DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H19-0233-23**	**Applicant:**	**Mr R Seaton**
Proposal:	Occupation of dwelling by persons not employed in agriculture (Condition 3 of EE36/73)		
Location:	98 Luttongate Gedney Hill Spalding		
Terminal Date:	4th May 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

PROPOSAL

This is a S191 application seeking the granting of a Certificate of Lawfulness for occupation of 98 Luttongate, Gedney Hill, PE12 0QH by persons not employed in agriculture (Condition 3 of EE36/73)

SITE DESCRIPTION

The site is located on Luttongate in Gedney Hill. It is located outside any defined settlement boundary and within the open countryside. It comprises a detached bungalow with a gravelled parking area to the front and side. There are a small number of dwellings scattered along the road but the site is predominantly surrounded by open fields.

HISTORY

H19-0456-90 - Retention of dwelling without complying with' agricultural condition' - refused

EE36/73 - New dwelling - approved

CONSULTATION RESPONSES

No consultations were undertaken and no representations have been received.

MATERIAL CONSIDERATIONS

The application seeks the granting of a Certificate of Lawfulness for occupation of 98 Luttongate, Gedney Hill, PE12 0QH by persons not employed in agriculture.

The applicant has submitted the following evidence in support of the claim:

Site location plan 1530-1_PL_LP01
LDC Supporting Information - Mr & Mrs Seaton
LDC Supporting Information - Terry Musgrove
LDC Supporting Information - Amy Brooks
LDC Supporting Information - Salway & Wright
LDC Supporting Information - David Naylor

This is a legal determination and planning policy is not therefore relevant to the determination as to whether the claimed use is indeed lawful. The test which the application must meet is that the use has been on-going for a continuous period of 10 years, although it is not necessary for the use to be on-going at the time of the application provided the use has not been lost by operation of law (ie by way of abandonment, the formation of a new planning unit, or a further material change of use). The evidence submitted must be considered on the balance of probability.

The evidence accompanying the application (statement from the applicant, the applicants Accountant, partner, family members and friends) indicate that neither the applicant nor any tenant, since 2nd March 2012 have complied with the Agricultural Restriction. In the absence of any evidence to the contrary, it is concluded that sufficient evidence has been produced which demonstrates that "on the balance of probability" the occupation of the dwelling in breach of the agricultural occupancy condition has continued for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

PLANNING BALANCE

On the balance of probability, it has been satisfactorily demonstrated that there has been a breach of the agricultural occupancy condition for at least the last 10 years. There is no substantive evidence held by the Council to dispute this.

It is therefore considered appropriate to issue a certificate of lawfulness.

CONCLUSION

Given the absence of contrary evidence it is considered that, on the balance of probabilities, the dwelling can be occupied by persons not employed in agriculture therefore it would be appropriate to issue a certificate of lawfulness.

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.

RECOMMENDATION

It is therefore considered appropriate to issue a certificate of lawfulness.