

Development Management Delegated Decision Report

B/23/0116



SUMMARY OF APPLICATION			
Application Reference	B/23/0116		
Application Type	Certificate of Lawfulness (Existing use)		
Proposal	Application for a Lawful Development Certificate to confirm that the continuing use of the dwelling, which has been occupied in breach of an agricultural occupation clause, is lawful		
Location	Takara, Ralphs Lane, Frampton, Boston PE20 1RJ		
Applicant	Mr Mark Bates		
Agent	Miss Charlotte Lockwood, Chattertons Solicitors		
Received Date:	24-Mar-2023	Consultation / Publicity Expiry Date:	26-May-2023
Valid Date:	24-Mar-2023	Statutory Expiry Date:	19-May-2023
Date of Site Visit:	03-May-2023	Extension of Time Date:	02-Jun-2023
Objections received?	None		
5 day notification record: N/A			
Councillors notified	Date	Response received – date	Ok to continue
Recommendation	GRANT Certificate of Lawfulness		
Report by:	Emma Turvey		
Date:	22-May-2023		

OFFICER REPORT

SITE AND SURROUNDINGS:

The application site is located on the southern side of Ralphs Lane which is located in the countryside, approximately 300m west of the settlement of Frampton West. The site consists of a two-storey detached dwelling with a driveway and gardens to the front and rear. The site is surrounded by arable land other than the adjacent farm buildings

DETAILS OF PROPOSAL:

This application seeks a Lawful Development Certificate for an existing use – namely the continued lawful occupation of the dwelling known as Takara. Planning permission was approved in 1989 for the construction of a detached house and garage with a condition attached that restricted the use of the dwelling to those employed or last employed in agriculture.

RELEVANT HISTORY:



B/08/0423 First floor extension – Granted.

RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:

An application for a Lawful Development Certificate is not a 'planning application' in the normal sense, and an assessment against the provisions of the development plan is not required.

OTHER RELEVANT DOCUMENTS/LEGISLATION/GUIDANCE

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended by Section 10 of the Planning and Compensation Act 1991) states that:

"If any person wishes to ascertain whether any existing use of buildings or other land is lawful, or any operations which have been carried out in, on, over or under land are 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.

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.

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(1) (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.

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 matters described in the application ... they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance (PPG)

Paragraph: 009 Reference ID: 17c-009-20140306 of the Planning Practice Guidance indicates:

"A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process."

CONSULTATION RESPONSES:

No consultations responses have been received.

THIRD PARTY REPRESENTATIONS RECEIVED:

No third party representations have been received.

EVALUATION:

Section 191 of the Act indicates that the burden of proof lies with the applicant, but the relevant test is 'the balance of probability'. Local Planning Authorities (LPAs) are advised that (unless the applicant's evidence is imprecise or ambiguous, or the LPA has evidence of its own which contradicts or undermines the applicant's version of events), a certificate should be issued.

The NPPG advocates that the applicant is responsible for providing sufficient information to support an application. The information needs to be precise and unambiguous to enable the Local Planning authority to fully assess if a use is in fact lawful.

In this case, a certificate is sought on the grounds that the dwelling, shown outlined in red on the location plan (Appendix 1), has been occupied for in excess of 10 years without compliance with the condition which restricted its occupation to those employed or last employed in agriculture. A sworn Statutory Declaration has been signed and submitted as part of the application along with information relating to the applicants business which is not in agriculture. The information submitted also states that no one else that lives in the dwelling is employed or was last employed in agriculture.

CONCLUSION:

The use of the dwellinghouse without restrictions to those employed or last employed in agriculture is considered to be lawful within the terms of Section 191 of the Town and Country Planning Act 1990.

RECOMMENDATION

GRANT Certificate

INFORMATIVES / NOTES TO BE INCLUDED ON/WITH DECISION NOTICE
<u>STATEMENT OF PROACTIVE WORKING:</u> In determining this application, the authority has taken account of the guidance in paragraph 38 of the National Planning Policy Framework 2021 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.