

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H16-0891-24 **Applicant:** Mr K Ahmad

Proposal: Proposed change of use from retail (Class E) gardening tools and plant shop to Class E (a) retail use other than for the sale of hot food, principally for visiting members of the public

Location: 48 Holbeach Road Spalding

Terminal Date: 25th December 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Description of Proposal

This is an application for a certificate of lawfulness made under Section 192 of the Town and Country Planning Act 1990. The application seeks to ascertain whether the change of use from an existing "gardening tools and plant shop" (as identified within the application form accompanying this submission) to a generic Class E use (as outlined within The Town and Country Planning (Use Classes) Order 1987 and amended by The Town and Country Planning (Use Classes) (Amendment) (England) Regulations 2020) would be lawful.

In effect, this application seeks confirmation of the use class the building would fall within.

Site Description

The site is within the settlement boundaries of Spalding, as outlined within the South East Lincolnshire Local Plan, 2019. It is located to the west of the junction of Holbeach Road and Roman Bank, along the river front. The building has a clear industrial character, and as a result is somewhat anomalous within this primarily residential area. 48 Holbeach Road is a large commercial building, rendered white. Associated offices are located to the south, while a large forecourt is present to the east.

Relevant History

H16-0604-24 - Full. Roof Alterations. Approved 04/10/24.

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 responses received.

Public Representations

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Key Planning Considerations

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.

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.

In support of this application, the following has been submitted:

- Application form
- Site location plan
- Proposed block plan
- Existing and proposed floor plans, roof plans and elevations
- Planning statement

The Town and Country Planning (Use Classes) Order 1987

As outlined above, the Town and Country Planning (Use Classes) Order 1987 defines specified use class which the operation of a building may fall into. Schedule 2, Part A (introduced by the aforementioned 2020 act) outlines "commercial, business and service" uses, identified as Class E. Class E is defined as a use, or part use, for any of the following purposes:

- (a)for the display or retail sale of goods, other than hot food, principally to visiting members of the public,*
 - (b)for the sale of food and drink principally to visiting members of the public where consumption of that food and drink is mostly undertaken on the premises,*
 - (c)for the provision of the following kinds of services principally to visiting members of the public??*
 - (i)financial services,*
 - (ii)professional services (other than health or medical services), or*
 - (iii)any other services which it is appropriate to provide in a commercial, business or service locality,*
 - (d)for indoor sport, recreation or fitness, not involving motorised vehicles or firearms or use as a swimming pool or skating rink, principally to visiting members of the public,*
 - (e)for the provision of medical or health services, principally to visiting members of the public, except the use of premises attached to the residence of the consultant or practitioner,*
 - (f)for a creche, day nursery or day centre, not including a residential use, principally to visiting members of the public,*
 - (g)for??*
 - (i)an office to carry out any operational or administrative functions,*
 - (ii)the research and development of products or processes, or*
 - (iii)any industrial process,*
- being a use, which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit."*

It is lawful to move between uses within the same use class.

Existing Use Class

The application form states that the previous use of the building was for "gardening tools and plants shop retail (class E)". This is supported by Paragraph 2.2 of the Planning Statement, which states "From the information that has been gleaned from our investigations into the site, the current use falls within Class E (c)(iii)"

The existing use of the site appears to be for the sale of garden and agricultural tools and machinery, as well as general accoutrements associated with this. The Companies House listing puts the nature of the business as "Agents involved in the sale of machinery, industrial equipment, ships and aircraft" (although it should be noted that this is a broad category, and the uses described in this description are not necessarily indicative of the exact use).

Accordingly, it is considered that the existing use of the site does fall within the broad class E category.

Evaluation of Lawfulness of Proposed Use

The application seeks a determination as to whether the change to a general Class E use would be lawful. As outlined previously, the use of the site does currently sit within a broad Class E use.

Paragraph 1A of Section 3 of The Town and Country Planning (Use Classes) Order 1987 outlines that the use of a building for any purpose of the same class is not taken to involve development. Section 55, Paragraph 2f of the Town and Country Planning Act further reiterates this stating that the following shall not be taken to involve development: "in the case of buildings or other land which are used for a purpose of any class specified in an order made by the Secretary of State under this section, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class."

Accordingly, the proposal is not considered to represent development, and thereby, under the provisions of Sections 55 and 57 the Town and Country Planning Act, planning permission is not required. As such, the change of use is considered to be lawful under Section 192 of the Town and Country Planning Act.

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

Based on the information detailed above, including the supporting information, assessment of site history and uses, it is considered that the change of use falling within Class E would not represent development as the existing use of the site is already within this use class.

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

Recommendation

Based on the assessment detailed above, it is recommended that the proposal should be approved under Delegated Authority.