DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H22-0666-26**	**Applicant:**	**Mr G Rayner**
Proposal:	Use of land as domestic garden (Use class C3)		
Location:	Land Adj Willowdyke Delgate Bank Weston Hills		
Terminal Date:	9th September 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019
National Guidance **National Planning Policy Framework August 2026**

Representations:

	Object	Support	No Obj.	Comments

CASE OFFICER ASSESSMENT

Proposal

The application seeks consent for a lawful development certificate for the use of land as a domestic garden. The application is submitted under Section 191 of the Town and Country Planning Act (1990) (as amended).

Site Description

The application site comprises a triangular shaped parcel of land that is located to the north of Willowdyke. Willowdyke is a detached two storey dwelling located to the east of Delgate Bank.

Planning History

No planning applications have previously been submitted within the site; however, the following application relates to land to the south of the site (the dwelling of Willowdyke).

H22-1121-05: (Full Application) Proposed ground floor and first floor extension - approved 21 September 2005

Consultation

There is no statutory obligation for the local planning authority (LPA) to publicise an application for a certificate of lawful development; however, a site notice has been displayed next to the site for 21 days. In this instance, no representations have been received from members of the public.

Key Planning Considerations

Relevant Legislation

Section 191 of the Town and Country Planning Act (TCPA) (1990) (as amended) - sets out the following:

"(2) For the purposes of this Act uses and operations are lawful at any time if:
- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force."

Section 191(4) further sets out the following:

"(4) If, on an application under this section, the local planning authority is provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

National Planning Practice Guidance clarifies that it is the responsibility of the applicant to provide sufficient information to support the application (Paragraph 006 Reference ID: 17c-006-20140306). The evidence provided needs to be sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability rather than beyond reasonable doubt.

Section 171B(3) of the TCPA further sets out the following:

"(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of:
(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed."

Assessment

Section 55 of the Town and Country Planning Act 1990 (TCPA) defines development as the "carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land" (1).

The application seeks consent to establish that the use of the land within the site as a domestic garden is lawful in planning terms.

The application is supported the following information:

- Application Form;
- Sales Brochure;
- Statements from Witnesses;
- Aerial Images; and
- Location Plan.

According to the application form, the use of the site began more than 10 years ago from the date the application was submitted; however, the submitted information suggests that the site has been used as garden land for longer than this.

The application is accompanied by a sales brochure of the dwelling of Willowdyke. It is unclear when the sales brochure was produced as it is not dated. It appears that the current owners have owned the site for the past 25 years and as such, the brochure was likely to be produced in the early 2000s. The brochure does not seem to specifically refer to the current application site and only appears to refer to the rear garden as being part of the plot, rather than the current application site. For reference, the following text is taken from the "Exterior" section of the brochure:

"The property sits on a non-estate plot with open field views to the front, side and rear. The front of

the property is laid to lawn with mature shrubs and trees, along with off-road parking for approximately four vehicles and leads to an oversized single garage. Tin addition there is an outside tap, with the side porch having courtesy lighting. A side gate leads to the rear garden, which is enclosed by hedging and a decorative low-level brick wall to the rear and side allowing enjoyment of the open field views. There is a good variety of trees and shrubs, a summer house, with the garden then being laid to lawn with a patio seating area, outside lights, outside power points and a canopy shade over the garden room."

Therefore, there appears to be no mention of the application site within the brochure.

The application is also accompanied by statements prepared by a relative of the previous owners, two neighbours and Councillor Anthony Casson. These statements are not sworn declarations and as such, this reduces the weight that can be given to the statements to a degree. However, the statements suggest that the site has been used as garden land for at least the past 10 years.

The applicant has also provided aerial views of the site that are referred to as being approximately 20 years old; however, the exact date is not specified. These images show that there was a shed within the site and there appears to have been a vegetable patch. It also appears that the land featured mowed grass and an area of tree planting. There is no evidence of an alternative use such as grazing or agriculture.

Additional aerial imagery and streetview images on google Earth have been reviewed and these also appear to show that there has been a shed within the site for at least the past 10 years. The images also seem to show that the land has been mowed, and that no crops appear to have been within the site.

Overall, and on the balance of probabilities, it is considered that the site has been used as garden land for the dwelling of Willowdyke for at least the past years.

Whilst the site is considered to have been used as garden land for at least the past 10 years, it is not considered that the land is within the curtilage of the dwelling of Willowdyke. For example, the site is accessed by land that is not within the applicant's ownership and this is shown both on the submitted location plan and on land registry. As the land is separated by third party land, including a dyke, this creates a degree of separation that severs the two parcels of land. Curtilage is generally regarded as land intimately associated with a building or dwelling and should generally form one enclosure. In this case, whilst the land appears to have been used as additional garden space, it is considered that the land forms a separate enclosure that is not within the curtilage 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

Having regard to the above and taking the submitted supporting evidence into account, it is considered that on the balance of probability, the site has been used as a domestic garden for at least the past 10 years. As such, the LPA would not be able to pursue enforcement action against the relevant breaches and it follows that the certificate of lawfulness should be granted on this basis.

Recommendation

It is recommended that a certificate of lawfulness can be issued under S191 of the Town and Country Planning Act, 1990.