

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H21-0717-19 **Applicant:** Mrs Beverley Park-Whittaker

Proposal: Retention of dwelling without complying with agricultural habitation clause (Condition 2 of H21-1883-88)

Location: Tarantella Front Road Tydd St Mary

Terminal Date: 20th September 2019

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
02	Development Management
11	Distribution of New Housing
17	Providing a Mix of Housing

National Guidance

National Planning Policy Framework 2019

NPPF 2019.

Representations:

	Object	Support	No Obj.	Comments
PARISH COUNCIL	0	0	0	0
WARD MEMBER	0	0	0	0
OTHER STATUTORY BODIES	0	0	0	1
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

Retention of dwelling without complying with agricultural habitation clause (Condition 2 of H21-1883-88).

Site Description

The site is a bungalow hidden at the end of a private lane running down behind other properties on Front Road, Tydd St Mary, the site is in close proximity to the river.

The property appears to have been extended and modernised.

History

H21-0424-16 S191 - APPROVED

Occupation of dwelling by persons not employed in agriculture

Consultation Responses

Fenland District Council

No comments.

Residents

Comments (no objections):

If the agricultural clause is lifted on this land is the intention to sell, or use, the land for development to raise equity for their sibling? Will the council look to this land for future housing development.

Planning Considerations

This application is for the removal of an agricultural occupancy condition that arises out of a permission granted in the 1980's under planning reference H21-1883-88 for a dwelling in connection with agriculture.

The applicant applied for a Lawful Development Certificate (LDC) for the occupation of a dwelling by persons not employed in agriculture which is in breach of the condition. The LDC was granted on the 16th June 2016 as the evidence submitted on the balance of probabilities proved that the agricultural occupancy condition had been breached for a period in excess of the required 10 years. The Council held no records or evidence to dispute the claim. Therefore the occupation of the dwelling in breach of the condition is considered lawful and immune from enforcement.

The granting of a LDC does not automatically lead to the grant for the removal of the condition but when considering the length of time the applicant has lived in the property and the lack of any material or demonstrable harm arising from the occupation of the property in breach of the condition, it is felt appropriate to grant the application as applied for. No objections have been received to the application therefore on the balance of probabilities it is considered that the need for the condition has sufficiently diminished the actual need for the restriction and the application, on this occasion, should be a delegated approval.

Conclusion

The proposals are considered, on balance, to be acceptable, no harm is identified and permission should be granted.

Recommendation: APPROVAL

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.