

Development Management Delegated Decision Report

B/24/0006



SUMMARY OF APPLICATION				
Application Reference	B/24/0006			
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	Alvey House Farm, Scalp Road, Fishtoft, Boston PE21 0SH			
Applicant	Mr Dean Goodeve			
Agent	Mr Alan Folkes, AFA Planning (Agricultural) Ltd			
Received Date:	05-Jan-2024	Consultation / Publicity Expiry Date:	16-Feb-2024	
Valid Date:	05-Jan-2024	Statutory Expiry Date:	01-Mar-2024	
Date of Site Visit:	26-Jan-2024	Extension of Time Date:	N/A	
Objections received?	None.			
5 day notification record:				
	Councillors notified	Date	Response received – date	Ok to continue
Recommendation	GRANT Certificate of Lawfulness			
Report by:	Megan Epton			
Date:	28-Feb-2024			

OFFICER REPORT

SITE AND SURROUNDINGS:

The site is located on the southern side of Scalp Road, Fishtoft and comprises of 1no. two storey detached residential dwelling and associated residential amenity space. It is directly adjacent to 1no. neighbour to the west.

DETAILS OF PROPOSAL:

This application seeks a Lawful Development Certificate for an existing use – namely the continued lawful occupation of the dwelling known as ‘Alvey House’, occupied in breach of an agricultural occupation condition placed on the original permission for the dwelling.



RELEVANT HISTORY:

- **BR104/62 – OUTL** – House and vehicular access – **APPROVED**.
- **BR213/62 – RESM** – Bungalow, garage and vehicular access – **APPROVED**.
- **B/04/0480 – FULL** – Alter and extend dwelling – **APPROVED**.
- **B/09/0294 – FULL** – Alteration to existing chalet bungalow to form a 2 storey house and new replacement garage/utility – **APPROVED**.

RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990 (as amended) (“the 1990 Act”) allows any person who wishes to ascertain whether “any existing use of buildings or other land is lawful” to make an application to the LPA. If the LPA is satisfied that the appropriate legal tests have been met, it should issue the Certificate.

Section 191 of the Act indicates that the burden of proof lies with the applicant. The relevant test is the balance of probability and local planning authorities are advised that if they have no evidence of their own to contradict or undermine the applicant’s version of events there is no good reason to refuse the application provided that the applicant’s version is precise and unambiguous to justify the grant of a certificate, 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:

Fishtoft Parish Council were consulted on the application, but no responses was received.

Witham Fourth Internal Drainage Board responded to the application with ‘no comments’.

THIRD PARTY REPRESENTATIONS RECEIVED:

No third party representations have been received.

EVALUATION:

The certificate of lawfulness is sought to confirm that the continuing use of ‘Alvey House’ as a dwelling is lawful, in spite of a breach of an agricultural occupation clause imposed on its original permission.

Outline planning permission was approved in 1969 for the construction of a ‘house and vehicular access’, with a condition attached restricting the occupancy of the dwelling to those with a direct relation to agriculture, this condition is as follows:

- *“2. The occupation of the house shall be limited to persons employed or last employed locally in agriculture or their dependents.”*

A further ‘reserved matters’ application was approved in 1962 for the erection of a Bungalow, garage and vehicular access’, with the original occupancy condition still applying.

The relevant consideration of this application for a certificate of lawfulness is against S.191(3) of the TCPA, which states that:

“... 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.”*

Section 171B of the TCPA sets out the time limits for enforcing a breach of planning control; due to the fact that the proposal is not a use or operation that would have required consent in its own right, and instead directly relates to a breach of condition S.171B(3) applies- with *“no enforcement action [able to] be taken after the end of the period of ten years beginning with the date of the breach”*.

In line with the relevant aforementioned Sections of the TCPA, this certificate of lawfulness is sought on the grounds that the dwelling shown outlined in red on the site location plan (received 05-Jan-2024), has been occupied for a period in excess of 10 years without compliance with the condition restricting the occupancy to those employed (or last employed) in agriculture locally. The Council agrees with the relevant provision it is being assessed against and confirms that the relevant period of assessment is ten years prior to the date of the application submission (05-Jan-2014 to 05-Jan-2024).

The application has been submitted with a sworn Affidavit signed by the applicant declaring the above and confirming the occupations of the residents of the dwelling; supporting council tax documents dating back to 2004, and a ‘supporting information’ document piecing the evidence together against the requirements of the legislation.

The information submitted states and evidences, precisely and unambiguously, that the current occupants of the dwelling, who have lived there for a period in excess of 10 years have no connection to agriculture or forestry, none of the residents are employed locally (or have been employed locally) in the industry. The Council have no evidence of our own to contradict or undermine the applicant’s submitted evidence.

Based on the above, the assessment of submitted information and on the balance of probability, it is considered the certificate of lawfulness should be granted.

CONCLUSION:

The use of the dwelling house 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 of Lawfulness

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 2023 in order to seek to secure sustainable development that improves the economic, social and environmental conditions of the Borough.