

Robert,

Notwithstanding the lack of the detail from the photograph of the extant chimney, I am able to respond to a number of the points raised within the response.

Building regulations

The agent asserts that building regulations compliance removes a feature from 'material' status as a planning matter. This notion is rejected for obvious reasons – a building regulations compliant structure is not necessarily appropriate for the place in which it is proposed to build it, and there are separate regulatory regimes for a reason. I need not expand further on this, but the same argument applies to nuisance as a separate regulatory regime, which I will address further, below.

Assumed appliance/fuel not determined

Agent's comments are noted. A lack of decision on fuel type is immaterial – at this stage operation with a WBS appliance is a possibility, and represents a reasonable assumption. In the event that a gas appliance is selected, then it is accepted that nuisance would not arise, however, as this won't be restricted by an awarded consent, and given comments about the identified purpose of the appliance, I do not consider it unreasonable to presume an open-flame/solid fuel appliance is likely, especially when we consider the design life of the development that is under application (notably not limited to the current occupants, and subject to PDR's).

Extant Chimney serving WBS – no complaints

I can confirm that there are no complaints on record in relation to smoke emissions in Tower Street Ems. The agent's response asserts equivalence (or at least negligible material difference) between in-principal emissions from the proposal and the extant chimney. That statement largely draws upon the building regulations, and not from the site context.

I note that the elevations are inconsistent in their depiction of the extant chimney and inaccurate with respect to the gable wall parapet, and I am unfortunately lacking the originally attached photo for context. It is unlikely that the height of the extant chimney has been measured/surveyed, and it is likely that the stated 2300mm projection from the roof surface, which is equivalent to that proposed, has been transferred from the proposal without verification. In any event, it is the position relative to prevailing conditions, and the distance from-, and height above- the ridges that are the considered to be material factors, along with the type of termination.

In this respect, I note that the extant chimney is windward of both the principal & hip/cat-slide ridges, and primarily passes through the heated internal spaces, i.e. is a warm flue. It's height appears to be close to the ridge height, depicted on plans to be somewhere between -150mm & +500mm of the ridge elevation. It is also shown

without a cowl, which if accurate, would ensure much better initial thermal lift. Being on the windward side of the roof, the smoke will gain elevation, and avoid turbulence, and so would not tend to be drawn downwards to the constrained Tower St, the roof & façades of no.8, or into it's walled garden. These features of the extant arrangement are broadly in line my suggested mitigating design options, and so illustrative that where good design principles are applied, complaints of nuisance can be avoided. It follows that where the opposite is true and good design principles are not followed, avoidable complaints may arise. The purpose of the planning policy is to avoid foreseeable problems arising.

It is noted that the proposed flue is in the (prevailing) lee of the ridge to the hipped/cat-slide roof, and therefore in it's turbulence zone. A flat-topped cowl is proposed, which will arrest initial lift and create initial turbulence at the point of emission, making interaction between roof-generated turbulence and the emission more likely – in turn retaining the emission close to structures where friction and turbulence effects will further act to hinder dispersal.

Proposed Emission 'more efficient'/better quality

Emission quality is a function of both the concentration of pollutants present, and the efficiency of dispersal. The agent makes several unqualified statements about efficiency which may mis-represent the comparison between the extant and the proposed.

As is highlighted, there is no smoke control area declared. As such, there is no obligation to use a Defra approved stove, or a smokeless fuel, even in the new installation. This is the practical context for the extant installation, and is the planning context for the proposals. Not all stoves have equivalent emissions, and it does not follow that the selected fuel or appliance will necessarily have lower emissions than the extant – the context is the same for both extant and proposed, and may therefore be disregarded.

Reference is made to the 'old and less efficient' (extant) chimney – with an implicit comparison to the proposed. There is no reason to attribute a presumed design-inefficiency or age-related deterioration of efficiency of the extant chimney as a function of age. The primary factors determining efficiency are contextual – and there are good reasons to consider that the extant chimney is inherently likely to achieve a more efficient plume dispersal than the proposed; e.g.

- Existing; windward side of roof, further from ridge to hipped roof, at or above principal ridge height, (may or may not be restricted), warm flue, further from receptor.

- Proposed; lee of roof, 0.75m below principal ridge, in turbulence zone of hipped roof, insulated cold flue construction, restricted terminal, closer to receptor.

On all of these factors, the existing chimney is very likely to be more efficient, especially if a liner was installed at the same time as the appliance. The proposed arrangement is inferior on a number of its contextual features.

Flue design

The indicated flue design is broadly in line with my suggested mitigations – however, as it is concrete and not pumice, it must be installed with a cowl termination – this is the feature that will interrupt initial thermal lift, not ideal for a position that is already within the turbulence zone of the roof under prevailing conditions. Open sides to the cowl are not particularly relevant – it's the flat top which creates the obstruction and induces turbulence.

Reference is made to personal experience of cowled flues generating 'good draught' – this is relevant to safety (internal air quality) but irrelevant to nuisance – what matters for nuisance is the behaviour of the emission after it exits the flue – it might have excellent draw into turbulence, but then be driven onto a cold roof surface in a downward tumbling motion, keeping smoke low where it will enter adjoining properties. This scenario would be perfectly safe for the users of the appliance, but give rise to neighbour nuisance. It is the latter that we are concerned with. Building regulations are concerned with the former.

Nuisance/8 Tower street

I am unclear on the reason for the redaction under 5 c). I am also unclear on the relevance of the reference to the size of window, or the qualification for the statement 'probably... (redacted)... [serving a] non-habitable space'.

Nuisance has two qualifying conditions which apply as an either/or – i) prejudicial to health, and ii) a nuisance. Building regulations compliance aims to prevent a neighbour's emission amounting to an emission that is directly prejudicial to health (e.g. an acute danger via CO poisoning, or contributing to acute respiratory or pulmonary distress via inhalation of organic particulates), but is not concerned with the nuisance.

The agent makes reference to my concept of nuisance as being ill defined. It is not necessary to define it as it is defined by the cannon of preceding case-law, and is clarified for planning purposes in the wording of adopted policy DM10. For the avoidance of doubt however, in this context nuisance is anything which interferes with the personal comfort of occupants of a dwelling during their reasonable use of that dwelling. Case law establishes that occupants are entitled to ventilate their property by means of open vents and open windows, and that the smell of smoke may be taken to be smoke. Therefore, it may be held that a nuisance exists where an occupant can regularly smell smoke originating from a neighbour's heating appliance (flue), within the living space of a dwelling, with its window's open. 'Regularly' might be taken to be as few as 3 or four times/annum, with reference to smoke cases relating to outside burning. Case law also establishes that having the benefit of a planning consent (or by extension, a building regulations approval-) does not serve as a defence against action taken for nuisance.

A smoke emission is more likely to be deemed to be a nuisance where it affects personal comfort in sleeping accommodation. I referred to the layout of no. 8 as derived from the planning archive when making an inference of a likely habitable space.

I am unclear on the reason for the redaction under 5 d), but as a result of that redaction cannot respond to what the agent wished to remind me of.

Policy

The agent refers to NPPF policy 8b), 135, 124 & 198. The overarching social objective of the planning system is not directly relevant. 135 a) requires that development will function well and add to the overall quality of the area, 135 f) 'decisions should ensure that development...create(s) places...with a high standards of amenity for existing and future users'. I would not consider that either has been robustly demonstrated; the proposed arrangement has not clearly demonstrated an improvement-, nor even neutrality- in respect of the emissions.

NPPF 124 relates to the effective use of land, and so is of questionable relevance given the established C3 use – however, it similarly refers to 'improving the environment' and 'ensuring...healthy living conditions', to which I would again refer to the proposal not clearly representing an 'in concept' improvement over the existing chimney arrangement. If we take the provisions of NPPF 198 a)-c) as representing examples, and not defining the explicit limits of the condition, it is arguable that the application has not demonstrated that it is suitable for its '[position, on the building, and therefore

it's location in general] taking into account the likely...cumulative...effects...of pollution on health'.

Adopted local policy DM10 requires that 'Development that may cause pollution ...through ...smell, smoke, fumes, gases... will only be permitted where ...The health and safety of existing and future users of the site, or nearby occupiers and residents is not put at risk.' In nuisance, prejudicial to health (PtH) has a specific and narrow meaning, and 'or a nuisance', referring as it does to 'personal comfort', is regarded to generally refer to conditions not falling within the narrower, and more serious definition 'PtH', but nevertheless affecting health (e.g. skin irritation, stress response to noise, loss of sleep, chronic effects from dust exposure, etc.). Smoke absolutely applies.

Conclusions, accounting for the agent's response;

The agent's response to my comments has interpreted my position as being ideologically opposed to the use of woodburning stoves, which is not the message I was attempting to convey. The response seeks to dismiss concerns, rather than to accept their substance and to address the substantive issues as material design considerations.

Therefore, my advice remains broadly unchanged – I consider that the proposed flue is materially more likely to lead to complaints arising than is the existing, and as such would advise that an objection on grounds of being contrary to policy DM10, an objection could be reasonably sustained.

To reiterate the suggested mitigations to mitigate the inherent (designed-in) risk of poor dispersal and neighbour nuisance,

- Use a flue construction which permits the omission of a cowl, or use a cowl design which does not deflect the vertical path of smoke by more than 45degrees.
- Increase the elevation of the flue terminal relative to the hipped roof ridge (likely requiring a braced construction), or (retaining it's position on the east elevation) move the flue closer to the southern elevation to increase the relative distance between the ridge and the unchanged chimney termination.
- (or install the chimney in a different position, notwithstanding that I acknowledge that this doesn't realistically serve the purposes or needs of the applicant)

The above serves as technical advice to the development management service; being mindful of the updated CO recommendations, and the limited number of potentially affected persons (with respect to nuisance, notwithstanding the likelihood of detectable smoke odour in outdoor areas at ground level in the area more widely) - I am relying upon DM to determine the appropriate planning balance.

For the benefit of the applicant, I would reiterate that having benefit of a planning consent provides no reliable defence to actions in nuisance – so in the event that a positive determination is made in respect of this application, care will need to be exercised in selecting an appropriate stove and in the selection of & storage arrangements for fuel, and good fire management will need to be observed when the appliance is in use.

Best Regards,

Jonathan Driver

Environmental Control Officer

Havant Borough Council Environmental Health

Public Service Plaza, Civic Centre Road, Havant, Hants, PO9 2AX

Tel (Direct Dial): 023 9244 6677

Tel (Team Admin): 023 9244 6670