DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0739-24**	**Applicant:**	**Mr C Bristow**
Proposal:	Change of use from agricultural land to extend domestic curtilage		
Location:	Bracken Barn Nutts Lane Holbeach St Johns		
Terminal Date:	27th November 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Not applicable for a Lawful Development Certificate section191 application, as it is a legal determination.

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the continued change of use of land from agricultural land to extend domestic curtilage for a period of more than 10 years at Bracken Barn, Nutts Lane Holbeach St Johns.

Site Description

The application site is land located to the south of Bracken Barn, Nutts Lane in Holbeach St Johns. To the east, south and west are open fields with Bracken Barn to the north. On the land is a stable block a dilapidated polytunnel to the west and trees to the east.

History

H23-0486-12 - Full - Change of use of land to paddock and proposed stables - Approved 01.08.2012

H23-0596-15 - Full - Proposed Annexe Building - Approved 04.08.2015

Consultation Responses

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Planning Considerations

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

The applicant has submitted the following evidence in support of the claim:

1. Application Form
2. Site Location Plan
3. Aerial View of Site
4. Photographs of garden area
5. Letters from individuals

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

Four letters from individuals have been submitted (these are not signed witness statements) all stating that since 2006 when the applicant purchased the house, they have used the land in question as garden land and planted several trees over ten years ago. Photos have also been submitted as evidence, however, following a site visit the photos submitted are of the lawful garden land associated with Bracken Barn and not the land in question.

National Planning Practice Guidance states that: "...if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."

The history of the site has been investigated and the site photos from the application submitted in 2012 (H23-0486-12) show the land the question being grass land with a clear segregation from the residential land of Bracken Barn with an established hedgerow as the boundary line. Application H23-0486-12 granted planning permission for the change of use from grass land to a paddock and the erection of stables.

Following application H23-0486-12 a further application was submitted in 2015 (H23-0596-15) for the erection of an annexe. When assessing the site photos for H23-0596-15 the stable had been erected, therefore, regardless of the use class of the site from 2006 as stated within the individual letters the lawful use of the site was now paddock land. It should also be noted from the 2015 site photos that there was still a clear segregation of land from the paddock and the residential garden of Bracken Barn with the hedgerow still being in place. It was clear that the land in question in 2015 was not being used as residential garden. Therefore, the use class of the land has not been used as residential garden for 10 years or more.

Therefore, notwithstanding what is stated in the letters submitted by the applicant, there is not considered to be conclusive evidence that the land has been used as garden land for the relevant period of 10 years. It should also be stated that the planting of trees does not automatically change the use of land to residential.

Furthermore, google earth has been used to view the historical areal views of the site, and this has shown there is no clear evidencable use of residential garden for the past 10 years. In 2021 the dilapidated polytunnel west of the stable block was still in place, with the grass overgrown clearly not being used as residential land compared to the maintenance of the residential garden land with the boundary of Bracken Barn.

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.

Conclusion

It is not considered that sufficient evidence has been submitted to demonstrate that "on the balance of probability" the land has been used for residential garden 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.