

Development Management Delegated Decision Report

B/24/0105



SUMMARY OF APPLICATION			
Application Reference	B/24/0105		
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	Grafters, Waste Green Lane, Algarkirk, Boston, PE20 2AT		
Applicant	Mr David Collier		
Agent	Andrew Hey, AM Hey FRICS		
Received Date:	13-Mar-2024	Consultation / Publicity Expiry Date:	08-Apr-2024
Valid Date:	13-Mar-2024	Statutory Expiry Date:	08-May-2024
Date of Site Visit:	15-Mar-2024	Extension of Time Date:	N/A
Objections received?	None.		
5 day notification record:			
	Councillors notified	Date	Response received – date
Recommendation	GRANT Certificate of Lawfulness		
Report by:	Megan Epton		
Date:	19-Apr-2024		

OFFICER REPORT

SITE AND SURROUNDINGS:

The site is located on Waste Green Lane, Algarkirk and comprises of 1no. detached two storey dwellinghouse within a large private plot. It is directly adjacent to 1no. residential neighbour to the south east but is otherwise adjacent to open land within the countryside.

DETAILS OF PROPOSAL:



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

RELEVANT HISTORY:

- **B01/0221/91** – Construction of a detached dwellinghouse and garage together with the installation of a septic tank – **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:

No consultation responses have been received.

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 ‘Grafters’ as a dwelling is lawful, in spite of a breach of an agricultural occupation clause imposed on its original permission.

Planning permission was approved in 1991 for the construction of a ‘detached dwellinghouse and garage together with the installation of a septic tank’, with a condition attached restricting the occupancy of the dwelling to those with a direct relation to agriculture, this condition is as follows:

- *“4. The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 336 of the Town and Country Planning Act 1990, or in forestry (including dependents of such a person residing with him) or a widow or widower of such a person.”*

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 full location plan (received 13-Mar-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 (13-Mar-2014 to 13-Mar-2024).

The application has been submitted with various documents as supporting evidence:

- 1no. Goods Vehicle Operators Licence, dated 10-May-2008, illustrating ‘Grafters’ as the occupant’s address;
- 1no. Bank Statement, dated 27-Nov-2009, illustrating ‘Grafters’ as the occupants address;
- 1no. Contract of Employment, dated 01-Aug-2019 (but commencing 01-May-2012) confirming the occupant’s history of employment as being employed as a HGV driver;
- 1no. Sworn Affidavit from a local resident confirming that the applicant’s have lived at the property for over 30 years;
- 1no. Sworn Affidavit from the occupant’s home insurance company, confirming the dwelling has been insured for a period of 13 years; and

The information submitted states and evidences, precisely and unambiguously, that the current occupants of the dwelling have lived there for a period in excess of 10 years and have not been ‘mainly or solely employed, in the locality in agriculture ... or forestry’. connection to agriculture or forestry. 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 or forestry, 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.