SOUTH HOLLAND DISTRICT COUNCIL

Report of: **Lead Development Management Planner (Interim) - BBC & SHDC**

To: **Planning Committee - 02 April 2025**

(Author: **Jess Hill - Senior Planning Consultant)**

Purpose: **To consider Planning Application H09-1008-24**

Application Number: H09-1008-24 **Date Received:** 28 November 2024

Application Type: S192 LAWFUL USE CERT

Description: Use of premises as a home for up to five children or young people as a single household (Use Class C3)

Location: 19 LANGWITH DRIVE HOLBEACH SPALDING

Applicant: Mr D V John **Agent:** Mr D V John

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You can view this application on the Council's web site at
http://planning.sholland.gov.uk/OcellaWeb/planningDetails?reference=H09-1008-24

1.0 REASON FOR COMMITTEE CONSIDERATION

1.1 The application has been subject to numerous letters of representation and comments have been received from MP Sir John Hayes. The proposal was presented to Chairman's Panel and it was decided that in the interests of transparency, the application warrants Committee consideration.

2.0 PROPOSAL

2.1 The application seeks consent for a lawful development certificate for the proposed use of 19 Langwith Drive, Holbeach as a dwelling house occupied by no more than six residents (Use Class C3(b)).

2.2 The applicant considers that a full planning application to change the use of the site would not be required as the existing use is Use Class C3, and the proposed use would also fall under C3.

2.3 The application is submitted under Section 192 of the Town and Country Planning Act (1990) (as amended).

3.0 SITE DESCRIPTION

3.1 The application site comprises land at 19 Langwith Drive, Holbeach.

3.2 The site features a two-storey detached dwelling which is located at the end of Langwith Drive, which is a cul-de-sac, located to the south of Spalding Road.

4.0 RELEVANT PLANNING POLICIES

4.1 **Relevant Legislation**

Planning policies are not relevant in this case as lawful development certificates are not applications for planning permission.

4.2 The application is submitted under Section 192 of the Town and Country Planning Act (1990) (as amended). The Act 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."

4.3 Therefore the Local Planning Authority need to be provided with sufficient information to demonstrate that, on the balance of probability, the proposed use is lawful in planning terms and would not require full planning permission for a change of use.

5.0 RELEVANT PLANNING HISTORY

5.1 H09-0420-17: (Full Application) Proposed first floor extension and alterations - approved 18 September 2017

5.2 H09-0756-18: (Discharge of Conditions) Details of colour of render and roof tiles (Conditions 3 and 4 of H09-0420-17) - approved 03 August 2018

6.0 REPRESENTATIONS

6.1 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 in the interests of transparency.

6.2 12 representations have been received from members of the public, setting out objections to the proposals. A representation from Sir John Hayes (MP) has also been received. The key matters raised are set out within the 'Public Representations' section of this report.

6.3 Children's services have also been consulted on the application for reference. No response has been received.

6.4 A response from Holbeach Parish Council has also been received querying why they were not consulted. The parish council were contacted to explain that the council does not typically

consult on lawful development certificate applications as there is no requirement to.

7.0 CONSIDERATIONS

7.1 Planning Considerations

The application only seeks consent to establish that the proposed use of the site under Use Class C3 is lawful. No operational development is proposed such as external changes to the building.

7.2 The Town and Country Planning (Use Classes) Order 1987 (as amended) defines Use Class C3 as follows:

"Use as a dwellinghouse (whether or not as a sole or main residence):
(a) by a single person or by people regarded as forming a single household, or
(b) not more than six residents living together as a single household where care is provided for residents' or
(c) not more than six residents living together as a single household where no care is provided to residents (other than a use with Class C4)."

7.3 The use class of the site is therefore Use Class C3 as it has been occupied as a dwelling. The current use would fall under Use Class C3(a). The applicant considers that the proposed use of the site would fall under Use Class C3(c), and as such a change of use application would not be required as the use would fall under C3.

7.4 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.

7.5 The application is accompanied by a supporting statement, within which the applicant clarifies that they intend to support and live with up to five young people. The applicant would not employ any staff. The applicant sets out that they would provide care for the young people, and they have subsequently clarified that their cousin lives with them and would assist them with looking after the young people/children.

In terms of whether the proposed use can be considered as reflecting the characteristics of a single household, relevant appeal decisions appear to indicate that facilities should be communal rather than individual. Based on the submitted details, it appears that the use reflects the nature and character of a single household. Some of the rooms contain ensuite bathrooms; however, there are communal rooms downstairs. Facilities will therefore likely be shared as would be the case within a family unit.

7.6 The applicant has subsequently set out that they do not know the anticipated ages of the young people who might be in their care. They have set out that they intend to care for young people under long term placements to offer stability. Social workers would likely visit every six weeks, and possibly other professionals; however, the applicant would not be working with other staff who would be working shifts.

7.7 The proposal is therefore for a maximum of six residents, including the applicant, to live within the property. The proposed use therefore falls under Use Class C3(c). A change of use application is therefore not considered to be necessary and the proposed use appears to be lawful based on the information that has been provided.

7.8 Whether a Change of Use Application is Required

In terms of caring for children at home, planning permission can sometimes be required for a change of use from Use Class C3 to Use Class C2 (residential institutions). Class C2 includes the following description:

"Use for the provision of residential accommodation and care to people in need of care (other

than a use within class C3 (dwelling houses))."

7.9 Whether a proposal to care for children within a home would be identified under Use Class C2, largely centres on whether or not the children are in themselves capable of living together as a single household. If a children's home was being run on this basis, with children being looked after by a permanent occupant of the dwelling, there would be no requirement for planning permission.

7.10 If other staff members were employed and the children were proposed to be looked after by staff who worked shifts, it is likely that the proposals would require a change of use under Class C2. Based on the information that has been provided, this is not proposed.

7.11 Public Representations

It is acknowledged that members of the public have submitted representations setting out concerns with the proposals. This includes a representation from an MP. For lawful development certificates, planning policy guidance is clear that there is no statutory requirement to consult third parties including parish councils or neighbours (Paragraph: 008 Reference ID: 17c-008-20140306). A site notice has however been displayed in this case for transparency. Planning policy guidance is also clear that 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 therefore not relevant (Paragraph: 009 Reference ID: 17c-009-20140306).

7.12 Planning practice guidance also sets out the following (Paragraph: 008 Reference ID: 17c-008-20140306):

"Views expressed by third parties on the planning merits of the case, or on whether the applicant has any private rights to carry out the operation, use or activity in question, are irrelevant when determining the application."

7.13 As such, the application can only be determined on the basis of whether the proposed use is lawful, not whether the planning merits weigh in favour or against the proposals. Notwithstanding this, the issues raised within the public representations are summarised below, including an explanation as to how they have been considered to assist members in case they have similar queries.

7.14 - Concerns are raised with the lack of consultation with neighbours - as set out previously there is no requirement to consult neighbours and the local planning authority is not able to take into account third party representations; however, a site notice has been displayed in the interests of transparency.
- Concerns are raised with the possibility of anti-social behaviour and noise disturbance - this cannot be taken into account in this case.
- Concerns are raised that the applicant would not be able to care for 5 young people on their own without support - the applicant has clarified that their cousin lives with them and would assist. The matter as to whether the ratio of one or two adults caring for four or five young people is a matter for social services rather than a relevant consideration in the determination of the current application.
- The property is subject to a restrictive covenant which prevents the proposed use - this is a civil matter which is separate from the current application process.
- Concerns are raised with the potential devaluation of neighbouring properties as a result of the proposals - this is not material planning consideration within any type of planning application.
- The cul-de-sac of Langwith Drive does not have the capacity to accommodate additional traffic and this could prevent emergency vehicles from accessing the road - as above this cannot be taken into account in this case.
- No evidence of the applicant's insurance or police checks has been provided - this is not relevant to the determination of the application.
- The landowner's details are redacted and the applicant is a lessee rather than the owner - personal details have been redacted from the application for data protection reasons (this is standard procedure for all application types), and the fact that the applicant is a lessee rather than the owner is not relevant to whether the certificate can be granted.
- The description of development was for a change of use - the description of development has been updated during the determination of the application to clarify that the proposed use would continue to fall under Class C3.
- The proposed plans were prepared by a company called Silver Birch Care which specialises in

residential care homes and concerns are raised that Silver Birch Care intends to operate from the site through the applicant - this has been queried with the applicant. The applicant has set out that they currently work for Silver Birch Care and that they would not operate from the site and have merely prepared the plans. If this changes, and if Silver Birch Care operate from the site or employ staff who work shifts within the site, then it is likely that the use would alter to Use Class C2 and a full application would be required. The local planning authority is however only able to determine the application on the basis of the submitted information and the proposed use.

7.15 **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.

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

7.17 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.

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

7.19 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).

7.20 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.

8.0 RECOMMENDATIONS

8.1 Based on the assessment detailed above, it is recommended that the proposal should be considered favourably and that the Local Planning Authority should deem this submission lawful.

9.0 CONDITIONS

1. Schedule 1 - Description of Use or Operation

Use of premises as a home for up to five children or young people as a single household (Use Class C3)

Schedule 2 - Land Specified

19 Langwith Drive, Holbeach, PE12 7HW (as outlined in red on the attached plan)

Reason for determining the use, operations or other matters to be lawful: The proposed use of the site would continue to fall under Use Class C3 and as such planning permission is not required to change the use of the site.

2. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 as amended. It certifies that the use, operations or matter specified in Schedule 1 taking place on the land described in Schedule 2 was or would have been lawful on the date of the application, and thus was not or would not have been liable to enforcement action under Section 172 of the 1990 Act on that date.

This Certificate applies only to the extent described in Schedule 1 and to the land specified in Schedule 2 and on the attached plan. Any use, operation, or other matter which is materially different from that described, or which relates to other land, may render the owner or occupier liable to enforcement action. For a Section 192 Certificate, the lawfulness is only conclusively presumed where there has been no material change in any relevant matter before the use or operations are begun.

3. The determined plans are:

Application Form
Supporting Statement
15SDEXISTING0124
15SDPROPOSED0124

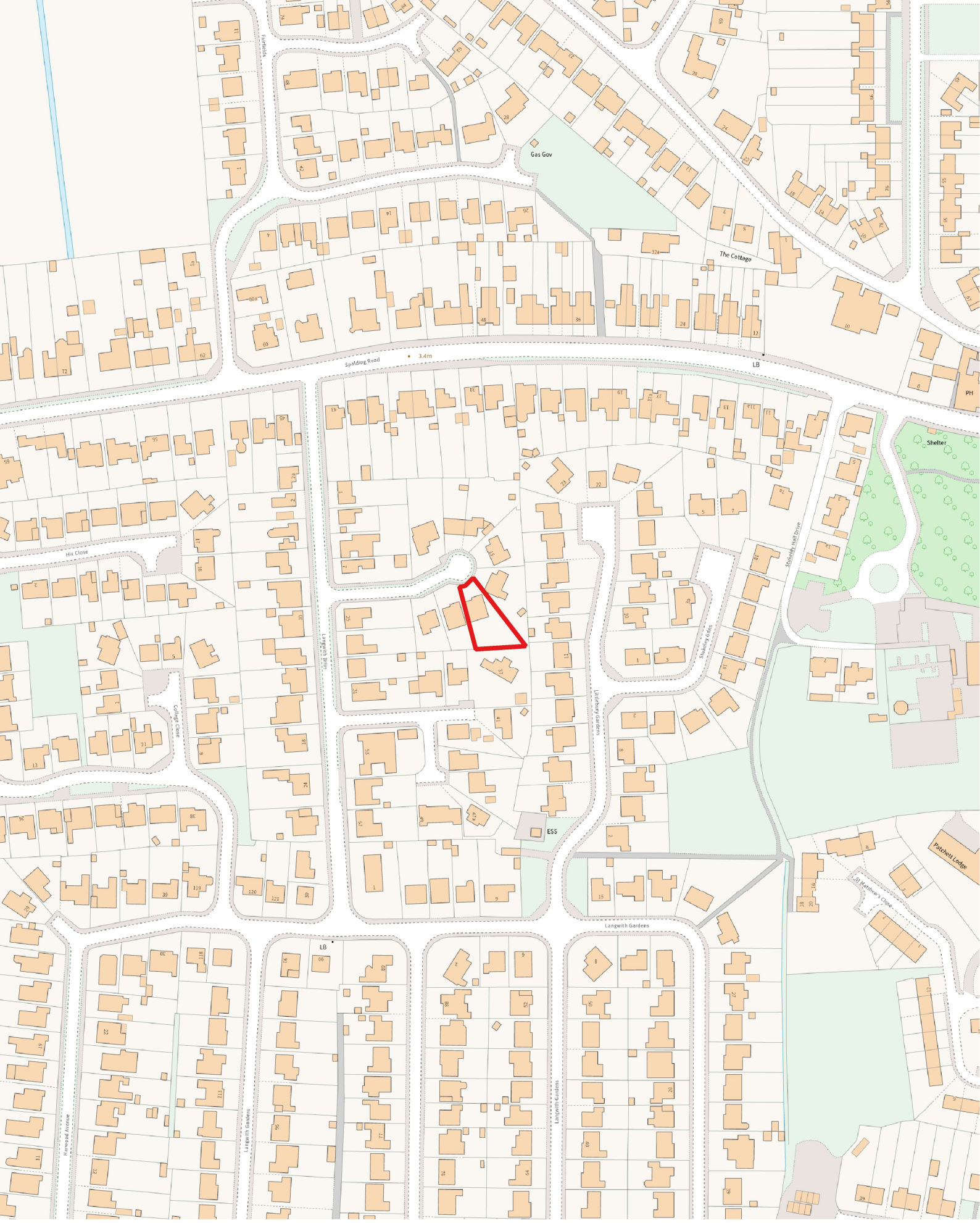
Background papers:- Planning Application Working File

Lead Contact Officer

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Appendices attached to this report:

Appendix A Plan A



SOUTH HOLLAND DISTRICT COUNCIL

MAP SCALE 1:1250
CREATED DATE: 19/03/25
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