

**Application Number:** 18/11341 Full Planning Permission

**Site:** PENLOWARTH, 7 THORNBURY AVENUE, BLACKFIELD,  
FAWLEY SO45 1YP

**Development:** Flue on outbuilding (Retrospective)

**Applicant:** Mr Dugdale

**Target Date:** 04/12/2018

**Extension Date:** 15/02/2019

**RECOMMENDATION:** Refuse  
**Case Officer:** Michael Barry

**1 REASON FOR COMMITTEE CONSIDERATION**

Previous Committee consideration

**2 DEVELOPMENT PLAN, OBJECTIVES AND POLICIES**

**Constraints**

None

**Plan Policy Designations**

Built-up Area

**National Planning Policy Framework**

Chap 12: Achieving well designed places

**Core Strategy**

CS2: Design quality

**3 RELEVANT LEGISLATION AND GOVERNMENT ADVICE**

Section 38 Development Plan  
Planning and Compulsory Purchase Act 2004  
National Planning Policy Framework

**4 RELEVANT SITE HISTORY**

Proposal	Decision Date	Decision Description	Status
04/80808 Roof alterations with dormer	28/04/2004	Granted Subject to Conditions	Decided
03/77751 Alterations to roof	21/05/2003	Granted Subject to Conditions	Decided
02/76848 Roof alterations; balcony	17/02/2003	Refused	Decided

## **5 COUNCILLOR COMMENTS**

No comments received

## **6 PARISH / TOWN COUNCIL COMMENTS**

Fawley Parish Council: recommend refusal due to concerns relating to the smoke nuisance being experienced by neighbours and query that this issue should be raised with NFDC Environmental Health.

## **7 CONSULTEE COMMENTS**

7.1 Environmental Health Protection: no objection. Once the appliance was operating at a high temperature, only a heat haze was visible, and smoke/odour was not considered to have any significant adverse impact.

## **8 REPRESENTATIONS RECEIVED**

Representations received based on original submission.

8.1 One objection received from 10 Thornbury Avenue on the grounds of the impact of the smoke from the flue and associated wood burner impacting their property and amenity:

- Detailed the proximity of the properties and the location of the outbuilding, showing the neighbour's property to be one of the closest properties to the outbuilding.
- Provides evidence of the average wind direction being towards his property from the outbuilding.
- Refers to guidance from the British Flue & Chimney Manufacturers Association (BFCMA) on the recommended minimum height of a flue for minimum effectiveness,
- Possible future legislation around emissions from all sources, including wood burning stoves.

8.2 A further letter of objection was received from 10 Thornbury Avenue

- Extra information has not been considered by Environmental Health regarding flue height:
  - BFCMA guidance for installing wood burning stove and flue
  - Approved Document J 2010 (Section J2)
- The overall flue height should be in accordance with Document J of Building Regulations - 4.5m above stove top. This does not appear to meet Building Regulations
- The existing height will allow smoke and fumes at very low level to circulate around their garden and house and enter windows and doors.
- Any flue must have a HETAS certificate ( Heating Testing and Approval Scheme introduced in 2006) or comply with Building Regulations
- Domestic wood burning emissions are a source of particulates.

8.3 The applicant has commented as follows:

- wind speed and direction indicators have been erected
- The flue fits within permitted development rights
- Environmental Health have raised no objection and so will not have a significant bearing on neighbouring properties
- The stove is DEFRA approved for use in smokeless areas. The wood is locally sourced, seasoned and stored in dry conditions

## **CRIME & DISORDER IMPLICATIONS**

None relevant

## **10 LOCAL FINANCE CONSIDERATIONS**

From the 6 April 2015 New Forest District Council began charging the Community Infrastructure Levy (CIL) on new residential developments.

Regulation 42 of the CIL Regulations 2010 (as amended) states that CIL will be applicable to all applications over 100sqm GIA and those that create a new dwelling. The development is under 100 sq metres and is not for a new dwelling and so there is no CIL liability in this case.

## **11 WORKING WITH THE APPLICANT/AGENT**

In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

In this case all the above apply and following further assessment and detailed consideration the application to retain the flue is considered to be unacceptable due to the potential adverse impact on residential amenity.

## **12 ASSESSMENT**

- 12.1 Members will recall that this application was considered and deferred at the last Planning Committee on 13th February 2019 (Item 3h).
- 12.2 The property is a detached chalet bungalow in the built up area of Blackfield. Thornbury Avenue has a wide variety of properties, with traditional and converted detached bungalows, as well as semi-detached two storey houses.
- 12.3 The plots are most commonly long and narrow, with properties set a uniform distance back from the road and close together. No. 7 and its adjacent neighbours have gardens that are intersected to the rear by the garden of No 10, at an angle of approx 25°.
- 12.4 The proposals are for retrospective planning permission for a flue on the existing outbuilding in the rear garden. The flue rises 0.5m above the ridge giving a total height of 3 metres and is located on the eastern roof slope of the existing outbuilding.
- 12.5 The outbuilding is located less than 1.0 metre from the boundary with the garden of No.10, but it would be 20 m away from the house.
- 12.6 The main considerations are visual impact and impact on amenity due to smoke, and associated emissions and smell for the flue.
- 12.7 The outbuilding and flue is located towards the rear of the garden and is set back relative to surrounding properties, such that there is no impact on visual amenity. Due to the outbuilding and flue being to the rear of the property there would be no impact on the street scene.

- 12.8 The residential amenity issues to consider relate to the potential for smoke from the flue to cause adverse impact on adjoining neighbouring properties. Paragraph 180 of the NPPF requires new development to be appropriate to its location taking into account the likely impacts of pollution on health and living conditions. Planning Policy Guidance includes Air Quality as a relevant material planning consideration to be taken into account in making an assessment of the acceptability of new development.
- 12.9 The outbuilding and the flue is located is close to the boundary with 10 Thornbury Avenue but there remains a separation of 20 m between the outbuilding and the house. Other neighbouring properties retain a similar separation but their gardens do not extend to have boundaries immediately adjacent to where the outbuilding and flue are located and as such are less directly impacted.
- 12.10 There is an outside decking area where a gazebo is erected in season within the garden on No 10 close to the boundary with No 7 and within approx 5 metres of the outbuilding and flue.
- 12.11 Due to concerns about the potential smoke and odour nuisance caused by the wood burning stove Members considered that further investigation and information were essential before this planning application could be properly assessed and determined. This investigation was to allow the effect of the wood burning stove to be observed when it was lit.
- 12.12 A site visit has now been undertaken to make this assessment . The conditions at the visit were bright and sunny with a light south westerly breeze. The wood burner and flue were installed by the applicant in accordance with DEFRA guidance. It was confirmed by the applicant that thoroughly seasoned locally sourced wood fuel is used which is stored in the greenhouse.
- 12.13 The wood burner was lit from cold and it took approximately 20 minutes to reach normal operation temperature. Smoke was visible from the flue for the majority of this time. Despite smoke being visible, it generally dispersed quickly despite the low level of the flue; however, transient odour from wood smoke was detectable, particularly around the outside decking area.
- 12.14 Once the appliance was operating at a high temperature, only a heat haze was visible but there remained the smell of combustion in the air. Whilst smoke emissions were present they were more intermittent and fluctuated with more limited smoke but odour remained evident. Further period of increased smoke and odour were observed when additional fuel was added to the wood burner, albeit for short durations of time. Odour from the smoke could be detected and was also present upstairs in the house where the rear facing windows were open. Overall, this impact was so slight to not be felt that refusal could be justified. This was considered to be acceptable due to the separation distance from the flue which allowed for dispersal of smoke emissions and odour.

- 12.15 Environmental Health have raised no objection. Despite the potential for smoke and odour to impact upon nearby properties the appliance is capable of operating efficiently with a low level of impact. Factors such as the way the appliance is operated, nature of fuel used, size of appliance etc. will ultimately determine whether smoke causes an issue. If such issues become a Statutory Nuisance then Environmental Health have legislation in place to deal with them.
- 12.16 Notwithstanding the Environmental Health comments, the assessment of the amenity impacts under planning legislation are relevant in the determination of this application and should provide a greater protection to safeguard against adverse impacts.
- 12.17 In making this assessment, reference is made to an appeal decision relating to a flue on a garden room at Strawberry Cottage, Butts Ash Lane, Hythe (15/10244). This retrospective application was refused for reasons of visual intrusion and impact on residential amenity due to smoke pollution. In dismissing the appeal, the Inspector considered emissions and commented that "*In this regard, it seems to me that monitoring [of the flue] over a longer period would be necessary before the Council can properly and reliably assess whether or not the emissions cause a nuisance to the occupiers of No. 33 when using their garden.*" Whilst he considered that amendment to the flue position and further monitoring of emissions may enable it to be considered acceptable, in the present circumstances the conclusion reached was that it was harmful and as such the appeal was dismissed.
- 12.18 It is relevant to note that in this case the Inspector found the impact from emission to be harmful to adjoining amenity and did not consider that a temporary consent to allow further monitoring to take place was appropriate. These circumstances are very similar to the current application.
- 12.19 Weather and wind conditions will change as will the emissions from flue and so too will associated impact on adjoining residents. It is accepted that there will be an impact on the adjoining neighbour and most particularly the outside decking area of No 10 which is close to the boundary with No 7.
- 12.20 In assessing the impact on amenity, the effect on the outside decking area at No 10 which is located close to the boundary and in a south west (down wind) position was of particular concern. This area is frequently used in fine weather as an outdoor amenity space to eat and socialise and this is the area most potentially affected by emissions from the flue.
- 12.21 Having observed the wood burner in operation, the initial impact from smoke and odours does have some short term adverse impact, after approximately 20 minutes these impacts were reduced but there remained a residual smell of combustion in the air. Although this was not considered to be overpowering it did have an adverse impact on the amenity of the adjoining residential occupants particularly the garden and decking area closest to the boundary with No 7. Within this context, although the flue is already in place, monitoring over a longer period would be necessary before the Council can properly or reliably assess its impact on the amenity of adjoining residential properties.

12.22 For information, Building Regulations are required for the outbuilding and the flue. This is because the outbuilding is over 15 sq. m under 30 sq. m in size, single storey, and does not contain sleeping accommodation, however as is within 1 m of the boundary, and so it is not an exempt building. However this is a separate matter not within the scope of this planning application.

12.23 In conclusion, there are potential impacts on residential amenity and whilst when inspected the most excessive smoke emissions appear to be relatively short term in nature, the residual odour remained while the wood burner was lit. It is accepted that the impacts will vary according to weather conditions and the manner in which the wood burner is used. However, given that the flue is positioned at such a low level and located in close proximity to the boundary and decking area at No 10 adverse impact on amenity would result

12.24 On the basis of the further assessment undertaken and the relevant appeal history it is concluded that a temporary consent to allow further monitoring is not appropriate in this instance and the recommendation is therefore to refuse.

12.25 In coming to this recommendation, consideration has been given to the rights set out in Article 8 (Right to respect for private and family life) and Article 1 of the First Protocol (Right to peaceful enjoyment of possessions) of the European Convention on Human Rights. Whilst it is recognised that this recommendation, if agreed, may interfere with the rights and freedoms of the applicant to develop the land in the way proposed, the objections to the planning application are serious ones and cannot be overcome by the imposition of conditions. The public interest and the rights and freedoms of neighbouring property owners can only be safeguarded by the refusal of permission.

## **13. RECOMMENDATION**

### **Refuse**

#### **Proposed Conditions:**

1. By reason of its siting, limited height and its position in relation to the boundary, the flue causes unacceptable pollution by way of smoke emission and odour to the detriment of the reasonable amenities of the occupiers of the adjoining residential property at No 10 Thornbury Avenue, and in particular the decking area within their rear garden. For this reason, the development is contrary to policies CS2 and CS5 of the Core Strategy for the New Forest District outside the National Park.

**Notes for inclusion on certificate:**

1. In accordance with paragraph 38 of the National Planning Policy Framework and Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, New Forest District Council takes a positive and proactive approach, seeking solutions to any problems arising in the handling of development proposals so as to achieve, whenever possible, a positive outcome by giving clear advice to applicants.

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**Further Information:**

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**Planning Development  
Control Committee**

**March 2019**

**Item No: 3d**

Penlowarth  
7 Thornbury Avenue  
Blackfield Fawley  
18/11341

Scale 1:1250

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scale.



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