement for an agricultural occupancy workers dwelling on this site, administratively the incorrect reference number was put forward on the application form at that time, it was also not corrected by the LPA.

The key considerations are in relation to the following topics:

- Planning History
- Tests for conditions
- Re attachment of Conditions
- Planning Balance

Planning History

H18-0700-01

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 without the agricultural occupancy condition attached to H18-1886-88 (the unimplemented outline permission).

H18-1886-88

This application was for outline permission, it contained the same occupancy restriction as H18-0910-89, though was never implemented as a 'full' application came forward instead of a reserved matters application.

H18-0910-89

This application, which is the subject of this S73 was a full application submitted 1 year following outline approval (which in effect replaced the reserved matters). Condition 5 required:

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.

This condition remains attached to the property until this day.

H18-0193-25

This application sought a lawful development certificate from the council, the decision was to issue the certificate for the following use/description:

Occupation of dwelling by persons not employed in agriculture - Condition 5 of H18-1886- 88 & H18-0910-89. The applicants have continually breached the agricultural occupancy condition (condition 5 of planning permission H18/0910/89) for a period beyond which the local planning authority can take enforcement action.

It was considered that on the balance of probabilities that the applicants (who had the occupancy restriction lifted in 2001 from the outline) would have likely been in breach continually beyond a period where the LPA could enforce. Whilst the LDC allows the applicants to live in the property, its effect is only relevant to them, should they sell the property or any once else move in then the breach would restart and immunity lost.

Summary of planning History

The key points are that:

- The current applicants under planning approval H18-0700-01 demonstrated that there was no longer a requirement for the occupancy condition at the application site, but applied to have it removed from an unimplemented permission (the outline rather than the full)
- The current applicants, despite the occupancy condition still being attached to H18-0910-89 have established they are living lawfully in the property.

Tests for conditions

The test for conditions is most recently set out under paragraph 57 of the National Planning Policy Framework, which states:

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 16 is beneficial to all parties involved in the process and can speed up decision making. Conditions that are required to be discharged before development commences should be avoided, unless there is a clear justification

It is considered that given the applicants have demonstrated that this site no longer requires an agricultural occupancy condition (H18-0700-01) it would be unreasonable not to allow the restriction to be lifted from this application.

Secondly the condition at present has, through the issuing of a certificate acknowledged that currently the condition is unenforceable.

Therefore, on this basis it is likely that there is no justification to hold on to the occupancy condition, which in sensible terms, was demonstrated redundant on this property under permission H18-0700-01.

Re attachment of Conditions

Permission under H18-0910-89 was given subject to 5 conditions. The first condition related to the timeframe for the development to begin, the second relates to external materials. A condition relating to trees and shrubs has likely passed its purpose (and would be unreasonable to reattach in this scenario) and condition 4 has also likely gone beyond its purpose, which related to establishing hedge boundaries. Condition 5, the occupancy condition is subject to this assessment.

On this basis it is considered that there is no requirement to reattach any planning conditions.

Planning Balance

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 applicants have previously demonstrated that there is no justification to have the dwelling restricted through occupancy. Moreover the LPA have issued a certificate stating that the current incumbents are immune from any enforcement action.

It is considered that it would be unreasonable in this instance, given the planning history attached to this dwelling, if the LPA did not remove the occupancy restriction from H18-0910-89.

Conclusion

In line with the advice given under paragraph 57 of the National Planning Policy Framework, the condition is currently not enforceable nor in the longer term is it reasonable to retain. It is hereby 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.