

Recommendation: GRANT PLANNING PERMISSION IN RETROSPECT

APP/18/00721 - Retention of enclosed seating area and outbuilding for office use.,
PERM,18/06/2019
This was conditioned: enclosed seating area only to be used by customers between

09:00 and 18:00 daily; no amplified music to be played within;

3 Proposal

Erection of CCTV and wood pellet burner flue to the rear seating area 'pod' (Retrospective).

The wood pellet burner has a black coated round flue with cowl cap that is sited on the rear elevation of the outbuilding and projects 71cm above the flat roof. There are 3 CCTV cameras, one on either southern corner of the outbuilding and one under the eaves of the office shed to the rear. These are linked to a monitor within the office shed.

4 Policy Considerations

National Planning Policy Framework

Havant Borough Local Plan (Core Strategy) March 2011

CS11	(Protecting and Enhancing the Special Environment and Heritage of Havant Borough)
CS12	(Chichester Harbour Area of Outstanding Natural Beauty (AONB))
CS16	(High Quality Design)
CS4	()
DM10	(Pollution)
DM5	(Control of Class A3, A4 and A5 Food, Drink and Entertainment Uses)

Havant Borough Local Plan (Allocations) July 2014

DM20	(Historic Assets)
AL1	(Presumption in Favour of Sustainable Development)
AL3	(Town, District and Local Centres)

Listed Building Grade: Not applicable.

Conservation Area: Emsworth

5 Statutory and Non Statutory Consultations

Conservation Officer

Conservation comments: No objection. The proposals would not be visible from the High Street or Queen Street and would be in keeping with the appearance of the site.

Crime Prevention

None received

Environmental Health Manager

I have no comments in respect of the CCTV. However, I have significant concerns regarding the low level height of the flue which serves a wood pellet burner, and whether this will achieve satisfactory dispersal of smoke and fumes. I believe the flue extends less than a metre above the height of the single storey outbuilding, known as the seating 'pod', it is attached to.

The seating 'pod' that the burner is situated in, is a single storey building situated in the courtyard area at the rear of the Driftwood café. The courtyard area is surrounded by a range of commercial and residential properties, which vary in height, up to 3 storeys high. In order for a flue in this location to achieve satisfactory smoke and fume dispersal, we would expect the flue height to extend above the ridge height of the tallest nearest building.

The greater a flue or chimney's height, the better the dispersion and dilution of smoke and fumes. It is accepted good practice amongst local authorities that flues and chimneys should not terminate less than 1 metre above the ridge height of the building to which it is attached. In situations where there are buildings nearby which are likely to have an effect on the dispersion of smoke and fumes, the flue height should be at least 1 metre above the ridge of the nearest, highest building. The flue for which the applicant is seeking permission for, falls significantly below this standard.

The rationale behind this principle is that unless a flue extends well above all nearby obstructions, downdraught of the smoke/fume plume can occur which has the potential to significantly impact the amenities of surrounding premises. Moreover, unless a flue terminates at sufficient height, the smoke may be trapped in regions of stagnant air which are common between low level buildings, rather than being rapidly mixed and dispersed sufficiently.

In addition to the above, the gardens of the residential properties in Queen Street that share the south east boundary are higher than where the seating pod is located which further reduces the effectiveness of the flue height. This means essentially that the flue is dispersing smoke and fumes just above head height into nearby residential gardens.

Both Building Regulations and HETAS guidance recommend a minimum chimney height of 4.5m to a position where the products of combustion can discharge freely, with the Building Regs also noting that chimney heights may need to be increased in situations where wind exposure, surrounding tall buildings, high trees or high ground could have adverse effects on flue draught.

I have discussed the application with the applicant and visited the site. I understand that the flue serves a compressed wood pellet burner. The burner is normally ignited in the mornings between 8.30 and 9am, and I understand that it is in use until the premises closes in the late afternoon. I also understand that the staff do not 'stoke' the burner as such, but they do refill the pellets through the day and the burner automatically dispenses the pellets as and when the burner needs it. Smoke and fumes are understood to only be released periodically during the day, i.e. do not occur constantly, and are generally associated with the lighting and refueling of the burner. I have observed the pellet burner being ignited in the morning and on this occasion smoke was produced and released at low level and blew in the direction of the café itself. I have concerns that when the wind is blowing in the opposite direction it will blow towards residential properties at a low level as opposed to being discharged at a suitable height which is able to achieve the satisfactory dispersal of smoke.

Environmental Protection also has received a complaint about odour and smoke from the pellet burner which is currently under investigation. The complaint was first received in July 2019 and concerns the ingress of smoke and odour from the pellet burner into a nearby residential premises. The complainant alleges that when fumes from the flue are released, the smoke affects multiple rooms in their home and has raised concerns that the fumes may be harmful to health. The matter remains under investigation.

In order to address my concerns and achieve suitable dispersal of smoke and fumes the height of the flue would need to be significantly increased which is not possible due to the nature of the building which it is attached to. As a satisfactory height of dispersal cannot be achieved, I recommend that permission is not granted for the flue.

I appreciate that in this situation that the flue has already been erected and is currently in use. If you are minded to grant permission, I would recommend that temporary permission is granted for a period of one year to enable the impact of fumes and smoke from the flue to be considered fully.

Natural England

Natural England has no comments to make on this application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland and veteran trees which you can use to assess any impacts on ancient woodland. For applications within the Chichester Harbour Area of Outstanding Natural Beauty (AONB) we recommend you seek the advice of the Chichester Harbour Conservancy.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise LPAs to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

We recommend referring to our SSSI Impact Risk Zones (available on Magic and as a downloadable dataset) prior to consultation with Natural England. Further guidance on when to consult Natural England on planning and development proposals is available on gov.uk at <https://www.gov.uk/guidance/local-planning-authorities-get-environmental-advice>

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 23

Number of site notices: 2

Statutory advertisement: 08/11/2019

Number of representations received: 1

Comment	Officer Comment
The smell from the chemical wood pellet burner installed in the shed abutting our small courtyard garden, and within feet of our home is noxious and intrusive into our day to day lives.	

It is lit regularly between 8.25 and 9am on cold, and not so cold days, (even in July) and continues until around 4pm. It is stoked intermittently depending upon the temperature. More stokes = colder temperatures. Each stoke leaves lingering smells and at times blue smoke. Our house acts as a stop and the fumes take up to 10 minutes to dissipate.	Comments re smoke and fumes noted - see section 7 below
The fumes are of a chemical nature and not natural wood smells. The blue smoke emitted is carbon monoxide.	
It is an inappropriate form of heating for such a small shed and being so close to some of its neighbours' houses. Other heating without emissions could replace it.	
The flu height is much too low, so close to houses and homes. Any flu would not meet adequate requirements as it would need to be a lot higher and that would be wrong for a conservation area. The smoke and fumes are emitted too low down.	Height of flue comments noted - see section 7 below
The height is required as the shed is surrounded by Georgian properties, all 2/3/4 stories high. The area is small, so fumes circulate within them.	
The correct flu height to comply with HETAS 'clean air' regulations can never be met by the driftwood cafe for their 10 foot high shed. The top of the flu is 2 feet above the top of the larger shed.	Applicant has shared their HETAS certificate of compliance for the flue
This is much too low for safe emissions and prevention of fumes. Any higher would be in contravention of conservation regulations.	
Our house is affected at times when we want to enjoy food and rest, the fumes linger in our bedroom and in our downstairs.	Affect on amenity noted - see section 7 below
Our outside space has been fully compromised with fumes and smoke since July again this year. We like to	

enjoy our garden, being and sitting outside well into October and often later too. Breakfast is a favourite time, as is lunchtime.

As a keen gardener, the flu and its fumes and the intrusive CCTV and emissions prevent that from happening. The sheds are too close to our garden.

One of our household has been suffering bad eyes and sore throats as a result of the smoke and fumes, we believe. It worsens when the burner is stoked. Anti-biotic eye drops help but the throat clogs when the fumes linger. We believe the flu emissions are a health hazard to our household.

Oso warm, Southbourne supplied the burner, but did not fit it, they told us such. They have subsequently installed the low flu.

Therefore, a flu driven heating appliance, especially one that generates carbon monoxide, will never work on that building as the flu cannot be placed high enough or far enough away from surrounding homes and buildings.

The wood pellet burner has been installed without planning permission. How many times can the Driftwood owners claim not to know they need planning permission? As responsible business operators, they cannot keep saying they don't know. It is no mitigation at all and unbelievable too.

The same applies to the CCTV installation without planning.

For the last year, we have had CCTV trained into our garden and home. 3 cameras have been installed within 1-2 feet of our home and garden. The staff have seen things that have invaded our privacy badly. We have heard them laughing at footage.

Recently, some bamboo sticks have

Confirm that this application is retrospective

Note comments re cameras positioning &

been put up to give themselves privacy. It has by default helped us visually, but we still have the sound problems. They are worse in the summer. The camera placed in the eaves of the small shed is very invasive of our privacy as it points into our garden and bathroom too! We would like it to be removed please. We understand the need for CCTV, but we do not want any pointing towards our house or boundary please. 3 cameras in such a small place is unwarranted. The owner's electrical fitters and suppliers of the CCTV cameras, LE Electrical South Ltd have said the Driftwood need/requested so many to provide safety for staff training in the area and lone worker safety. Planning permission was granted for a small office shed. It is very small and would not facilitate training. The outside space is supposed to be for parking, not staff use, so no need for such intense CCTV activity. One pointing at both sheds would suffice. The sheds are so close to houses and are lit up fully, so that individual safety of staff would be covered by one CCTV camera. Most sensibly, use the cafe itself to train staff in, it's a large open building and can be used for after operating hours safely, with the correct permissions having been obtained and wouldn't interfere with its neighbours. Both rear sheds are for use between 9am and 5pm, that was the allowed planning consent. The cafe may well have after hours use allowed, so working alone, if required, can take place there?	view - see section 7 below Not planning's role to question the need for the cameras
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Ongoing representations have also been received from the neighbour, including a diary recording the incidents when the smoke and fumes ingress into their property and affect their wellbeing. This will be considered in section 7 below

7 Planning Considerations

7.1 Having regard to the relevant policies of the development plan it is considered that the main issues arising from this application are:

- (i) Principle of development
- (ii) Impact upon the character and appearance of the area, AONB, Listed Buildings and Conservation Area
- (iii) Impact upon residential amenity

(i) Principle of development

7.2 The application site is situated within an urban area where further development is considered acceptable subject to the usual development control criteria. The site lies within a Conservation Area and is also adjacent Listed Buildings in Queen Street (numbers 4, 6, 10 and 12). Therefore Section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 is relevant to the determination of this application requiring special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest, as well as the desirability of preserving or enhancing the character or appearance of a conservation area.

7.3 During the course of determining this retrospective application a review of The Town and Country Planning (General Permitted Development Order) 2015, as amended, has been undertaken. It has concluded that in fact the flue subject to this application does not require planning permission and is permitted development. Class N of Part 14 relates to the installation of flues for biomass heating systems on non-domestic premises. Section 132(4) of the Energy Act 2004 defines biomass as “the biodegradable portion of a specified product, waste or residue;”. The installed burner operates on wood pellets that are reconstituted saw dust waste - it is therefore considered that the wood pellet burner comprises a biomass heating system. Class N sets out criteria which are all complied with:

Development is not permitted by Class N if—

- (a) the capacity of the system that the flue would serve exceeds 45 kilowatts thermal;
- (b) the height of the flue would exceed either—

- (i) the highest part of the roof by 1 metre or more, or
 - (ii) the height of an existing flue which is being replaced,

whichever is the highest;

- (c) the installation of the flue would result in the installation on the same building of more than 1 flue forming part of either a biomass heating system or a combined heat and power system;

- (d) the flue would be installed on a listed building, within the curtilage of a listed building or on a site designated as a scheduled monument; or

- (e) in the case of a building on article 2(3) land, the flue would be installed on a wall or roof slope which fronts a highway.

7.4 The burner has a wattage of 8kw and the flue exceeds the highest part of the outbuilding roof by 0.71m; the site is not a Listed Building and although the site is article 2(3) land, the flue does not front a highway. Accordingly the burner and flue meet all the criteria to be permitted development. This has to therefore comprise the fall back position and regard must be had to this position when determining the application.

(ii) Impact upon the character and appearance of the area, AONB, Listed Buildings and Conservation Area

- 7.5 The outdoor seating area with flue on its rear elevation and office outbuildings are located within the enclosed rear garden of Driftwood cafe. As such there are no wider public views of the structures which can only be seen from private areas. The CCTV cameras are small and discreet, and not visually intrusive. The flue is finished in black and not reflective. Accordingly the flue and CCTV cameras are not considered to cause any detrimental harm to the character of Emsworth town centre, the AONB, and would continue to preserve the character of the Conservation Area. Overall the structures are not considered harmful to the setting of nearby Listed Buildings or the character of the wider area.

(iii) Impact upon residential amenity

- 7.6 The amenity impacts fall within two considerations:

a) Effect on Privacy from CCTV cameras

The 3 cameras are primarily installed to provide security and are directed towards the rear area between the pod and office; and the main cafe garden. They do not provide views into neighbouring properties or over the boundary wall - at a site visit the monitor was shown to the case officer and it was clear that the angle of vision is purely internally of the site only for security purposes. It is concluded that no invasion of neighbouring privacy results and in the positions mounted and shown on the drawings, the cameras are compliant with policy CS16.

b) Effect on amenity from appearance, smoke, fumes and smells

The outbuilding on which the flue is sited is single storey and therefore the flue is relatively low. The cafe courtyard garden is surrounded by higher two and three storey buildings with the rear gardens of these properties abutting the shared side boundaries. To the south east these rear gardens are set at a higher level than the cafe courtyard and therefore the flue appears relatively close and low when viewed from the most directly affected neighbours garden.

This proximity of the flue also results in the smoke and fumes being dissipated at a relatively low level and sitting over the roof of the outbuilding and adjacent gardens. Because of the enclosed nature of the setting of the site, the smoke and fumes do not get wafted up and over the ridge line of the adjacent higher properties, but linger at this low level. The neighbour alleges that the smells and fumes enter their dwelling and linger causing sore throats and aggravated eyes. A diary of occasions the smoke is apparent and fumes invade their dwelling has been kept and indicates a pattern of being lit at about 8.30am with an initial burst of smoke and fumes. It would appear that depending on the weather and wind the fumes linger for a varying amount of time, sometimes just 10 to 15 minutes, other times, with refueling, throughout the day.

Whilst it is acknowledged that the low lying site circumstances are resulting in a lingering presence of smoke and fumes as perceived by the affected neighbour, nevertheless regard must be had to the fact that the flue is permitted development. The running of this burner on wood pellets with the existing flue does not need planning permission. Any harm to amenity is unfortunate but could not justify a reason for refusal or be considered contrary to policy when the application of those policies is not applicable to permitted development. The fall back position is significant in the determination of this application, and despite objections from neighbours and

Environmental Health, it is not considered reasonable to refuse development that does not need permission.

It is also noted that Environmental Health have their own powers to consider whether the alleged smoke and fumes constitute a statutory nuisance and would have powers to deal with such nuisance if witnessed by officers and found to exist. It is understood that they are currently investigating such a complaint. The grant of planning permission would not jeopardise the consideration of the Environmental Protection complaint which is under separate legislation.

8 Conclusion

- 8.1 It is considered that the 3 CCTV cameras do not result in any harm to neighbouring privacy or amenity. The flue, whilst acknowledged as having some harmful impact on amenity, must be considered against the fact that the wood pellet burner and flue are permitted development and it would not be reasonable of the LPA to refuse or seek the removal of this flue via Enforcement action, as such action would be unsuccessful as the flue benefits from permitted development. The alleged harm from smoke and fumes can be considered separately under Environmental Health legislation. Therefore the application is recommended for retrospective permission.

9 RECOMMENDATION:

That the Head of Planning be authorised to **GRANT PLANNING PERMISSION IN RETROSPECT** for application APP/19/01082 subject to the following conditions

- 1 The development hereby permitted shall be retained in full accordance with the following approved plans:
Design & Heritage Statement by hd architects dated November 2019
Supporting Information re CCTV by LE Electrical dated October 29, 2019
Proposed CCTV and Log Burner Flue plans Drawing number 19157-01
Reason: - To ensure provision of a satisfactory development.