

## OFFICER REPORT FOR COMMITTEE

DATE: 6th May 2020

P/20/0215/FP  
Mr IAN TINDALE

FAREHAM WEST  
AGENT: Mr IAN TINDALE

GARDEN TERRACED AREA (PART COVERED) AND A COVERED STORE  
(ALTERNATIVE TO PLANNING APPLICATION P/19/0150/FP)

68 THE AVENUE, FAREHAM, PO14 1PB

### **Report By**

Jon Snook Direct Dial 01329 824703

### **1.0 Introduction**

1.1 This planning application has been called before the Planning Committee by the Local Ward Member, Councillor Mrs Hockley. The reason provided by Councillor Hockley was '*...to enable residents affected by the original permission to get a chance to express their views as the impact of the chimney etc are having huge implications on their ability to enjoy their gardens and to open windows. The original application was determined under delegated powers and the affected residents feel very let down by that decision and are angry at their views being ignored*'.

### **2.0 Site Description**

2.1 The site consists of a large detached chalet bungalow set in a substantial plot and located on the northern side of The Avenue, Fareham. The northern boundary for the site adjoins the rear gardens of properties located in Heath Lawns. There are a number of similar properties in the area.

### **3.0 Description of Proposal**

3.1 The proposed development seeks the retention of a garden outbuilding which is partly covered and includes a covered store which has been built differently to plans previously permitted.

3.2 The structure has an overall width of just over 16 metres with the sheltered seating area being 9 metres wide. The depth of the outbuilding is 5 metres with the roof line sloping from 2.86 metres at the front down to 2.385 metres to the rear, northern, boundary. The footprint dimensions for the structure are identical to an original planning permission (P/19/0150/FP). However, the front elevation is slightly lower, by 14cm, than the original 3 metres and the rear elevation is slightly higher (36cm) than the original 2.025 metres. In addition to these changes in the front and rear heights is the increased height and design of the brick chimney which is located on the eastern end of the

building. This chimney is to have a finished height of 3.9 metres including the Flue cube which is 0.3 metres in height. Currently the measurement to the top of the existing chimney pot is 3.2 metres. Therefore the planning application proposes to increase the overall height by 0.7 metres.

- 3.3 The development is located 0.6 metres from the northern boundary, 1.7 metres from the western boundary and 0.33 metres from the eastern boundary of 68 The Avenue. It is intended to use the outbuilding for recreational uses incidental to the main house.
- 3.4 The development was commenced under the provisions of the original planning permission and is complete other than the changes in height seeking approval in this application and the proposed alterations to the chimney as outlined above.

#### **4.0 Policies**

- 4.1 The following policies apply to this application:

##### **The Planning Practice Guidance**

##### **Adopted Fareham Borough Core Strategy**

CS17 – High Quality Design

##### **Adopted Development Sites and Policies**

DSP3 – Impact on Living Conditions

#### **5.0 Relevant Planning History**

- 5.1 The following planning history is relevant:

<b>P/18/1233/FP</b>	Single Storey Rear Extension
APPROVE	26 <sup>th</sup> November 2018
<b>P/18/1233/MA/A</b>	Non-material amendment to approved planning application P/18/1233/FP - Addition of two velux windows to roof of extension on east elevation
APPROVE	7 <sup>th</sup> May 2019
<b>P/19/0150/FP</b>	Garden terraced area (part covered) and a covered store
APPROVE	19 <sup>th</sup> March 2019

#### **6.0 Representations**

6.1 There have been 6 Representations with regard to the application, with 5 letters of objection and 1 letter of support. The 5 letters of objection all came from residents of Heath Lawns of which 3 letters came from those with gardens adjoined the southern boundary the application site, whilst the other 2 objectors live further away. The 1 letter of support came from a resident with an adjoining garden located in The Avenue. The letters of objection raised the following concerns which have a material impact upon the planning assessment of this case: -

- The chimney extension is no guarantee that it will resolve the smoke issues already encountered from the fire pit
- The chimney is unsightly, intrusive, ugly and dominates the skyline
- The structure differs from the original plans
- The development does not promote green living and a smoke free zone
- The structure was built a considerable distance away from the dwelling at the application site and very close to neighbouring properties that have substantially smaller gardens
- Smoke from the chimney 'engulfed' a neighbouring property causing sore eyes and throats
- The Chimney use results in neighbouring windows being closed, washing taken in and residents moving indoors from adjoining gardens
- The Council Environmental Health Department should carry out an assessment in respect of noise and air pollution
- The garden room is used for recreational purposes and that there should be consideration of a condition relating to hours of use
- The original approval did not require compliance with Building Regulations
- Planners need to consider a Public Health document 'Review of interventions to improve outdoor air quality and public health' and Clean Air Strategy 2019
- There is a rear door on the outbuilding which is not shown on the plans
- Site Plan shows the structure as 2.5 metres from boundary.
- That the scale is not obvious, but there are measurements on the drawings.

The letter of support raised the following points: -

- There was no cause to be concerned with the noise, smoke, gatherings.
- The garden terraced area is actually very nice and a welcome replacement, providing cover to the fencing and properties behind giving privacy to all.
- The garden terrace is used infrequently
- The outside light is not on all of the time
- The Council have actually already approved the garden terrace which is why the build has been completed.

## **7.0 Consultations**

## INTERNAL

Environmental Health: No Objection subject to conditions.

- 7.1 Environmental Health has received complaints from multiple neighbours when the chimney is in use. Therefore, the current arrangement is unacceptable due to smoke nuisance to neighbours.
- 7.2 The planning application seeks to increase the height of the chimney stack and fit a cowl to reduce the impact of smoke nuisance to neighbours. These measures are likely to reduce the impact of smoke nuisance and on these grounds Environmental Health will not object to the application. There is no way of knowing whether the measures will reduce smoke nuisance to an acceptable level until the mitigation is installed.
- 7.3 In addition to increasing the stack height and fitting the cowl I suggest that if planning permission is granted that only a smokeless fuel should be burnt with the exception of a small amount of kindling to get the fire started.
- 7.4 The applicant should be aware that if smoke nuisance is witnessed by Environmental Health, even if planning permission is granted, that the Service has the power to serve a smoke abatement notice under the Environmental Protection Act 1990 limiting or prohibiting the use of chimney.

### **8.0 *Planning Considerations***

8.1 The following matters represent the key material planning considerations which would need to be assessed to determine the suitability of the development proposal. The key issues comprise:

- a) The Principle of development
- b) Character of the area
- c) Impact in living conditions of neighbouring residents

#### 8.2 The Principle of Development:

As described above, the principle of an outbuilding in the garden of the application property is established through the planning history. The key consideration in the assessment of this application is the impact of the changes in the height of the front and rear of the building and the proposed alterations to the chimney.

#### 8.3 Character of the area

The detached chalet bungalow of 68 The Avenue sits in a substantial plot with it being screened from neighbouring properties and set back from The Avenue roadside. The proposed structure in the rear garden will, as a result, not be visible from the roadside along The Avenue. The outbuilding will sit on the northern boundary of the site which adjoins a number of properties in Heath Lawns. There is an existing boundary treatment along this northern edge of the site comprising of breeze blocks and a timber fence which measures a total of 1.93 metres high.

- 8.4 The rear wall of the proposed development at 2.385 metres high is 36cm taller than that previously accepted and will be 45cm higher than the boundary treatment. It is worthy to note that under permitted development (PD) rights an outbuilding can be constructed in a rear garden to a height of 2.5 metres if located within 2 metres of the boundary and the rear wall of the building is clearly within these tolerances. The building is not PD as a result of the height of the front of the outbuilding being 2.86 metres high. In this case, the front wall of the structure is only 0.36 of a metre above the permitted development rights. However, this wall is in excess of 5.5 metres from the northern boundary.
- 8.5 Concern has been expressed that a rear door on the outbuilding has not been shown on the plans, that the Site Plan shows the outbuilding to be 2.5 metres from the boundary and that the scales on the plans are not obvious. The matter of the door has been brought to the attention of the applicant who is in the process of submitting revised plans and this will be updated to Members at the Committee meeting. The measurement has been checked to confirm that the Site Plan is accurate in plotting the structure to be 0.6 metres from the boundary and the proposed drawings give full measurements of the development proposed.
- 8.6 In addition to these changes in height, it is now proposed to alter the chimney of the outbuilding. The chimney will be constructed in brick and will be 3.9 metres high (an increase of 0.7m from the current chimney), inclusive of the fuel cube which measures 0.3 metres high. The brick finish to the chimney has been designed with a view to blending in with the brickwork used to construct other parts of the outbuilding.
- 8.7 Whilst the overall height of the chimney would alone trigger the requirement for the planning application, it is however, set in excess of 2 metres from the northern boundary of the property. The chimney is considered to be modest in dimensions in comparison to the overall size of the outbuilding
- 8.8 Policy CS17 seeks to ensure that development will respond positively to and be respectful of the key characteristics of the area including scale, form, spaciousness and use of materials
- 8.9 It is considered that the amended height of the outbuilding including the chimney would, given the parameters for outbuildings under PD and the planning history for this site, not conflict with the requirements of policy CS17. The proposal is not considered to be out of keeping with the area and street scene.
- 8.10 Impact in living conditions of neighbouring residents  
Concerns have been expressed from neighbours about the fuels being burnt on site and the resulting smoke nuisance as well as implications for their health. As mentioned above, the application for the increased height of the chimney is made in an effort to resolve the matter.

- 8.11 Policy DSP2 seeks to ensure that development proposals should not individually, or cumulatively, have a significant adverse impact on neighbouring property by virtue of, noise, heat, liquids, vibration, light or air pollution (including dust, smoke, fumes or odour).
- 8.12 It is the view of Environmental Health that the proposed increased height of the chimney and fuel cube cowl will reduce the impact upon neighbouring residents such that the likely emissions from the chimney will not have a significant adverse impact upon neighbouring properties and the scheme would therefore comply with policy DSP2. Therefore, Environmental Health has not raised an objection to this application.
- 8.13 In raising no objection to the application, Environmental Health has also suggested a planning condition limiting the use of smokeless fuels to be burnt. As Members of the Planning Committee will be aware, the use of planning conditions need to meet six clearly set out tests. One such test is that of necessity. Advice in the Planning Practice Guidance (PPG) on the use of conditions sets out that conditions requiring compliance with other regulatory regimes will not meet the test of necessity and may not be relevant to planning. The PPG continues to advise that the use of informatives to remind the applicant to obtain further planning approvals and other consents may be more appropriate. Consideration has been given to the Environmental Health suggestion in this case regarding such a condition, but it is considered that there are sufficient environmental powers to deal with such nuisance. As such this type of planning condition would fail to meet the “necessary” test for the use of planning conditions and is not included in the recommendation.
- 8.14 It is worthy to note that the applicant or indeed any other person are at liberty to use barbecues and other freestanding garden heating equipment without planning permission providing they do not cause a nuisance as stated within the Environmental Protection Act 1990.
- 8.15 Overall, the assessing Environmental Health Officer has stated that the proposed increase in chimney height and the addition of the fuel cube cowl should resolve the current difficulties with smoke but that the only possible way of measuring this was to assess after the development was complete. However, even if planning permission is granted and smoke was to continue to be a nuisance, Environmental Health still has the power to serve a smoke abatement notice under the Environmental Protection Act 1990 limiting or prohibiting the use of the chimney.
- 8.16 Third party comments also suggest that a condition should be imposed limiting the hours of use of the outbuilding given that it could be used for recreational purposes. The building is to be used incidentally to the main house and the site remains as one residential planning unit. Given that an outbuilding could potentially be constructed under permitted development rights without any limit on the use of the building other than for it to be used incidental to the main dwelling, such a condition would (again having regard to the tests for the use of planning conditions) be unreasonable and

unnecessary in this case. Furthermore, such a condition was not imposed on the planning history for the building as previously permitted.

8.17 Further third party comments have expressed that the original planning approval did not require compliance with Building Regulations and that Planners need to consider both the Public Health England document '*Review of Interventions to Improve Outdoor Air Quality and Public Health*' and the Clean Air Strategy 2019. Officers are aware that the applicant has consulted with the Building Control Partnership to ensure compliance with the stand-alone Building Regulations with this application following that consultation. The above mentioned, documents look at the wider spatial planning issues of air quality and how interventions can separate people from pollutants and introduce barriers to pollutants with changes to infrastructure such as road and pavement design with a focus on how to provide separation between the two and a big focus in the document is on green infrastructure and making people change their travel behaviour to influence air pollution. The documents do not provide specific guidance on the development of a chimney on an outbuilding. In this case, to address air quality, Officers sought the specialist advice of the Environmental Health Officer and that advice is set out above alongside the consideration of the proposal against the relevant Development Plan policy.

#### 8.18 Conclusion

In summary, the application has been assessed and it is considered that the proposed development is not considered harmful to the appearance, character of the area or street scene.

8.19 The application has been made in effort to regulate the differences in the building as built from that previously permitted and to address the concerns regarding the impact of the building upon the amenity of neighbouring properties.

8.20 It is considered that the proposed measures will resolve the current difficulties that have arisen as a result of the development and therefore a refusal of this application on the impact upon neighbouring properties would not be warranted. In addition, it is still open to the Council, through its other Services, to take other enforcement action if there are further complaints with regard to smoke issues.

8.21 The proposals accord with Policy CS17 of the adopted Fareham Borough Core Strategy and Policies DSP2 and 3 of the adopted Fareham Local Plan Part 2: Development Sites and Policies and as such the proposal is recommended for permission.

### **8 Recommendation**

9.1 GRANT PLANNING PERMISSION, subject to the following Conditions:

1. The development shall be carried out in accordance with the following approved documents:

- a) All Plans Updated 23<sup>rd</sup> April 2020
- b) Detail of Terracotta Fluecube
- c) Site Plan
- d) Location Plan

REASON: To avoid any doubt over what has been permitted.

- 2. The works to the chimney hereby approved shall be undertaken within three months from the date of this permission.

REASON: To allow a reasonable time period for work to start, to comply with Section 91 of the Town and Country Planning Act 1990, and to enable the Council to review the position if a fresh application is made after that time.

### **10.0 Notes for Information**

### **11.0 Background Papers**

P/20/0215/FP

# FAREHAM

BOROUGH COUNCIL



68 The Avenue  
Scale 1:1250



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