



Appeal Decision

Site visit made on 11 June 2019

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2019

Appeal Ref: APP/H3320/D/19/3226662

Salamander Cottage, 23 Parks Lane, Minehead TA24 5NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr David Harwood-Smith against the decision of West Somerset Council.
 - The application Ref 3/21/19/009, dated 14 February 2019, was refused by notice dated 29 March 2019.
 - The development is the installation of a wood burner flue.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. On 1 April 2019 West Somerset Council merged with Taunton Deane Borough Council, forming Somerset West and Taunton Council. Nevertheless, until superseded, the existing development plan documents of the former authorities remain extant.¹
3. The woodburner flue at Salamander Cottage, No 23 Parks Lane, projecting above a monopitched roof of that property, has been reduced in height and painted black since originally installed. The principal plan representing the scheme is No 1800.1/301 and is entitled 'Proposed Plans & Elevations'. That is the basis on which I have determined the appeal.
4. The Council have suggested, and the appellant has agreed to, a condition that would have the effect of requiring the removal of the shed shown on the plan referenced above.² However that is a separate matter to the scheme before me, and at the time of my site visit the shed was all but dismantled.

Main issue

5. Based on all I have read and seen, the main issue is the effect of the development on the living conditions of the occupants of No 8 the Parks.

Reasons

6. No 23 originated as ancillary accommodation and in 2005 secured permission as an independent dwelling.³ It is to the rear of Grade II Listed No 8 The Parks which dates from around the mid nineteenth century and falls within the

¹ With reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, the statutory basis for decision taking.

² In the event that the appeal were to be allowed, and without prejudice to their positions.

³ Planning permission Ref 3/21/04/191.

Wellington Square Conservation Area. The appeal site is in a relatively close-knit environment, near the Parade which runs centrally through Minehead.

7. I am told that No 23 was initially a workshop associated with No 8. That relationship is reflected in the location of No 23 to the rear of properties fronting The Parks and in its modest scale and height. I saw that there are few similarly located dwellings. No 23 has, however, been much altered over time such that there is no readily apparent historic integrity to it, and the Council do not object to the development in respect of its effects on heritage assets.
8. There are letters before me from Embers Woodburner Installations and HETAS Ltd. They indicate that the flue complies with the provisions of the Building Regulations 2010 as amended, with particular reference to diagram 17 of Approved Document J. Nevertheless whilst Building Regulations and planning occasionally concern similar matters they are essentially separate regimes; a scheme may comply with the former but not be appropriate in planning terms with regard to the wider public interest.
9. Unlike some other development, in that context the installation of a domestic chimney or flue is not permissible without specific planning permission.⁴ Policy NH9 of the West Somerset Local Plan (adopted November 2016, the 'LP') sets out that development which generates atmospheric emissions that would cause harm to health or senses will not be permitted. Paragraph 127, bullet f) of the National Planning Policy Framework (updated 19 February 2019, 'NPPF') similarly sets out that planning decisions should ensure that there is a 'high standard of amenity' for existing and future users.
10. I acknowledge the representations regarding Building Regulations compliance referred to above. I also understand that the installed 'Stovax 5' woodburner is DEFRA approved for use in Smoke Controlled Areas designated under the Clean Air Act 1993 as amended (albeit that No 23 is not within such an area). Provided that authorised fuel is used, emissions from the woodburner are likely to be lower than other models or types of fire. The absence of dedicated storage capacity for such fuel is not, in my view, determinative as to whether or not that would be used in practice.
11. However diagram 17 of Approved Document J referred to above is guidance. Paragraphs 2.10 and 2.11 indicate that flues should be installed so as to ensure that the products of combustion can 'discharge freely', and that site specific circumstances should be taken into account with regard to that objective. At around 4.75 metres high relative to the garden level of No 8,⁵ the flue is around the threshold of the minimum recommended height in Approved Document J paragraph 2.8.
12. At that height I saw how the top of the flue roughly aligns with rear-facing first floor bedroom and bathroom windows of No 8. That property also has a modest dormer window in the roof slope above. The separation distance between the rear elevation of No 8 and the flue at No 23 is around 12.5 metres, or thereabouts. That is a close inter-relationship in absolute and relative terms, particularly as No 23 is something of an anomaly with regard to the prevailing

⁴ Schedule 2, Class A, paragraph A.1(k)(iii) of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

⁵ A figure which is not specifically disputed by the appellant.

pattern of development. Whilst the woodburner is DEFRA approved, nevertheless combustion inevitably results in by-products.

13. Moreover No 23 is set at a relatively low point in the topography in a comparatively close-knit environment. The property is somewhat hemmed in by others at a higher ground level on the opposite side of Parks Lane, a cluster of trees towards the north, Minehead Baptist Church to the south and properties fronting The Parks. As such odour and particulates resulting from combustion are less likely to disperse naturally here than elsewhere given the limited height of the flue and its enclosed surroundings. Being an historic property and given the climate of the south west, No 8 will also need to be aired by way of opening windows from time to time. It is, in my view, logical that more private rear-facing windows would be used for such in preference to windows in the principal elevation of No 8 which face The Parks, part of a principal route between the centre of Minehead and the A39.
14. Setting aside compliance with Building Regulations and the nature of the woodburner and its fuel, the flue will inevitably result in odour and particulate matter being expelled at close proximity to habitable rooms of No 8 in a relatively enclosed location. When the wind is in a certain direction or the windows of that property are open, those by-products are likely to carry into the neighbouring property and to detrimentally affect the living conditions of its occupants accordingly. I therefore conclude that the scheme conflicts with the relevant provisions of LP policy NH9 and of NPPF paragraph 127. Whilst the use of the woodburner would be a welcome feature of the living environment at No 23, that personal benefit does not outweigh the harm that would result.

Conclusion

15. For the above reasons, having considered the development plan as a whole, the approach in the NPPF, and all other relevant matters, I conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR