DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H20-0768-23**	**Applicant:**	**H MacDonald**
Proposal:	Erection of dwelling (Class C3) without compliance to the approved permission H20-0658-98		
Location:	Barling Deer Farm Bardlings Drove Sutton St James		
Terminal Date:	3rd November 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Not applicable - this is a lawful development certificate application and therefore policies do not apply in this instance.

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The proposal relates to a certificate of lawfulness application to ascertain whether or not the erection of a dwelling (Class C3) without compliance to the approved permission H20-0658-98 is lawful given that it was constructed more than 4 years ago. The type of application is a S191 Lawful Use Certificate.

Site Description

The site is in the countryside on farmland to the south west of Sutton St. James. It is outside of any settlement
boundary and therefore in an unsustainable location. The nature of the area is typical flat farmland although the site itself has a good level of boundary screening and is not visible from the highway. The site has a constructed house with two rear sheds and one shed along the flank boundary at the front. Much of the perimeter of the site has mature tree and hedge screening. A large gravel drive connects the property to the adjacent highway.

History

H20-0420-94 - Determination that Prior Approval for Agricultural Building Not Required - Erect Steel

Portal Framed Building to store hay - Approved 18 May 1994.

H20-0856-94 (Outline) - Erection of a house and garage. Condition 4 related to an agricultural occupancy condition. Approved 25 April 1995.

H20-0037-98 (Reserved Matters). Erection of house and garage. Approved 17 April 1998.

H20-0658-98 - (Full) - Erection of house and garage. Approved 22 October 1998. Condition 2 of that approval states:
"The occupation of the dwelling shall be limited to a person solely or mainly employed, locally in agriculture, as defined in Section 336 of the Town and Country Planning Act 1990 or a dependent of such a person residing with him, or a widow or widower of such a person."

Consultation Responses

None.

Planning Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claim is indeed lawful. The decision is based upon the case officer's judgement as to the case being proven on the balance of probabilities.

The application relates to the construction of a dwelling not in compliance with the relevant planning permission, i.e. H20-0658-98. The date of the decision was 22 October 1998. Whilst a dwelling was constructed on site in a similar design to that approved, it was not constructed in the same location within the plot.

The supporting information submitted with the application is as follows:
-Application form
-Location Plan
-Planning Supporting Statement
-Supporting Location Plan
-Supporting Application Form
-Supporting Plans
-Supporting Planning Permission
-Report
-JR-1924-02 - Block Plan
-JR-1924-01 - Block Plan and Satellite View
-Timeline

Case law has established that in order to become immune from enforcement action and therefore lawful, a breach of condition must be continuous for a period of at least 10 years. A construction of a dwelling must have been in existence for at least 4 years for it to be immune from enforcement action.

The Planning Supporting Statement sets out the basis of the application:

-The dwelling has been in existence for more than four years, so is immune from enforcement action.
-It was built in an incorrect position, it is 20m north west of approved location.
-The dwelling was not constructed within the approved red line, therefore cannot have permission
-The planning unit is greater in size than originally permitted, being extended from 0.09 hectares to 0.45 being a 400% increase.
-the dwelling was not constructed in accordance with the approved plans.
-there cannot be any agricultural occupancy restriction relating to the current dwelling.

Surveyed Information
The supporting material includes an exact surveyed comparison between the approved drawings and the dwelling constructed based on OS data. A digital extract of Ordnance survey data of the site area was downloaded and loaded into AutoCAD. The location of the property as shown on the approved drawing H20-0658-98 was transferred into the drawing as an underlay. The PDF under layer was then scaled to match the OS data using fixed points on both the PDF and OS data so that the PDF under layer matched the scale of the OS data. The two layouts were then overlain and

adjusted to give a best fit arrangement creating drawings JS-2024-01 & JR-2024-02. The OS building data was highlighted in blue on the drawings and the building as shown on the approved drawing H20-0658-98 was highlighted in red. The aerial impact from Google Maps was imported into the drawings. From the drawings produced it has been demonstrated that there is a discrepancy in the location of the building and size of the garden. The property has been constructed approximately 20m to the North West of the approved plan. The garden on the approved drawing plan measures approximately 0.09 hectares. The garden presently comes to approximately 0.45 hectares. The evidence from the information shown on drawings JR-2024-01 & JR2024-02 is that the property has not been constructed in accordance with the approved plans.

Timeline Information
The submitted timeline shows the following:
-An aerial photo image shows the dwelling was constructed in 1999.
-An aerial photo image from 2005 shows an enlarged garden established with a new access.
-An aerial photo impact from 2007 - shows trees planted and the lower section of garden fenced.
-An aerial photo from 2016 - shows the dwelling and garden in situ

These images demonstrate that a dwelling has existed on the site since 1999, well in excess of either the 4 year rule for the construction of a dwelling, and the 10 year rule in relation to an agricultural occupancy condition. In addition, the expansion and creation of a larger domestic garden also occurred in excess of 10 years ago and this is also considered to be lawful.

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 dwelling was erected in breach of the approved plans more than four years ago. Its construction is therefore immune from enforcement action. In addition, on the balance of probability, the occupation of the dwelling by non agricultural workers is likely to have occurred in excess of 10 years ago, in breach of condition 2 of H20-0658-98. The breach of condition is thereby immune from enforcement action in addition to the construction of the dwelling in 1999.

Conclusion

It is considered 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.