DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H23-0908-18**	**Applicant:**	**Ms Helen Lea**
Proposal:	Occupation of extension being used as a separate unit and not in conjunction with existing dwelling (Condition 2 of H23-0980-91)		
Location:	Peartree House Annex The Common Whaplode Drove		
Terminal Date:	13th November 2018		

Planning Policies

Local Plan July 2016:
National Guidance **National Planning Policy Framework 2018**

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

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 judgement as to the case being proven.

This application seeks the granting of a Lawful Development Certificate (LDC) under section 191 of the Town and Country Planning Act 1990 to certify that the building edged red on the plan submitted with the application and described as the annex building to Peartree House has been used independently from the main dwelling and rented out as a separate unit for a period exceeding 4 years. On this basis the use would have gained immunity from planning enforcement.

An LDC under s.191 is not the equivalent, in law, of a planning permission. Its purpose is to enable owners and others to ascertain whether specific uses, operations or other activities are lawful. Lawfulness is equated with immunity from enforcement action.

The National Planning Policy Guidance (NPPF) contains guidance on what should be contained within a lawful development certificate and Schedule 8 to the Town and Country Planning (Development Management Procedure) (England) Order 2015 outlines the prescribed form. It is clear from the guidance and from various appeal cases that Certificates need to be clear, precise and unambiguous in order for the Local Planning Authority to maintain the planning control that they intended when considering the application. A failure to do so means that the content may be open to interpretation by the applicant, the LPA, the Inspectorate and the Courts. An ambiguous LDC may result in the LPA losing certain planning controls over the land.

The onus of proof in an LDC application is placed firmly upon the applicant. The applicant's own

evidence does not need to be corroborated by independent evidence although corroboratory statements or declarations may assist. If the local planning authority have no evidence of their own, or 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".

Under section 172B(2) of the Act, the time limit for enforcement action in respect of the use of any building as a single dwelling house is 4 years. The Court of Appeal judgment in FSS v Arun DC & Brown EWCA Civ 1172 established that this applies whether the breach of planning control consisted of development carried out without planning permission or a breach of a condition of a planning permission.

The application in this case relates to a breach of planning condition for the use of the annex as a separate single dwelling house, as such the breach should be evidenced by continuous use exceeding the required 4 years.

The background to the application is that in 1991 planning permission was granted under planning reference H23-0980-91 for an annex building to Pear Tree House, Holbeach Drove Common, Spalding. Condition 2 of that permission stated the following:

Condition 2
The extension of the dwelling shall be used and occupied in conjunction with the existing dwelling and shall not be used as a separate unit of living accommodation.
Reason: The site is inadequate in size to afford two unrelated dwellings sufficient residential amenities and privacy.

It is the applicants case that this condition has been breached for over 4 years as the annex has been rented out to private tenants living independently from the host dwelling, this use therefore is now immune from planning enforcement.

The applicant has submitted the following in support of the case:

1.Signed letter from applicant confirming tenants and dates from 5th August 2013 until present day.
2.Letter from current tenant confirming renting annex since 18th Nov 2017
3.Letter from neighbour, Glen Bruce, confirming that he has always known the annex to be independently occupied.
4.Bank statement showing regular payments of rental income from 2013 until present.

The applicant states that on the 5th August 2013, a Mr Elliot and his family rented the annex along with a modest sized garden area for a regular rental price until they vacated the dwelling on 1st February 2017. The property was then rented by Lisa Marquis and Karl Bailey; the property was secured by a bond on 1st February 2017 and was not vacated until mid-November 2017, after which the applicant undertook decorating works to the property.

The property was then rented out to the current tenant A. Smith on the 20th November 2017; the current tenant has written a letter to confirm the date and her current occupation of the property. All rental transactions have been evidenced by the applicant's bank statement which clearly shows the regular rental income and in addition to this a neighbour has written to confirm the rental of the annex independent from the host dwelling.

From the evidence submitted, which is sufficiently clear and unambiguous, on the balance of probabilities it has been proved that the annex has been rented independently from the host dwelling for a period exceeding 4 years. On this basis and accordance with planning guidance and case law, the use of the annex as a rental property, which is in breach of condition 2 of the permission, is now immune from planning enforcement.

A delegated approval on this occasion, granting the certificate as applied for, is considered appropriate in accordance with the application submitted and the supporting evidence.