DECISION DELEGATED TO HEAD OF PLANNING

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| **Application No:** | **H16-0323-25** | **Applicant:** | **Ms L Bates** |
| **Proposal:** | Proposed garden/games room | | |
| **Location:** | 16 Stennett Avenue Spalding | | |
| **Terminal Date:** | 24th June 2025 | | |

**Planning Policies**

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| **South East Lincolnshire Local Plan - Adopted: March 2019** |
| **National Guidance**<br>**National Planning Policy Framework December 2024** |

**Representations:**

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

**Proposal**

The application seeks consent for a lawful development certificate for a detached garden / games room within the rear garden of 16 Stennett Avenue, Spalding. Consent is sought under Section 192 of the Town and Country Planning Act (1990) (as amended).

**Site Description**

The site is located at 16 Stennett Avenue, Spalding, which features a two-storey dwelling and its associated garden. The site is located between 15 and 17 Stennett Avenue.

**Relevant Planning History**

H16-1196-87: (Full Application) Three detached houses in lieu of two previously approved - approved 27 November 1987

**Consultation**

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. Therefore, no consultation has been undertaken with statutory consultees.

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.

## Key Planning Considerations

Relevant Legislation

Section 192 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whetherâ??
(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 shallâ??
(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.]"

Therefore, the LPA needs to be provided with sufficient information to demonstrate that, the proposed building is lawful in planning terms and would not require full planning permission.

Assessment

The planning history of the site has been reviewed. It is unclear when the dwelling within the site was constructed as there are no planning permissions available within the local planning authority's system that indicate when the dwelling was originally granted consent. It is therefore unlikely that there are any planning conditions that restrict permitted development rights for outbuildings within the site.

Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the construction of 'buildings etc incidental to the enjoyment of a dwellinghouse'. Class E allows for the following:

"E. The provision within the curtilage of the dwellinghouse ofâ??
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas."

The proposed garden / games room would therefore fall under this category.

Section E.1 sets out the circumstances under which development is not permitted by Class E. The proposed garden room is assessed against these criteria below.

"a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);"

The dwelling was not granted permission under the above referenced Classes.

"b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage

(excluding the ground area of the original dwellinghouse);"

The proposed garden / games room would not result in more than 50% of the curtilage of the dwelling being built upon. To clarify, the curtilage of the site (excluding the original dwelling) comprises approximately 145sqm. The proposed garden / games room would comprise approximately 26sqm, which is 18% of 145sqm and is therefore below the 50% allowance.

"c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;"

The proposed garden room would not be built forward of the principal elevation of the dwelling. The principal elevation is considered to be the northern elevation as this faces towards Stennett Avenue and the garden is located to the south of the dwelling.

"d) the building would have more than a single storey;"

The garden room building would feature only one storey.

"e) the height of the building, enclosure or container would exceedâ??
(i) 4 metres in the case of a building with a dual-pitched roof,
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
(iii) 3 metres in any other case;"

The building is proposed to measure 6m in length, and 4m in width. The building is proposed to be located next to the western boundary of the site. The building is proposed to feature a flat roof, measuring 2.5m in height. As such, the building would not exceed the limitations of part ii).

"f) the height of the eaves of the building would exceed 2.5 metres;"

The height of the eaves on the proposed building would not exceed 2.5m.

"g) The building, enclosure, pool or container would be situated within the curtilage of a listed building;"

The building is not within the curtilage of a listed building.

"h) It would include the construction or provision of a verandah, balcony or raised platform;

No verandahs, balconies or raised platforms are proposed.

"it relates to a dwelling or a microwave antenna;"

The proposal is not for an antenna.

"j) the capacity of the container would exceed 3,500 litres;"

Part j is not relevant to the proposal.

Section E.2 is not relevant as the site is not within an area of outstanding natural beauty, the Boards, a National Park, or a World Heritage Site.

Section E.3 sets out the following:

"In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse."

The site does not comprise article 2(3) land.

Section E.4 sets out the following:

"For the purposes of Class E "purpose incidental to the enjoyment of the dwellinghouse as such"

includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse".

The proposed garden room is considered to be incidental to the enjoyment of the main dwelling.

## 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 proposed garden room is considered to comprise permitted development, which is allowed by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). There are no conditions from previous permissions within the site which restricted permitted development rights for the proposed outbuilding. As such, it is considered that the proposed development would be lawful, and that a certificate of lawfulness can be issued under S192 of the Town and Country Planning Act, 1990.

## Recommendation

A certificate of lawfulness should be issued under S192 of the Town and Country Planning Act, 1990.