



Appeal Decision

Site visit made on 14 December 2021

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/N4720/D/21/3282789

143 Manor Park Avenue, Allerton Bywater, Castleford WF10 2DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Stephen Mirfin against the decision of Leeds City Council.
 - The application Ref 20/08515/FU, dated 19 December 2020, was refused by notice dated 20 July 2021.
 - The development proposed is the installation of a chimney/flue outlet to existing outbuilding.
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Decision

1. The appeal is allowed and planning permission is granted for the installation of a chimney/flue outlet to existing outbuilding at 143 Manor Park Avenue, Allerton Bywater, Castleford WF10 2DN in accordance with the terms of the application, Ref 20/08515/FU, dated 19 December 2020, and subject to the following condition:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan SM-01, Layout Plan SM-00, and Plans and Elevations SM-03.

Procedural Matters

2. The flue is in place, therefore I am considering this appeal retrospectively.

Main Issue

3. The main issue is the effects of the proposed development on the living conditions of neighbouring occupiers, with particular reference to smoke and odours.

Reasons

4. The flue is situated to the roof of a detached outbuilding in use as an additional sitting room. The flue extracts smoke from a multi-fuel stove used to occasionally heat the outbuilding.
5. I noted the small size of the stove on my site visit and saw that the flue projects above the ridge of the outbuilding. I also noted that there are a range of outbuildings adjacent to the summerhouse, and that the gardens to neighbouring properties are of a reasonable length. I could not see any windows to dwellings immediately adjacent to the site of the flue.

6. The appeal site is not within a smoke control area where there are limits on the types of fuels which can be burnt. Nonetheless, the appellant has indicated that the types of fuels used in the stove are smokeless coals and kiln dried logs. The fuels listed are typical of those widely sold for burning in domestic stoves and I note that they are HETAS and DEFRA approved for smoke control areas. I also recognise that retailers are no longer permitted to sell household sized bags of house coal and wood with more than 20% moisture content.
7. I acknowledge that the neighbour is asthmatic however the aforementioned fuels, and the specification of the stove and flue, are subject to controls under other legislation. Whilst the flue is of lower height than a regular house chimney, it reaches approximately 3.21m from the ground level of the appeal site¹. This is sufficiently above head height and garden paraphernalia such as washing lines.
8. Furthermore, should the appellant relocate the stove and flue to the roof of the host dwellinghouse which is a very small distance away from the summerhouse, it would be permitted development under Schedule 2 Part 1 Class G of the GPDO² and thus there would be no control under the planning system. I give moderate weight to this realistic fallback position.
9. Whilst I acknowledge the representations of the neighbouring occupiers with regard to smoke and odours from the flue, no technical evidence has been provided by them nor the Council to substantiate these concerns. Furthermore, there are no responses before me from relevant consultees such as Environmental Health to assist in assessing the effects. Consequently, there is a lack of evidence to lead me to conclude that the development would result in an unacceptable degree of harm to living conditions.
10. In view of the above, I find the effects of the proposed development on the living conditions of neighbouring occupiers to be acceptable. It is in compliance with Leeds Unitary Development Plan (Review 2006) saved Policy GP5 which seeks for proposals to avoid loss of amenity and pollution. In turn, the proposal conforms with paragraph 130 f) of the National Planning Policy Framework (the Framework) in terms of amenity for existing and future users.
11. In my conclusion I have had regard to paragraph 188 of the Framework which states that the focus of planning decisions should be on whether proposed development is an acceptable use of land, rather than the control of processes or emissions (where these are subject to separate pollution control regimes), and that planning decisions should assume that these regimes will operate effectively.

Other Matters

12. I acknowledge the neighbour's concerns regarding the propensity of existing buildings in the vicinity, however the flue adds little to the mass of structures given its small size. It is appropriately coloured in a matt black and has a minimal visual effect on the appeal site and its surroundings.
13. There is a lack of substantive evidence before me that the emissions from the flue would detract wildlife such as birds and bats. The installation of stoves is

¹ Figure 4, Statement of Case (RBA Town Planning 3 September 2021)

² The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

subject to separate legislation in relation to fire risk as well as emissions, and it is only the flue itself which is before me for consideration as part of this appeal.

14. I have had due regard to the accommodation needs of the appellant's son as part of the Public Sector Equality Duty contained in the Equality Act 2010. The stove associated with the flue provides heat to a room which provides independent living space, and this adds a moderate degree of weight to my considerations.

Conditions

15. The appellant has indicated that they would agree to a condition which limits operation of the stove to the colder months of October to March only. However, the Council have made no comment on this and I find that such a condition would be unreasonable. This is given that operation of the stove would be minimal during the warmer summer months when gardens are most in use, and windows could still be open during the colder months of year. It would not meet the tests as set out in paragraph 56 of the Framework and the planning practice guidance.
16. Given that the flue has already been installed, no time limit condition is necessary. Only a condition requiring adherence with the approved plans is necessary, for the avoidance of doubt.

Conclusion

17. The appeal is allowed.

Susan Hunt

Inspector