DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H03-0010-23**	**Applicant:**	**Mr K Smith**
Proposal:	Use of annexe building as residential dwelling		
Location:	Castle Roofing Supplies Six Score Road Deeping St Nicholas		
Terminal Date:	6th March 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02	Development Management
01	Spatial Strategy
36	Vehicle and Cycle Parking
APPENDIX 6	Parking Standards
03	Design of New Development

National Guidance

National Planning Policy Framework 2021

Section 12 - Achieving Well Designed Places

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The application seeks the granting of a Certificate of Lawfulness for the use of an annexe building as a residential dwelling at The Cottages, Deeping St Nicholas.

Site Description

The site is to the south-west border of South Holland, laying between Deeping St Nicholas and Market Deeping. The site is east of Hop Pole. The annexe is situated within the countryside, according to Policy 1 within the South-East Lincolnshire Local Plan, 2019. The building is located to the rear of the Cottages, situated south-east of the dwelling.
The building in question was originally constructed as a garage with games room above but was converted into an annexe in 2004. The building is of pale brown brick construction with a red tiled roof. The annexe has a garden plot separated by a border fence.

Relevant History

H03-0195-01 - Full. Proposed self-contained dwelling and double garage. Refused 17/4/01.

H03-0854-01 - Full. Proposed garage with games room above. Approved 23/8/01.

H03-1111-08 - S191. Use of garage as self-contained annex. Approved 27/10/11.

H03-0597-13 - Full. Erection of detached dwelling and new vehicular access. Refused 28/8/13.

H03-0238-20 - Prior Approval. Change of use from B1 (light industrial) to C3 (dwellinghouse). Refused 21/4/20.

Consultation Responses

No representations received.

Material Considerations

The application seeks the granting of a Certificate of Lawfulness for the use of the annexe at The Cottages as a separate residential dwelling.

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

The applicant has submitted the following evidence in support of the claim:

1.Application Form

2.Site Location Plan

3.Location Plan

4.Site Plan and Building Details

5.Planning Statement containing a current Council Tax bill.

6.Three statutory declarations (one from Miss Miller, a former tenant, one from Mr Smith, the property's owner, and one from Mr Wall, the employee of Mr Smith).

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

The statutory declaration from Mr Smith states that since the completion of the development in 2004, the annexe has been a continuous and uninterrupted use as a separate planning unit. Mr Smith goes on to state that since 2004 the annexe has been occupied by various tenants. This statement is corroborated by the statements from Miss Miller (a former tenant of the property from October 2012 until 2017) and Mr Wall (an employee of Mr Smith since 2007).

A planning statement, containing a copy of a current Council Tax bill, has also been submitted to demonstrate that the buildings have been separated for the purposes of Council Tax. The statement asserts that this separation occurred in October 2008.

In the absence of any evidence to the contrary, and based on the above information, on the balance of probabilities, it is considered that the annexe at The Cottages has been in separate residential use for a period exceeding 10 years since the breach of planning control, thereby making it immune from planning enforcement.

Conclusion

On the balance of probability, it has been satisfactorily demonstrated that there has been a breach of condition for at least the last 10 years. There is no substantive evidence held by the Council to dispute this.

It is therefore considered appropriate to issue a certificate of lawfulness.

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.