

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H17-0619-24 **Applicant:** Mr D Vernall
Proposal: Proposed vehicle crossing
Location: 1 Newlands Road Surfleet Spalding
Terminal Date: 12th September 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 lawful development certificate for improvements to an existing vehicular access at 1 Newlands Road, Surfleet. No new access is proposed, merely improvements to an existing crossing.

Site Description

The site is located outside of any of the settlement boundaries outlined within the South East Lincolnshire Local Plan, 2019, sitting approximately 400m north of Surfleet. The dwelling is a semi-detached house, lying at the end of a row of six pairs of comparable properties. To the north, east and south are agricultural fields.

Relevant History

H17-0553-17- Full Erection of an outbuilding for use as music teaching space, music recording studio and family recreational area (resubmission of H17-0319-17) Approved 18-07-17

H17-0319-17- Full. Erection of outbuilding for use as music teaching space and family recreational area. Approved 17-05-17

H17-0269-14- Full. Extension to dwelling comprising two first floor bedrooms, ground floor living room, bedroom and shower room. Approved 29-05-14

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

Evaluation

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.

Assessment - The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

Schedule 2, Part 2, Class B of the General Permitted Development Order "means of access to a highway" states that the following is permitted development:

" The formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)."

The means of access would be located on a classified road, and as such, the formation of a new access could not be achieved under this section of the Permitted Development Order.

In addition, if it is not considered that the proposal represents the creation of a new access, instead being considered general improvements to an existing access, no provisions for this are made within this section of the Permitted Development Order. Therefore, it is not considered that the proposal could be achieved under this class.

Moreover, from the submitted details, there is reasonable doubt if the site is wholly within the residential curtilage of 1 Newland Road. A portion of the area to be improved appears to be outside of the residential curtilage, potentially within land owned by the Local Highway Authority. As such, the proposed works could not be conducted under Class F, Part 1 of Schedule 2 of the General Permitted Development Order.

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

On the balance of probabilities, it is not considered that the proposal would conform to the constraints outlined within the General Permitted Development Order, in particular Schedule 2, Part 2, Class B. As such, it is considered that the proposal would represent development for which a grant of planning permission would be required.

Accordingly, it is considered that a certificate of lawfulness should not be issued.

Recommendation

Based on the assessment detailed above, it is recommended that the proposal is unlawful and should be determined as such under Delegated Authority.