

DECISION DELEGATED TO HEAD OF PLANNING

Application No: H19-0039-24 **Applicant:** Mr & Mrs S Durston

Proposal: Use of site in connection with the business of buying and selling furniture (including cleaning/minor repairs, restoration, re-modelling and upcycling)

Location: 279 Broadgate Sutton St Edmunds Spalding

Terminal Date: 15th March 2024

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Not applicable for a Lawful Development Certificate section191 application as it is a legal determination.

Representations:

	Object	Support	No Obj.	Comments
NORTH LEVEL INTERNAL DRAINAGE BOARD	0	0	0	1
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This is a Section 191 Lawful Use Certification application at 279 Broadgate, Sutton St Edmunds for continued use of the site in connection with the business of buying and selling furniture (including cleaning/minor repairs, restoration, re-modelling and upcycling). This application seeks to establish through supportive documents that the business has been operating continuously for 10 years.

This application has been supported by the submission of:

- Application Form
- Site Location Plan
- Statement of Business Timeline/History
- Evidence of Accounts.

Site Description

The application site is located to the rear of 279 Broadgate in Sutton St Edmund. The site is accessed via a shared drive off Broadgate and is largely screened from the main road by the existing dwelling and high hedging. The site is characterised by residential properties of varying ages, scales and designs. The site also lies within Flood Zone 2 and 3.

History

H19-0611-23 - Proposed single storey dwelling including new vehicular/pedestrian access for existing dwelling (No. 279) - Refused September 2023

H19-0885-20 - Conversion of existing agricultural building to one four-bed dwelling - Approved January 2021

H19-0677-18 - Conversion of existing agricultural building to one four-bed dwelling - Approved August 2018

Consultation Responses

None received.

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, one letter of representation has been received.

These can be summarised as follows:

- Increase in traffic
- Lorries unable to make the turn into the driveway
- Lorries drive over our front lawn
- Causing damage to driveways and kerbs
- Road is too small for the deliveries of shipping containers
- This area should be residential only
- Our view is blocked from the rear
- The noise is excessive

Planning Considerations

This application seeks the granting of a Certificate of Lawfulness of the continued use of the site in connection with the business of buying and selling furniture (including cleaning/minor repairs, restoration, re-modelling and upcycling) for 10 years.

This is a legal determination and planning policy is not therefore relevant to the determination as to whether the claimed use is indeed lawful. The test which the application must meet is that the use has been on-going for a continuous period of 10 years, although it is not necessary for the use to be on-going at the time of the application provided the use has not been lost by operation of law (ie by way of abandonment, the formation of a new planning unit, or a further material change of use). The evidence submitted must be considered on the balance of probability.

The evidence accompanying the application indicate that the site has been operating a business of buying and selling furniture (including cleaning/minor repairs, restoration, re-modelling and upcycling) for over 10 years continuously. In the absence of any evidence to the contrary, it is concluded that sufficient evidence has been produced which demonstrates that 'on the balance of probability' the site has operated the business of buying and selling furniture, for in excess of 10 years, thereby making it immune from planning enforcement.

Conclusion

The applicant has provided their own evidence and independent evidence to demonstrate the site has been operating a business of buying and selling furniture (including cleaning/minor repairs, restoration, re-modelling and upcycling) for over 10 years continuously.

No objections have been received to contradict the evidence given by the applicant. The Council has no evidence or records to dispute the claim, therefore on the balance of probabilities the case has been proved that the business has been in operation at 279 Broadgate, Sutton St Edmunds exceeding 10 years. The breach is now, as a result of this, immune from planning enforcement.

It is therefore considered 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.