



Appeal Decision

Site visit made on 4 January 2022

by Sarah Manchester BSc MSc PhD MIEnvSc

an Inspector appointed by the Secretary of State

Decision date: 8th March 2022

Appeal Ref: APP/F2360/W/21/3282008

9 Wordsworth Place, Walton-Le-Dale, Preston, PR5 4TU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Michael Houghton against the decision of South Ribble Borough Council.
 - The application Ref 07/2021/00322/HOH, dated 24 March 2021, was approved on 9 June 2021 and planning permission was granted subject to conditions.
 - The development permitted is retrospective planning application for erection of a flue on an outbuilding.
 - The condition in dispute is No 3 which states that: *Smoke Prior to any further use of the appliance and flue a report produced by a member of the National Association of Chimney Engineers must first be submitted and approved by the planning authority which demonstrates that the flue can disperse fumes and smoke without causing an adverse impact upon neighbouring properties. Once the report has been approved and implemented the appliance and flue must be maintained and used as instructed by the report and by the manufacturer. If smoke or fumes (odour) are detected by an authorised officer of the Authority then the appliance must not be used until it can be demonstrated that it can be used without causing an adverse impact upon neighbouring properties.*
 - The reason given for the condition is: *In the interests of the amenity of the nearby residents in accordance with Policy 17 of the Central Lancashire Core Strategy and Policy G17 in the South Ribble Local Plan.*
-

Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission was granted in June 2021 for the erection of a flue on an outbuilding. The works were completed in February 2019 in association with the appliance (a multifuel stove) and the planning application sought retrospective permission for the development that had been implemented. Planning condition No 3 prohibits further use of the flue until it has been demonstrated that it can disperse fumes and smoke without adverse impacts on the neighbouring properties.
3. The main issue is whether or not condition No 3 is necessary and reasonable in the interests of the amenity of nearby residential occupiers.

Reasons

4. The appeal property is a single storey semi-detached dwelling at the end of a residential cul-de-sac. It is set in a large irregularly shaped plot with several detached outbuildings. The summerhouse outbuilding, where the stove and flue

are installed, is a low building close to the boundaries with several neighbouring properties including 2 storey and single storey dwellings, some with dormer extensions and roof windows. The rear gardens vary in size and they are enclosed by fences.

5. By virtue of the low height of the flue, the use of the stove would result in the emission of smoke at a height below that achieved by the chimneys of nearby dwellings. Moreover, it seems likely that the degree of enclosure and the surrounding buildings would result in a relatively sheltered environment in the rear gardens. Consequently, prevailing conditions at the appeal site may not always be conducive to effective high level dispersal of smoke.
6. The summerhouse was originally intended for occasional use, but it was used intensively during the coronavirus pandemic lockdown to enable working from home and to enrich the environment of the appellant's children. The evidence with the appeal indicates that the stove and flue were used several days each week, including weekends and evenings, albeit with reduced frequency during summer months. The consultee and third party representations to the planning application evidence that at times the smoke and odour has been detrimental to neighbouring occupiers, including preventing them from opening windows or using their gardens.
7. If normal working patterns resume once the pandemic ends, then the summerhouse may be used less frequently. However, there are no limits on the days or hours that the stove can be used. There would be no guarantee that future occupiers of the appeal property would not use the summerhouse and its stove on a frequent and regular basis. Neither the appellant's desire to avoid causing nuisance to his neighbours nor his future intentions provide a robust mechanism to ensure that the use of the stove and flue would not adversely affect the neighbouring occupiers' living conditions, their health and well-being.
8. The reason for the condition refers to Policy 17 of the Central Lancashire Core Strategy Adopted July 2012 (the CS) and Policy G17 of the South Ribble Borough Council Local Plan Adopted July 2015 (the LP). CS Policy 17 requires, among other things, that new buildings are sympathetic to surrounding occupiers and they avoid demonstrable harm to the amenities of the area. LP Policy G17 seeks to avoid harm to neighbouring properties through undue overlooking, overshadowing or overbearing. I accept that the flue is not a new building and it does not result in the specific types of harm referred to by Policy G17. However, my attention has been drawn to CS Policy B1, which requires development in built-up areas to avoid adversely affecting the amenity of nearby residents. Moreover, the National Planning Policy Framework (the Framework) requires development to promote health and well-being, with a high standard of amenity. Therefore, and irrespective that the policies do not specifically refer to air pollution or odour, the condition is relevant to planning and to the development.
9. Condition No 3 requires a report by a member of the National Association of Chimney Engineers (NACE) to demonstrate that the flue disperses fumes and smoke without adversely impacting neighbouring properties. I understand that the technical director of NACE advised the appellant that he would not produce such a report. However, there is little substantive evidence that a member of NACE would not be willing or that they would be unable to prepare the necessary report. Even if this was the case, such that it was unreasonable to

refer specifically to NACE, nevertheless the condition would still be necessary and no modified form of condition wording has been proposed.

10. Therefore, I conclude that the condition is necessary and reasonable in order to protect the living conditions of neighbouring residential occupiers, with particular regard to fumes and smoke. The proposed deletion of condition No 3 would conflict with the aims of the development plan, including CS Policy 17 and Policy B1. It would also conflict with the aims of the Framework in relation to residential amenity, health and living conditions.

Other Matters

11. My attention has been drawn to Schedule 2 Part 1 Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015. This states that the installation, alteration or replacement of a chimney, flue or soil and vent pipe on a dwellinghouse is permitted development. However, the appeal relates to a flue on an incidental outbuilding and not to a dwellinghouse. There is little substantive evidence, such as a lawful development certificate, to demonstrate that the flue benefits from the permitted development rights and they do not weigh in favour of the scheme.
12. The appellant wishes to be reimbursed for the fees paid on the grounds that he was incorrectly advised that planning permission was required. However, the appeal form states that he has not made a costs application with the appeal. Therefore, I have not considered this matter further.
13. The appellant would be willing to alter the cowl or the height of the flue if necessary or to relocate the stove into the main house. The Procedural Guide: Planning appeals - England 24 February 2022 advises that the appeal process should not be used to evolve a scheme, what is considered by the Inspector should essentially be what was considered by the local planning authority and on which interested people's views were sought. If an applicant thinks that amending their proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application.

Conclusion

14. For the reasons set out above, the appeal should be dismissed.

Sarah Manchester

INSPECTOR