

DECISION DELEGATED TO DEVELOPMENT MANAGER

Application No: H16-0361-20 **Applicant:** Mr P Lata
Proposal: Brick-built BBQ with flue - retrospective
Location: 4 Solent Drive Spalding
Terminal Date: 1st July 2020

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

02 Development Management
03 Design of New Development
30 Pollution

National Guidance

National Planning Policy Framework 2019

Section 12 - Achieving well-designed places

Representations:

	Object	Support	No Obj.	Comments
WARD MEMBER	0	0	0	0
SHDC INTERNAL	0	0	0	1
RESIDENTS	1	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a householder application (retrospective) for a brick-built BBQ with a flue at 4 Solent Drive, Spalding.

It should be noted that there is no issue with the principle of a BBQ being located in the garden of a residential property. The reason that an application is required in this instance is that a flue attached to a permanent structure (in this case, a brick-built BBQ) cannot be considered to be permitted development.

Site Description

The BBQ with flue is situated at the rear of the dwelling, along the eastern boundary. The site itself is located in a built-up residential area of Spalding and there are properties surrounding it.

History

No relevant history.

Consultation Responses

SHDC Environmental Protection Officer - No objection.

Public comments (1 objection received) -

- Smoke produced by the BBQ obstructs views of the garden and can be smelt on fabrics
- Difficult for smoke to disperse away due to limited space between houses
- Concern re potential for heat and smoke to cause damage and discoloration to property

Planning Considerations

The key issue in this instance, given the nature of the proposal, is whether a flue in this location would have an unacceptable impact upon the occupants of neighbouring properties.

Impact upon residential amenity

One objection has been received to the application, which raises the issue of the impact of smoke generated by the BBQ. As previously mentioned, there is no issue with the presence of a BBQ in a residential garden, however, a flue attached to a permanent, brick-built, structure such as this does not benefit from permitted development rights. Therefore planning permission is required.

The objector's concerns are appreciated, however Environmental Protection colleagues have not raised any objection to this planning application. In light of this, it would be unreasonable to refuse planning permission. Notwithstanding this, it should be noted that there is separate Environmental Protection legislation that colleagues in said department can rely on if it becomes a 'statutory nuisance'.

The objector also raises concern about the potential for heat and smoke to cause damage and discoloration to property. However, damage caused to property is a civil matter between landowners, and not something that can be addressed through the planning process.

Taking the above into account, the brick-built BBQ with flue is considered to be acceptable in planning terms and the application in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan, 2019 in respect of their provisions on residential amenity and pollution.

Conclusion

In light of the considerations above, the proposed application is considered to be in accordance with Policies 2, 3 and 30 of the South East Lincolnshire Local Plan (2019) and of Section 12 of the National Planning Policy Framework (2019).

The recommendation is therefore for a delegated approval.

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.