

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H02-0008-25 **Applicant:** JBPRM Ltd
Proposal: Proposed installation of plastic/shingle honey comb floor base, 4 wooden poles, rain canopy and base for small container to be positioned
Location: Peterborough And Spalding Gliding Club St Guthlacs Lodge Spalding Road
Terminal Date: 13th March 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the proposed installation of a plastic/shingle honey comb floor base, four wooden poles, a rain canopy and a base for a small container. Consent is sought under Section 192 of the Town and Country Planning Act (1990) (as amended).

Site Description

The application site comprises land at Peterborough and Spalding Gliding Club. The site comprises an access track off Barrier Bank and land to the south of various buildings including a packaging supply shop.

Planning History

One application partly overlaps the access to the site:

H02-0515-16: Demolition of existing farm building and erection of new workshop - approved 26 July

2016

Consultation

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days. The North Level District Internal Drainage Board have however responded to the application setting out that they have no comments.

Key Planning Considerations

Relevant Legislation

Section 192 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of proposed use or development.

- (1) If any person wishes to ascertain whether
 - (a) any proposed use of buildings or other land; or
 - (b) any operations proposed to be carried out in, on, over or under land,would be lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use or operations in question.
- (2) If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application.
- (3) A certificate under this section shall
 - (a) specify the land to which it relates;
 - (b) describe the use or operations in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
 - (c) give the reasons for determining the use or operations to be lawful; and
 - (d) specify the date of the application for the certificate.
- (4) The lawfulness of any use or operations for which a certificate is in force under this section shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.]"

Therefore, the local planning authority need to be provided with sufficient information to demonstrate that, on the balance of probability, the proposed development is lawful in planning terms and would not require full planning permission.

Assessment

The proposals would involve the installation of a plastic/shingle honeycomb floor base, four wooden poles, a rain canopy and a base for a small container.

Within the application form, the applicant sets out the following in terms of why they consider that the proposed development is lawful:

"We are installing a non-permanent temporary shelter to protect our customers from the elements our out on the range. This will look better for the business and hopefully enable us to grow and to take up permanent offices on another part of the site. We do need a storage place for our equipment on the flying area and again this will be non-permanent and taken away when our lease ends."

According to the submission, the proposed container is expected to measure 2m by 3m, with a maximum of 3m in height. The proposed canopy is expected to measure 5m by 3m, with a maximum height of 3m. The wooden poles are expected to measure 2.4m in length (height).

Firstly, the applicant's explanation that the proposals will benefit their business are not relevant to the determination of the application as national planning practice guidance is clear that planning merits are not relevant in the determination of applications for lawfulness (Paragraph: 009

Reference ID: 17c-009-20140306).

The applicant has not referred to any permitted development rights that they consider apply to allow for the installation of the proposals. Notwithstanding this, the local planning authority (LPA) has considered whether the proposed development would benefit from permitted development rights. The Town and Country Planning (General Permitted Development) Order (GPDO) (2015) (as amended) sets out permitted development rights for various forms of development.

The GPDO Schedule 2, Part 2, Class A 'gates, fences, walls etc' allows for the installation of fencing. The proposed poles would measure 2.4m and could potentially fall under this category, however, the poles would be too tall as fencing is only permitted if it is no more than 2m in height if it is not adjacent to a highway. The poles therefore require planning permission if they are 2.4m in height.

Schedule 2, Part 8, Class F of the GPDO sets out permitted development rights for 'development at an airport'. The gliding club is not however considered to be a relevant airport for which these rights apply. The GPDO defines a relevant airport as "an airport which Part 5 of the Airports Act 1986 (status of certain airport operators as statutory undertakers etc.)". There are not considered to be any permitted development rights which apply for gliding clubs.

There are some permitted development rights which apply to some forms of temporary development. These rights are set out within Schedule 2, Part 4 of the GPDO. These rights typically apply for a relatively short period of time (for example 28 days).

The local planning authority does not consider that permitted development rights would allow for the proposed development, and as such a full planning application is required. Although the proposals would only be temporary, the proposed development nonetheless requires planning permission even if only for a temporary period.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:

- A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European

Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

As listed above, the proposed development would not be classed as permitted development that is allowed within GPDO. The proposed development is therefore not permitted development, and a full planning application is required for the proposals.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be refused under Delegated Authority.