DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0370-24**	**Applicant:**	**Liaise**
Proposal:	Proposed use of 6 individual apartments (C3) to use as single household where care is provided for residents (C3b)		
Location:	Flats 1-6 18 High Street Spalding		
Terminal Date:	18th June 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Section 192 of the Town and Country Planning Act 1990 (TCPA 1990)

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This submission is a Section 192 application, comprising a Lawful Development Certificate which seeks the LPAs confirmation that change of use of Flats 1-6, 18 High Street, Spalding from 6 single household apartments (under C3a) to 6 individual apartments where care is provided to residents (Under C3b).

The application is supported by:

- Site Plan
- Existing and Proposed Floor Plans
- Existing and Proposed Elevations
- Site Location & Block Plan
- Covering Letter / Supporting Information

Site Description

The proposal site is a block of 6 newbuild flats, designed in a faithful Georgian style. The property is located in a highly prominent conservation area setting, adjacent to a listed building (Holbeach House) and within close visual range of a number of others. The site is serviced by a large car park to the rear of the property.

History

H16-0040-14

Proposed conversion of Holland House to 5 apartments together with new build of 6 two-bed apartments, 6 three-bed three-storey town houses, 2 two-bed semi-detached town houses and 3 two-bed terraced town houses including demolition of ex-government offices. Approved

H16-0883-14

Details of archaeological report, schedule of materials and sample panels (Conditions 3, 11 and 12 of H16-0040-14). Approved 05-01-15

H16-0951-14

Details of boundary treatment, doors and windows, meter boxes etc, redundant vehicle crossing and samples (Conditions 6, 15, 16, 19, 22 and 23 of H16-0040-14). Approved 05-01-15.

H16-0110-15

Details of external illumination, renewable energy and management company (Conditions 8, 9 and 21 of H16-0040-14). Approved 11-05-15

H16-0412-15

Proposed conversion of Holland House to 5 apartments together with new build of 6 two-bed apartments, 6 three-bed three-storey town houses, 2 two-bed semi-detached town houses and 3 two-bed terraced town houses including demolition of ex-government offices - Original application approved under H16-0040-14 - Amendments to provide a ramped access to the rear of new build apartments. Approved 09-09-15.

H16-0992-15

Proposed conversion of Holland House to 5 apartments together with new build of 6 two-bed apartments, 6 three-bed three storey town houses, 2 two-bed semi-detached town houses and 3 two-bed terraced town houses including demolition of ex-government offices - approved under H16-0040-14. Removal of Condition 8 relating to renewable energy. Approved 25-02-16.

Consultation Responses

None requested.

Evaluation

This application is a Lawful Development Certificate which seeks confirmation of lawfulness of the proposed change of use from 6 individual household apartments to 6 individual apartments where care is provided to residents. In effect, the Local Planning Authority is asked to confirm if it considers the new proposed use to fall within the same use class as existing (C3), and therefore whether consent would be required for the proposed change.

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 to change of use 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.

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

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.

Furthermore, Section 3 of the Town and Country Planning (Use Classes) Order, 1987 (as amended) provides that:

(1A) Subject to the provisions of this Order, where a building or other land is situated in England and is used for a purpose of any class specified in - (a) Part B or C of Schedule 1, or (b) Schedule 2, the use of that building or that other land, or if specified, the use of part of that building or the other land ("part use"), for any other purpose of the same class is not to be taken to involve development of the land.
(2) References in paragraph (1) and (1A) to a building include references to land occupied with the building and used for the same purposes.
(3) A use which is included in and ordinarily incidental to any use in a class specified in Schedule 1 or 2 is not excluded from the use to which it is incidental merely because it is specified in Schedule 1 or 2 as a separate use.

Lawful Development - Assessment

The applicant has submitted this Lawful Development Certificate to gain confirmation as to the proposed use of the application site, with particular focus upon gaining confirmation that it falls within Class C3. The application has been supported by:

- Site Plan
- Existing and Proposed Floor Plans
- Existing and Proposed Elevations
- Site Location & Block Plan
- Covering Letter / Supporting Information

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

- Each apartment within the building will accommodate a maximum of 1 resident.
- Whilst carers will support them, the resident within each apartment will live as a single household.
- A maximum of 2 carers will be present at each apartment at any one time. Usually only 1 at night if required.
- It is highly unlikely that residents will have cars.
- Parking is available to the rear of the site (with a space allocated to each property) which staff may utilise although most will use public transport and it is likely that the levels of car parking on site will

be low. Visitor parking spaces are also available.
- Staff will be recruited locally to support the residents within their home
- Existing use is C3a
- On the basis of the above, the proposed use sits firmly within use class C3b.
- Planning permission is not required for changes of use within overarching C3 use class.

Taking the above into account, given that a maximum of 6 residents shall live on site, across a maximum of 6 separate units, and a care provision shall be available permanently on site, in line with the applicant's supporting statement, it is clear that the proposed use would fall within use class C3b, and therefore, the change of use from another C3 use is not a process which requires the submission and approval of an application for planning permission, and is therefore considered permitted development and as such, lawful development.

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.