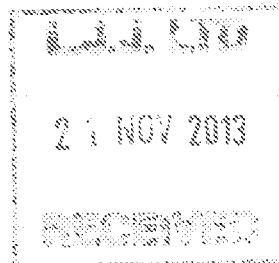




**Department
for Environment
Food & Rural Affairs**

CCU 7th Floor
Nobel House
Smith Square
London SW1P 3JR

Mr John Daly
LJJ Limited
Dowding House
Wellington Road
High Wycombe
Buckinghamshire
HP12 3PS



Your ref: SP/djw/5009-055

Our ref: DWO297158/WK

18th November 2013

Dear Mr Daly

Appeal under the Section 15 of the Clean Air Act Height of Chimneys Provision

I am writing, on behalf of the Secretary of State (SoS), in response to your appeal against the outcome of your retrospective chimney height application, to Arun District Council (ADC) for a biomass boiler situated at The Regis School. First please accept my apologies for the delay in providing my decision. As you are aware it was necessary to seek additional information from all parties involved in your case and obtain further independent technical and legal advice before a conclusion could be reached.

I am sorry to inform you that following full consideration of all the available evidence your appeal has not been upheld and I must support the ADCs decision to reject your application for a 7m high chimney. Furthermore the lowest height of chimney I am prepared to approve without qualification in this case is 20.2m. The reasons for my decision are outlined below.

The Clean Air Act (CAA) 1993 (Part 2 Section 14) makes it an offence for an occupier of a building to use a furnace with $\geq 366.4\text{kw}$ output or, in the case of a solid fuel furnace, which burns $\geq 45.4\text{ kg/hr}$ solid fuel, unless the height of the chimney servicing the furnace has been approved by Local Authorities (LAs). Section 15 of the Act states that approval shall not be granted by a LA unless they are satisfied that the height of the chimney will be sufficient to prevent, so far as practicable, the smoke, grit, dust and fumes emitted from the chimney from becoming prejudicial to health or a nuisance having regard to —

- (a) the purpose of the chimney;
- (b) the position and descriptions of buildings near it;
- (c) the levels of the neighbouring ground; and
- (d) any other matters requiring consideration in the circumstances.



INVESTORS
IN PEOPLE

Appeal assessment

In your letter of 26 July you confirmed that the chimney is situated 17m from the school building and the ventilation intakes within this building are positioned at a height of 17.2m.

Section 15 (2) of the CAA states that the LA must be satisfied that the height of the chimney is sufficient to prevent smoke emissions from being prejudicial to health. The boiler installed at the Regis school is a solid fuel biomass boiler which will produce emissions of particulate matter (PM) and oxides of nitrogen (NOx).

Given the proximity of the school building (17m), the position of openable windows and height of ventilation intakes it must be concluded that a 7m high chimney is insufficient to prevent unsafe levels of pollutants from entering the school premises. The Ramboll Report you submitted in support of 7m high chimney is not considered relevant as the model does not take account of air ingress through windows and ventilation systems.

In assessing the appropriate height for a chimney situated adjacent to a publically accessed building, the third edition of the Clean Air Act Memorandum on Chimney Heights (CHM) provides a relatively simple method for taking account of nearby buildings in chimney height calculations. It also includes overriding minimum requirements under clause 25, one of which states that a chimney should terminate at least 3m above the level of any adjacent area to which there is general access (i.e. ground level, roof areas or adjacent openable windows). Lawyers have advised that in this case the ventilation intakes can reasonably be considered as openable windows and therefore it must be concluded that minimum height for this chimney is 20.2m.

I cannot concur with the 19m chimney height recommended by ADC as their calculations assumed an incorrect building height and failed to take the CHM into consideration.

In your letter of 26th July, you claim that the school complaints arose from the use of incorrect fuel in the boiler and that during normal use the chimney is of a sufficient height to allow complete dispersion of pollutants. You also supplied a further report from A1 Bridge Flue Systems showing the calculation used to determine the height of the 7m chimney. Unfortunately this additional information does not alter my decision to reject the appeal. All the calculations used to assess your appeal and determine a minimum chimney height of 20.2m assume the correct fuel is used.

Furthermore the flue specialist report you supplied includes 2 key caveats; the first states that the report conclusion is subject to further assessment by LA which may specify further adjustment in the light of particular circumstances. The second states that no height adjustment has been made to cover the requirement of clause 25 of CHM due to insufficient information being available.

Appeal conclusion

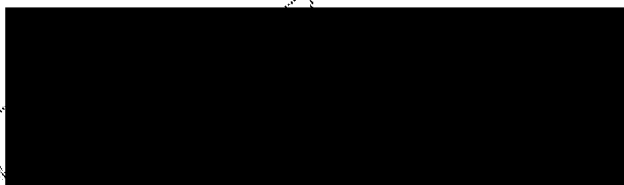
In the light of available evidence I must reject your appeal against the outcome of your retrospective application for chimney height approval and state that the lowest height of chimney I would be prepared to approve in this case is 20.2m.

I appreciate that this may not be welcome news but the safety of the occupants of Regis School must be of primary consideration in this case. Please contact my official Donna Yates on telephone number 0207 238 5903 or e-mail Donna.Yates@defra.gsi.gov.uk if you have any further questions.



INVESTORS
IN PEOPLE

A copy of this letter has been sent to Arun District Council notifying them of my decision.



Dan Rogerson
Parliamentary Under Secretary of State for the Environment

