

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H22-0176-26 **Applicant:** Mr S Gibbard
Proposal: Change of use of part of agricultural land to extend domestic curtilage
Location: 196 Moulton Chapel Road Moulton Chapel Spalding
Terminal Date: 24th April 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
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CASE OFFICER ASSESSMENT

Proposal

This is a Lawful Development Certificate for an existing use, submitted under Section 191 of the Town and Country Planning Act 1990.

The applicant seeks that land to the rear of 196 Moulton Chapel Road has been utilised as residential garden land, as part of the domestic curtilage, associated with the residential property of 196 Moulton Chapel Road for a period in excess of 10 years.

Site Description

The site is located outside any defined settlement boundary and is therefore in the countryside, as outlined within the South East Lincolnshire Local Plan, 2019 (SELLP). The wider site comprises a dwelling, which is set amongst a small cluster of four dwellings, and surrounded by open agricultural fields.

The application site itself, comprises a grassed area of land, to the rear of 196 Moulton Chapel Road. There is currently an existing building within this parcel of land, which had been used for agricultural purposes throughout the life of the site.

History

H22-0863-96 - Erection of garage - Approved

H22-0812-98 - Extension to house - Approved

H22-0013-01 - Extension to house - Approved

H22-1190-07 - Erection of 2 conservatories - Approved

H22-0455-17 - Occupation of dwelling by persons not employed in agriculture (Condition 3 of H22-0680-78) - Approved

H22-0834-24 - Retention of dwelling without complying with agricultural habitation clause (Condition 3 of H22-0680-78)

H22-1270-25 - Change of use of part of agricultural land to extend domestic curtilage - Refusal

Consultation Responses

No consultation responses received.

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 planning control, as referenced above, for the requisite period of time, so that the LPA are unable to take enforcement action. As such, the proof must evidence a breach that has been continuous for a period of at least 10 years.

Assessment of Evidence

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

The application seeks the local authority's consideration as to whether the land to the rear has been used as residential garden land, as part of the domestic residential curtilage, for a continuous period of 10 years.

In support of this claim, the following evidence has been provided:

- *PL01a - Location Plan*
- *Google Earth Images - 2007 to 2025*
- *Neighbours & Applicant Support Letters*

As such, the applicant has sought to demonstrate that the land in question, comprising a maintained area of grass land to the rear of 196 Moulton Chapel Road, has been used as residential garden land associated with the host dwelling, for a period in excess of 10 years. The evidence, as listed above, comprises Google Earth aerial images which illustrate screenshots of the application site and its immediate surrounding land between the period of 2007 and 2025; two supporting letters from neighbouring residents comprising brief comments on the site; and a single letter by the applicants and land owner.

Ariel Photos

The applicant has provided ariel photos from Google Earth, showing a period of time between 2007 and 2025. These have been provided with the intention to show how the land in question, to the rear of 196 Moulton Chapel Road, has been used as a residential garden during the period claimed.

Firstly, in assessing the state of land prior to this period, in the year 2005, it is clear, as a minimum, that at this stage the land acted as part of the existing agricultural land to the rear of the site. The

Local Planning Authority consider this to be clear and can be seen via the state of the land, as well as the clear tyre tracks illustrating tractors and other farming vehicles have driven over the land.

Turning to the first image provided by the applicant, comprising that of the year 2007, this is the first year in which the land was evidently grassed, offering a clear visual difference from that prior to this period, which was evidently more traditional farmed land.

This grassed land appears to have been subsequently maintained, in this capacity over the proceeding years. It can also be said, in the opinion of the Local Planning Authority, that the land has been retained in a similar manner, comprising a tidy and maintained area of grass land from this date, until the latest ariel image provided, dated the year 2025.

Whilst these images show that the land was maintained in such a way, this does not evidence its nature or extent of use, does not illustrate a domestication of land, nor does this, in of its own, evidence that the land is lawful residential garden land.

During this period, beyond being maintained to a tidy standard and comprising grass land, the ariel imagery does not provide any further clarity, nor do they demonstrate any further evidence of the land's use as residential garden land. The site, during the entirety of the period shown between 2007 and 2025, comprises and maintains a large agricultural building. This building is unaltered, and based on the evidence submitted before the Local Planning Authority, appears to have retained its agricultural use. At the least, it does not appear that the building has been utilised for any other purpose.

Furthermore, notwithstanding the comments raised by the applicant which will be assessed further below, in that they state the land has been used by individuals for activities, the ariel imagery for the entirety of this period fails to show any domestic paraphernalia. The land in question is in clear view of any typical domestic items, or garden items that would typically be associated with residential gardens.

Beyond this, as can be seen and illustrated through the ariel imagery, and has been further evidenced during the case officer's site visit, the site comprises a notable and established hedge. This hedge has remained, providing a natural separation between the two parcels of land. Again, this has been in situ since at least 2005, and remains in situ to the present day, and to some extent, illustrates the segregation of land between the residential land and rural land beyond.

Letters of Support

Moving on from the assessment of the Google Earth Images, three letters of support have also been provided. These comprise two letters from nearby residents or interested parties, and a further letter from the applicant.

Firstly, Mr Wakefield writes that they have farmed the arable part of the field to the north, for around 20 years. In this letter, Mr Wakefield details that "the remaining part of the field (to the south nearest to the house) has always been regularly mown grass for use by Mr & Mrs Gibbard for their domestic, recreational and residential use as garden".

The second letter, provided in the name of a separate neighbour, discusses that they have lived next to the applicant's since 1987 and have outlined that "The area of land in question has been used as residential garden land, and not farmed, for at least the last 20 years".

Finally, with regard to the letter prepared by the applicant's themselves to support the application, it has been stated that, "After the existing storage building was erected on the land in 2003, it became impractical and uneconomic to farm the area of land surrounding the shed and so we took the decision to grass the area and use it as additional garden". It continues that the land, as outlined above, was established with grass in about 2005 and "has been mown weekly ever since". They ceased farming on the northern part of the land soon after this with this being farmed by Mr Wakefield. The letter concludes by outlining that "The grassed area has been used by us since 2005 as an extension of our garden for recreation, for parties, an area for our grandchildren to play, to exercise family pets, and also as an area for our friends in our local car club to meet informally".

It should be noted that this supporting information comprises letters only. These are not sworn declarations, nor have any of the claims or matters raised been substantiated further beyond the fairly limited written letters provided.

The two letters from interested parties provide, to some extent, further clarity with regard to the timeframe in which the land in question was, and subsequently was not, utilised for arable farming. However, beyond brief and somewhat vague statements, the letters do not offer any evidential backing to the claims made, nor do they outline or express their consideration of the 'recreational and garden uses'.

The letters, including that of the applicant, assert that the continuous mowing of land further evidences the use of the land. However, this does not provide evidence of the land's lawful use, but simply evidences that the land is clearly no longer actively used as an arable farm. The ceasing of farming on the land, and further maintenance of the land, in itself does not result in a lawful use of the land as residential garden.

As expressed within the assessment of similar proposal considered by the Planning Inspectorate within the District (Appeal Decision APP/A2525/X/24/3352949), whilst the letters refer to other matters including mowing and uses, "they do not describe any activities common to use as a domestic garden". Furthermore, whilst the terms recreation and garden have been detailed, "The letter does not explain what the writers mean by 'recreation', so it is not clear whether it means use as a domestic garden".

It is considered that the evidence is not sufficiently precise and unambiguous to demonstrate that any such use was instituted, or persisted, for a 10-year period without significant interruption. It has therefore not been demonstrated, on the balance of probabilities, that enforcement action could not have been taken against the change of use when the application was made.

Other Considerations and Planning History Assessment

The application site, and that of the residential dwelling No.196 Moulton Chapel Road, has been subject to various planning proposals. As detailed above, of particular note are application references H22-1190-07 (Erection of 2 conservatories - Approved), H22-0455-17 (Occupation of dwelling by persons not employed in agriculture (Condition 3 of H22-0680-78) - Approved), H22-0834-24 (Retention of dwelling without complying with agricultural habitation clause (Condition 3 of H22-0680-78)) and H22-1270-25 (Change of use of part of agricultural land to extend domestic curtilage - Refusal).

These applications, comprising the planning history of the site, are important in understanding the permitted nature of the site and wider site, and offer further clarity and evidence that the site has not been utilised as residential garden for a period in excess of ten years.

In addition to the above more recent proposals, reference H22-0680-78 is also of importance. This granted the initial grant of permission for the residential dwelling.

Reference H11-0680-78, which relates to an Outline Planning Application, granted permission for a residential dwelling, subject to an agricultural clause; whereby the occupation of the dwelling was limited to a person solely or mainly employed, or last employed, in agriculture. The site area for this application, as marked by the red lined site location plan, was limited to that of the much reduced land immediately surrounding the dwelling as is in situ.

Turning to the more recent proposals on site, householder planning permission was granted for domestic extensions under reference H22-1190-07. This permission, as to match that of the earlier grant of planning permission for the dwelling, comprised a site area of the much reduced and immediate residential garden, as shown by the submitted site location plan. The wider site, that subject to the current lawful development certificate, was not shown within the submitted plans.

A lawful development certificate, seeking confirmation of a continuous breach in relation to the occupation of the dwelling by persons not employed in agriculture (Condition 3 of H22-0680-78) was submitted and determined in 2017, under reference H22-0455-17. As per that of the above applications, this submission comprised a red line boundary that related solely to that of the much reduced site area.

Application reference H22-0834-24 granted permission, by virtue of Section 73A of the Act, for the retention of the dwelling previously discussed without complying with the agricultural habitation clause (Condition 3 of H22-0680-78). This application was granted permission in light of the previous lawful development certificate. Similar to that of the lawful development certificate prior,

and the other applications referenced, this submission also comprised a red line boundary and site location plan that related solely to the much reduced site area.

At no stage within these applications as listed above, was the land north of the residential dwelling mentioned in respect of comprising an extended residential garden.

The final application subject to this application site is that of reference H22-1270-25. This application sought full planning permission for the "Change of use of part of agricultural land to extend domestic curtilage". This application sought full planning permission for the change of use of the land in question under this current lawful development certificate.

The application was accompanied by an application form, site location plan, biodiversity assessment, and a flood risk assessment. The consideration of the land in question, and its use as residential garden land associated with 196 Moulton Chapel Road, was not mentioned during any formally submitted documentation or at any stage of that application process.

The submitted biodiversity assessment statement refers to the proposal as comprising a 'change of use' throughout, and describes the site as being an 'existing grassed area of the site'. Furthermore, the submitted flood risk assessment also refers to the proposal as being for a change of use (which is unsurprising given the nature of the application) and detailed that "The area **will** be part of my residential property, indicating that the land was not in use for that purpose at that present time.

At no stage did this submission refer to the land as being lawful, or as having been used as residential garden land.

Of most note within this most recent application (reference H22-1270-25) is the submitted application form. This form, under section 3 (Description of Proposal), states no for the following two questions:

- Has the building, work or change of use already started? - Answer: 'No'.
- Has the building, work or change of use been completed? - Answer: 'No'.

This, coupled with the aforementioned planning history and detail, provides further doubt in the opinion of the local planning authority. Based on this information, it is the local planning authority's opinion that the land, on the balance of probabilities, has not not been used continuously as domestic residential garden land for the requisite period.

Summary of Assessment

As outlined above, National Planning Practice Guidance outlines that it is the applicants responsibility to provide sufficient information to support the application with this evidence needing to be sufficiently precise and unambiguous to justify the granting of the certificate on the balance of probabilities rather than beyond reasonable doubt.

Upon assessing the application, alongside the evidence which has been provided and that available to the local planning authority, it is not considered that it has been evidenced, beyond reasonable doubt, that the land has been used for a continuous period of 10 years as domestic residential garden land, and thus there is reasonable doubt that the breach has been in place past an unenforceable period.

The history of the site has been investigated through the various Google Earth photos. Whilst the area of land has evidently been grassed over and maintained as such for a notable period; these images, coupled with site visit imagery and the case officers personal visit to the site, fail to demonstrate or evidence the site use as a domestic residential garden. The site is subject to a hedge which, although accessible through, offers clear segregation between the residential garden of 196 Moulton Chapel Road, with an established hedgerow and trees as the boundary line.

It should also be noted that during the officers site visit during a previous application on site (H22-1270-25), which was a full application to change this parcel of land to domestic curtilage as discussed above, this clear boundary remained established alongside various other atypical domestic elements. This includes, but is not limited to, a prominent agricultural building, a shipping container and a digger.

Whilst it is difficult to gain detailed evidence through the Google Earth images, as to whether the shipping container and digger have been on site for an extended period of time, it is clear that the

agricultural building has been on site since at least 2004. The only image before this was from 1999 which does not show the building on site, with it being assumed that this was used in connection with the agricultural land. No evidence of the use of this building for anything other than agricultural purposes has been evidenced or demonstrated.

Alongside this, these Google Earth images have been used to ascertain whether any domestic features can be noted on site to show that the land has been used as part of the applicants domestic curtilage. From this, it does not appear that any domestic paraphernalia is shown throughout the years.

As such, this provides no support to the claim that the land has been used as domestic curtilage with the main and most prominent feature being the large agricultural building, with there also being the shipping container and digger which are not considered to be typical domestic paraphernalia. It should also be stated that the fact the land has been grassed over, and farming has not been carried out, does not constitute a change the use of the land to residential, but solely results in an unfarmed area of maintained land.

The imagery and site visits have failed to illustrate any domestic paraphernalia or furniture that would typically be associated with a domestic garden.

Therefore, notwithstanding what it stated in the letters submitted by the applicant and other residents which have been noted and considered, there is not considered to be adequate evidence to demonstrate that the land has been used as domestic residential garden land for the relevant period of 10 years.

Taking the above into account, it is not considered that sufficient evidence has been submitted to demonstrate that "on the balance of probability" the use of land has been used as residential for a continuous period of at least ten years. Therefore, it is considered that there are no reasonable grounds upon which to grant a Lawful Development Certificate.

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

It is not considered that sufficient evidence has been submitted to demonstrate that "on the balance of probability" the land has been used as residential garden land for a continuous period of at least ten years. It is the Local Planning Authority's opinion that, when considering all of the evidence before them, that it is clear that the land has not been used as residential garden land for the period required. Therefore, it is considered that there are no reasonable grounds upon which to grant a Lawful Development Certificate, and the proposal is not considered to be lawful.

Recommendation

Based on the assessment detailed above, it is considered that the application should be deemed unlawful.