

DECISION DELEGATED TO HEAD OF PLANNING**DECISION DELEGATED TO HEAD OF PLANNING**

Application No: H23-0773-23 **Applicant:** Mr B Fairbrother

Proposal: Proposed swimming pool and outbuilding

Location: Cranesgate House Cranesgate North Whaplode St Catherine

Terminal Date: 27th October 2023

Planning Policies**South East Lincolnshire Local Plan - Adopted: March 2019****National Guidance****National Planning Policy Framework 2023**

Not applicable for a Lawful Development Certificate section192 application as it is a legal determination.

Representations:

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

CASE OFFICER ASSESSMENT**Proposal**

This is an application for a Lawful Development Certificate to confirm that the proposed outbuilding containing a swimming pool, sauna, steam room and changing facilities at Cranesgate House, Cranesgate North is lawful and does not require the submission of a planning application.

Site Description

The application site is a paddock located south of Cranesgate House, Cranesgate North. The immediate area is open fields with one neighbouring property to the north.

History

No relevant planning history.

Consultation Responses

The responses received from consultees during the initial consultation exercises, which can be viewed in their entirety through the South Holland website, can be summarised as follows:

South Holland Drainage Board

Byelaw 3 (Surface Water)

I cannot see that the applicant has identified a drainage strategy for the site within their application. We recommend a drainage strategy is provided for the site. If the applicant proposes to discharge surface water to a watercourse, consent would be required under Byelaw 3. Please note that we recommend that any discharge is in line with the Non-Statutory technical standards for sustainable drainage systems (SuDS) , therefore the Board is unlikely to grant consent for discharges in excess of greenfield rate.

Byelaw 3 (Treated Foul Water)

I note that the applicant has not indicated how they propose to dispose of foul water from the development. If the applicant proposes to discharge treated foul water to a watercourse, consent would be required under Byelaw 3.

Section 23, Land Drainage Act 1991

I note the presence of a Board maintained watercourse known as F15 Cranesgate Drain (DRN197P1503) adjacent to the southern site boundary. Whilst not currently proposed, should the applicant's proposals change to include works to alter the watercourse, or if works are proposed to alter the watercourse at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4).

I note the presence of watercourses which are not maintained by the Board (riparian watercourses) adjacent to the western and southern site boundaries. Whilst not currently proposed, should the applicant's proposals change to include works to alter the riparian watercourses, or if works are proposed to alter the watercourses at any time in the future, consent would be required under the Land Drainage Act 1991 (and byelaw 4).

Byelaw 10

Whilst not currently proposed, should the applicant's proposals change to include works within 9 metres of the aforementioned Board Maintained watercourse, or if works within 9 metres of the watercourse are proposed at any time in the future, consent would be required under Byelaw 10.

Historic Places Team Lincolnshire County Council

No archaeological input required

Public Representation

This application has been advertised in accordance with the Development Procedure Order and the Council's Statement of Community Involvement. In this instance, no letters of representation have been received.

Evaluation

The proposal involves the erection of an outbuilding containing a swimming pool, sauna, steam room and changing facilities at Cranesgate House, Cranesgate North.

This application is a legal determination and planning policy is not relevant to the determination as to whether the proposed use would be lawful.

The key issue for decision is whether the proposed works are either (i) not development; or (ii) permitted development. The works are considered to be development, as defined by section 55 of the Town and Country Planning Act 1990, because they involve building operations that are either "structural alterations of or additions to buildings" or "other operations normally undertaken by a person carrying on business as a builder".

The planning history of the site was investigated. Permitted development rights had not been removed by any previous permissions and the proposal.

Planning Considerations

The Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 1 Class E - buildings etc incidental to the enjoyment of a dwellinghouse

Development is permitted by Class E subject to the following conditions-

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;

The location of the proposed outbuilding containing a swimming pool, sauna, steam room and changing facilities is not considered to be located within the residential curtilage of the dwellinghouse. When assessing the submitted plans, supporting information and following a site visit, it is concluded that there is a clear distinction between the residential garden and the plot of land next to the dwellinghouse, which is a paddock.

The proposed outbuilding would be located on land located next to the dwellinghouse which is a 2-acre paddock and is fenced off separately to the residential garden. There is also a block of three stables located within the paddock and the paddock has its own separate vehicle access along Cranesgate North.

Cranesgate House was on the market back in 2021, the listing found, advertises the land next to the residential garden a paddock stating "beyond, a timber block of three stables, also with light and power, overlooks the two acre paddock which is fenced for livestock and has a separate field access." This clearly indicates the land as a paddock and not a residential garden.

The applicant provided the following information to support his application:

- Proof of ownership
- The Land Registry documentation
- Proof that stamp duty land tax was paid when purchasing the property

The applicant also provided documentation stating the following

- 2.75 acres of land is perfectly reasonable for a domestic garden
- The physical layout is such that it is all one residential garden
- The land in question is not separated or disconnected to the dwelling by a road or other means of shared or public access
- No part of the land is open or public or unenclosed land
- It is not defined or restricted to an imaginary line on a plan or map
- The land is not used for any non-domestic purpose
- The stables formerly used by previous owners for their own private use of their horses

To address the points above, ownership, the Land Registry documentation and proof that stamp duty land tax was paid when purchasing the property, does not prove that the land in question is the domestic garden, this just proves that the applicant owns all of the land.

The opinion that "the physical layout is such that it is all one residential garden" does not mean that it is the residential garden. Just because the land is not separated or disconnected to the dwelling by a road or other means of shared or public access, or that no part of the land is open, or public or unenclosed land, does not mean it cannot be a paddock. Finally, the applicant has stated that the land is not defined or restricted to an imaginary line on a plan or map, this statement is false. Every

map that has been view and submitted has a clear line separating the residential garden and the paddock.

When assessing all of the above it is concluded that the proposed does not constitute permitted development as the proposed outbuilding containing a swimming pool, sauna, steam room and changing facilities is not considered to be located within the residential curtilage of the dwellinghouse and is located within the paddock adjacent.

Conclusion

The proposed outbuilding does not constitute permitted development under Schedule 2 Part 1 Class E of the General Permitted Development Order (2015). The proposed outbuilding would not be located within the residential garden and would constitute operational development for which a grant of planning permission would be required.

Accordingly, it is concluded that a certificate of lawfulness should be refused.

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.