

Regeneration and Economic Development Department

APPLICATION NO: 21/00465/CLU

APPLICANT: Cases For Industry Ltd

WARD AFFECTED: Northwood

DEVELOPMENT: CERTIFICATE OF LAWFULNESS FOR AN EXISTING WOOD BURNING HEATER

LOCATION OF SITE: Cases For Industry Ltd, Stockpit Road, Knowsley Industrial Park, Kirkby, Knowsley, L33 7TQ,

KNOWSLEY LOCAL PLAN ALLOCATION –

Primary Industrial Area - Primarily Industrial Area

RELEVANT POLICIES

Not applicable.

TECHNICAL CONSULTATIONS:

Not applicable.

NEIGHBOUR NOTIFICATION:

Not applicable.

ISSUES AND ASSESSMENT:

SITE AND SURROUNDINGS

The application relates to an existing industrial unit on Stockpit Road, Knowsley Business Park, Kirkby. The site is surrounded by other industrial uses,

The building is currently occupied by Cases for Industry Ltd. The application relates to an extension granted planning permission under planning reference 19/00072/FUL (detailed below). That development was not the subject of any pre commencement conditions and the Council's Building Regulation records indicate (19/00578/OTH/1) that works were completed in May 2020.

PROPOSAL

The application has been submitted under S191 of the Town and Country Planning Act 1990 (the 1990 Act).

The application seeks determination on whether the installation of an existing wood burning heater used to heat the premises using virgin wood is lawful. The submitted application form indicates that the applicant "does not believe that planning permission is required under permitted development however we are completing an application for RHI - Ofgem [Non-domestic Renewable Heat Incentive] and they require confirmation.

RELEVANT PLANNING HISTORY

K/PP/3771

ERECTION OF NEW WORKSHOP AND EXTENSION TO EXISTING WORKSHOP
Granted March 1979

97/00705/APP

ERECTION OF WORKSHOP EXTENSION

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PS/DC/OP04/05	003	23/9/02

Granted - March 1998

19/00072/FUL

ERECTION OF SINGLE STOREY REAR EXTENSION TO WORKSHOP

Granted April 2019

21/00555/FUL

ERECTION OF A DETACHED STORAGE BUILDING

Pending Consideration

NEIGHBOUR NOTIFICATION

There is no statutory requirement to consult third parties including parish councils or neighbours.

LEGAL CONTEXT

The key statutory framework for lawful development certificates and their determination is set out in sections 191-193 of the Town and Country Planning Act 1990 (as amended).

Section 191 Certificate of lawfulness of existing use or development sets out that:

If any person wishes to ascertain whether—

- (a) *any existing use of buildings or other land is lawful;*
- (b) *any operations which have been carried out in, on, over or under land are lawful; or*
- (c) *any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,*

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

The statutory framework covering "lawfulness" for lawful development certificates is set out in section 191 section 191 of the Act. In summary, lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application.

OFFICER APPRAISAL

The applicant contends in the submission that the proposed development, that is the installation of a wood burner, is permitted and does not require planning permission.

The application is supported by relevant site location plan and site plan which identifies the location of the wood burner; together with technical specification of the burner and details of a flue.

The wood burner comprises an 'Eko Dragon Log' which is a self-contained biomass air blower system that produces hot air for space heating. The flue as shown on drawing No. Flue Elevations drawing 2 of 3 and projects out of the roof where it is located by 1.19 m.

Whether the proposal constitutes 'development'

Section 55 (1) of the Act provides 'Subject to the following provisions of this section, in this Act, except where the context otherwise requires, 'development' means the carrying out of building, engineering, mining or other operations in, on or under land, or the making of any material change of use in the use of any buildings or other land'.

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The proposed works constitute development under the Act.

Whether the proposal requires planning permission

If the proposal falls within the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GDPO) express planning permission is not required.

Permitted Development

Schedule 2, Part 14 - Renewable Energy, *Class N - installation etc of flue for biomass heating system on non-domestic premises states:*

N. The installation, alteration or replacement of a flue, forming part of a microgeneration biomass heating system, on a building other than—

- (a) a dwellinghouse or a block of flats; or
- (b) a building situated within the curtilage of a dwellinghouse or a block of flats.

Development not permitted

N.1 Development is not permitted by Class N if—

- (a) the capacity of the system that the flue would serve exceeds 45 kilowatts thermal;

Officer Assessment - The submitted information indicates that the rated output would be 60 kw. The capacity of the system that the flue would serve exceeds 45 kilowatts thermal.

- (b) the height of the flue would exceed either—
 - (i) the highest part of the roof by 1 metre or more, or
 - (ii) the height of an existing flue which is being replaced,

whichever is the highest;

Officer Assessment - The submitted drawings show that the flue projects 1.19 m from the point where it protrudes from the roof, but as the roof is sloping, it protrudes 1.10 m beyond the highest part of the roof of the extension in which it is located. However, the extension roof is lower than the ridge of the main building, The flue is 1.22 m below the ridge line of the main building The flue therefore does not exceed the 1m from the highest part of the roof.

- (c) the installation of the flue would result in the installation on the same building of more than 1 flue forming part of either a biomass heating system or a combined heat and power system;

Officer Assessment - does not apply in this instance.

- (d) the flue would be installed on a listed building, within the curtilage of a listed building or on a site designated as a scheduled monument; or

Officer Assessment - does not apply in this instance.

- (e) in the case of a building on article 2(3) land, the flue would be installed on a wall or roof slope which fronts a highway.

Officer Assessment - does not apply in this instance.

CONCLUSION

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Given the above factors and based on the information as submitted, the installation of the wood burner with its associated flue does not comply with the provisions as laid down within Schedule 2, Part 14, Class N of the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended). Taking the submitted information into consideration the development is not permitted, and consequently express planning permission will be required.

Under s171b (1) of the Town and Country Planning Act where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. It is clear that the development has not been in place in excess of 4 years as it is located within an extension that was granted planning permission in April 2019.

RECOMMENDATION:

The issue of a Certificate of Lawfulness for an existing development under s191 of the Act should be refused for the following reason:

- 1) The proposed development does not meet the requirements of Class N of Part 14, Schedule 2 of the Town and Country Planning (General Permitted (England) Order 2015 (as amended), in particular, it is contrary to part (a). Accordingly, express planning permission will be required for the development and a Lawful Development Certificate under S191 of the Act shall not be issued.

Maxine Wishart

5 November 2021

Alan Kilroe
14 December 2021

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