DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H21-0043-25**	**Applicant:**	**Mrs J King**
Proposal:	Proposed new garden room to rear garden		
Location:	The Hide Common Way Tydd St Mary		
Terminal Date:	18th March 2025		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for a detached garden room within the rear garden of The Hide, Common Way, Tydd St Mary. Consent is sought under Section 192 of the Town and Country Planning Act (1990) (as amended).

The plans have been amended during the determination of the application as initially, the proposed garden was not considered to comprise permitted development. The applicant's agent was therefore contacted and given the opportunity to amend the plans to ensure they complied with the relevant legislation.

Site Description

The site is located at The Hide, Common Way, Tydd St Mary and features a detached dwelling and its associated garden and driveway.

The site is within Tydd St Mary Conservation Area. There are no Article 4 directions which apply within the Conservation Area.

Relevant Planning History

H21-0306-17: (Full Application) Proposed development - 7 dwellings - refused 20 May 2017 (appeal

dismissed 13 November 2017)

H21-1105-19: (Full Application) Erection of 3 dwellings - refused 08 January 2020

H21-0564-20: (Full Application) Erection of 3 dwellings - re-submission of H21-1105-19 - refused 06 October 2020

H21-1013-20: (Full Application) Erection of 2 dwellings - re-submission of H21-0564-20 - approved 18 January 2021

Consultation

There is no statutory obligation for the Local Authority to publicise an application for a certificate of lawful development. Therefore, no consultation has been undertaken with statutory consultees.

For lawful development certificates, planning policy guidance is clear that there is no statutory requirement to consult third parties including parish councils or neighbours (Paragraph: 008 Reference ID: 17c-008-20140306). A site notice has however been displayed in this case in the interests of transparency. Planning policy guidance is also clear that 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 therefore not relevant (Paragraph: 009 Reference ID: 17c-009-20140306). Therefore, the local planning authority (LPA) is not able to take into account matters such as the impact of the proposed use on the amenity of neighbours. The LPA is only able to consider information that relates to the lawfulness of the proposed use.

One public representation has been received setting out an objection to the proposals. This objection is based on the initially submitted plans, which have since been amended. The representation sets out concerns with the proposed velux windows due to privacy loss concerns. The representation sets out a concern that an additional floor could be inserted to worsen the degree of overlooking between the dwellings. Both of these matters are not relevant to the determination of the application as the LPA is not able to consider the planning merits of the building. Notwithstanding this, it should be noted that the velux windows are not proposed on the amended plans as the building has been reduced in scale to accord with the relevant permitted development rights.

Key Planning Considerations

Relevant Legislation

Section 192 of the Town and Country Planning Act (1990) (as amended) sets out the following:

"Certificate of lawfulness of proposed use or development.

(1) If any person wishes to ascertain whetherÃ¢??
(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 shallÃ¢??
(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.]"

Therefore, the LPA needs to be provided with sufficient information to demonstrate that the proposed building is lawful in planning terms and would not require full planning permission.

Assessment

Firstly, the planning history of the site was investigated. The site was previously granted permission under reference H21-1013-20 for two dwellings. Condition 3 of permission H21-1013-20 sets out the following:

"Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, (or any Order or Statutory Instrument revoking and re-enacting that Order), none of the following developments or alterations shall be carried out.

i)the erection of house extensions including dormer windows, conservatories, garages, car ports, porches or pergolas;
ii)alterations including the installation of replacement or additional windows or doors and the installation of roof windows.
Reason: To ensure that the Local Planning Authority retains control over the future extension and alteration of the development, in the interests of its architectural and visual integrity, levels of residential amenity and the visual amenity and character of this part of the Conservation Area within which it is set. This Condition is imposed in accordance with Policies 2, 3 and 29 of the South East Lincolnshire Local Plan, 2019 and national guidance contained in Section 16 of the National Planning Policy Framework, 2019."

Therefore, whilst condition 3 restricts some permitted development rights, the condition does not limit the erection of outbuildings such as garden rooms.

No other conditions were found which would restrict the erection of outbuildings.

Whether the Proposed Garden Room is Permitted Development

Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) permits the construction of 'buildings etc incidental to the enjoyment of a dwellinghouse'. Class E allows for the following:

"E. The provision within the curtilage of the dwellinghouse of
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas."

The proposed garden room would therefore fall under this category.

Section E.1 sets out the circumstances under which development is not permitted by Class E. The proposed garden room is assessed against these criteria below.

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

The dwelling was not granted permission under the above referenced Classes.

"b) the total area of ground covered by buildings, enclosures and containers within the curtilage (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 garden room would not result in more than 50% of the curtilage of the dwelling being built upon.

"c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;"

The proposed garden room would not be built forward of the principal elevation of the dwelling.

"d) the building would have more than a single storey;"

The garden room building would feature only one storey.

"e) the height of the building, enclosure or container would exceed
(i) 4 metres in the case of a building with a dual-pitched roof,
(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
(iii) 3 metres in any other case;"

As set out previously, the plans were amended during the determination of the application as initially the proposed building would have exceeded the above referenced dimensions. The building is now proposed to measure 13.45m in length, and 4.4m in width. This reduces down to 2.6m in width towards the north-eastern end of the building. The building is proposed to be located within 0.6m of the boundaries of the site. The building is proposed to measure a maximum of 2.5m in height and as such the building would not exceed the limitations of part ii).

"f) the height of the eaves of the building would exceed 2.5 metres;"

The height of the eaves on the proposed building would not exceed 2.5m.

"g) The building, enclosure, pool or container would be situated within the curtilage of a listed building;"

The building is not within the curtilage of a listed building.

"h) It would include the construction or provision of a verandah, balcony or raised platform;

No verandahs, balconies or raised platforms are proposed.

"it relates to a dwelling or a microwave antenna;"

The proposal is not for an antenna.

"j) the capacity of the container would exceed 3,500 litres;"

Part j is not relevant to the proposal.

Section E.2 is not relevant as the site is not within an area of outstanding natural beauty, the Boards, a National Park, or a World Heritage Site.

Section E.3 sets out the following:

"In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse."

The site is within a Conservation Area, which is article 2(3) land. However, the building is not proposed between the side elevation of the dwelling and the boundary of the curtilage. The building is proposed at the rear of the dwelling.

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

The proposed garden room is considered to comprise permitted development which is allowed by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). There are no conditions from previous permissions within the site which would restricted permitted development rights for the proposed garden room. 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.