

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H15-0189-25 **Applicant:** Mrs S Bingham
Proposal: Erection of dwelling - approved under H15-0843-08
Location: Blue Bell Cottage Sarahgate Lane Quadring
Terminal Date: 24th April 2025

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

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

Town and Country Planning Act 1990

Section 191 of the Town and Country Planning Act 1990

Relevant Legislation

The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended). The Act sets out the following:

"Certificate of lawfulness of existing use or development.

(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.

(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.

(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.

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

Representations:

| | Object | Support | No Obj. | Comments |
|--|--------|---------|---------|----------|
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CASE OFFICER ASSESSMENT

Proposal

This is a Section 191 application, comprising a Lawful Development Certificate (Exisitng) to ascertain whether the erection of a dwelling (Class C3), as is built on site, is lawful without compliance to the approved permission H15-0843-08.

The propsoal seeks a Lawful Development Certificate due to the dwelling having been sited within a slightly alternative location on site, within a residential curtilage (site area) that extends beyond that previously permitted. The proposal ultimately seeks to establish if the development is lawful given that it was constructed more than 10 years ago, having also been completed prior to the amendments dated April 2024.

Site Description

The application site lies to the northern side of Sarahgate Lane, within the village of Quadring. The site is host to a sizeable detached residential dwelling, with a detached garage located to the south east.

The site is accessed directly via Sarahgate Lane. The site lies partially detached from the main built

form of Quadring, being immediately neighboured by extensive glasshouses to the north, with agricultural land adjacent.

History

H15-0843-08 - Full Planning Application - Proposed erection of detached dwelling and detached double garage with office above - Approved - 06.10.2008.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

No consultation responses gained for this application.

Public Representation

There is no statutory obligation for the Local Authority to publicise an application for a Certificate of Lawful Development. However, a site notice has been displayed next to the site for a period of 21 days in the interests of transparency.

In this instance, no letters of representation have been received during the application process.

Planning Considerations

This is a legal determination and planning policy is not therefore relevant to the determination as to whether the claimed use or development is indeed lawful. The test with which the application must meet, is that the use/development has been on-going for a continuous period, sufficient as to be 'immune' from enforcement action. The evidence submitted must be considered on the balance of probability.

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.

The application seeks the granting of a Certificate of Lawfulness in respect of ascertaining whether the erection of a dwelling (Class C3), as is built on site, is lawful without compliance to the approved permission H15-0843-08.

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

1. Application
2. Site Location Plan
3. Proposed Site Layout, Proposed floor Plans & Proposed Elevations (As Built)
4. Proposed Site Layout, Proposed floor Plans & Proposed Elevations (As Approved under H15-0843-08).

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)."

It has not been disputed, and it is clearly evident, that the site is currently occupied. The occupation of this dwelling, at the time of this report, is by a single person or by people regarded as forming a single household. The use of the site is considered to be C3 - Dwellinghouse.

The submission provides two distinctive plans - one being the site layout as approved under reference H15-0843-08 and the second being that as per the constructed dwelling. The drawing provided to illustrate the scale and siting of the dwelling 'as constructed' replicates that which was

visible on site during the case officers site visit. It is considered reasonable to conclude that the development as shown within this 'as constructed' plan, is that which was initially constructed on site. There is also no evidence to the contrary, that has been brought before the Local Planning Authority, to disprove this.

The applicant through these drawings, in addition to that built form viewed during the officers site visit, have evidenced the differences between the development as approved under H15-0843-08 and that which has been constructed on site. Furthermore, through seeking aerial imagery of the site, the dwelling appears to have been constructed between the period of 2008 (the date of the permission) and 2010 whereby the site appears well-established and in use.

Case law had established that in order to become immune from enforcement action and considered lawful in this regard, a breach must be continuous for a period of at least 10 years. Section 171B of the Town and Country Planning Act 1990 details that:

*"(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...*

*(2)Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, 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 of the breach..."*

It is noted that the period outlined under 171B, Para (2), was subject to amendment in April 2024 under the Levelling-up and Regeneration Act 2023. Prior to this, the change of use to form a dwelling must have been in existence for at least 4 years for it to be immune from enforcement action.

Irrespective of this, it is clear that the dwelling was constructed between 2008 and 2010 and as such, even in the case of the most recent date of December 2010, the development had been constructed for a period in excess of 15 years. In light of this, the period for immunity of ten years has elapsed and as such, the development is considered lawful in this regard.

Overall, it is viewed that the proposal is lawful.

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

The applicant has provided evidence as to the differences between the development as approved under H15-0843-08 and that which has been constructed on site. The drawing provided to illustrate the scale and siting of the dwelling 'as constructed' replicates that which was visible on site during the case officers site visit.

No objections have been received to contradict the evidence given by the applicant, and it is clear, through seeking aerial imagery of the site, that the dwelling had been constructed between the period of 2008 (the date of the permission) and 2010 whereby the site appears well-established and in use.

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