

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H23-0609-21 **Applicant:** Mrs C Ward
Proposal: Use of property as a single dwelling
Location: Aubretia Cranesgate South Whaplode St Catherine
Terminal Date: 27th July 2021

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Not applicable.

Representations:

	Object	Support	No Obj.	Comments
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CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the use of the property as a single dwelling.

It has been indicated that a single room in the property was formerly used as a post office, but that the room changed to solely residential use in conjunction with the rest of the property in 1996.

The village post office is now situated in the village hall further north on Cranesgate South.

Site Description

The property known as Aubretia is a detached bungalow situated on the eastern side of Cranesgate South. There is frontage residential development extending to the north and south, as well as on the opposite side of the road. There are agricultural fields beyond and the overriding character of the area is rural.

Relevant History

None.

Consultation Responses

Not applicable.

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. Letter from Post Office regarding Subpostmistress resignation
4. Grant of Probate

Case law has established that in order to become immune from enforcement and therefore lawful, the use as a single dwelling must have begun more than four years before the date of the application.

The letter from the Post Office regarding the resignation of the Subpostmistress is dated 27th October 1995 and indicates that the last day of service would 'be on or about the 27th January 1996'. Clearly well in excess of 4 years has passed since this date. However, as also indicated in the letter, it is not stated whether the premises was to remain available for use as a Sub-Post Office following the resignation of said Subpostmistress. Ordinarily, it could reasonably be argued that sufficient information has not been submitted to prove that the new use began within the relevant time period to be deemed lawful.

Notwithstanding the above, the case officer has historical knowledge of the site in question dating back to around 2008 and cannot recall having seen a Post Office in this location. Furthermore, the most current Google Street View imagery is dated April 2009 and there is no indication that a Post Office was present in the property at that time.

Therefore, in the absence of any evidence to the contrary, it is concluded that "on the balance of probability" the use as a single dwelling has continued for in excess of 4 years, thereby making it immune from planning enforcement.

It is therefore considered appropriate to issue a certificate of lawfulness.

Planning Balance

On the balance of probabilities, it is concluded that the use as a single dwelling has continued for in excess of 4 years, and it would be appropriate to issue a certificate of lawfulness.

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

Given the absence of contrary evidence it is considered that, on the balance of probabilities, the use as a single dwelling has continued for in excess of 4 years, and it would be appropriate to issue a certificate of lawfulness.