DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No:	**H11-1019-19**	**Applicant:**	**Mr & Mrs Howard**
Proposal:	Installation of flue on workshop		
Location:	120 London Road Long Sutton Spalding		
Terminal Date:	12th December 2019		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2019

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	0	0	0	1

CASE OFFICER ASSESSMENT

Proposal

This application seeks the granting of a Lawful Development Certificate (LDC) for the installation of a flue at 120 London Road, Long Sutton, Spalding which is in breach of permitted development rights.

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 judgment as to the case being proven on the balance of probabilities.

Site Description

The main dwelling is a detached bungalow. The flue is erected in a large outbuilding used as a workshop within the site. The unit is in close proximity to the western boundary with No. 118.

History

Consultation Responses

No neighbour consultation although some objections have been received - see below.

Planning Assessment

Glass G of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out the requirements for the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse to be permitted development.

The flue is not located on a dwellinghouse but an outbuilding within the domestic curtilage. Therefore, the flue was erected in contravention of the provisions of the Order.

The applicant has submitted the following evidence in support of the claim:

1. Site Location Plan
2. Planning Statement including the following documents:
- Site Photographs
- Diary Extract
- Receipt of purchase of log burner and flue
- Two affidavits/sworn declarations from two neighbours.
3. Application form

Case law has established that in order to become immune from enforcement action and therefore lawful, the development must have been completed more than four years before the date of application.

The background to the case is that the applicant installed a log burner and a flue as a heating source for when the outbuilding is used as a workshop. It is the applicant's case that the passage of time being well in excess of the required 4 years means that the works as specified and shown on the submitted block plan are now immune from planning enforcement.

In assessing the evidence submitted by the applicant, the receipt of purchase of the flue and log burner dated 27 October 2013 would not, in principle, be sufficient by itself as it does not demonstrate the time of flue installation. Notwithstanding this, two affidavits/sworn declarations from two neighbours stating that the flue has been present since November 2013 would be appropriate to demonstrate robustly that.

No neighbour consultation has been carried out in account of the nature of this application. Two letters though were submitted to SDHC Environmental Health objecting to this application and it has been accordingly notified to the Development Management.

SDHC Environmental Health officers advise that the smoke expelled through the flue has resulted in several complaints in recent years. Should the applicant have sought retrospective full planning permission, this would constitute a paramount material consideration to be taken into account in the determination of the application and it could well be considered to be contrary to planning policy. However, due to the nature of this application, the lawfulness is the only matter to consider.

No evidence has been submitted to the Council to prove the contrary.

Conclusion

Therefore, on the balance of probabilities, the case has been proven that the installation of the flue in the outbuilding used as a workshop at 120 London Road, Long Sutton, Spalding has been completed more than four years before the date of application and is therefore immune from planning enforcement action.

A delegated approval is considered appropriate in the circumstances.

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.