

**DECISION DELEGATED TO HEAD OF PLANNING**

**Application No:** H07-0953-24                      **Applicant:** Mr K Rodford  
**Proposal:** Erection of rear extension  
**Location:** The Cottage 13 Hillgate Gedney Hill  
**Terminal Date:** 14th January 2025

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**Planning Policies**

**South East Lincolnshire Local Plan - Adopted: March 2019**

**National Guidance**

**National Planning Policy Framework December 2024**

**Representations:**

	<b>Object</b>	<b>Support</b>	<b>No Obj.</b>	<b>Comments</b>
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**CASE OFFICER ASSESSMENT**

**Proposal**

The application seeks consent for a lawful development certificate for a rear extension. The application is submitted under Section 191 of the Town and Country Planning Act 1990 (as amended). The applicant considers that the extension was constructed more than 10 years ago, and as such the applicant considers that the extension is immune from enforcement action and that a certificate of lawfulness can therefore be granted for the extension.

**Site Description**

The application site comprises land at The Cottage, 13 Hillgate, Gedney Hill. The site features a two-storey detached dwelling and its associated garden space and driveway.

The dwelling faces to the north-west of the site, towards Hillgate. The extension is located on the rear of the dwelling, on the south-eastern elevation. The extension features a two storey element which features a sloping roofline, and the extension also features a single storey element with a flat roof. The extension measures approximately 6.8m when measured from the original building line to the end of the extension. The extension is approximately 6m in height at its tallest.

The two-storey part of the extension slopes from below the ridgeline of the main part of the dwelling. The eaves of this part of the extension measure approximately 4.3m. The single storey part of the extension measures approximately 2.6m in height.

**Planning History**

No planning applications have previously been submitted within the site.

## **Consultation**

There is no statutory obligation for the local planning authority (LPA) to publicise an application for a certificate of lawful development. A site notice has however been displayed next to the site for 21 days.

## **Key Planning Considerations**

### Relevant Legislation

Section 191 of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

"(2) For the purposes of this Act uses and operations are lawful at any time if:

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out that:

"(4) If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:  
(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

### Assessment of Evidence

For the certificate to be granted, it needs to be proven that the extension was constructed more than 10 years ago. According to the submission, the extension was constructed at least 35 years ago. The applicant therefore considers that the extension is immune from enforcement action, and that a certificate of lawfulness should be granted on this basis.

The applicant has only recently moved to the property and as such they are not sure which year the extension was built, however, the applicant considers that the extension was in place in the 1980s. The application is supported by two statements from neighbours. One of the statements sets out that the extension was in place in 1988, when one of the neighbours moved into their property. The other statement confirms that the extension was in place in 1995 when the other neighbour moved into their property. The LPA has not received any information that undermines the accuracy of these statements.

The LPA has reviewed satellite imagery from 2014 and it appears that the extension was in place from at least 2014. Furthermore, the LPA has reviewed the planning documents which are available for application H07-0594-84, which relates to The School House, which is located to the north of the site. Application H07-0594-84 was granted consent on 17 August 1984. The submission documents from application H07-0594-84 appear to show the extension within the block plan. As such, it seems that the extension was constructed in the 1980s and has therefore been in place for at least the past

10 years.

## **Conclusion**

On the balance of probability, the evidence submitted is considered sufficient to enable the LPA to conclude that the extension has been in place for at least the past 10 years. As such the extension is immune from enforcement action and the certificate should therefore be granted.

## **Recommendation**

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

## **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.