DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H16-0385-23**	**Applicant:**	**Mr S Genever**
Proposal:	Use of former offices as residential dwelling		
Location:	6a Herring Lane Spalding		
Terminal Date:	15th June 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

01	Spatial Strategy
10	Meeting Assessed Housing Requirements
11	Distribution of New Housing
17	Providing a Mix of Housing

National Guidance

National Planning Policy Framework 2021

Section 5 - Delivering a sufficient supply of homes

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The application seeks the granting of a Certificate of Lawfulness for the of 6A Herring Lane as a residential property. The current designated use is as an office.

Site Description

The site is located within the settlement boundaries of Spalding, as outlined in the South-East Lincolnshire Local Plan, 2019 (SELLP). The site is within the centre of Spalding, within the conservation area, approximately 50 metres west of the river.

The site is an orange brick terraced property, with white painted timber windows. The properties to the east are built in a similar style to 6A, however, the western neighbour (Elderkin and Son) is distinct to the area, with dark grey, textured cladding. To the south is a series of Grade II Listed buildings.

History

H16-0561-88 - Full. Erection of two dwellings. Refused 20/06/88.

H16-0562-88 - Full. Demolition of existing buildings. Refused 20/06/88.

H16-0943-08 - Full. Change of use from residential to Use Class A2 commercial offices (retrospective). Approved 21/10/08.

Consultation Responses

No responses received.

Planning Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed use is indeed lawful. The decision is based upon the case officer's judgment as to the case being proven on the balance of probabilities.

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

1.Application Form
2.Site Location Plan
3.Copies of tenancy agreements from the period May 21st, 2013, to June 9th ,2022.

Case law has established that in order to become immune from enforcement and therefore lawful, the breach must be continuous for a period of at least 10 years.

The submitted tenancy agreements run continuously from May 21st, 2013, through to the present day. The submitted evidence therefore shows that the site has been continuously used as a residential dwelling for 10 years, contrary to the permitted use designated in H16-0934-08. Although the use has only just passed the 10-year threshold, the use has still occurred for greater than 10 years.

Taking the above into account, it is considered that sufficient evidence has been submitted to demonstrate that "on the balance of probability" the site has been occupied as a residential dwelling for a period of at least ten years. There is no substantive evidence held by the Council to dispute this. It is therefore considered appropriate to issue a Certificate of Lawfulness.

Conclusion

It has been satisfactorily demonstrated that there has been a breach of condition for at least the last 10 years.

The recommendation therefore is 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.