DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H20-0735-24**	**Applicant:**	**Dr R Joshi**
Proposal:	Proposed single storey rear extension		
Location:	Northfields Old Fendyke Sutton St James		
Terminal Date:	6th November 2024		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Representations:

	Object	Support	No Obj.	Comments
SOUTH HOLLAND INTERNAL DRAINAGE BOARD	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for a rear extension at Northfields, Old Fendyke. The proposed extension would feature a flat roof and have a depth of 8m, running the entire width of the house (approximately 17m). The flat roof would have a height of 2.6m, in line with the eaves of the host.

Site Description

The site is located outside of any of the settlement boundaries outlined within the South East Lincolnshire Local Plan, 2019. As such, the site is considered to be within the open countryside from a planning context. The area is defined by rural agriculture, occasionally featuring isolated farms and farmhouses.

Northfields is fairly typical of dwellings within the district, being an isolated, brown brick bungalow. The dwelling was constructed in the mid-1980s. The existing dwelling is fairly modest in size.

Relevant Planning History

H20-0204-85: (Full Application) 1 no. proposed bungalow with garage including vehicular access -

approved 17 April 1985.

H20-1060-13: (S73 Application) Proposed bungalow with garage including vehicular access (removal of Condition 2 of H20-0204-85 relating to agricultural habitation clause) - approved 04 February 2014.

H20-0623-24: (Prior Approval Application) - Erection of single-storey rear extension - approved 23 August 2024.

H20-0703-24: (S192 Application) Removal of external garage door and installation of window to form utility room & toilet - approved 10 October 2024

Consultation

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. Notwithstanding this, South Holland Drainage Board has been consulted. Their response can be viewed in full on the council's website, however, their response is summarised below:

-The Board's Officers have reviewed the documents submitted in support of the above planning application. Officers have noted works which may require Land Drainage Consent from the Board as outlined in the table below and detailed overleaf. Please be aware of the potential for conflict between the planning process and the Board's regulatory regime.

Key Planning Considerations

Evidence Provided

The following documentation has been submitted:

-Application Form (PP-13357336);
-Site Plan (240406-00-P0); and
-Existing Plans & Elevation and Proposed Plan (240406-02-P2).

Assessment

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 key issue for decision is whether the proposed works are either (i) not development; or (ii) permitted development. The works are considered to be development, as defined by section 55 of the Town and Country Planning Act 1990, because they involve building operations that are either "structural alterations of or additions to buildings" or "other operations normally undertaken by a person carrying on business as a builder".

The planning history of the site was investigated. Permitted development rights had not been removed by any previous permissions.

The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended- Schedule 2 Part 1 Class A

Schedule 2, Part 1, Class A of the GPDO permits the 'enlargement, improvement or other alteration of a dwellinghouse' and as such, typically relates to extensions (not including porches). Class A sets out circumstances within which development is not permitted by Class A within Paragraph A.1, criteria a) to l). The proposed extension is assessed against these criteria below.

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

The dwelling was not granted permission via the relevant Classes, therefore the scheme conforms with part a.

"(b) as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (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 works would not result in the total area of ground covered by buildings to exceed 50%.

"(c) the height of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the highest part of the roof of the existing dwellinghouse;"

The height of the extension would be set at 2.6m, below the 4.5m maximum of the host dwelling.

"(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse;"

The eaves height of the proposed extension is approximately 2.6m, level with that of the host dwelling.

"(e) the enlarged part of the dwellinghouse would extend beyond a wall which-
(i) forms the principal elevation of the original dwellinghouse; or
(ii) fronts a highway and forms a side elevation of the original dwellinghouse;"

The extension would be located to the rear of the dwellinghouse, following the demolition of an existing rear projection. The extension would not form a principal elevation nor would it front a highway and form a side elevation.

"(f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and-
(i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse, or
(ii) exceed 4 metres in height;"

The proposal would extend beyond the rear wall by 8m, therefore exceeding the 4m allowance. The extension would not however exceed 4m in height.

"(g) For a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and-
(i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse, or
(ii) exceed 4 metres in height;"

The dwelling is not within article 2(3) land nor within an SSSI. The extension would measure 8m in depth, conforming to the limitations for a detached dwellinghouse. The height of the extension would not exceed 4m. Further commentary on this is found below within the "larger home extension" section; whereby the site has been subject to a favourable decision through a 'larger home extension' prior approval.

"(h) the enlarged part of the dwellinghouse would have more than a single storey and-
(i) extend beyond the rear wall of the original dwellinghouse by more than 3 metres, or
ii) be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse;"

The proposal comprises a single storey extension and as such parts h)i) and h)ii) are not relevant..

"(i) the enlarged part of the dwellinghouse would be within 2 metres of the boundary of the curtilage of the dwelling house, and the height of the eaves of the enlarged part would exceed 3 metres;"

The proposed extension would feature an eaves height below 3m in height.

"(j) the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse, and would-
(i) exceed 4 metres in height,
(ii) have more than a single storey, or
(iii) have a width greater than half the width of the original dwellinghouse; or"

The proposal would be integrated with an existing rear extension. The original plans for the dwelling

(circa 1985) clearly show that this section is not part of the original dwelling; and therefore, is an extension. As such, the proposal would not extend beyond the side elevation of the original dwellinghouse and accords with part j.

"(ja) any total enlargement (being the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) exceeds or would exceed the limits set out in sub-paragraphs (e) to (j);"

The proposal would conform with paragraphs e) to j) and would not exceed the limits when the existing extension is considered. This is with the exception of part f)i) as the extension would extend beyond the rear wall by more than 4m.

"(k) it would consist of or include-
(i) the construction or provision of a verandah, balcony or raised platform,
(ii) the installation, alteration or replacement of a microwave antenna,
(iii) the installation, alteration or replacement of a chimney, flue or soil and vent pipe, or
(iv) an alteration to any part of the roof of the dwellinghouse."

The proposal would not result in the creation of any of the above.

"(l)the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses)."

The dwelling was not built under Part 20 of this Schedule.

Paragraph A.2 relates to sites on article 2(3) land. The site is not on article 2(3) land and as such this is not relevant

Paragraph A.3 sets out conditions that Class A is subject to (criteria a to c). The proposed extension is assessed against these conditions below.

(a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse;

(b) any upper-floor window located in a wall or roof slope forming a side elevation of the dwellinghouse must be

(i) obscure-glazed, and
(ii) non-opening unless the parts of the window which can be opened are more than 1.7metres above the floor of the room in which the window is installed; and

(c) where the enlarged part of the dwellinghouse has more than a single storey, or forms an upper storey on an existing enlargement of the original dwellinghouse, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse."

The proposal would conform to the above conditions. All materials would match the host dwelling and no upper floor windows are proposed.

Larger Home Extension

Paragraph A.4 of Class A sets out other conditions that apply to development permitted by Class A which exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g). This is therefore relevant in this case as the proposed extension exceeds 4m in depth but would be less than 8m. Paragraph A.4 sets out that before beginning the development, the developer must provide various details of the proposed extension by submitting an application to determine if prior approval is required.

As set out previously, a prior approval application for the same extension as is currently proposed was submitted and determined under reference H20-0623-24. Prior approval was granted. H20-0623-24: (Prior Approval Application) - Erection of single-storey rear extension - approved 23 August 2024.

Whilst the submitted application form for the current application does not explicitly refer to the previous decision (H20-0623-24). The form sets out within the 'Grounds for Application' section that

the applicant considers that the extension is lawful as it is 'within the constraints' of the GPDO. This is incorrect as the extension would exceed the limitations of A.1(f) but not the limitations of paragraph A.1(g), however, this is only if a prior approval application has subsequently been submitted. As such, the reason for determining the operation to be considered lawful submitted is incorrect, however it would be willfully obstructive of the planning authority not to consider the application in light of this previous decision.

Appeal decisions APP/L5240/X/22/3304933 and APP/J1915/X/20/3249498 (amongst others) make is clear that it is possible to issue a Lawful Development Certificate under Section 192 for a larger rear extension if the developer has successfully completed the prior approval process. Paragraph 15 from appeal decision APP/J1915/X/20/3249498 supports this approach:

"Thus, if the LPA informed the appellant, on 6 February 2020, that Prior Approval was not required, then at the time of the application on 7 February 2020 the proposal as applied for was lawful for planning purposes. It follows that a LDC should have been issued."

Whilst each case must be considered on its own merits, and the decisions of the Planning Inspectorate do not necessarily set a precedent, they offer important guidance in this matter. In light of the above decisions, it is considered that the proposed development can be considered lawful as the prior approval process was followed and prior approval was granted. The proposal is therefore considered to be lawful.

Conclusion

Previous appeal decisions have indicated that a certificate of lawfulness can be issued if the applicant has previously completed the prior approval process required under Paragraph A.4 of the General Permitted Development Order. A notice indicating that the proposed extension was within the confines of the Order was issued under application H20-0623-24. The details for the proposed extension that was submitted under application H20-0524-24 was identical to extension that is proposed through the current application. As such, it is considered that the proposed development would be lawful, and that a certificate of lawfulness should 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.

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

As listed above, the proposed extension would conform to the details within The Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 1, Class A. The proposal is therefore considered to be permitted development.

Recommendation

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