



Appeal Decision

Site visit made on 11 January 2024

by Mr Kim Bennett BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29.01.2024

Appeal Ref: APP/G2245/D/23/3322557

2 Five Wents Swanley Kent BR8 7LE

- 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 Mr Salman Qayyum against the decision of Sevenoaks District Council.
 - The application ref 22/03402/HOUSE, dated 7 December 2022, was refused by notice dated 25 April 2023.
 - The development is a single storey wooden outbuilding at end of rear garden.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of proposed development on the application form is somewhat lengthy. I have therefore adopted the description as it appears on the Council's decision notice as that more succinctly describes the development involved.

Main Issue

3. The main issue is the effect of the development on the living conditions of occupiers of nearby residential properties.

Reasons

4. The appeal property comprises a large detached house located in a small cul-de-sac known as Five Wents just off Swanley Lane. There are residential properties to either side, and also at the rear where the rear gardens of houses in Hawthorn Park back onto the appeal property's garden.
5. The development is already in place and comprises a hexagonal shaped building located towards the end of the rear garden and alongside the common boundary with the garden No 1 Five Wents. It has a hexagonal shaped and steeply pitched roof with a total height of just over 3 metres. Above that and in a central position at the top of the roof, is a flue structure of approximately 0.5 metres in height. The flue serves as an outlet for a fixed barbecue within the building. The appellant advises that the use of the building is for personal recreational use and it is not used for commercial purposes. In that respect there is no evidence before me to suggest that is not the case.

6. The Council raises no objections in terms of the design of the building, its physical impact or any loss of privacy to occupiers of adjoining properties. Having considered those issues at my site visit, I see no reason to disagree.
7. The main concern arises from the potential for odour nuisance to neighbouring properties with regard to the design of the flue and its potential to prevent the free flow of flue gases upwards. This concern stems from the Council's Environmental Protection Team who noted that a different form of rain diverter terminus should be sought to allow vertical discharge of fumes.
8. From the information before me, it would appear that the Council does not object to some sort of flue arrangement; just that an alternative should be sought. Assuming that is the case, I am somewhat surprised that there does not appear to be any evidence of communication between the main parties to seek an alternative acceptable arrangement and thus avoid an appeal situation. However, in such circumstances, I can only consider what is before me.
9. Although the appellant suggests that smoke free fuels are used and has attached a photograph and video which appear to show little smoke emerging, there is no technical evidence to show that would always be the case, particularly in adverse or windy weather conditions. In any event, a condition to require the use of smoke free fuels at all times would be difficult to enforce. Given the above, I cannot be satisfied that the current flue arrangements would prevent odour nuisance to occupiers of adjoining properties at all times. In that respect, I attach significant weight to the comments of the Environmental Protection Team, who will have professional experience of dealing with flue emissions and the design of such flues, in other situations.
10. I have considered whether a condition would be appropriate to require some alternative form of flue arrangement and I note that the appellant would be supportive of that. However, the difficulty is that the building and flue is already in place and shown on the submitted plans in that form. Additionally, there is no evidence before me as to what alternative arrangement might be required and whether that in itself might have other implications.
11. I note that the appellant suggests that the internal grill can be detached and taken out of the building so that in effect it would become a summer house with no internal barbecue. However, that is not what is before me to consider. Although I also acknowledge that a barbecue can be responsibly used in an open garden situation, the dispersal of odour and fumes would be different than that as installed where it is concentrated and directed through a flue outlet. Finally, although my attention has been drawn to an apparently similar case in Swanley, no details are before me and I therefore attach little weight to that in reaching my findings above.
12. Drawing the above together, I find that the potential for odour nuisance to occupiers of adjoining properties cannot be ruled out as a consequence of the design of the current flue arrangement. Given that it forms an integral part of the submitted plans, a condition requiring alternative arrangements would be inappropriate. The development is therefore contrary to Policy EN2 of the Council's Allocations and Development Management Plan 2015, in that it does not safeguard the amenities of occupiers of nearby properties in respect of potential odour and air pollution. Accordingly, the appeal should be dismissed.

Kim Bennett INSPECTOR