

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H13-0477-24 **Applicant:** Mr H Clark

Proposal: Upgrade existing outbuilding to provide flexible auxiliary accommodation and home office

Location: Crown Hall Farm 60 Eaugate Road Moulton Eaugate

Terminal Date: 30th July 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Description of Proposal

This an application for a lawful development certificate for the proposed upgrade of an existing outbuilding to provide flexible auxiliary accommodation and an office.

Internally, this would divide the existing outbuilding into two, an area for a staff room and office for the associated agricultural business (to replace an existing agricultural storeroom) and an accommodation area associated with the host dwelling (to replace a store and office).

Externally, several alterations are proposed, including the installation of five windows (including one replacement window), the installation of two doors, and the removal of two doors.

Site Description

The site is outside of any of the settlement boundaries outlined within the South East Lincolnshire Local Plan, 2019. The property features an agricultural business, including farmyard and larger agricultural buildings, as well as an associated dwellinghouse. The building to which this application relates appears to sit primarily within the agricultural unit; however, the south-west corner of the building does display a strong relationship with the associated dwelling.

Relevant History

H13-0487-07 - Agricultural determination - Erection of dutch barn (1,620 square metres). Approved 04/05/07.

Consultation Responses

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Key Planning Considerations

Evaluation

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.

Relevant provisions of the Town and Country Planning Act, 1990

In relation to proposed uses, Section 192 of the Town and Country Planning Act, 1990, provides that:

- (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.

Lawful Use - Assessment

While on site, it was noted by the Case Officer that the building is within the agricultural unit of the site. The brick boundary treatments located to the south of the building to which this application refers to clearly delineate a residential curtilage. The agricultural unit is, in part, designed by the area of hardstanding on which this building sits. The overall use of the building, as indicated within the submitted plans, coupled with this positioning creates reasonable doubt as to whether the building could be considered domestic in its current form, and instead appears to suggest the building is agricultural in nature (if not necessarily wholly in functional use).

As discussed above, it is considered that the outbuilding to which this application relates is outside of the domestic curtilage of Crown Hall Farm, and is instead within the agricultural unit. While sections of the building may have been used for domestic purposes, it does not appear that this would be to the extent to which a change of use has occurred. Furthermore, insufficient evidence has been provided to illustrate that said use has occurred for a period in excess of 10 years, as to satisfy the requirements of Section 171 of the Town and Country Planning Act, 1990. As such, it is considered that the building subject to this application is, when considering the most probable use without clear evidence to demonstrate such matter, of an agricultural use.

As such, it is considered that the proposal would constitute a material change of use, from agricultural to domestic (C3). No evidence has been provided to demonstrate that this change of

use has occurred for the necessary period of time as to be considered lawful. In light of this, the LPA has reasonable doubt in respect of the lawfulness of the proposed development. As such, it is considered that there is reasonable doubt that the proposal would not be lawful and a Full Planning Application would be required.

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

Taking these factors into consideration, the proposed works are considered to constitute development, for which a grant of planning permission would be required. Accordingly, it is concluded that a certificate of lawfulness cannot be deemed lawful in this instance.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal is unlawful and should be determined as such under Delegated Authority.