DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H22-0281-23**	**Applicant:**	**Mr B King**
Proposal:	Use of Cobblestones as two independent dwellings - re-submission of H22-1017-22		
Location:	Cobblestones Marsh Road Weston		
Terminal Date:	17th May 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for use of Cobblestones as two independent dwellings; the existing bungalow being one dwelling and the extension granted in 2007 being the second.

The application is a re-submission of H22-1017-22 which was refused on the basis that insufficient evidence was provided to demonstrate that the site has had a continuous use as two independent dwellings for a period of at least ten years.

The applicant has submitted further information to include bank statements showing payments being made to the applicant from his daughter/son-in-law to cover their share of the mortgage/bills. Photographs have also been submitted showing the gardens split and the access also splitting once entering the site.

Site Description

The site is located on Marsh Road in Wragg Marsh. It is outside any defined settlement boundary and within the open countryside. There are commercial/industrial units to the north/north-west of the site and 3no residential dwellings to the north-east. The wider area is predominantly rural. The application site comprises a bungalow with extensions to the side. There is a single access point to the site from Marsh Road. To the front is a gravelled driveway and a high level hedge forms the front boundary. There are various outbuildings on the site.

Relevant History

H22-1017-22 - Use of Cobblestones as two independent dwellings - Refusal

H22-0884-07 - Extensions to existing bungalow to create bathroom, kitchen and two bedrooms - Approved

H22-0975-99 - Erection of a detached double garage/garden store and conservatory to front of bungalow - Approved

Consultation Responses

No consultations undertaken and no representations 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. Statutory declarations from 2 individuals (1 from the Applicant who claims to have lived in the existing bungalow since 1981 and 1 from the Applicants son-in-law who claims to have lived in the extension since 2009 and used it entirely as an independent dwelling to the existing bungalow). Further supporting information has been submitted to include bank statements showing payments being made to the applicant from his daughter/son-in-law to cover their share of the mortgage/bills. Photographs have also been submitted showing the gardens split and the access also splitting once entering the site.

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 statutory declaration from the Applicant states that planning permission was granted for the extension in 2007 and the purpose of the extension was to accommodate his daughter and son-in-law. They have lived in the extension since 2009. Following this the originally approved bedrooms were converted into a lounge and two further bedrooms were built and the door between the extension and the bungalow was sealed up, turning the extension into a self-contained dwelling. The bungalow and the extension both have their own oil fired boiler and oil tank. There is one main electricity metre in the bungalow which is paid for by the applicant and a secondary one in the extension which is paid for by the daughter and son-in-law. The buildings insurance for both is paid for by the applicant with the daughter and son-in-law paying their share directly to the Applicant. Contents insurance is paid separately. There is one Council tax and the water bill for both the bungalow and the extension are they have one shared access. Further supporting information has been submitted to include bank statements showing payments being made to the applicant from his daughter/son-in-law to cover their share of the mortgage/bills. Photographs have also been submitted showing the gardens separated by fencing and planting and the access also splitting once entering the site.

A second statutory declaration has been submitted by the Applicants son-in-law stating the same.

The starting point for determining an application for an existing development under section 191 is 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. The evidence is judged on the balance of probabilities. Moreover, the Court has held (see F W Gabbitas v SSE and Newham LBC JPL 630) that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If we have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

Notwithstanding what is stated in the statutory declarations, including the additional information

submitted detailing payments made to the applicant by his son-in-law/daughter and photographs showing the gardens separated by fencing and planting and the access also splitting upon entering the site there is not considered to be conclusive evidence that the extension has been occupied as an independent dwelling for the relevant period of 10 years. Although the submitted photographs show the gardens separated, it is unclear when these changes were made. The access off Marsh Road is shared and only splits upon entering the site therefore it cannot be considered a separate access.

Furthermore the fact the extension has always been considered as part of the bungalow and has no separate council tax record, bills or mortgage payments is enough evidence that the property has always been considered as one. Furthermore the extension has always been occupied by family members of the applicant therefore it can only be considered an ancillary development and not an independent dwelling.

Taking the above into account, it is not considered that sufficient evidence has been submitted to demonstrate that "on the balance of probability" the extension has been occupied as an independent dwelling for a period of at least ten years. As such it is considered that there are no reasonable grounds upon which to grant a Lawful Development Certificate.

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

It is not considered that sufficient evidence has been submitted to demonstrate that "on the balance

of probability" the extension has been occupied as an independent dwelling for a period of at least ten years. As such it is considered that there are no reasonable grounds upon which to grant a Lawful Development Certificate