DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H21-0530-25**	**Applicant:**	**Ms E Thorpe**
Proposal:	Occupation of dwelling by persons not employed in agriculture - Condition 3 of EE166/73 & Condition 2 of EE423/73		
Location:	Dunton Lodge Hall Bank Tydd St Giles		
Terminal Date:	22nd July 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the occupation of a dwelling in breach of condition 3 of planning permission EE166/73 and condition 2 of planning permission EE423/73. The submission sets out that the dwelling has been occupied by persons not employed in agriculture for more than 10 years and no enforcement action has been taken during this time. The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

Site Description

The application site comprises a single storey bungalow, Dunton Lodge, Hall Bank Road, Tydd St Mary. Hall Bank Road and Shire Drain are located to the south-east of the site. Dunton Hall is located to the north. The site is otherwise mostly surrounded by agricultural fields.

Planning History

EE166/73: Bungalow off Hall Bank Road, Tydd St Mary - approved 06 April 1973

EE423/73: Bungalow off Hall Bank Road, Tydd St Mary - approved 23 July 1973

Consultation

There is no statutory obligation for the local planning authority (LPA) to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days.

The North Level District Internal Drainage Board has submitted a response to the proposals setting out that they have no comments.

Key Planning Considerations

Relevant Legislation

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

"(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."

Section 191(4) further sets out that:

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

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:
(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

Assessment of Evidence

For the certificate to be granted, it needs to be proven that the condition was breached more than 10 years ago, and was continually breached for a period of 10 years of more.

The application is accompanied by the following documents to support the submission:

-Application Form;
-Location Plan;
-Supporting Statement, prepared by AFA Planning (Agriculture) Ltd;
-An affidavit from the applicant
-Two statements of truth from people who knew the applicant's mother (names not disclosed in this report for privacy reasons);
-A tenancy agreement for the tenant who resided in the dwelling from 1984 to 2020;
-The relevant decision notices for permissions EE166/73 and EE423/73; and
-A copy of the applicant's mother's bank statement showing rent payments.

According to the submission, the applicant currently owns the property. The dwelling was built by

the applicant's grandparents. The applicant's grandfather was a farmer, and he died in 1984. This was the last time anyone employed in agriculture lived at the property.

Previously, the applicant's mother owned the dwelling and rented the dwelling to two tenants from 1984 to 2020. A copy of the tenancy agreement is submitted as part of the application, and this shows the tenant's name. The agreement is dated 1984, however, the specific dates are not filled in. The tenants had never been employed in agriculture. A copy of a bank statement belonging to the applicant's mother is provided. This shows a payment from the tenants in July 2017. The supporting statement sets out that further documents and bank statements can be provided if needed showing other payments. It is however considered that the information provided is sufficient to demonstrate that rent was being paid to the applicant's mother. Confirmation cannot be obtained from the relevant tenants as they passed away in 2020. Furthermore, no application was received by the owners or tenant of this property during this period to remove this agricultural occupation restriction.

The applicant's mother moved into the dwelling in September 2020 and lived there until her death in October 2023. For approximately three months in 2020, the applicant's mother did not live in the dwelling as works were being undertaken to update the dwelling such as the installation of a new kitchen, a new bathroom and a new heating system. The applicant's mother was not employed in agriculture, nor had she ever been.

The supporting statement sets out that domestic documents for the years 2020 to 2023 are available upon request showing the years of occupancy for the applicant's mother. It is not considered necessary to obtain these documents as it seems that on the balance of probability the site was occupied by the applicant's mother during these years and that she was not employed in agriculture. For example, the submitted statements of truth provide sufficient evidence.

The bungalow was placed on the market for sale in 2024 and a sale was progressing, however, it was during the sale process that the agricultural occupancy restriction become apparent at the end of 2024. The prospective buyers could not comply with the condition and as such, the buyers withdrew from the purchasing process. The bungalow has therefore remained empty since the applicant's mother died in 2023; however, the applicant has set out that they still visit the site for maintenance reasons regularly (approximately every 10 days).

It is necessary to consider whether the breach of the relevant conditions has been continuous since October 2023, whilst no one has been living in the dwelling. In this regard, the supporting statement refers to the following court decisions:

-Nicholson v Secretary of State for the Environment & Maldon District Council 1998, 76 P & CR 191; and
-North Devon District Council v. Secretary of State for Environment v. Rottenbury 1998, 4 PLR 46.

The statement sets out that these cases show there is no clear definition of what comprises a 'de minimis' period of vacancy and as such, each case needs to be determined on the basis of fact and degree. The above referenced North Devon case contains the following relevant passage:

"Clearly, continuous physical occupation is not required for there to be occupation in breach. Beyond those few comments, it would not be appropriate to indicate any guidelines. This question is quintessentially a question of fact of degree to be considered in the light of all surrounding circumstances including the length and physical occupation and any other indications or evidence of continuing occupation despite the physical absence of the occupiers."

The statement refers to another relevant case, Basingstoke and Deane Borough Council v. Secretary of State for Communities and Local Government and Sir Thomas Stockdale EWHC 012 (Admin). This case involved a dwelling which had been occupied in breach of an agricultural occupancy condition. The property had been vacant for 12 months. The court concluded that the vacant 12-month period counted towards the 10 year breach period. The court was given evidence to show that during this period the owner arranged for renovation work to take place, the work was undertaken, and the property marketed. It found that the purpose of the work was to further the breach of condition that had occurred prior to the break, which was the intention of the owner.

None of the above referenced cases are appended to the supporting statement and as such, limited information has been provided to assist with identifying the similarities and differences between the above referenced cases and the current site. Notwithstanding this, there are considered to be

similarities with the above referenced Basingstoke case and the current site. For example, the property has been marketed for sale. The period of vacancy has been approximately 21 months as of July 2025. This is longer than the 12 months vacancy period referenced in the Basingstoke case.

Dunton Lodge has been vacant for approximately 19 months from the time when the applicant's mother died in October 2023 and the submission of the application in May 2025. The local planning authority considers that this is a considerable break in the continuity of the breach of the conditions. In contrast to the Basingstoke case, no renovation works were undertaken to prepare the property for sale during this time. Based on the evidence that has been provided, the LPA is unable to conclude that everything that was done in relation to the property during this period was "in furtherance of the breach of condition", particularly during the 19 month period from October 2023.

It is considered that the LPA would not have been able to issue an enforcement notice during the above referenced period of time as there was no "non-compliant" person living in the property. No one was in actual occupation of the dwelling, no renovation works were underway and the sale process of the dwelling did not start until the latter part of 2024. Whilst it is recognised that the probate was not finalised under 03 September 2024, this nonetheless represents a significant period of vacancy.

Therefore, it is considered that up to October 2023, the property appears to have been occupied in breach of the agricultural occupancy conditions since 1984. After October 2023, the LPA does not consider that the subsequent 21-month period can be characterised as de minimis. The LPA is not satisfied that during the period of vacancy, enforcement action could have been taken successfully in relation to the breach of conditions. Therefore, the LPA considers that, as a matter of fact and degree, the long-standing breach came to an end while the property was unoccupied from October 2023 onwards, with the application to remove the agricultural tenancy condition being submitted in May 2025.

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.

Conclusion

The applicant has not shown, on the balance of probability, that the agricultural occupancy conditions were breached for a continuous period of 10 years immediately preceding the date of the application. It is therefore considered that the certificate should not be granted.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under delegated authority.