

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H21-1177-25 **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: 20th February 2026

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 EE166/73 and Condition 2 of EE423-73. The submission sets out that the dwelling has not been occupied by someone in agriculture since 1984 and therefore for a period of more than 10 years.

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.

History

EE166/73: Bungalow off Hall Bank Road, Tydd St Mary - Approved

EE423/73: Bungalow off Hall Bank Road, Tydd St Mary - Approved

H21-0530-25 - Occupation of dwelling by persons not employed in agriculture - Condition 3 of EE166/73 & Condition 2 of EE423/73 - Refusal

Consultation Responses

North Leven Internal Drainage Board

No comments.

Planning Considerations

Relevant Legislation

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

"Certificate of lawfulness of existing use or development.

(1) If any person wishes to ascertain whether

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful; or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if

(a) the time for applying for an order under section 171BA (a "planning enforcement order") in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.]

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

(5) A certificate under this section shall

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this

section shall be conclusively presumed.

(7) A certificate under this section in respect of any use shall also have effect, for the purposes of the following enactments, as if it were a grant of planning permission

(a) section 3(3) of the M1Caravan Sites and Control of Development Act 1960 or section 7(1) of the Mobile Homes (Wales) Act 2013;

(b) section 5(2) of the M2Control of Pollution Act 1974; and

(c) section 36(2)(a) of the M3Environmental Protection Act 1990."

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."

Therefore, the local planning authority (LPA) needs to be provided with sufficient information to demonstrate that there the site has been in breach of the relevant conditions, as referenced above, for the requisite period of time, so that the LPA are unable to take enforcement action.

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 or more.

The application seeks the local authority's consideration as to whether:

Occupation of dwelling by persons not employed in agriculture - Condition 3 of EE166/73 & Condition 2 of EE423/73

The condition states:

The occupation of the dwelling shall be limited to a person solely or mainly employed or last employed in the locality in agriculture as defined in Section 290(1) of the Town & Country Planning Act 1971 or in forestry (including any dependents of such a person residing with him) or a widow or widower of such a person

The application has provided:

- Application Form
- Site Location Plan
- Planning Statement
- Supporting Statement - May 2025
- Statement of Truth - Carl Smith - Dated 6 May 2025
- Statement of Truth - Lorraine Williamson - Dated 8 May 2025
- Decision Notice EE166-73
- Decision Notice EE423-73
- Tenancy Agreement

The statement within the application outlines that the dwelling was lived in by the applicant's grandfather until his death in 1984 and this was ultimately the last time anyone employed in agriculture lived at the property. From 1984 until 2020 the property was rented out to various tenants until the applicant's mother moved in. A copy of the tenancy agreement is submitted as part of the application. For around three months in 2020 the applicant's mother did not live on site as works were being undertaken to update the dwelling through the installation of a new kitchen, bathroom and heating system. The applicant's mother resided in this property until her death in October 2023.

Following this, the applicant's former home was put on the market in March 2024 and she planned

to move into Dunton Lodge once her property was sold. In June of this same year the neighbours offered to buy the bungalow until the agricultural occupancy condition was identified meaning the purchasers were unable to proceed. The applicant's former house then sold and she moved in Dunton Lodge on 30 May 2025 with Dunton Lodge being her only residence since then and remains so to date.

Statements of truth have been submitted with the first one from Carl Smith outlining that they knew the owners of Dunton Lodge and would regularly do building and maintenance jobs for the family. They go on to say that *'To the best of my knowledge and recollection Mr Robinson was not employed in agriculture or forestry and I know that his wife worked as a cleaner'*. As outlined above, Mrs Thorpe moved into Dunton Lodge in 2020 after the previous tenants had moved out. This statement says that Mrs Thorpe *'had never really had employment and was a housewife, her late husband owned a haulage company'*. Finally, they also say that they know Mrs Thorpe's daughter and know her previous employments and that they are not aware of her ever being employed in agriculture or forestry.

A second statement provided by Lorraine Williamson outlines a similar pattern and discusses what they know of the applicant and applicant's families previous employment. In a similar light to the above, the statement outlines that they are not aware of Mrs Thorpe having any form of employment as she was a housewife and that her husband owned a haulage company. The statement explicitly states *'I have never seen or heard anything to suggest that neither Rosemary, nor her late husband, nor Emma were ever employed in agriculture or forestry'*. Alongside this, they mention the previous tenants who lived on site before Mrs Thorpe moved in in 2020, *'I know that he (the previous tenants) had various jobs in the past including working for the police and then going to maintenance jobs for Rosemary when she lived at Dunton Hall. His wife worked as a cleaner for Rosemary. I am not aware of either Jim or Wendy Robinson being employed in agriculture or forestry'*.

From these statements of truth it is therefore clear that knew the applicant and applicant's family were aware of their jobs and previous employment, and have no knowledge of any family members who resided at the property working within an agriculture setting.

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 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.

It is considered that this piece of case law should only be applied in situations where there has been a break in occupancy during the 10-year period in which the applicants claim the breach was made. As this is not the case, this cannot be fully applied in this instance. Dunton Lodge was only unoccupied some 41 years after the breach was made. From the information which has been submitted and assessed within this report, it is considered that there was a continuous breach of the agricultural clause on site from 1984 to 2023 through the tenants who lived on site not working in agriculture at any point during their time there.

Whilst the 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 LPA have in this case requested more details for the tenancy agreements, specifically for them to include dates.

This information, as outlined above shows that there was tenants on site from 1984 until 2020 at which points the applicant's mother moved back into the dwelling. In any case, neither the tenants

or the applicants mother worked in agriculture. Through the extensive period in which the tenants lived on site, on the balance of probabilities it can be assumed that there was a continuous 10-year breach where no-one residing at Dunton Lodge worked in agriculture and were therefore in breach with the condition for this 10 year period.

It was previously concluded, under reference H21-0530-25, that *"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.*

In this submission, it is noted that further clarity has been provided, additional case law has been offered and further evidence has been obtained. Similarly to that of the previous assessment, it is considered that up to October 2023, the property appears to have been occupied in breach of the agricultural occupancy conditions since 1984.

However, despite the period of unoccupancy after this, this would not render the breach null and void in line with *R (Ocado) v Islington LBC (2021) EWHC 1509 (Admin)* which stated that once a breach of condition has continued for more than 10 years, the right to use the land in breach of that condition can only be lost by abandonment, change of use or the creation of a new unit. For instance, in an instance whereby the site was occupied by an individual last employed in agriculture, the condition would be triggered and as such, the immunity fundamentally lost. However, this has not occurred in this instance and the sole period whereby the LPA would be required to consider a potential pause in the breach undertaken, was significantly beyond the 10 year period. In light of this, none of these three points have been achieved since the last occupancy and therefore it is considered that the breach has not been lost despite this period of unoccupancy.

Whilst it was outlined in the previous application on site that the 19-month period of unoccupancy could not be characterised as *de minimis*, due to the new evidence provided through the tenancy agreement which shows the property was rented out since 1984 as well the case study of *R (Ocado) v Islington LBC (2021) EWHC 1509 (Admin)*, it shows the breach has been in place since 1984 and for a continuous period of more than 10-years. The long-standing breach did not come to end during the period of unoccupancy due to the breach being well established before this.

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

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be supported and this lawful development certificate can be deemed lawful.