DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H20-0645-23**	**Applicant:**	**Mr & Mrs S Reed**
Proposal:	Continued use of site as storage business with clarification of opening hours of Monday to Sunday 07.00 to 19.00		
Location:	Lift And Shift Broadgate Road Sutton St James		
Terminal Date:	10th October 2023		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework 2023

Not applicable.

Representations:

	Object	Support	No Obj.	Comments
SHDC INTERNAL	0	0	0	1
OTHER STATUTORY BODIES	0	0	1	0
RESIDENTS	1	2	0	1

CASE OFFICER ASSESSMENT

PROPOSAL

This is a Section 191 Lawful Use Certification application at Lift and Shift, Broadgate Road, Sutton St James for continued use of the site as a storage business, with clarification of the opening hours of Monday to Sunday 07.00 to 19.00. This application seeks to establish through supportive documents that the business has been operating continuously for 10 years of more with opening hours of Monday to Sunday 07:00 to 19:00. The operating hours are contrary to Condition 4 of H20-1336-90 which states:

"The premises shall not be used at any time on Sundays nor between the hours of 6pm and 8am on other days.

Reason: To protect the amenities of this residential area."

SITE DESCRIPTION

Lift and Shift is an established storage container business operating under the present ownership for 23 years. The surrounding area is predominately rural and is characterised by non-nuclearised linear development of varying ages and designs. The site is in Environment Agency Flood Zone 3, and is not subject to increase hazard or depth on the 2115 South Holland Strategic Flood Risk Mapping.

RELEVANT HISTORY

H20-1336-90

Full - Change of use of agricultural buildings and yard to plant holding depot - Approved - 07 March 1991.

H20-0882-17

Full - Proposed dwelling including change of use of land for storage to allow business expansion - Approved - 07 December 2017.

H20-0607-18

Non-Material Amendment - Proposed dwelling including change of use of land for storage to allow business premises - approved under H20-0882-17. Amendments to cladding - Approved - 21 June 2018.

H20-0575-23

Section 73a Continuation - Change of use of agricultural buildings and yard to plant holding depot - approved under H20-1336-90. Removal of Condition 4 relating to operating hours - Application withdrawn - 20 July 2023.

CONSULTATION RESPONSES

Lincolnshire County Council - Historic Places Team

"No archaeological input required."

South Holland District Council - Environment Protection

"Just to advise you that we have now closed the noise investigation on this premises as we are satisfied the modifications they have done have resolved the problem to a level where it no longer has potential to be a nuisance."

Sutton St James Parish Council

"I am in no doubt that Lift and Shift have been operating 7am to 7 pm 7 days a week for more than 10 years. I can confirm that I have never known any complaints about the site or the operating hours being brought to the Parish Council."

Members of the public - 5 responses

- *"At no time has Lift & Shift caused us any noise disturbance or any problem with vehicle movements. The site has always been kept very neat and tidy as one would expect if they were to attract customers for their storage facilities. We have seen their advertisements over the years and these have been consistent with their operating hours. Mr and Mrs Reed seem very fair minded people so we would expect them to be very obliging should anyone suffer any inconvenience caused by their business. The business offers very useful services to the wider local community and this application should be approved."*

- *"I have never had cause for concern regarding noise or disruption."*

- *"Can you confirm why we were not notified by post re the change in application number to which we could object?"*

- The site is under investigation for a noise complaint.

- They have undertaken works to a tree.

- Highways should be consulted.

- The containers are an eyesore.

- This application is only motivated by money.

- Any increase in traffic will impact highway safety.

- There is not a need for this application.

SUPPORTING INFORMATION

Customer declarations - Ten.

- Impact on other businesses from not retaining opening hours.
- I have had 24 hours access to the storage yard when required
- We have events on weekends and Sunday access is essential for us.
- I have moved containers for the owners between 06:00 and 20:00
- In June 2020 *"Due to work commitments and moving house I attended my storage unit before 8am and after 7pm on a number of occasions."*
- I have used this site for 16 years which has operated opening hours of 07:00 to 19:00 all of that time.
- We have used the site at the operating hours since 2012.

Website link from web.archive.org for liftandshiftltd.co.uk dated 01 April 2023, 11 January 2014, 22 August 2015, October 14 2016 and 01 June 2017 stating "We are open 7 days a weeks and you have access to your storage unit 24 hours a day."

Decision Notice H20-0321-19 for Thistlewood, Old Fendyke, Sutton St James for storage and distribution use showing approved opening hours of 07:00 to 22:00 Monday to Sunday.

Sutton St James Newsletter - September 2013 Page 5 & December 2013 Page 7 - Advert for Lift & Shift showing opening hours of "7am to 7pm 7 days a week."

2015 and 2021 leaflets advertising 7 day access.

Copy of contract signed 23 August 2012 showing opening hours of 07:00 to 20:00 in summer and 07:00 to 19:00 during winter hours.

Visitor Logs from January 2023 to August 2023 that detail every time for entry and exit from the site, as well as the name of the customer.

MATERIAL CONSIDERATIONS

The application seeks the granting of a Certificate of Lawfulness for continued use of the site as a storage business, with clarification of the opening hours of Monday to Sunday 07.00 to 19.00. Any comments made related to noise, disturbance, work to trees or any other matters are not relevant to the application at hand.

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 from a variety of sources shows that the site has been operating

opening hours of 07:00 to 19:00 Monday to Sunday for a continuous period in excess of 10 years. No-one has disputed the claimed hours of opening.

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 opening hours of 07:00 to 19:00 Monday to Sunday, for in excess of 10 years since the breach of planning control, thereby making it immune from planning enforcement.

CONCLUSION

On the balance of probability, it has been satisfactorily demonstrated that there has been a continuous breach of Condition 4 of H20-1336-90 for at least the last 10 years. There is no evidence held by the Council to dispute this.

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.