DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0020-23**	**Applicant:**	**Mr & Mrs M Bannister**
Proposal:	Erection of Annexe		
Location:	Fields Farm Spalding Gate Whaplode		
Terminal Date:	8th March 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2021

Town and Country Planning Act 1990.

Representations:

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

CASE OFFICER ASSESSMENT

Proposal

This is a Section 191 certificate of lawful existing development for the erection of an annexe.

Site Description

The application site is located on Spalding Gate in Whaplode. The surrounding area is predominately rural, characterised by buildings of varying ages and design.

History

H23-0867-04 - Ground floor extension to rear of dwelling - APPROVED.

H23-0152-14 - Proposed menage - APPROVED.

H23-0290-16 - Proposed garage, plant store, workshop, playroom and hobby room - APPROVED.

H23-1067-18 - Proposed garage and store room - APPROVED.

Consultation Responses

The site is within the Internal Drainage District (IDD) of the South Holland Internal Drainage Board (IDB) and therefore the Board's Byelaws apply. Whilst the Board's regulatory process (as set out under the Land Drainage Act 1991 and the Board's Byelaws) is separate from planning, the ability to implement a planning permission may be dependent on the granting of any required Land Drainage Consents.

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.

Where consents are required, the Board strongly recommends that these are sought from the Board prior to determination of this planning application. The annexe at the end of this letter outlines the Board's regulatory function and how to apply for Land Drainage Consent.

This response appears to have been made on the basis of a planning application for a proposed development rather than a lawful development certificate. As such it is not necessary to include this as an informative to the decision.

Material Considerations

This is a legal determination and planning policy is not relevant to the determination as to whether the claimed development is indeed lawful. The decision is based upon the case officer's judgement as to whether the case being proven on the balance of probabilities.

The application has been submitted with the following evidence:

·A Site Location,
·Block Plan,
·Elevations & Floor Plans
·A Justification Statement

Within the justification statement aerial photography has been provided from Google Maps showing foundations of the annexe had been started that is dated 2006. A further aerial photo from Google Maps in 2007 has been provided showing the annexe completed. Photographs have also been provided of the foundations being dug, however, there is no proof of date only what the applicant has handwritten on.

On further investigation when looking at the site history, within application H23-0152-14 the annexe can clearly be seen on the site visit photos. The annexe can also be seen on Google Maps Street View from 2009 along Goddam's Lane. On the balance of probability, therefore, it has been satisfactorily demonstrated that the annexe was substantially completed more than 10 years before the date of this application. There is no substantive evidence held by the Council to dispute this.

Planning Balance

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.

On the balance of probabilities, it is considered that the annexe was substantially completed more than 10 years before the date of this application and therefore a certificate of lawfulness can be issued.

Conclusion

Approve

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.