

# Development Management Delegated Decision Report

«Apn\_Number»



| SUMMARY OF APPLICATION            |   |  |                                 |
|-----------------------------------|---|--|---------------------------------|
| <b>Application Reference</b>      | B/24/0097   |  |                                 |
| <b>Application Type</b>           | Full Planning Permission  |  |                                 |
| <b>Proposal</b>                   | Application under Section 73 for the removal of Condition C2 (Agricultural Habitation Clause) following grant of permission BR 104/62 |  |                                 |
| <b>Location</b>                   | Alvey House Farm, Scalp Road, Fishtoft, Boston, PE21 0SH  |  |                                 |
| <b>Applicant</b>                  | Mr Dean Goodeve   |  |                                 |
| <b>Agent</b>                      | Mr Gareth Stent, AFA Planning Consultants Ltd   |  |                                 |
| <b>Received Date:</b>             | 07-Mar-2024   | <b>Consultation / Publicity Expiry Date:</b> | 08-Apr-2024                     |
| <b>Valid Date:</b>                | 07-Mar-2024   | <b>Statutory Expiry Date:</b>                | <b>02-May-2024</b>              |
| <b>Date of Site Visit:</b>        | 15-Mar-2024   | <b>Extension of Time Date:</b>               | N/A                             |
| <b>Objections received?</b>       | None  |  |                                 |
| <b>5 day notification record:</b> |   |  |                                 |
|                                   | <b>Councillors notified</b>   | <b>Date</b>                                  | <b>Response received – date</b> |
|                                   |   |  |                                 |
| <b>Recommendation</b>             | Approve   |  |                                 |
| <b>Report by:</b>                 | Megan Epton   |  |                                 |
| <b>Date:</b>                      | 24-Apr-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:



Outline planning permission (BR104/62) was granted for the construction of a 'house and vehicular access', with Condition 2 of the approval restricting the occupancy of the dwelling to persons '*employed or last employed locally in agriculture, or their dependents.*'

The current application seeks the removal of this condition, and arguments in favour of the condition's removal are put forward in:

- the application form; and
- an accompanying Supporting Statement.

The application is also accompanied by:

- a 'Location Plan'; and
- various supporting Appeal Decisions.

### **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**.
- **B/24/0006 – LDC** - 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 – **GRANTED**.

### **RELEVANT DEVELOPMENT PLAN POLICIES AND DOCUMENTS:**

The **South East Lincolnshire Local Plan 2019** shows the application site as being within the Open Countryside. The following policy is relevant to this application:

- Policy 1 – Spatial Strategy.

### **OTHER RELEVANT DOCUMENTS / LEGISLATION / GUIDANCE:**

#### **National Planning Policy Framework (2023)**

At the heart of the 2023 Framework is a presumption in favour of sustainable development. The following sections are relevant to this scheme:

- Section 2 – Achieving sustainable development;
- Section 4 – Decision-making; and
- Section 5 – Delivering a sufficient supply of homes.

#### **National Planning Policy Guidance**

### **CONSULTATION RESPONSES:**

Fishtoft Parish Council were consulted on the application.

### **THIRD PARTY REPRESENTATIONS RECEIVED:**

No third party representations have been received.

## **EVALUATION:**

Section 73 of the Town and Country Planning Act instructs a Local Planning Authority to consider only the question of the planning condition's subject. If it is considered acceptable, the LPA can grant permission accordingly, i.e. with or without the imposition of a condition. If the LPA decides that planning permission should be granted subject to the same conditions as those to which the previous permission was granted, it should refuse the application.

In this case, the application seeks the removal of condition 2 attached to planning permission BR104/62, which limited the occupation of the dwelling to persons employed or last employed locally in agriculture or to their resident dependents. As such, other planning considerations cannot be revisited, and the local planning authority can consider only whether or not it is appropriate for the agricultural occupancy condition (AOC) to be removed.

*Paragraph 56 of the NPPF indicates that planning conditions should be imposed (and by implication, maintained) only where they are "necessary, relevant to planning and to the development ..., enforceable, precise and reasonable in all other respects."*

The application site is located within the designated open countryside of the local plan, on Scalp Road, Fishtoft. It is adjacent to 1no. residential dwelling to the west. Whilst its location is not considered to be a heavily built-up area, 'Alvey House Farm' cannot reasonably be considered as an 'isolated' dwelling within the open countryside given its wider context (in that there are various strips of developed dwellings in its surroundings). But nonetheless the application seeks the granting of a dwelling in a location where the provisions of the Local Plan would suggest that one would not normally be approved. In considering this application for the removal of the AOC, the planning authority must therefore be satisfied that there is evidence to show that circumstances have altered sufficiently that it is now appropriate for the condition to be removed.

Typically applications to remove an AOC are expected to be accompanied by evidence that:

- the dwelling has been absorbed by the growth of a nearby village or town; or
- the dwelling is no longer needed to serve the agricultural holding to which it originally related; and
- there is no demand for the agricultural dwelling within the wider area – this is normally demonstrated by robust evidence of unsuccessful marketing of the dwelling at a price that reflects the existence of the AOC.

**However**, as the site benefits from the recent approval of the Certificate of Lawfulness (B/24/0006) - confirming that the continuing use of the dwelling, which has been occupied in breach of an agricultural occupation clause, is lawful- the typical evidence is not required in this instance.

It is considered that as the Certificate of Lawfulness has been approved with sufficient evidence to demonstrate the occupant has lived in breach of Condition 2 on BR104/62 for a period in excess of 10 years, the condition is no longer seen to be reasonably enforceable and therefore its usefulness and effectiveness has diminished.

Whilst the Certificate of Lawfulness grants immunity for the current occupants of the dwelling from any enforcement action on the breach of Condition 2, it does not preclude future compliance by agricultural workers. However, in the submitted 'Supporting Letter', it is detailed that it is 'more likely that the occupiers of the property would seek to ensure the continued breach of condition', given that the existence of the condition impacts property value and sales.

The supporting information also cites an appeal with a similar argument (Ref: APP/T6850/A/20/3252618) in relation to a site at Newtown, Powys, the inspector writes:

*"The CLEUD is unfettered and the benefits it provides would be transferable to subsequent occupiers. Therefore, it is clear that the condition is not enforceable as long as the Appellants continue to occupy the dwelling, and neither would it be enforceable against any future occupier unless they met the qualification requirements. The appeal property could consequently be occupied in breach of the condition by any non-qualifying person in perpetuity."*

*I afford significant weight to the CLEUD and regard the ability to occupy Bron Heulwen in breach of the disputed condition as a significant material consideration which would, in this specific circumstance, clearly outweigh the conflict with the development plan. Consequently, the condition does not meet the 6 tests prescribed in national guidance, and it is no longer necessary or reasonable to continue to require the property to be occupied by qualifying persons."*

On this basis, whilst we do consider the applicant's arguments in relation to the granted Certificate of Lawfulness to be acceptable, we also follow the legal principle set out in the relevant appeal by a planning inspector, where the CLEUD was found to be sufficient evidence for the removal of the AOC.

## **CONCLUSION:**

Paragraph 56 of the NPPF indicates that planning conditions should be imposed only where they are "necessary, relevant to planning and to the development ..., enforceable, precise and reasonable in all other respects."

It is considered that the approval of the Certificate of Lawfulness (B/24/0006) and the further submitted supporting letter provides sufficient evidence demonstrating that the need for Condition 2 of the original permission is no longer necessary or reasonable and that it is therefore appropriate for planning permission to be granted for its removal.

## **RECOMMENDATION:**

**Approve**

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| <b>INFORMATIVES / NOTES<br/>TO BE INCLUDED ON/WITH DECISION NOTICE</b> |
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| <b><u>STATEMENT OF PROACTIVE WORKING:</u></b> |
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| 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 |
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development that improves the economic, social and environmental conditions of the Borough.