DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H14-0221-24**	**Applicant:**	**Mr N Odedra**
Proposal:	Confirmation of existing use which falls within Class E(a)		
Location:	75 Church Street Pinchbeck Spalding		
Terminal Date:	13th May 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 191 of the Town and Country Planning Act 1990 (TCPA 1990)

Representations:

	Object	Support	No Obj.	Comments
OTHER STATUTORY BODIES	1	0	0	0
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This submission is a Section 191 application, comprising a Lawful Development Certificate which seeks confirmation of the existing use class for 75 Church Street, Pinchbeck.

The proposal seeks confirmation that the use of the property falls within Class E(a). The application has been supported by:

- A Site Location Plan
- Decision Notices relating to references H14-0440-10 and H14-0521-13, along with associated planning drawings
- Evidence of 'Non-Domestic Rates'
- Pre-Application Advice Response, provided by South Holland District Council
- Supporting Statement.

Site Description

The application comprises a detached rendered building, located on Church Street in Pinchbeck. The building is set back on its plot with a forecourt to the front. The location of the application site is within Pinchbeck Conservation Area, with older terraced properties to the north and more modern dwellings to the south and east.

The building is also located within the street scene of Pinchbeck Hall, which is a listed building to the north west. The building is not a significant building within the Conservation Area and is of plain construction.

History

H14-0223-24 - Change of use of part of building from builders yard and offices to bathroom showroom (retrospective) - approved under H14-0440-10. Modification of Condition 3 to allow extension of opening hours - To be determined

H14-0222-24 - External alterations including new frontage, the installation of shutters, and installation of condensing units - To be determined

H14-0983-22 - Conversion of existing building to provide a local convenience store, to include new front elevation design, shutters, condensing units external works and extension of opening hours - Refused - Appeal Dismissed

H14-0521-13 - Extension and alterations to front elevation - Approved

H14-0440-10 - Change of use of part of building from builders yard and offices to bathroom showroom (retrospective) - Approved

H14-0133-07 - Timber store shed (retrospective) - Approved

H14-0545-06 - Change of use of former garage to offices and general store - Approved

H14-1110-06 - Alteration to front elevation and security fence & gate to rear (retrospective) - Withdrawn

H14-1437-06 - Alteration to front elevation, security fence and gate to rear - Approved

Consultation Responses

MP - Sir John Hayes

I have recently been contacted by my constituent regarding the above application for confirmation of existing use which falls within Class E(a) at 75 Church Street.

My constituent is concerned about opening hours of the store and the impact this could have on neighbouring properties. In addition, the site only has parking for two cars which will result in a considerable number of cars parking on the main road through Pinchbeck near to the junction with Knight Street, which would be dangerous and cause congestion.

To this end, I would be grateful if you could treat my letter as an objection to this proposal. However, if the planning committee is minded to grant permission then appropriate conditions need to be put in place to ensure that neighbouring residents are not affected in any way.

Further hand written notes were stated.

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, one letters of representation has been received.

These can be summarised as follows:

-No objection to the premises operating as a business.

-The remainder of the context of the letter was objecting to the increase in opening hours.

Evaluation

This application is a Lawful Development Certificate which seeks confirmation of the existing use class of 75 Church Street, Pinchbeck; predominantly to gain confirmation as to whether the use of the premises falls within Class E(a).

This application is a legal determination and planning policy is not relevant to the determination as to whether the proposed use would be lawful. The planning history of the site was investigated. Permitted development rights had not been removed by any previous permissions and the proposal.

The Local Planning Authority has not received any application relating to the change of use of the site, subject to this application, following the previous approval granted under reference H14-0440-10, which subsequently approved a change of use of part of building from builders yard and offices to bathroom showroom (retrospective).

The Use Classes order has been amended since the determination of this application.

Planning Considerations

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

As this application relates to a Lawful Development Certificate for an existing use or development, the relevant section is Section 191 of the Town and Country Planning Act.

This section provides that:

"(1) If any person wishes to ascertain whether -
(a) any existing use of buildings or other land is lawful;
(b) any operations which have been carried out in, on, over or under land are lawful; or
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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".

(3)For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if -
(a)the time for taking enforcement action in respect of the failure has then expired; and
(b)it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A)In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if -
(a)the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,
(b)an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
(c)a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired".

In relation to the determination of applications for certificate of lawful development for existing use,

the Act provides under Section 191(4) that:

"(4)If, on an application under this section, the local planning authority are 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".

The Act continues in regard to the determination of Lawful Development Certificates for existing use, by stating that:

"(5)A certificate under this section shall -
(a)specify the land to which it relates;
(b)describe the use, operations or other matter 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, operations or other matter to be lawful; and
(d)specify the date of the application for the certificate.

(6)The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed".

Lawful Use - Assessment

The applicant has submitted this Lawful Development Certificate to gain confirmation as to the use of the application site, with a particular focus upon gaining confirmation that its se falls with Class E(a). In support of this application, the applicant has provided:

- An Application Form
- A Site Location Plan
- Decision Notices relating to references H14-0440-10 and H14-0521-13, along with associated planning drawings
- Evidence of 'Non-Domestic Rates'
- Pre-Application Advice Response, provided by South Holland District Council
- Supporting Statement.

The applicants supporting statement sets out their key points for this case; these can be summarised as:

- Planning approval was granted on 20th July 2010, under application reference H14-0440-10, which granted permission retrospectively for a change of use of part of building from builders yard and offices to bathroom showroom.

- Planning approval was granted on 06th August 2013, under application reference H14-0521-13, which granted permission for proposed extensions and alterations to the front elevation. The applicant details that the "planning application form, attached as Appendix E, describes the existing use as 'Bathroom showroom and office'. It is clear from the plans that the accommodation was primarily used for the sale and display of bathroom goods".

- Pre-application Advice was previously obtained for the site which had previously stated that "The proposed convenience store will not require an application for change of use as the current and proposed use both fall under Class E Commercial, business and service on the Use Classes Order (2021)".

- "The property, reference number 70137962, is rated for non-domestic rating purposes as 'store and premises' and has historically been rated for this purpose over the last 10 years".

In assessing this application and the lawful use of the site, it is considered that, in respect of the 'Use', that the last known permission granted by the Local Planning Authority was reference H14-0440-10. This granted permission to change the use of the site to a 'Bathroom Showroom'.

Subsequent applications on site, namely reference H14-0521-13, have granted extensions and alterations to the building, which have cited the property as being a 'Bathroom showroom and office'; seemingly acknowledging that the use permitted under reference H14-0440-10 was implemented. This is further evident in that this initial permission was submitted retrospectively.

At the time of determination of application H14-0440-10, the use as a 'Bathroom Showroom' would differ to that which it would now be classified as, given that the 'Town and Country Planning (Use Classes) Order 1987 (as amended)' was significantly altered in 2020 under 'The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020'. This must be considered as part of the assessment of this case.

Also of importance and note is the recent determination of application reference H14-0983-22. This application sought the "conversion of existing building to provide a local convenience store, to include new front elevation design, shutters, condensing units external works and extension of opening hours". This application was subsequently refused by the Local Planning Authority, including due to the potential impacts it would cause should it be permitted as a convenience store.

This refusal was subsequently appealed, with the Planning inspectorate dismissing the appeal. Within the appeal submission, the applicants agent at the time expressed that the Local Planning Authority should not have refused permission, as the site already had a lawful use that would cover a convenience store, in Class E(a). The Local Planning Authority did not challenge that the use may have been Class E(a) but clearly demonstrated that the application sought a 'conversion', cited to refer as a change of use.

The Planning Inspector largely agreed with this take, determining the appeal based upon the description of proposal put forward for the application, which included the 'conversion'. However, the Appeal decision detailed that:
"It is a matter of dispute between the main parties as to whether the proposal includes the change of use of the appeal site. I understand, and it does not appear to be disputed, that the site was previously in Class E use as a bathroom showroom. However, the use has now ceased, and the building was unoccupied at the time of my site visit.

Ultimately, it is not within my remit to consider whether or not the use of the building as a convenience store would constitute a change of use, or require planning permission, and even though there appears to be some agreement
between the main parties that such a use could be lawful without planning permission, there is no substantive evidence before me in the form of a certificate of lawful use issued under sections 191 or 192 of the Town and
Country Planning Act 1990 which would confirm this fact".

It is assumed that this statement provides the reasoning as to why the applicant has submitted this Section 191 application. In any event, irrespective of the reasoning for such a submission, it is considered that the Planning Inspector was comfortable that the site could be considered as a Class E use.

The site is currently unoccupied and has been for a period of time that is not strictly known by the Local Planning Authority; although it is known that this has been for a minimum period that spans the timeframe of the applications referred to above, namely H14-0983-22. However, it is also known that the site was in use in 2013, at the time of application H14-0521-13, given that this sought permission for an extension to an existing business. As such, the building has not been unoccupied for a substantial period; albeit, it is evident that it is unoccupied currently.

In any event, the last known use of the site was as a Bathroom Showroom. It is the Local Planning Authority's opinion that, this use, following the amendment to the use Class Order, falls within Class E. The previous permission that granted the use as a Bathroom Showroom did not contain conditions that restricted its use to solely that of a 'Bathroom Showroom'; although hours of operation were limited.

It is understood that whilst planning permission is required in some instances should a material change of use occur, including when changing between some use classes that contain the same class letter, i.e. Use Class F1 to Class F2; the change of use of a unit between different categories within the single use class of Class E (Commercial, Business and Service), i.e. Class E(b) to Class E(a) does not constitute a material change of use whereby formal planning permission is required through the submission of a planning application.

Overall, it is considered that the use of the premises, as a Bathroom Showroom would fall under use Class E(a).

Conclusion

No objections have been received that provide information that contradicts the evidence given by the applicant, or the assessment of information that has taken place by the Local Planning Authority.

Based on the information detailed above, including the supporting information, assessment of site history and uses, the previous appeal decision and further detailed assessment of the case, it is considered that the lawful use of the site is as Class E(a).

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.