

**MID SUSSEX DISTRICT COUNCIL****PLANNING COMMITTEE A****21 JUN 2018****INDEX TO ITEMS REPORTED****PART I – RECOMMENDED FOR APPROVAL**

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# MID SUSSEX DISTRICT COUNCIL

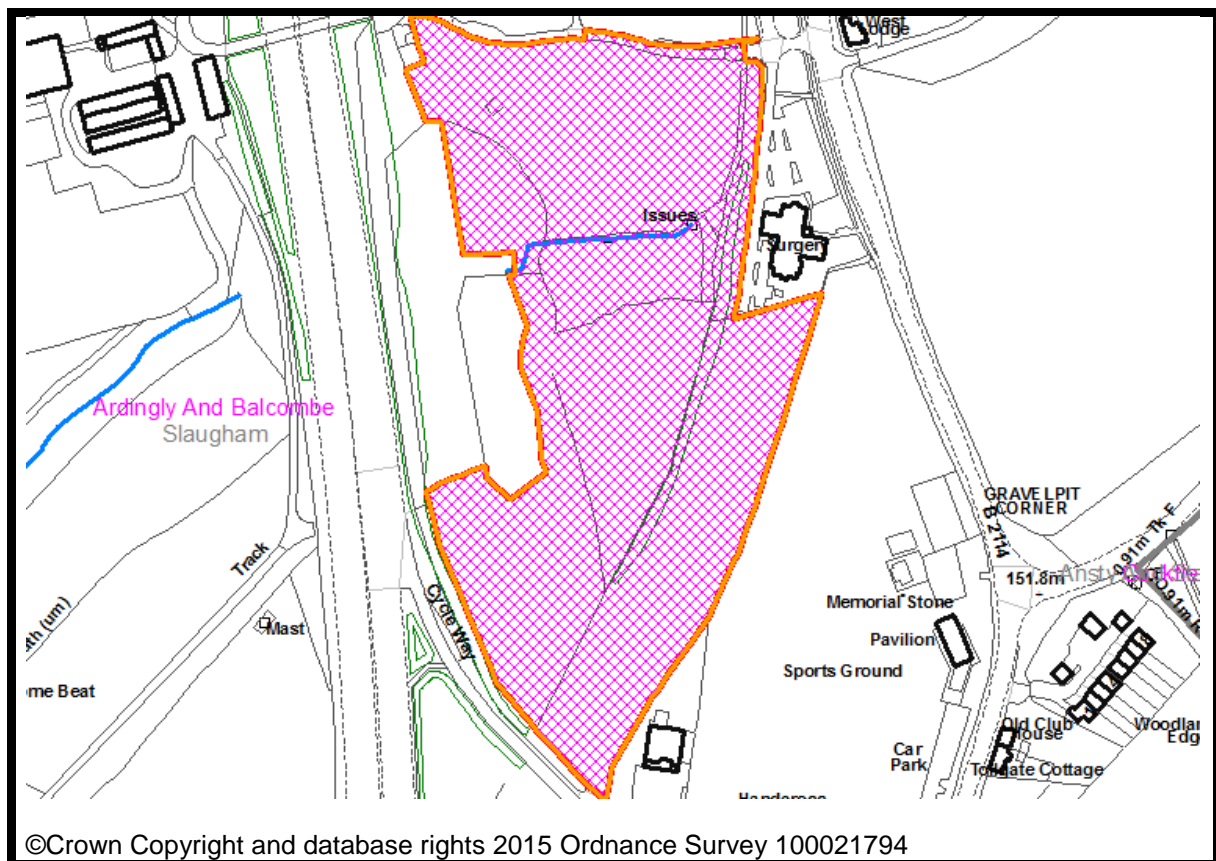
PLANNING COMMITTEE A

21 JUN 2018

## PART I – RECOMMENDED FOR APPROVAL

### Slaugham

1. DM/18/0897



**LAND SOUTH WEST OF HANDCROSS PRIMARY SCHOOL LONDON ROAD HANDCROSS WEST SUSSEX**

**DETAILED APPLICATION PROVIDING FOR 38 RESIDENTIAL DWELLINGS, RELOCATED SUB STATION AND PARKING AREA (PROVIDING FOR SOME ALTERATIONS IN PART TO THE SCHEMES ALREADY APPROVED UNDER REFERENCES 12/04032/OUT AND APP/D3830/A/13/2198213 (APPEAL B), DM/17/1329 AND DM/17/1331 - NAMELY TO ALLOW FOR THE PROVISION OF 6 ADDITIONAL DWELLINGS)**

**MR M SUGGITT**

**GRID REF: EAST 526186 NORTH 130440**

**POLICY:** Areas of Outstanding Natural Beauty / Areas of Special Control for Adverts / Countryside Area of Dev. Restraint / Planning Agreement / Planning Obligation / Aerodrome Safeguarding (CAA) / Radar Safeguarding (NATS) / Sewer Line (Southern Water) / Tree Preservation Order / Highways and Planning Agreement (WSCC) /

**ODPM CODE:** Minor Dwellings

**8 WEEK DATE:** 18th May 2018

**WARD MEMBERS:** Cllr Gary Marsh / Cllr Andrew MacNaughton /

**CASE OFFICER:** Mr Stephen Ashdown

**PURPOSE OF REPORT**

To consider the recommendation of the Head of Economic Promotion and Planning on the application for planning permission as detailed above.

**EXECUTIVE SUMMARY**

This application seeks consent for the erection of a total of 38no. dwellings on land that is subject to current planning permissions for residential development. The current consents for site allow for a total of 96no. dwellings (approved over two phases) and this application seeks some amendments/additions, in part, to the existing permissions and of the 38no. dwellings included in this application, 32no. form part of those existing consents. Therefore the application proposes an additional 6no. dwellings over that which have already been permitted for the site. If consented, the application will allow for the development of 102no. dwellings across the entire site.

Planning legislation requires the application to be determined in accordance with the Development Plan unless material circumstances indicate otherwise. As the proposed scheme does not comply with certain aspects of the Development Plan, other material considerations need to be considered in determining the application, including the National Planning Policy Framework (NPPF).

The application site lies in countryside, outside the built up area of Handcross and thus would be contrary to policy DP12 of the District Plan as general housing development is not one of the permitted exceptions to the policy of restraint in the countryside. The aim of the policy is to protect the countryside in recognition of its intrinsic character and beauty. The proposal is also contrary to policy DP15 of the District Plan as it does not meet any of the criteria for new housing in the countryside.

In accordance with the law whilst this breach of policy is the starting point for

decision making the Council also must have regard to other material considerations. It is considered that there are other material considerations, specific to this site that are relevant to this application. These include:

The proposal optimises the use of a site where the principle of development has been established by virtue of the Secretary of State and the Council granting planning permission for a total of 96no. dwellings on the wider development site, the last consent for 21no. dwellings was issued on the 1st December 2017 by the Council. The proposal will provide 6no. dwellings at a time where there is a general need for Local Authorities to boost significantly the supply of housing and this should be given positive weight in support of permission.

The site has been found by the Secretary of State and the Council to be a sustainable location for a major housing development as it is located adjacent to a category 3 settlement in Mid Sussex that provides essential services for its residents and those in the immediate surrounding communities.

Weighing against the scheme is that the fact that dwellings are being proposed outside the built up area and would normally be restricted under the relevant District Plan and emerging Neighbourhood Plan policies. However planning permission has been granted by the Secretary of State and the Council for a total of 96no. dwellings on the wider development site, of which the application site forms part. Accordingly the weight that can be given to this objection is significantly reduced in this case because the principle of developing on this site is established.

Having regard to the planning history of the site and the modest addition of 6no. dwellings that is proposed as part of this application it is considered the proposals would give rise to neutral impacts in respect of impact on scenic beauty of the High Weald Area of Outstanding Natural Beauty, highways, ecology, drainage and residential amenity.

On the positive side the provision of 6no. new dwelling on the site will make a minor but positive contribution to the district's housing supply, The New Homes Bonus is a material planning consideration and if permitted the Local Planning Authority would receive a New Homes Bonus for the unit proposed. The proposal would also result in construction jobs over the life of the build and the increased population likely to spend in the community. It is considered that these benefits can be afforded some weight.

Overall it is considered that the proposal is not in compliance with all of the policies in the development plan. In particular there is a conflict with policies DP12 (Protection and Enhancement of the Countryside) and DP15 (New Homes in the Countryside) of the District Plan because the proposal involves development in the countryside. However these in principle conflicts are not considered to be a reason to resist this application because the principle of a major residential development on this site is already established.

There is considered to be compliance with a number of policies in the development (DP17 Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC), DP20 Securing Infrastructure, DP21 Transport, DP26

Character and Design, DP27 Dwelling Space Standards, DP29 Noise, Air and Light Pollution, DP30 Housing Mix, DP38 Biodiversity and DP41 Flood Risk and Drainage).

In light of all the above it is considered that there are other material planning considerations that justify a decision that is not in full conformity with all of the policies in the development plan. In light of the above it is considered that this application should be approved.

#### **RECOMMENDATION A**

It is recommended that permission be granted subject to the completion of a satisfactory S106 Legal Agreement to secure affordable and appropriate infrastructure contributions and to the conditions listed at Appendix A.

#### **RECOMMENDATION B**

Recommend that if the applicants have not entered into a satisfactory section 106 agreement to secure the necessary infrastructure payments and affordable housing by 21st September 2018 then the application should be refused at the discretion of Divisional Lead for Planning and Economy for the following reason:

The proposal fails to provide the required infrastructure contributions necessary to serve the development and the required affordable housing. The proposal therefore conflicts with policies DP20 and DP31 of the District Plan.

### **SUMMARY OF REPRESENTATIONS**

One letter of representation received making the following comments;

- Smaller units will not be affordable to residents within the village
- Set a precedent
- Undermine the Neighbourhood Plan.

### **SUMMARY OF CONSULTEES**

#### **MSDC Urban Designer**

This looks fine. I only have one small point in terms of the position of downpipes on the terrace houses on 33-35 to ensure the opportunity is taken to provide the frontage with rhythm through consistent subdivision / replication.

#### **MSDC Housing**

No objection

#### **MSDC Drainage**

No objection

## **MSDC Community and Leisure Officer**

No objection

## **MSDC Contaminated Land Consultant**

No objection

## **WSSC Highways**

No objection

## **SLAUGHAM PARISH COUNCIL**

Slaugham PC supports the application subject to more allocated parking conforming to the minimum requirements as outlined in the emerging neighbourhood plan, i.e. 2 spaces per dwelling.

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## **INTRODUCTION**

This application seeks consent for the erection of a total of 38no. dwellings on land that is subject to current planning permissions for residential development. The current consents for site allow for a total of 96no. dwellings (approved over two phases) and this application seeks some amendments/additions, in part, to the existing permissions and of the 38no. dwellings included in this application, 32no. form part of those existing consents. Therefore the application proposes an additional 6no. dwellings over that which have already been permitted for the site. If consented, the application will allow for the development of 102no. dwellings across the entire site.

## **RELEVANT PLANNING HISTORY**

The application site was included as part of development proposals considered under outline application 12/04032/OUT for the erection of up to 75no. dwellings and a 60no. bed care home. All matters were reserved except for access. The application was refused consent by the Council under a notice dated 30th April 2013 but following a subsequent appeal considered by means of a public inquiry, the Secretary of State allowed the appeal under a letter dated the 1st May 2014.

DM/17/1329 - Reserved Matters application in pursuant to outline application 12/0432/OUT for appearance, layout, scale and landscaping of 75no. dwellings - Permitted 1st December 2017.

DM/17/1331 - Proposed residential development comprising of 21no. dwellings with associated car parking and landscaping, accessed via phase 1. Permitted 1st December 2017.

## SITE AND SURROUNDINGS

The application site mainly forms the southwestern part of the existing development site, where it is bounded to the west by the A23. In addition, the red line of the application also includes individual plots numbered 1, 97, 101, 102 on the submitted plans.

To provide the wider context, the site lies to the north of Handcross village, falling outside the defined built up area boundary and within the High Weald Area of Outstanding Natural Beauty (AONB). It is south of Handcross primary school and row of cottages on Hoadlands, with the GP surgery to the north east, along with the recreation ground.

## APPLICATION DETAILS

The application includes a total of 38no. dwellings, of which 6no. represent additional dwellings that do not form part of the either of the existing consents for the site. Those dwellings that form part of the existing consents for the site are included in this application as they are subject to amendments, by means of layout, their house type or other design alternations.

Set out below is a comparison of the housing mix for the site as per the existing permissions, and as a result of this current application;

### Existing permission combined phases 1 and 2    Result of current application

#### Private

Beds	Numbers	Beds	Numbers
1	0	1	0
2	22	2	25
3	26	3	26
4	19	4	19
Total	67	Total	70

#### Affordable

Beds	Numbers	Beds	Numbers
1	6	1	9
2	22	2	23
3	1	3	0
Total	29	Total	32

It is therefore proposed that the additional dwellings will provide for 3 x two-bedroom private units and 3 x one-bedroom affordable units.

Access will remain as per the existing consent and the general appearance and scale of the proposals follow that set out in the previous permissions, which was of a traditional nature, with some contemporary features/detailing. Proposed materials include red brick, horizontal boarding, graphite boarding and red clay or grey slate affect roof tiles.

In terms of parking provision, the additional new dwellings will be served by a total of 9no. spaces, with the two bed properties each having two spaces, and the one bed properties one each.

## **LIST OF POLICIES**

### **District Plan**

DP12 - Protection and Enhancement of the Countryside  
DP15 - Housing in the Countryside  
DP16 - Areas of Outstanding Natural Beauty  
DP20 - Securing Infrastructure  
DP21 - Transport  
DP26 - Character and Design  
DP27 - Dwelling Space Standards  
DP30 - Housing Mix  
DP31 - Affordable Housing  
DP38 - Biodiversity  
DP41 - Flood Risk and Drainage

### **Slaugham Neighbourhood Plan**

There is a draft neighbourhood plan however at this time it can only be given little weight in the determination of this application. Relevant policies include;

Policy 1 - Protect Area of Outstanding Natural Beauty  
Policy 4 - Development outside built up area boundaries.

### **National Policy and Legislation**

#### *National Planning Policy Framework (NPPF) (March 2012)*

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 7 sets out the three dimensions to sustainable development, such that the planning system needs to perform an economic role, a social role and an environmental role. This means ensuring sufficient land of the right type to support growth; providing a supply of housing and creating a high quality environment with accessible local services; and using natural resources prudently. An overall aim of national policy is to 'boost significantly the supply of housing.'

With specific reference to decision-taking the document provides the following advice:

Para 187 states that local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.



Para 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

*National Planning Policy Guidance*

*Technical Housing Standards*

*The High Weald Area of Outstanding Natural Beauty Management Plan 2014-2019*

## **ASSESSMENT**

It is considered that the main issues that need to be considered in the determination of this application are as follows;

- The principle of development;
- Impact on Area of Outstanding Natural Beauty
- Layout and Design
- Access and Transport
- Residential Amenity
- Affordable Housing
- Ashdown Forest
- Infrastructure
- Planning Balance and Conclusion

### **Principle of Development**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

*"In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,*
- b) And local finance considerations, so far as material to the application, and*
- c) Any other material considerations."*

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

*"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan. The District Plan has been adopted and has superseded the Mid Sussex Local Plan (MSLP), other than the policies in the MSLP which relate to site specific allocations.

Policy DP12 of the District Plan seeks to protect the character of the countryside and only permits development that is necessary for the purposes of agriculture or supported by a specific Development Plan policy. Policy DP15 in the District Plan allows for new dwellings in the countryside subject to a number of criteria. This proposal does not fall into one of the categories of development that are allowed under policy DP15.

In light of the above, it is considered that the proposal would be contrary to the policies that have been identified above because the proposal is for a large scale major development of residential development outside the built up area of Handcross and the site has not been allocated for development. As such it is necessary to consider other material planning considerations to determine if there are grounds to come to a decision that is not in compliance with the development plan.

### **Other material considerations**

#### Planning history

The planning history of the site is highly material to an assessment about the principle of this proposal. Outline planning permission was granted by the Secretary of State for a development of this site for up to 75no. dwellings and a 60no. bed care home in May 2014, with a subsequent Reserved Matters consent approved by the Council for 75no. dwellings on the 1st December 2017. Furthermore, the Council approved an application for 21no. dwellings on the site, in place of the 60no. bed care home, also on the 1st December 2017. These permissions have established that the site is suitable for residential development and the implementation of these permissions has commenced.

In light of the above it is considered that the fact that the proposal would be contrary to policies DP12 and DP15 would not justify resisting this planning application because the principle of development on this site has already been established. As such on the issue of the principle of developing the site, this is a case where there are other material planning considerations that would justify a decision that would not be in full accordance with the development plan.

### **Impact on Area of Outstanding Natural Beauty**

The proposal lies with the High Weald Area of Outstanding Natural Beauty. The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CRoW) 2000 which at Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty. Section 84 of the CRoW requires Local Planning Authorities to 'take all such action as appears to them expedient for accomplishment of the purpose of conserving and enhancing the natural beauty of the AONB'.

Policy DP16 of the District Plan requires proposals to conserve or enhance natural beauty and this reflects the paragraph 115 of the NPPF that states *"great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty."*

Given that the site has been previously deemed acceptable for development and the application seeks a modest addition of 6no. dwellings over that already permitted it is not considered that the current application would give rise to any acceptable landscape impacts. Furthermore, in considering the impact of development on the AONB, the Secretary of State took into account its statutory importance and still arrived at a decision that the construction of up to 75no. dwellings and a 60no. bed care home (across the wider site that includes the application site) was acceptable.

It is considered that, given the planning history of the site, the application will conserve the natural beauty of the area and as such the application complies with Policy DP16 of the District Plan 2014 - 2031.

### **Layout and Design**

Policy DP26 of the District Plan deals with design matters and states;

*'All development and surrounding spaces, including alterations and extensions to existing buildings and replacement dwellings, will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:*

- *is of high quality design and layout and includes appropriate landscaping and greenspace;*
- *contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *protects valued townscapes and the separate identity and character of towns and villages;*
- *does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29);*
- *creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*

- *incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- *positively addresses sustainability considerations in the layout and the building design;*
- *take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element;- optimises the potential of the site to accommodate development.'*

The NPPF advocates high quality design (paragraph 17) and goes on to states that planning decisions should not attempt to impose architectural styles (paragraph 60). Furthermore, paragraph 61 states *"although visual appearance and architecture of individual buildings are very important factors, securing high quality and inclusive design goes beyond aesthetic considerations. Therefore, planning policies and decisions should address the considerations between people and places and the integration of new development into natural, built and historic environment"*.

The proposed amendments and additions have been considered in the context of the existing permissions and the approach adopted by the applicant follows the design and layout principles previously deemed acceptable on the site. One of the main additions is the increase in the size of flat block 3 from 9no. units to 12no. units, however, this would mirror flat block 5 in terms of massing, scale and appearance.

In general terms the proposed changes are acceptable and optimise the use of the site. The development will create a living environment of interest and as such the application complies with policy DP26 of the Mid Sussex District Plan 2014 - 2031.

### **Access and Transport**

Policy DP21 of the District Plan deals with transport matters and sets out a number of criteria that development proposals should take account of, including;

- *Appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking, have been fully explored and taken up;*
- *The scheme is designed to adoptable standards, or other standards as agreed by the Local Planning Authority, including road widths and size of garages;*
- *The scheme provides adequate car parking for the proposed development taking into account the accessibility of the development, the type, mix and use of the development and the availability and opportunities for public transport; and with the relevant Neighbourhood Plan where applicable;*
- *The scheme protects the safety of road users and pedestrians; and*

- *The scheme does not harm the special qualities of the South Downs National Park or the High Weald Area of Outstanding Natural Beauty through its transport impacts.'*

In terms of the traffic movements generated by the 6 additional units, the Local Highway Authority agree with the results of the supporting Transport Statement in that they would be immaterial when viewed those against those already permitted in relation to the existing consented units.

In terms of parking, then the proposed additional units would be supported by a total of 9no. spaces, two each for the two bed properties and one each for the one bed units. The proposed level parking is in line with that already permitted for the site and again the Local Highway Authority have not raised an objection. The comments of the Parish Council are noted on this matter and in respect of the two bed properties than two spaces are being provided, however given the provision in respect one bed units is acceptable and complies with policies contained with the Development Plan. There is no objection from the Local Highway Authority on this matter.

The comments of the Local Highway Authority with regard to the turning area adjacent to plot no.97 are noted and comments from the Council's waste team are awaited. Should it be necessary to make adjustments to this small area of the layout then officers will approach the applicant and members will be updated at the committee meeting.

In light of the above it is considered that the application complies policy DP21 of the Mid Sussex District Plan 2014 - 2031.

### **Residential Amenity**

The main impact in relation to this issue arises from traffic noise from the A23 to west, which could potentially affect future occupier's amenity. The application has been supported by a Noise Assessment, an earlier version was considered by your Environmental Protection Officer in relation to development permitted by DM/17/133.

Policy DP29 deals with Noise, Light and Air Pollution matters and in respect of noise it states that *"noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development"*. Policy DP26 seeks to protect future residential amenities.

In commenting on the application DM/17/1331 your Environmental Protection Officer stated;

*'This development is close to the A23 trunk route and traffic noise is significant at the site. The acoustic report submitted by Hodkinsons is noted and its conclusions accepted. It recommends a scheme of mitigation comprising acoustic barrier fencing, upgraded glazing and mechanical ventilation to allow windows to remain closed to meet recommended noise levels. Even with mitigation, outdoor amenity space will slightly exceed the upper guideline noise levels at some locations and although this*

*in itself is not necessarily a reason for refusal, it should be considered when balancing the need for housing against other factors'.*

While the comments of your Environmental Protection Officer are considered relevant in respect of this application, in taking the decision to approve DM/17/1331, the Council considered that the issue was not sufficient to warrant refusing the application and given the relatively minor amendments sort by the application it is not felt that there are reasonable grounds to justify adopting a different view in this case.

Having regard to the site history and the nature of the amendments/addition sort by this application it is considered that the proposal will create an acceptable living environment for future occupiers and that the application complies with policies DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031.

### **Affordable Housing**

Policy DP31 of the District Plan deals with affordable housing matters and requires appropriate developments to provide 30 per cent affordable housing. As part of this application, of the additional 6no units proposed by the applicants, 3 are to be affordable, meaning across the development a total of 32no. units will be affordable, which represents 31 per cent.

Your Housing Officer has commented on the application and stated;

*"This application is for amendments to an existing reserve matters permission and detailed planning permission to reflect, among other matters, a revised layout for the residential units. The result of which gives an additional 6no. dwelling houses within the scheme and therefore a proportionate uplift in the onsite affordable housing is required to reflect 30 per cent of the total number of dwellings. The applicant is now proposing to provide 102no. residential dwellings of which 32no. will be affordable. This is agreed and reflects current policy and will need to be secured via a new planning obligation. The tenure split will be for 75 per cent affordable rent and 25 per cent shared ownership."*

The affordable housing is to be provided across the entire site in three clusters and it is considered that these are acceptable with regard to social integration. It will be secured within an appropriately worded S106 Legal Agreement.

It is considered that the application complies with Policy DP31 of the Mid Sussex District Plan 2014-2031.

### **Ashdown Forest**

Under the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council - has a duty to satisfy itself that any plans or projects that they regulate (including plan making and determining planning applications) are not likely to have a significant effect on a European site of nature conservation importance. For most developments in Mid Sussex, the European sites of focus are the Ashdown Forest Special Protection Area (SPA) and Ashdown Forest Special Area of Conservation (SAC).

Planning permission cannot be granted by the District Council where the likelihood of significant effects exists. The main issues are recreational disturbance on the SPA and atmospheric pollution on the SAC, particularly arising from traffic emissions.

The application site is outside of the 7km zone of influence and thus there would be no effect on the SPA from recreational disturbance.

Increased traffic emissions as a consequence of new development may result in atmospheric pollution on Ashdown Forest. The main pollutant effects of interest are acid deposition and eutrophication by nitrogen deposition. High levels of nitrogen may detrimentally affect the composition of an ecosystem and lead to loss of species.

The proposed development was modelled in the Mid Sussex Transport Study (Updated Transport Analysis) as a committed scheme such that its potential effects are incorporated into the overall results of the transport model, which indicates there would not be an overall impact on Ashdown Forest. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

A screening assessment sets out the basis for this conclusion and is available to view on the planning file.

## **Infrastructure**

The NPPF sets out the Government's policy on planning obligations in paragraphs' 203 and 204. Respectively these paragraphs state;

*"Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be used where it is not possible to address impacts through planning conditions."*

and;

*"Planning obligations should only be sought where they meet all the following tests;*

- *Necessary to make the development acceptable in planning terms;*
- *Directly related to the development; and*
- *Fairly and reasonably related in scale and kind to the development."*

Policy DP20 of the District Plan requires applicants to provide for the costs of additional infrastructure required to service their developments and mitigate their impact. These are usually secured through the signing of a legal agreement. All requests for infrastructure payments must meet the 3 tests of the Community Infrastructure Levy (CIL) Regulations 2010, which are as set out above.

A Section 106 Legal Agreement is being pursued to secure financial contributions and affordable housing associated with the uplift in the overall development, i.e. 6 units. The following heads of terms is pursued;

- Financial contribution towards Primary education to be confirmed
- Financial contribution towards Secondary education to be confirmed
- Financial contribution towards Libraries to be confirmed
- TAD contribution to confirmed
- Play/Kickabout contribution of £7,065 to MSDC
- Formal sport contribution of £6,630 to MSDC
- Community Building Contribution of £2,880 to MSDC
- Local Community Infrastructure contribution of £2,403 to MSDC

An update will be provided at the committee in relation to appropriate level of contributions to be sought and the projects against which they will be secured.

A Section 106 Legal Agreement, to off-set the impact caused by the proposed development on local infrastructure, is an acceptable mechanism by any concerns on this issue can be addressed to a point where it would not be appropriate to refuse planning permission on these grounds alone.

Officers are satisfied that the above heads of terms and contributions, once confirmed, will have been calculated in accordance with the Council's adopted Supplementary Planning Document 'Infrastructure and Development' and comply with tests set out in the CIL Regulations and comply with the principles set out in the NPPF and policies DP20 and DP31 of the Mid Sussex District Plan.

### **Other Matters**

Matters associated with ecology/biodiversity value of the site were considered as part of the previously permissions and the proposals subject to this application do not materially alter the position adopted in respect of those permissions, which established that the appropriate mitigation could be secured and controlled through an appropriate planning condition. A similarly condition is appropriate and with this the application complies with Policy DP38 of the Mid Sussex District Plan.

The proposed units comply with the appropriate National Space Standards and as such the application complies with Policy DP27 of the Mid Sussex Local Plan.

Issues associated with drainage and contaminated land can be suitably controlled through the use of conditions, as per the previous permissions and as such the proposal complies with Policy DP41 of the Mid Sussex District Plan.

### **PLANNING BALANCE AND CONCLUSION**

Planning legislation requires the application to be determined in accordance with the Development Plan unless material circumstances indicate otherwise. As the proposed scheme does not comply with certain aspects of the Development Plan, other material considerations need to be considered in determining the application, including the National Planning Policy Framework (NPPF).

The application site lies in countryside, outside the built up area of Handcross and thus would be contrary to policy DP12 of the District Plan as general housing development is not one of the permitted exceptions to the policy of restraint in the



countryside. The aim of the policy is to protect the countryside in recognition of its intrinsic character and beauty. The proposal is also contrary to policy DP15 of the District Plan as it does not meet any of the criteria for new housing in the countryside.

In accordance with the law whilst this breach of policy is the starting point for decision making the Council also must have regard to other material considerations. It is considered that there are other material considerations, specific to this site that are relevant to this application. These include:

The proposal optimises the use of a site where the principle of development has been established by virtue of the Secretary of State and the Council granting planning permission for a total of 96no. dwellings on the wider development site, the last consent for 21no. dwellings was issued on the 1st December 2017 by the Council. The proposal will provide 6no. dwellings at a time where there is a general need for Local Authorities to boost significantly the supply of housing and this should be given positive weight in support of permission.

The site has been found by the Secretary of State and the Council to be a sustainable location for a major housing development as it is located adjacent to a category 3 settlement in Mid Sussex that provides essential services for its residents and those in the immediate surrounding communities.

Weighing against the scheme is that the fact that dwellings are being proposed outside the built up area and would normally be restricted under the relevant District Plan and emerging Neighbourhood Plan policies. However planning permission has been granted by the Secretary of State and the Council for a total of 96no. dwellings on the wide development site, of which the application site forms part. Accordingly the weight that can be given to this objection is significantly reduced in this case because the principle of developing on this site is established.

Having regard to the planning history of the site and the modest addition of 6no. dwellings that is proposed as part of this application it is considered the proposals would give rise to neutral impacts in respect of impact on scenic beauty of the High Weald Area of Outstanding Natural Beauty, highways, ecology, drainage and residential amenity.

On the positive side the provision of 6 new dwelling on the site will make a minor but positive contribution to the district's housing supply, The New Homes Bonus is a material planning consideration and if permitted the Local Planning Authority would receive a New Homes Bonus for the unit proposed. The proposal would also result in construction jobs over the life of the build and the increased population likely to spend in the community. It is considered that these benefits can be afforded some weight.

Overall it is considered that the proposal is not in compliance with all of the policies in the development plan. In particular there is a conflict with policies DP12 (Protection and Enhancement of the Countryside) and DP15 (New Homes in the Countryside) of the District Plan because the proposal involves development in the countryside. However these in principle conflicts are not considered to be a reason to resist this

application because the principle of a major residential development on this site is already established.

There is considered to be compliance with a number of policies in the development (DP17 Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC), DP20 Securing Infrastructure, DP21 Transport, DP26 Character and Design, DP27 Dwelling Space Standards, DP29 Noise, Air and Light Pollution, DP30 Housing Mix, DP38 Biodiversity and DP41 Flood Risk and Drainage).

In light of all the above it is considered that there are other material planning considerations that justify a decision that is not in full conformity with all of the policies in the development plan. In light of the above it is considered that this application should be approved.

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## **APPENDIX A – RECOMMENDED CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. No development above slab level shall take place unless and until there has been submitted to and approved in writing by the Local Planning Authority full details of both hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of those to be retained, together with measures for their protection in the course of development and these works shall be carried out as approved.

Reason: In the interests of visual amenity and of the environment of the development and to accord with Policy DP26 of Mid Sussex District Plan 2014-2031.

3. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the Local Planning Authority.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies and to accord with Policy DP21 of Mid Sussex District Plan 2014-2031.

4. No development shall take place unless and until details of the layout and specification of and construction programmes for the roads, footpaths and casual parking areas, the foul and surface water drainage and means of disposal have been submitted to and approved by the Local Planning Authority. No house shall be occupied until it is provided with access constructed in accordance with such approved details to the established highway network.

Reason: To secure satisfactory standards of access and drainage for the proposed development and to accord with Policy DP21 of the Mid Sussex District Plan 2014-2031.

5. No development shall take place, Construction management plan

Reason: To ensure safe and neighbourly construction in the interests of amenity and road safety and to accord with Policies B3 and T4 of the Mid Sussex Local Plan and policy DP19 of the Submission Version District Plan 2014-2031.

6. No development shall take place above slab level until details of proposed screen walls/fences and/or hedges have been submitted to and approved by the Local Planning Authority and no dwellings shall be occupied until such screen walls/fences or hedges associated with them have been erected or planted.

Reason: In order to protect the appearance of the area and to accord with Policy DP26 Mid Sussex District Plan 2014-2031.

7. The development hereby permitted shall not commence unless and until details of the proposed foul and surface water drainage and means of disposal have been submitted to and approved in writing by the local planning authority. No building shall be occupied until all the approved drainage works have been carried out in accordance with the approved details. The details shall include a timetable for its implementation and a management and maintenance plan for the lifetime of the development which shall include arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. Maintenance and management during the lifetime of the development should be in accordance with the approved details.

Reason: To ensure that the proposal is satisfactorily drained and to accord with the NPPF requirements and Policy DP41 of the Mid Sussex District Plan 2014 - 2031.

8. No development shall take place until details of existing and proposed ground and building levels for that phase have been submitted to and approved in writing by the local planning authority, and development shall be carried out in accordance with the approved details.

Reason: For the avoidance of doubt and to ensure that the development does not prejudice the appearance of the locality and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031.

9. No development shall take place until a scheme showing the means of complying with the summary recommendations of the Engain Ecological Appraisal dated the 24th March 2017 have been submitted to and approved

in writing by the local planning authority. The scheme shall only be carried out in accordance with the approved details.

Reason: To protect the ecological value of the site and to accord with Policy DP38 of the Mid Sussex District Plan 2014-2031.

10. No works pursuant to this permission shall commence until there has been submitted to and approved in writing by the Local Planning Authority before development commences or within such extended period as may be agreed with the Local Planning Authority:

a) A desk study report documenting all the previous and existing land uses of the site and adjacent land in accordance with best practice including BS10175:2011+A1:2013 Investigation of potentially contaminated sites - code of practice. The report shall contain a conceptual model showing the potential pathways that exposure to contaminants may occur both during and after development;

and unless otherwise agreed in writing by the LPA,

b) A site investigation report documenting the ground conditions of the site and incorporating chemical and gas analysis identified as appropriate by the desk study created in accordance with BS10175:2011+A1:2013 and BS 8576:2013 Guidance on investigations for ground gas. Permanent gases and Volatile Organic Compounds (VOCs); the laboratory analysis should be accredited by the Environment Agency's Monitoring Certification Scheme (MCERTS) where possible; the report shall refine the conceptual model of the site and state either that the site is currently suitable for the proposed end-use or that will be made so by remediation;

and, unless otherwise agreed in writing by the LPA,

c) A remediation method statement detailing the remedial works and measures to be undertaken to avoid risk from contaminants and/or gases when the site is developed and proposals for future maintenance and monitoring. For risks related to bulk gases, this will require the production of a design report and an installation report for the gas as detailed in BS 8485:2015 - Code of practice for the design of protective measures for methane and carbon dioxide ground gases for new buildings. The scheme shall consider the sustainability of the proposed remedial approach. It shall include nomination of a competent person<sup>1</sup> to oversee the implementation and completion of the works

Reason: To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

11. The development hereby permitted shall not be occupied until there has been submitted to and approved in writing by the Local Planning Authority

verification by the competent person approved under the provisions of condition (10)c that any remediation scheme required and approved under the provisions of conditions (10)c has been implemented fully in accordance with the approved details (unless varied with the written agreement of the LPA in advance of implementation). Unless otherwise agreed in writing by the LPA such verification shall comprise a stand-alone report including (but not be limited to):

- a) Description of remedial scheme
- b) as built drawings of the implemented scheme
- c) photographs of the remediation works in progress
- d) certificates demonstrating that imported and/or material left in-situ is free of contamination, and records of amounts involved.

Thereafter the scheme shall be monitored and maintained in accordance with the scheme approved under conditions (11)c.

Reason: To ensure that the risks from land contamination to the future users of the land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors.

12. No development shall take place above slab level until a scheme for protecting the proposed development from noise, that implements the measures (additional screening, glazing specification and mechanical ventilation) described in Section 6 of the Hodkinson acoustic report, reference Hoadlands Development Handcross, dated February 2018, shall be submitted and approved in writing by the Local Planning Authority.

No specific dwelling, which is identified within and forms part of the approved scheme, shall be occupied until the specific measures with the approved scheme associated with that dwelling have been installed. The dwelling shall thereafter be maintained in accordance with the approved details.

Reason: To protect the amenity of future occupiers and to comply with policies B3 and B23 of the Mid Sussex Local Plan.

13. The dwellings hereby approved shall only be constructed in accordance with the materials and finishes shown on drawing no. 7862-P111 Rev C unless first agreed in writing with the Local Planning Authority.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policy DP26 Mid Sussex District Plan 2014 - 2031

14. Hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority. Any trees or plants which within a period

of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity and of the environment of the development and to accord with Policy DP26 of the Mid Sussex District Plan 2014-2031.

15. No dwelling shall be occupied until the car parking spaces serving the respective dwelling have been constructed in accordance with the approved plans. These spaces shall thereafter be retained at all times for their designated use.

Reason: To ensure adequate parking provision is provided for properties and to accord with Policy DP21 of the Mid Sussex District Plan 2014-2031.

16. Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent shall be limited to the following times:

Monday - Friday 08:00 - 18:00 Hours  
Saturday 09:00 - 13:00 Hours  
Sundays and Bank/Public Holidays no work permitted.

Reason: To protect the amenity of local residents and to accord with Policy B3 of the Mid Sussex Local Plan.

17. No external lighting of any areas outside the private curtilage of individual properties shall be installed except in accordance with details that have first been approved in writing by the local planning authority.

Reason: For the avoidance of doubt and to ensure that the development does not prejudice the appearance of the locality and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031.

18. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Applications".

Reason: For the avoidance of doubt and in the interest of proper planning.

## INFORMATIVES

1. In accordance with Article 35 Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those

concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

### **Plans Referred to in Consideration of this Application**

The following plans and documents were considered when making the above decision:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Submitted Date</b>
Transport Assessment/Travel Plan	14729TA/3220	P1	28.02.2018
Transport Assessment/Travel Plan	14729TA/3221	P1	28.02.2018
Transport Assessment/Travel Plan	14729TA/3222	P1	28.02.2018
Transport Assessment/Travel Plan	14729TA/3300	P4	28.02.2018
Transport Assessment/Travel Plan	14729TA/3301	P5	28.02.2018
Transport Assessment/Travel Plan	14729TA/3302	P4	28.02.2018
Site Plan	7862-P001.1	B	28.02.2018
Site Plan	7862-P001.2	-	28.02.2018
Site Plan	7862-P001	A	28.02.2018
Site Plan	7862-P101	C	28.02.2018
Site Plan	7862-P102.1	B	28.02.2018
Site Plan	7862-P102	B	28.02.2018
Street Scene	7862-P103	B	28.02.2018
Street Scene	7862-P104	B	28.02.2018
Site Plan	7862-P111	C	28.02.2018
Site Plan	7862-P112	-	28.02.2018
Proposed Floor Plans	7862-P150.1	B	28.02.2018
Proposed Elevations	7862-P150.2	C	28.02.2018
Proposed Floor Plans	7862-P153.1	-	28.02.2018
Proposed Elevations	7862-P153.2	A	28.02.2018
Proposed Floor Plans	7862-P154.1	B	28.02.2018
Proposed Elevations	7862-P154.2	C	28.02.2018
Proposed Floor Plans	7862-P155.1	C	28.02.2018
Proposed Elevations	7862-P155.2	B	28.02.2018
Proposed Floor Plans	7862-P156.1	B	28.02.2018
Proposed Elevations	7862-P156.2	B	28.02.2018
Proposed Floor Plans	7862-P157.1	A	28.02.2018
Proposed Elevations	7862-P157.2	A	28.02.2018
Proposed Floor Plans	7862-P160.1	C	28.02.2018
Proposed Floor Plans	7862-P160.2	C	28.02.2018
Proposed Elevations	7862-P160.3	B	28.02.2018
Proposed Elevations	7862-P160.4	C	28.02.2018

Proposed Floor Plans	7862-P161.1	A	28.02.2018
Proposed Floor Plans	7862-P161.2	A	28.02.2018
Proposed Elevations	7862-P161.3	-	28.02.2018
Proposed Elevations	7862-P161.4	-	28.02.2018
Proposed Floor and Elevations Plan	7862-P190.2	A	28.02.2018
Proposed Floor and Elevations Plan	7862-P190.3	A	28.02.2018

## **APPENDIX B – CONSULTATIONS**

### **MSDC Urban Designer**

This looks fine. I only have one small point in terms of the position of downpipes on the terrace houses on 33-35 to ensure the opportunity is taken to provide the frontage with rhythm through consistent subdivision / replication.

### **MSDC Housing**

This application is for amendments to an existing reserve matters permission and detailed planning permission to reflect, among other matters, a revised layout for the residential units. The result of which gives an additional 6 dwelling houses within the scheme and therefore a proportionate uplift in the onsite affordable housing is required to reflect 30% of the total number of dwellings. The applicant is now proposing to provide 102 residential dwellings of which 32 will be affordable. This is agreed and reflects current policy and will need to be secured via a new planning obligation. The tenure split will be for 75% affordable rent and 25% shared ownership provided as per the agreed mix below:

Affordable Rent	Shared Ownership
6 x 1 bed flats (inc 1 x Wheelchair unit)	3 x 1 bed flats
12 x 2 bed flats (inc 1 x Wheelchair unit)	3 x 2 bed flats
6 x 2 bed houses	2 x 2 bed houses

The affordable dwellings are to be provided in 3 separate clusters within the site so as to aid social integration.

### **MSDC Drainage**

Thank you for highlighting this application, which is an alteration to the already approved applications for phases 1 and 2 of the site.

This revised layout of the site does not create any significant change in terms of how the proposed surface water drainage system will operate. We consider the proposed drainage system as appropriate, but this application will still be subject to drainage condition. I have attached my consultation response for this.

At present, DM/18/0019 and DM/18/0681 are the discharge of condition applications for the two original phases. I have attached my last correspondence for these two applications, which are still valid and would therefore be relevant to this application.



## **MSDC Community and Leisure Officer**

An additional 6 units will generate the following leisure contributions:

Play £5,505

Kickabout £1,560

Formal Sport £6,630

Community Buildings £2,880

## **WSSC Highways**

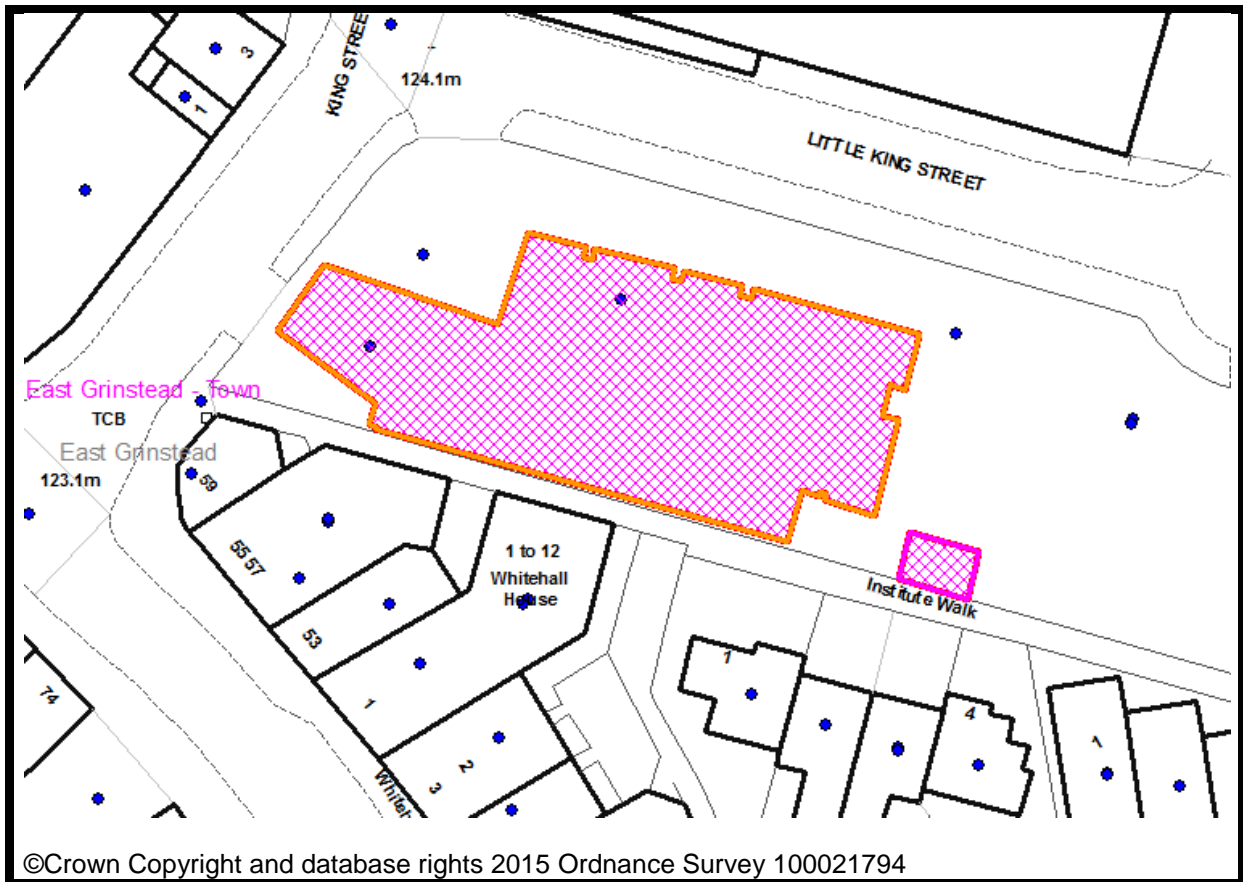
Based on the red edging, the majority of the permitted site (including the alignment of the main spine road through the development) is remaining unchanged. Whilst 6 additional dwellings are proposed, the resultant additional vehicle movements as demonstrated by the supporting Transport Statement would be immaterial when viewed against those already permitted units.

The only comment that would be made with the proposed changes is that in relation to plot 97 (previously numbered 62 on the approved drawings). The revised layout appears to be extending the curtilage of the dwelling into the nearby turning head. Given the quite significant distance to the next nearest turning area, a usable turning head must be retained as part of the development. Whilst turning for a 9.6 metre refuse vehicle is demonstrated using this turning head, this manoeuvre is tight and it's unclear if the design vehicle used represents that actually used by the District Council's refuse collection team. It is recommended that the refuse collection team are consulted on the proposed change as well as those other relocated bin storage points. Some of these stores are located further away from the spine road than the permitted scheme.

In summary, there are no particular concerns with the small increase in dwelling numbers. The refuse collection team should confirm that suitability of the design vehicle used for refuse collection and the appropriateness of the collection points.

## East Grinstead

### 2. DM/18/1646



**SILVER BIRCH DEVELOPMENT SITE KING STREET EAST GRINSTEAD WEST SUSSEX**

**CHANGE OF USE OF PART OF THE GROUND FLOOR FROM CLASS A1 (SHOPS) TO CLASS D2 (24-HOUR GYNASIUM). EXTERNAL ALTERATIONS AND INSTALLATION OF ASSOCIATED PLANT ENCLOSURE.**

**MR JOHN GRAHAM**

**GRID REF: EAST 539437 NORTH 138207**

POLICY: Ashdown Forest SPA/SAC / Built Up Areas / Classified Roads - 20m buffer / Planning Agreement / Planning Obligation / Aerodrome Safeguarding (CAA) / Sewer Line (Southern Water) / SWT Bat Survey /

ODPM CODE: Change of Use

8 WEEK DATE: 18th June 2018

WARD MEMBERS: Cllr Peter Wyan / Cllr Norman Mockford /

CASE OFFICER: Mr Stephen Ashdown

## **PURPOSE OF REPORT**

To consider the recommendation of the Head of Economic Promotion and Planning on the application for planning permission as detailed above.

## **EXECUTIVE SUMMARY**

The application seeks consent to change the use of the part of the ground floor of the new building from retail (A1 use) to a gym (D2 use). The proposal also includes some minor external alterations and the installation of associated plant. It is proposed that the gym will be available for use 24 hours a day.

Planning legislation requires the application to be determined in accordance with the Development Plan unless material circumstances indicate otherwise. As the proposed scheme does not comply with certain aspects of the Development Plan, other material considerations need to be considered in determining the application, including the National Planning Policy Framework (NPPF).

The application site lies within East Grinstead town centre where policy DP2, of the Mid Sussex District Plan, and policy EG8, of the Neighbourhood Plan, support changes of use within the Use Class proposed. The proposal would make a small contribution to job creation within the district in support of the economic development objectives of Policy DP1 of the Mid Sussex District Plan.

It is not considered that the proposal would give rise to any adverse impacts on the local highway network and while any visitors travelling by car would use town centre car parks, given the existing arrangements for the permitted uses of the site, it is not considered that this would be unacceptable, particularly given that there are opportunities for alternative modes of travel.

While a 24 hour facility could result in some additional noise and disturbance during the night time period, this is likely to be limited to visitors entering/leaving the area via the car parks and having regard to the relatively low numbers anticipated during such hours and the fact that the car parks themselves are available to use 24 hours a day within a town centre location, it is not considered that any likely harm would be significant.

It is considered that the application complies with policies DP1, DP2, DP17, DP21, DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031 and Policy EG8 of the Neighbourhood Plan and as such the application can be supported.

## **RECOMMENDATION**

It is recommended that permission be granted subject to the conditions listed at Appendix A.

## **SUMMARY OF REPRESENTATIONS**

59 letters of objection received making the following comments;

- Another gym is not beneficial to the town;
- Already a number of other gyms within the town;
- Retail should be retained;
- Lack of parking;
- Gym will not be staffed;
- Town lacking retail shops;
- Proposed hours will create unacceptable impact on nearby amenities;
- 24 hour opening will possibly lead to crime and anti-social behaviour;
- Council refused extended hours to adjacent night club;
- Given pub opposite, intoxicated users may try and gain access;
- A gym will not increase footfall within this part of town;
- Noise by users entering/leaving the site/car parks will be significant

3 letters of support for the application received.

### *East Grinstead Society*

Recommend refusal. We prefer retail and think there are parking and disturbance problems relating to the gymnasium, Atrium and Travelodge. There are already three other gyms.

## **SUMMARY OF CONSULTEES**

### **MSDC Environmental Protection**

The application is for a change of use from retail unit to a 24 hour gym. This change has the potential to negatively impact the residential amenity of nearby residential premises, due to noise.

No objection subject to conditions.

## **EAST GRINSTEAD TOWN COUNCIL**

As per East Grinstead Town Council Planning Committee meeting held on the 16th May 2018:- Recommend refusal: DP2: the proposal of a 24 hour gym has concerns for the committee that noise and disturbance may occur to the residential premises near the gym. It is not felt that this development would be appropriate in functions to location.

There are also concerns regarding DP29 on the basis that the coming and goings at the gym 24 hours could result in noise and light pollution for the residential properties nearby and thorough assessment of this is requested.

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## **INTRODUCTION**

The application seeks consent for the change of use of part of the ground floor associated with the King Street development granted under 14/03838/FUL, which provided for retail, hotel and residential uses, from A1 retail to D2 to provide a 24 hour gymnasium.

## **RELEVANT PLANNING HISTORY**

14/03838/FUL - Demolition of the existing buildings and the construction of a part four/part storey building to accommodate 12 apartments, retail on the ground floor and a 72 bedroom hotel on the upper floors, plus car parking, cycle parking, bin storage and commercial vehicle facilities - Permission granted 31st March 2015.

## **SITE AND SURROUNDINGS**

The site lies within East Grinstead town centre, as identified within the both the District and Neighbourhood Plans, and sits to the north of London Road, which is part of the town's defined primary shopping area. The site's frontage is to King Street, while the existing vehicular access is located off Little King Street.

While within the town centre the site is very much within an area that is characterised by a mix of uses with retail on the west, on the opposite side of King Street, a cinema and other night time uses to the north, on the opposite side of Little King Street, and residential and commercial uses to the east and south off Institute Walk and Cantelupe Road respectively.

The host building is a part four/part five storey building where the main superstructure has been erected. The residential element of the scheme, at the rear of the site, has been completed while the ground floor uses and the upper storey hotel are awaiting fit out.

The streets immediately surrounding the site, namely King Street and Little King Street are adopted public highways and there is a controlled on street parking scheme in operation within the later of these roads, double yellow lines are in operation within the King Street. There are two public car parks in close proximity, both operated by the District Council, one at the eastern end of Little king Street and one at the northern end of King Street.

## **APPLICATION DETAILS**

The application seeks consent to change the use of the part of the ground floor of the new building from retail (A1 use) to a gym (D2 use). The proposal also includes some minor external alterations and the installation of associated plant. It is proposed that the gym will available for use 24 hours a day

The proposed use would take access from an entrance lobby to King Street and occupy 647sqm of the ground floor area. The ground floor plan shows the internal space divided between a gym floor, a studio, free weight area and locker/shower facilities. A plant compound area is shown in the southwestern corner of

the shared service yard at the rear of site, where a series of condenser units are to be housed within an acoustically fenced area.

In support of their application, and in response to a number of issues raised within the representations, the applicant's agent submitted a letter setting out the following points;

- The proposed gym will be staffed 24 hours a day. Staff are supported by a comprehensive CCTV system. These arrangements operate successfully at nearly 200 existing puregym sites.
- Average weekday figures show a site receives 70 visitors between 10pm and 6am, which equates to an average of 9 users per hour. However, this proposed gym is a new format that is intended to serve a smaller catchment area and provides less than half of an existing, standard site. Therefore it can be expected that the application site would generate even lower visitor numbers during night-time hours.
- It is likely that visitor numbers would be around 50 per cent lower than a standard site which would indicate total visitor numbers of about 35 between 10pm and 6am on a weekday. During the busiest hourly interval of 5am to 6am, we would therefore expect around 12 visitors.
- We appreciate that public transport services are limited at night-time but note that members will still arrive on foot at night or in the early morning, and this will include those employed within late opening venues elsewhere within the town centre and early morning commuters who go on to use facilities such as the nearby railway station.
- Nevertheless, even if all members using the gym during night-time hours arrived by car, it is clear that this would result in only a small number of additional vehicle movements that would be negligible in the context of the wider highway network. On this basis, there would be an average of only 4 two-way vehicle movements per hour between 10pm and 6am on a weekday, with even lower figures at a weekend.
- The planning application is supported by a Patron Noise Report which provides case study examples of existing, well-established PureGym sites that are immediately adjacent or in very close proximity residential properties, including hotels. In each case the local authority confirmed that it had received no complaints in respect of noise or disturbance associated with the operation of the gym.
- There would not be any issues of drunken behaviour, groups of people or queuing/loitering associated with the proposed gym.
- Unlike the proposed gym, customers of these facilities (which sit closer to residential properties than the application site) are likely to be exiting in groups and in potentially large numbers in the case of the cinema.

## **LIST OF POLICIES**

### **District Plan**

DP1 - Sustainable Economic Development

DP2 - Town Centre Development

DP21 - Transport

DP26 - Character and Design  
DP29 - Noise, Air and Light Pollution

### **East Grinstead neighbourhood Plan**

There is a draft neighbourhood plan however at this time it can only be given little weight in the determination of this application. Relevant policies include;

Policy EG6 - East Grinstead Town Centre  
Policy EG12 - Car Parking

### **National Policy and Legislation**

*National Planning Policy Framework (NPPF) (March 2012)*

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 7 sets out the three dimensions to sustainable development, such that the planning system needs to perform an economic role, a social role and an environmental role. This means ensuring sufficient land of the right type to support growth; providing a supply of housing and creating a high quality environment with accessible local services; and using natural resources prudently. An overall aim of national policy is to 'boost significantly the supply of housing.'

With specific reference to decision-taking the document provides the following advice:

Para 187 states that local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Para 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

### **ASSESSMENT**

It is considered that the main issues that need to be considered in the determination of this application are as follows;

- The principle of development;
- Residential Amenity
- Access and Transport
- Ashdown Forest
- Other Matters
- Planning Balance and Conclusion

## **Principle of Development**

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

Specifically Section 70 (2) of the Town and Country Planning Act 1990 states:

*"In dealing with such an application the authority shall have regard to:*

- a) The provisions of the development plan, so far as material to application,
- b) And local finance considerations, so far as material to the application, and
- c) Any other material considerations."

Section 38(6) Planning and Compulsory Purchase Act 2004 provides:

*"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."*

Under section 38(5) of the Planning and Compulsory Purchase Act 2004 if a policy contained in a development plan for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published.

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan and the East Grinstead Neighbourhood Plan.

The site is located within the defined town centre as identified in both the District Plan and the Neighbourhood Plan. The District Plan identifies both primary and secondary shopping frontage, however the site is not located within either. DP2 deals with town centre development and states;

*"To support the regeneration and renewal and environmental enhancement of the town centres as defined on the Policies Map- development, including mixed use and tourism related development, will be permitted providing it:*

- Is appropriate in scale and function to its location including the character and amenities of the surrounding area;
- Has regard to the relevant Town Centre Masterplans and is in accordance with the relevant Neighbourhood Plan."

Within the Neighbourhood Plan, Policy EG8 states;

*"Planning permission for changes of use of ground floor shop type units within the Town Centre will be permitted subject to the following criteria being met:*

- a) *The retention of a shop window display;*



b) *The use falls within the A1 to A5 use classes, D2 and other cultural/arts and community type uses or uses which enhance the vitality and viability of the Town Centre;*

*Proposals that seek to amalgamate small units into larger units will generally be resisted because they would be contrary to the small shop unit character of the Town Centre. However in exceptional circumstances, where the proposals result in a qualitative benefit to the Town Centre, such amalgamations will be permitted if the shop front design presents the perception of small shop units."*

In light of the above, and notwithstanding the desire within the representations to maintain an A1 retail unit, the proposed change of use complies with the Development Plan policies and as such the principle of is acceptable. It should be noted that the submitted drawings do not cover the entire ground floor and show that the remainder is being retained for A1 retail purposes.

The proposed use is appropriate for a town centre location such as this and as such the proposal accords with policy DP2 of the Mid Sussex District Plan 2014-2031 and the Policy EG8 of the Neighbourhood Plan.

### **Residential Amenity**

The proposed use has the potential to impact on hereby amenities by means of associated with the direct use, mechanical plant and visitors entering/leaving the site/area, with residential properties located in Christopher Road, Cantelupe Road, Institute Walk and London Road.

Policy DP29 of the District Plan deal with noise pollution and seeks to protect the quality of people's life from unacceptable levels of noise by only permitting development where;

- It is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area;
- If it is likely to generate significant levels of noise it incorporates noise attenuation measures

Policy DP2 sets out that development in town centres *"will be permitted providing that it is appropriate in scale and function to its location including the character and amenities of the surrounding area"*. Furthermore, policy DP26 seeks to ensure that development does not cause significant harm to the amenities of existing nearby residents.

The application has been supported by two noise reports, the first deals with patron noise generation and sets out a number of case studies from other sites, while the second deals with mechanical plant. Both have been considered by your Environmental Protection Officer whose comments can be found in full in Appendix B of this report.

In general terms, your Environmental Protection Officer has not raised an objection to the application and is satisfied that conditions can be used to mitigate the impact

of the proposal. Your officer's have carefully considered the suggested conditions by your Environmental Protection Officer and set out in Appendix A those which are appropriate having regard for the tests, which include enforceability, set out in National Planning Policy Guidance.

A number of concerns have been raised within the representations relating to amenity issues, particularly potential noise generated by users of the gym leaving the site late at night/early morning, including the town centre car parks, given the proposed opening hours.

The applicants have provided some information relating to the likely expected number of users of the facility during the night time hours, namely 10pm to 6am, based upon figures gathered from other larger sites they operate. The figures show that at the larger sites, which are twice the size of the proposed, an average of 70 visitors attend during the above time period on weekdays (weekend significantly less), which equates to on average to 9 per hour. Given the size of the gym the applicants expect around 50 per cent of the of the above averages to visit this site and it should be noted that the most popular 'night time' hours are at either end of the period stated above.

While there will clearly be some visitors to the site during the night time period these are likely to be relatively low, predicted around 35 between 10pm and 6am, and again while a significant proportion of these are likely to have travelled by car and use the town centre car parks, it is not considered that this likely to rise to significant harm to nearby residential amenity. The site is located in the town centre and the adjacent car parks are available to use 24 hours a day, while there will inevitably be some noise and disturbance in this regard, it would be no more than what could be expected in such a location.

The representations have drawn attention to the fact that the Council have historically refused permission for a night club opposite to extend its opening hours due to the impact on nearby amenities and that this proposals raises similar issues and should result in a similar outcome. It is not considered that the two uses, or the resultant impacts, are comparable given the relatively small number of night time users, compared to a night club, and the fact that users will not be leaving in large groups, as they would either be typical lone visitors or a couple at most.

Having regard to the potential alternative uses within the D2 Class Order, and the fact that the consent would grant a 24 hour use, it is suggested that a condition be applied to any planning permission limiting the use to that of a gym only.

It is considered that while there will be some impact from the proposal, particularly from visitors using the town centre car parks during the night time period, it is not felt that significant harm would result, especially given the relatively low anticipated numbers. The application therefore complies with policies DP2, DP26 and DP29 of the District Plan 2014 - 2031.

## **Access and Transport**

Policy DP21 of the District Plan deals with transport matters and sets out a number of criteria that development proposals should take account of, including;

- *The scheme provides adequate car parking for the proposed development taking into account the accessibility of the development, the type, mix and use of the development and the availability and opportunities for public transport; and with the relevant Neighbourhood Plan where applicable;*
- *The scheme avoids severe additional traffic congestion, individually or cumulatively, taking account of proposed mitigation;*

It is not considered that the proposal would give rise to any unacceptable impacts on the local highway network given that the proposal is an appropriate town centre and that the existing use of the building is for A1 retail.

Concerns have been raised about the impact of the proposed use on the demand for parking spaces within the town centre, especially as no on-site spaces are proposed as part of this application.

The applicants have set out that this site is a much smaller product than what is offered on their larger format sites and the catchment area is likely to be localised, particularly as they operate a large facility in Crawley town centre. While they accept that a significant amount of visitors will use their cars, plenty will take the opportunity to use alternative modes or visitor as part of an alternative trip, i.e. a commuter using the station.

Having regard for the permitted use of the site and the fact that no on-site provision is currently provided, it is not considered that the proposed use, given its limited size, would give to an unacceptable impact on town centre parking.

In light of the above the application accords with policy DP21 of the Mid Sussex District Plan 2014 - 2031.

## **Ashdown Forest**

Under the Conservation of Habitats and Species Regulations 2010 (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council - has a duty to satisfy itself that any plans or projects that they regulate (including plan making and determining planning applications) is not likely to have a significant effect on a European site of nature conservation importance. For most developments in Mid Sussex, the European sites of focus are the Ashdown Forest Special Protection Area (SPA) and Ashdown Forest Special Area of Conservation (SAC). Planning permission cannot be granted by the District Council where the likelihood of significant effects exists. The main issues are recreational disturbance on the SPA and atmospheric pollution on the SAC, particularly arising from traffic emissions.

This application has been screened for its potential effects on the SPA and SAC. This exercise has indicated that there is no likelihood of significant effects. A

screening assessment sets out the basis for this conclusion and is available to view on the planning file.

### **Other Matters**

The proposal would generate two full time jobs and 10 part time jobs that would make a small contribution to the Council's economic development objectives in line with Policy DP1 of the Mid Sussex Local Plan.

A number of matters have arisen out of the representations received that are not material to the determination on this application. These include the issue of competition with other existing gyms within the town and the staffing arrangements for the proposal (this is a management issue for the applicant).

Furthermore, there is no evidence to suggest that the proposal will give rise to incidents of users of nearby drinking establishments entering the facility intoxicated to make use of weights and other machines inside. This is not material planning consideration and gain something that the site management would need to address, should it occur.

### **PLANNING BALANCE AND CONCLUSION**

Planning legislation requires the application to be determined in accordance with the Development Plan unless material circumstances indicate otherwise. As the proposed scheme does not comply with certain aspects of the Development Plan, other material considerations need to be considered in determining the application, including the National Planning Policy Framework (NPPF).

The application site lies within East Grinstead town centre where policy DP2, of the Mid Sussex District Plan, and policy EG8, of the Neighbourhood Plan, support changes of use within the Use Class proposed. The proposal would make a small contribution to job creation within the district in support of the economic development objectives of Policy DP1 of the Mid Sussex District Plan.

It is not considered that the proposal would give rise to any adverse impacts on the local highway network and while any visitors travelling by car would use town centre car parks, given the existing arrangements for the permitted uses of the site, it is not considered that this would be unacceptable, particularly given that there are opportunities for alternative modes of travel.

While a 24 hour facility could result in some additional noise and disturbance during the night time period, this is likely to be limited to visitors entering/leaving the area via the car parks and having regard to the relatively low numbers anticipated during such hours and the fact that the car parks themselves are available to use 24 hours a day within a town centre location, it is not considered that any likely harm would be significant.

It is considered that the application complies with policies DP1, DP2, DP17, DP21, DP26 and DP29 of the Mid Sussex District Plan 2014 - 2031 and Policy EG8 of the Neighbourhood Plan and as such the application can be supported.

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## APPENDIX A – RECOMMENDED CONDITIONS

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

2. Unless otherwise agreed in writing, noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed 10dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:2014. Details of any mitigation measures shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented before the development is brought into use as a Class D2 use establishment and thereafter be maintained in accordance with the approved details.

Reason: In the interests of protecting nearby amenities and to accord with Policy DP29 of Mid Sussex District Plan 2014-2031.

3. The development hereby permitted shall not be brought into use as a Class A2 establishment until a soundproofing scheme, for the protection of customers of the above hotel and of nearby residents has been submitted to and approved in writing by the Local Planning Authority and the scheme as approved has been implemented.

Reason: In the interests of protecting nearby amenities and to accord with Policy DP29 of Mid Sussex District Plan 2014-2031.

4. Plant and machinery associated with mechanised ventilation of the premises shall be limited to the following times:

Monday - Sunday 07:00 to 22:00 Hours

Reason: In the interests of protecting nearby amenities and to accord with Policy DP29 of Mid Sussex District Plan 2014-2031.

5. No deliveries or collections of commercial goods or waste outside the following hours:

Mon to Fri 07:00 to 19:00 hours  
Sat 08:00 to 13:00 hours

Reason: In the interests of protecting nearby amenities and to accord with Policy DP29 of Mid Sussex District Plan 2014-2031.

6. The premises shall be used for gymnasium and for no other purpose (including any other purpose in Class(es) D2 of the Schedule to the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).

Reason: In order to protect nearby amenities and to accord with Policy DP29 of the Mid Sussex District Plan 2014 - 2031.

7. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Applications".

Reason: For the avoidance of doubt and in the interest of proper planning.

### INFORMATIVES

1. In accordance with Article 35 Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. Your attention is drawn to the requirements of the Environmental Protection Act 1990 with regard to your duty of care not to cause the neighbours of the site a nuisance.

Please note that the granting of this planning permission does not exempt the operator from liability for any statutory nuisance (e.g. noise or artificial light) caused as a result of the extension and/or use of the building.

### Plans Referred to in Consideration of this Application

The following plans and documents were considered when making the above decision:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Submitted Date</b>
Location and Block Plan	XX-001-LP		20.04.2018
Existing Floor Plans	XX-002-EP		20.04.2018
Existing Elevations	XX-003-EE		20.04.2018
Proposed Floor Plans	XX-004-FP		20.04.2018
Proposed Elevations	XX-005-PE		20.04.2018

## **APPENDIX B – CONSULTATIONS**

### **East Grinstead Town Council**

As per East Grinstead Town Council Planning Committee meeting held on 16th May 2018:- Recommend Refusal: DP2: the proposal of a 24 hour gym has concerns for the committee that noise and disturbance may occur to the residential premises near the Gym. It is not felt that this development would be appropriate in function to its location.

There are also concerns regarding DP29 on the basis that the comings and goings at the Gym 24 hours could result in noise and light pollution for the residential properties nearby and a thorough assessment of this is requested.

### **MSDC Environmental Protection Officer**

The application is for a change of use from retail unit to a 24 hour gym. This change has the potential to negatively impact the residential amenity of nearby residential premises, due to noise, most likely from the following sources:

- Noise from customers arriving and leaving
- Noise from amplified music
- Noise from customers use of heavy gym equipment
- Noise from staff and/or customers shouting encouragement to customers
- Noise from customers groaning, grunting or crying out
- Noise from plant and/or machinery

Use of planning conditions can be used to mitigate the impact from most of these, but customer noise may well only be controllable by the use of conditions. Having looked at the proposed hours of use, these do appear manageable and should be conditioned.

Recommendation:

Approve with conditions

1. Construction Hours: Works of construction or demolition, including the use of plant and machinery, necessary for implementation of this consent shall be limited to the following times:

Monday - Friday      08:00 - 18:00 Hours  
Saturday              09:00 - 13:00 Hours  
Sundays and Bank/Public Holidays no work permitted

2. Plant & Machinery: Unless otherwise agreed in writing, noise associated with plant and machinery incorporated within the development shall be controlled such that the Rating Level, measured or calculated at 1-metre from the façade of the nearest existing noise sensitive premises, shall not exceed 10dB below the existing LA90 background noise level. Rating Level and existing background noise levels to be determined as per the guidance provided in BS 4142:2014. Details of any mitigation measures shall be submitted to and approved in writing by the Local Planning

Authority. The approved measures shall be implemented before the development is brought into use as a Class A2 use establishment and thereafter be maintained in accordance with the approved details.

### 3. Mechanical Ventilation Operating Hours

Plant and machinery associated with mechanised ventilation of the premises shall be limited to the following times:

Monday - Sunday 07:00 - 22:00 Hours

4. Soundproofing: The development hereby permitted shall not be brought into use as a Class A2 establishment until a soundproofing scheme, for the protection of customers of the above hotel and of nearby residents has been submitted to and approved in writing by the Local Planning Authority and the scheme as approved has been implemented.

5. Noise Management Plan: The development hereby permitted shall not be brought into use as a Class A2 establishment until a Noise Management Plan addressing the potential for noise nuisance (for the protection of customers of the hotel the premises above the gym and of nearby residents) from the following:

- Noise from customers arriving and leaving
- Noise from amplified music
- Noise from customers use of heavy gym equipment
- Noise from staff and/or customers shouting encouragement to customers
- Noise from customers groaning, grunting or crying out

has been submitted to and approved in writing by the Local Planning Authority and the scheme as approved has been implemented.

6. Deliveries and collections: No deliveries or collections of commercial goods or waste outside the following hours:

Mon to Fri 07:00 to 19:00 hours

Sat 08:00 to 13:00 hours

Reason: To protect the amenity of local residents.

Informative:

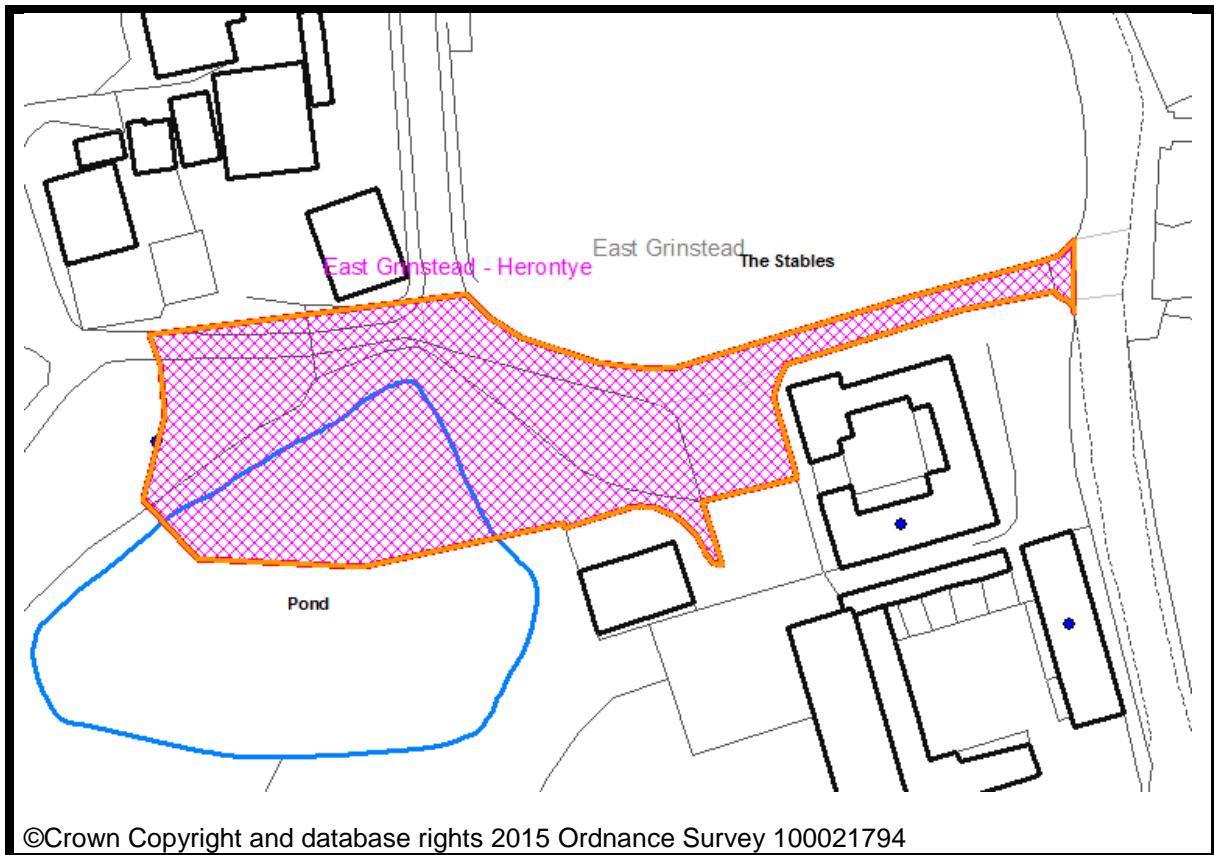
Your attention is drawn to the requirements of the Environmental Protection Act 1990 with regard to your duty of care not to cause the neighbours of the site a nuisance.

Please note that the granting of this planning permission does not exempt the operator from liability for any statutory nuisance (e.g. noise or artificial light) caused as a result of the extension and/or use of the building.



## East Grinstead

### 3. DM/18/1746



**SAINT HILL MANOR SAINT HILL GREEN EAST GRINSTEAD WEST SUSSEX**

**REMOVAL OF CONDITION 1 (THE USE OF THE SITE BY COACHES SHALL CEASE ON 26TH MAY 2018) FROM PLANNING PERMISSION DM/16/3611.**

**CHURCH OF SCIENTOLOGY**

**GRID REF: EAST 538372 NORTH 135816**

**POLICY:** Areas of Outstanding Natural Beauty / Areas of Special Control for Adverts / Ashdown Forest SPA/SAC / Countryside Area of Dev. Restraint / Classified Roads - 20m buffer / Methane Gas Safeguarding / Aerodrome Safeguarding (CAA) / Highways Agreement (WSCC) /

**ODPM CODE:** Minor Other

**8 WEEK DATE:** 22nd June 2018

**WARD MEMBERS:** Cllr Edward Belsey / Cllr Dick Sweatman /

**CASE OFFICER:** Mr Steven King

## **PURPOSE OF REPORT**

To consider the recommendation of the Divisional Lead, Planning and Economy on the application for planning permission as detailed above.

## **EXECUTIVE SUMMARY**

Planning permission has been granted for a coach drop off and parking area under reference DM/16/3611. This application seeks planning permission for the removal of planning condition 1 that was attached to this planning permission. The planning condition requires that the use of this access to the site by coaches should cease on 26th May 2018.

The physical works for this development are all completed and there is no breach of planning control in relation to these physical works. The planning permission that was granted allowed for a temporary period of use of the access by coaches to allow time for an assessment of the impact of this use on residential amenity.

It is considered that the evidence before the Council has shown that there are no grounds to resist the proposed use on the basis of highway safety. It is also considered that in terms of an impact on the character of the High Weald Area of Outstanding Natural Beauty (AONB), this has been conserved. The main issue is in relation to the impact on residential amenity.

It is considered that because of the complaint that has been received about the use of the access by coaches taking place outside of the approved times, it has not been demonstrated that the applicants have exercised sufficient control over the use of the access by coaches. It is therefore felt it would be appropriate for there to be a further temporary period in relation to the use of the access by coaches to enable further assessment of this use to be undertaken. A period of 9 months is considered to be sufficient.

## **RECOMMENDATION**

**Recommendation A:** It is recommended that planning permission be approved subject to the conditions set in Appendix A.

## **SUMMARY OF REPRESENTATIONS**

1 letter of objection:

- applicant continues to use the access after the temporary permission has expired and this demonstrates a flagrant disregard for the planning conditions and astonishing confidence that this application will be approved.
- after witnessing the sham of Committee A and aware of the deep potential bias running through both EGTC and MSDC, public resistance and protest is further restrained and subdued. Of 18 EGTC councillors, 7 have declared interests in the

applicant and 5 are connected to receiving large donations. Of 10 EG MSDC councillors, 3 have declared interests in the applicant and 3 are connected to receiving large donations.

- given the hesitancy and helplessness, amenity impact cannot be measured by the number of complaints MSDC has received. Previous complaints have had no effect.
- policy RA6 in the Mid Sussex Local Plan has not been considered by both the Planning Department and Committee A
- there are 52 catalogued cases of witnessed coach movements over the test period that breach Condition 2 and since 26th May dozens of movements that breach Condition 1.
- these and hundreds of other coach and vehicle movements throughout all days of the week impact amenity and rural character
- the many breaches of Condition 2 (hours of use by coaches) implies our amenity has not been protected over this trial year, thus by definition, the assessment of Condition 1 must therefore conclude that amenity is impacted which implies coach use can no longer be permitted.
- using this coach depot as a regular jet-wash service for the applicant's fleet of vehicles does wreck the character and amenity of the area.
- removing the woodland has also removed a large sound barrier between the grounds in front of the manor and Saint Hill Green
- the amenity-busting, character-wrecking application DM/18/0946 goes hand-in-hand with this application.
- tearing up the tarmac and reverting to woodland and pond would bring MSDC back in-line with its policies, the area back to its natural rural character and cease amenity impact.

East Grinstead Society: Recommend refusal until the future of DM/18/0946/FUL is decided

## **SUMMARY OF CONSULTATIONS**

### **Highway Authority**

In the period of the past 12 months I am not aware of any adverse comments that may have been made by the Local Highway Authority (LHA), or of any other highway related concerns with this site and the current use. Therefore, I would not foresee there being any significant highway issues to this use continuing.

### **Environmental Health Officer**

Environmental Protection has no records of any noise complaints relating to coaches for this site going back over several years. We are aware of two complaints to MSDC Planning from the same complainant but they have not been possible to substantiate. I recommend that this application can be approved.

## **TOWN COUNCIL OBSERVATIONS**

Recommend Refusal: The Committee felt it was too early to complete the monitoring of this condition. The usage of the coach park must complete a full year of

monitoring before this should be considered further. There remain concerns as to the usage and the timings of this usage which need to be satisfied by the continued monitoring by the District Council.

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## **INTRODUCTION**

This application seeks planning permission for the removal of planning condition 1 that was attached to planning permission reference DM/16/3611. The planning condition requires that the use of this access to the site by coaches should cease on 26th May 2018.

## **RELEVANT PLANNING HISTORY**

There have been numerous planning and listed building consents that have been granted and implemented at Saint Hill Manor and its grounds. Of most relevance to this application was the planning permission that was granted under reference DM/16/3611 at Planning Committee A on 25th May 2017 for the following:

"Provision of coach drop-off area, 6 contractor parking bays, minor alterations to access onto West Hoathly Road and associated landscaping."

The physical works associated with this planning permission have all been completed. There was a planning condition attached to the use of the access by coaches (condition 1), which stated

"The use of the site by coaches shall cease on 26th May 2018.

Reason: To enable the use of the site by coaches to have a trial run in order to allow an assessment of the impact of this use on residential amenity to be made at the end of the trial period and to comply with policies B3 and B23 of the Mid Sussex Local Plan."

## **SITE AND SURROUNDINGS**

The site of the application is an area of land to the south of the rebuilt buildings referred to above. The area of land is accessed via a single width driveway, some 40m in length that emerges onto the West Hoathly Road to the east. The site is at a lower level than the road.

The site of the application is within the grounds at Saint Hill Manor. In planning policy terms the site is within the countryside as defined in the District Plan (DP) and the High Weald area of outstanding natural beauty (AONB).

The site comprises a coach drop off area and 6 contractors parking bays. The area of hard standing whose central area measures some 28m by 24m. The hard standing has been laid out with 6 car parking spaces in the centre, with a circular route for vehicles around this. There are two areas of landscaping either side of the car parking bays that break up the area of hard standing.

There are a series of low level bollard lights on the southern side of the hard standing area and slightly taller low level lighting within the centre of the area.

## **APPLICATION DETAILS**

This application seeks to remove condition 1 attached to planning permission reference DM/16/3611. This would allow the access to continue to be used by coaches. The other condition relating to the times of use of the access would remain. This states that:

"Coaches may only access and exit the site between 08.00 and 21.00.

Reason: To protect the amenity of local residents and to comply with policy B3 of the Mid Sussex Local Plan"

The applicants have submitted a supporting letter with their application. This states

*"In effect, the condition allowed the operation of the site for a one year period so that the impacts of the use of the site on nearby residential properties could be assessed.*

*Since the grant of permission, the Applicant has been made aware of one complaint which related to busses arriving and leaving the site outside of the hours set out in Condition 2 - Coaches may only access . As soon as the Church were made aware of this (on 9th January 2018) an internal investigation took place and the reasons for these breaches investigated. Following this, measures were put in place to ensure coaches only accessed the site within the permitted hours. No further complaints have been received in relation to this to the knowledge.*

*The Applicant has not received any complaints relating to the impact on residential amenity as a result of the use of the site by coaches and has no reason to believe that nearby residential amenity has been disrupted as a result of this use.*

*The reason for Condition 1 clearly states that the restriction is to allow a one year period of is to allow for the impact on residential amenity to be tested. As the Applicant has not been made aware of any negative impacts on residential amenity over the trial period, we request that Condition 1 be removed"*

## **LIST OF POLICIES**

### **District Plan**

The District Plan was adopted in March 2018.

DP16 High Weald Area of Outstanding Natural Beauty

DP21 Transport

DP26 Character and Design

DP29 Noise, Air and Light Pollution

DP34 Listed Buildings and Other Heritage Assets

## **Neighbourhood Plan**

The East Grinstead Neighbourhood Plan is a made plan with full weight.  
EG1 Development in the AONB  
EG4 Designated and Non Designated Heritage Assets.

## **National Policy and Legislation**

### *National Planning Policy Framework (NPPF) (March 2012)*

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 7 sets out the three dimensions to sustainable development, such that the planning system needs to perform an economic role, a social role and an environmental role.

Paragraph 12 This National Planning Policy Framework does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise.

Paragraph 17 of the NPPF sets out 12 principles that the planning system should play that underpin both plan making and decision taking. This paragraph confirms that planning should be genuinely plan-led, empowering local people to shape their surroundings, with succinct local and neighbourhood plans setting out a positive vision for the future of the area. It also confirms that planning should proactively drive and support sustainable economic development to deliver the homes, business and industrial units, infrastructure and thriving local places that the country needs.

With specific reference to decision-taking the document provides the following advice:

Para 150 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

Para 187 states that local planning authorities should look for solutions rather than problems, and decision-takers at every level should seek to approve applications for sustainable development where possible. Local planning authorities should work proactively with applicants to secure developments that improve the economic, social and environmental conditions of the area.

Para 196 states that the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material consideration in planning decisions.

Para 197 states that in assessing and determining development proposals, local planning authorities should apply the presumption in favour of sustainable development.

Para 198 states that where a planning application conflicts with a neighbourhood plan that has been brought into force, planning permission should not normally be granted.

## **ASSESSMENT**

It is considered that the main issues that need to be considered in the determination of this application are as follows:

- Highways issues
- Impact of the proposal on the amenities of surrounding occupiers
- Impact of the proposal on the character of the area
- Impacts on listed buildings

### **Highways Issues**

The physical works on the previous planning permission (DM/16/3611) have been completed, including the works to the crossover with West Hoathly Road. The access has been widened and the visibility splay to the north has been increased to 30m. The addition of a passing place within the site has also been completed. Policy DP21 in the DP states

*"Development will be required to support the objectives of the West Sussex Transport Plan 2011-2026, which are:*

- *A high quality transport network that promotes a competitive and prosperous economy;*
- *A resilient transport network that complements the built and natural environment whilst reducing carbon emissions over time;*
- *Access to services, employment and housing; and*
- *A transport network that feels, and is, safer and healthier to use.*

*To meet these objectives, decisions on development proposals will take account of whether:*

- *The scheme is sustainably located to minimise the need for travel noting there might be circumstances where development needs to be located in the countryside, such as rural economic uses (see policy DP14: Sustainable Rural Development and the Rural Economy);*
- *Appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking, have been fully explored and taken up;*
- *The scheme is designed to adoptable standards, or other standards as agreed by the Local Planning Authority, including road widths and size of garages;*
- *The scheme provides adequate car parking for the proposed development taking into account the accessibility of the development, the type, mix and use of the*

*development and the availability and opportunities for public transport; and with the relevant Neighbourhood Plan where applicable;*

- *Development which generates significant amounts of movement is supported by a Transport Assessment/ Statement and a Travel Plan that is effective and demonstrably deliverable including setting out how schemes will be funded;*
- *The scheme provides appropriate mitigation to support new development on the local and strategic road network, including the transport network outside of the district, secured where necessary through appropriate legal agreements;*
- *The scheme avoids severe additional traffic congestion, individually or cumulatively, taking account of any proposed mitigation;*
- *The scheme protects the safety of road users and pedestrians; and*
- *The scheme does not harm the special qualities of the South Downs National Park or the High Weald Area of Outstanding Natural Beauty through its transport impacts.*

*Where practical and viable, developments should be located and designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles.*

*Neighbourhood Plans can set local standards for car parking provision provided that it is based upon evidence that provides clear and compelling justification for doing so."*

The NPPF provides guidance in relation to transport matters, stating that developments should only be refused on matters relating to transport where the residual impacts of the development are severe.

It should be noted that West Hoathly Road is on a bus route so there are already larger vehicles using this road now.

It is considered that the cross over onto West Hoathly Road is safe as required by policy DP21. The Highway Authority has no objection to the continued use of this access by coaches. It is considered that there is no evidence to suggest that in highway capacity terms the impact of the use of this access point by coaches is severe.

In light of the above it is considered that the proposal is acceptable in relation to highways matters.

### **Impact on residential amenity**

Policy DP26 of the DP seeks to resist developments where there is significant harm to neighbouring amenity, from for example, noise, air and light pollution. Policy DP29 in the DP states

*"The environment, including nationally designated environmental sites, nationally protected landscapes, areas of nature conservation or geological interest, wildlife habitats, and the quality of people's life will be protected from unacceptable levels of noise, light and air pollution by only permitting development where:*



*Noise pollution:*

- *It is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area;*
- *If it is likely to generate significant levels of noise it incorporates appropriate noise attenuation measures;*

*Noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development.*

*In appropriate circumstances, the applicant will be required to provide:*

- *an assessment of the impact of noise generated by a proposed development; or*
- *an assessment of the effect of noise by an existing noise source upon a proposed development;*

*Light pollution:*

- *The impact on local amenity, intrinsically dark landscapes and nature conservation areas of artificial lighting proposals (including floodlighting) is minimised, in terms of intensity and number of fittings;*
- *The applicant can demonstrate good design including fittings to restrict emissions from proposed lighting schemes;*

*Air Pollution:*

- *It does not cause unacceptable levels of air pollution;*
- *Development on land adjacent to an existing use which generates air pollution or odour would not cause any adverse effects on the proposed development or can be mitigated to reduce exposure to poor air quality to recognised and acceptable levels;*
- *Development proposals (where appropriate) are consistent with Air Quality Management Plans.*

*The degree of the impact of noise and light pollution from new development or change of use is likely to be greater in rural locations, especially where it is in or close to specially designated areas and sites."*

The nearest residential properties to the northeast of the site are over 100m from the site of the car park. The entrance to the site is opposite. A number of concerns were raised on the original planning application in relation to the use of the site in respect of noise disturbance late at night from vehicles. At the time of the 2017 application, the Council's Environmental Health Officer (EHO) had visited the site and raised some concerns about the use of the development. The EHO suggested that the use of the area for coach drop off should be limited to between 08.00 to 21.00. He also suggested that the planning any permission should be for a temporary period of 12 months to allow the impact of the use of the site on residential amenity to be assessed. It was on this basis that condition 1, limiting the period of time that the access could be used by coaches, was imposed on the 2017 planning permission. The purpose of this was to give a trial run for 12 months to allow the impacts on residential amenity to be assessed.

The Councils EHO has raised no objection to the application and has noted the lack of complaints, as set out in their consultation comments. The Councils Planning and Investigations Officer has received a complaint about the use of the access by coaches. This complaint relates to coaches accessing and leaving the site outside of the hours that were permitted by condition 1. The complainant is also concerned about coaches keeping their engines running whilst they are within the car park/drop off area.

The running of engines within the car park/drop off area is not a breach of planning control. The purpose of seeking to control the hours that coaches could use this access was because it was considered that beyond the permitted hours, there could be an adverse impact on residential amenity. It is considered that this remains the case. An approval of this planning application would not impact on this assessment since the use of the access by coaches would still not be allowed outside of the permitted hours of between 08.00 and 21.00.

The question therefore is whether the use of coaches at any time has caused a significant adverse impact on residential amenity that would justify a refusal of this application. It is considered that based on the information that the Council has received in relation to the overall use of the access by coaches, there is insufficient evidence to say that the use of the access by coaches should cease altogether. However, the breaches of control in relation to the hours that the access can be used by coaches are an important consideration. It is felt that these show that there is an issue in terms of the applicants exercising appropriate control over coaches accessing the site. The Government's Planning Practice Guidance (PPG) states *"It will rarely be justifiable to grant a second temporary permission - further permissions should normally be granted permanently or refused if there is clear justification for doing so. There is no presumption that a temporary grant of planning permission should be granted permanently."* It is considered that this is a somewhat unusual situation in that there has been an extensive and detailed complaint about the use of the access by coaches from one individual but in terms of the content of the complaint, the planning breach relates to the times that the access was used by coaches.

Taking all of the above into account it is considered that at this point in time there is insufficient evidence to say that the use of the access by coaches has caused significant harm to residential, amenity and should cease. However there is evidence of a lack of control by the applicants over the times that coaches are using the access. On this basis it is considered that there is a clear justification for a further temporary planning permission in relation to the use of the access. Given the fact that there has already been a trial period for a year, it is not felt that this further temporary permission needs to be for a further year. It is considered that a period of 9 months would be sufficient. The purpose of this would be for the applicants to demonstrate that they can exercise the appropriate control over the use of this access by coaches. It is considered that such an approach would strike the right balance between the desire of the applicants to use this access by coaches and the need to protect residential amenity.

## **Impact of the proposal on the character of the area**

As the site is within the High Weald AONB, policy DP16 in the DP states

*Development within the High Weald Area of Outstanding Natural Beauty (AONB), as shown on the Policies Maps, will only be permitted where it conserves or enhances natural beauty and has regard to the High Weald AONB Management Plan, in particular;*

- *the identified landscape features or components of natural beauty and to their setting;*
- *the traditional interaction of people with nature, and appropriate land management;*
- *character and local distinctiveness, settlement pattern, sense of place and setting of the AONB; and*
- *the conservation of wildlife and cultural heritage.*

*Small scale proposals which support the economy and social well-being of the AONB that are compatible with the conservation and enhancement of natural beauty will be supported.*

*Development on land that contributes to the setting of the AONB will only be permitted where it does not detract from the visual qualities and essential characteristics of the AONB, and in particular should not adversely affect the views into and out of the AONB by virtue of its location or design."*

Paragraph 115 of the NPPF states that great weight should be given to the protection of the AONB.

In this case there are no physical works proposed by this application; all of the physical works for the coach drop off and car parking area have been previously approved under planning permission reference DM/16/3611. As such in relation to the impact of the proposal on the character of the AONB, it is the use of the site by coaches that is the relevant issue.

It is important to note that there was a previous access at this point that served the maintenance area and this had no restrictions on its use. As such lorries and other maintenance vehicle could (and still can) use this access at any time. The road that the access adjoins is on a bus route so this type of vehicle is already a feature on the locality. It is also relevant that coaches are permitted to use the surroundings roads.

In light of these points it is considered that the use of this access by coaches does not have an adverse impact on the character of the AONB and preserves its natural beauty. As such it is considered the proposal does not conflict with policy DP16 of the DP.

## **Impacts on listed buildings**

When a planning application affects a listed building, the statutory requirement to have special regard to the desirability of preserving the building, its setting and any

features of special interest (s66, Planning (Listed Buildings and Conservation Areas) Act 1990) must be taken into account when making any decision. In addition, in enacting section 66(1) of the Listed Buildings Act, the desirability of preserving the settings of listed buildings should be given 'considerable importance and weight' when the decision taker carries out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.

The NPPF sets out the government's policies for sustainable development. A core planning principle of this framework is to conserve heritage assets in a manner appropriate to their significance (para.17). When considering the impact of a proposed development on the significance of a designated heritage asset the NPPF requires that great weight should be given to its conservation. The more important the asset, the greater the weight should be. It explains that the significance of a heritage asset can be harmed or lost through development within its setting and as heritage assets are irreplaceable, any harm or loss should require clear and convincing justification (Para. 132).

In assessing this issue on the previous application (DM16/3611) the officers report stated

"Saint Hill Manor is a Grade II listed building situated in substantial landscaped grounds in a rural position outside East Grinstead town. The site is some 130m to the southeast of the Manor House, adjacent to the existing service yard, and is separated from the listed building by landscaped gardens. The Conservation Officer considers that the topography of the gardens and the planting within them means that intervisibility between the new coach drop off and the Manor House would be limited or non-existent. As such there would be no harm to the setting of the listed Manor House and no conflict with either development plan policy, the provisions of the Act or the NPPF. 6 and 7 Saint Hill Green are the two listed properties opposite the access into the site. The works at the site entrance involve widening the access, increasing the kerb radii and the addition of a passing place on the southern side of the access drive. These works would be some 30m from the listed properties opposite. The listings description describes the buildings as follows *1 storey and attic. 4 windows and 4 gabled dormers, ashlar, slate roof. Casement windows, leaded lights and projecting gabled central porch. Originally 2 dwellings.*

It is not considered that these works to the access adversely affects the setting of these listed dwelling houses."

It is not considered that the use of the access by coaches causes harm to the setting of any of the heritage assets around the site. The physical works associated with the car park and drop off area were all approved under application DM/16/3611 and do not feature in this planning application.

## **PLANNING BALANCE AND CONCLUSION**

To summarise, planning permission has been granted for a coach drop off and parking area. The physical works for this development are all completed and there is no breach of planning control in relation to these physical works. The planning permission that was granted allowed for a temporary period of use of the access by

coaches to allow time for an assessment of the impact of this use on residential amenity.

It is considered that the evidence before the Council has shown that there are no grounds to resist the proposed use on the basis of highway safety. It is also considered that in terms of an impact on the character and natural beauty of the AONB, this has been conserved. The main issue is in relation to the impact on residential amenity.

It is considered that because of the complaint that has been received about the use of the access by coaches taking place outside of the approved times, it has not been demonstrated that the applicants have exercised sufficient control over the use of the access by coaches. It is therefore felt it would be appropriate for there to be a further temporary period in relation to the use of the access by coaches to enable further assessment of this use to be undertaken. A period of 9 months is considered to be sufficient.

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## **APPENDIX A – RECOMMENDED CONDITIONS**

1. The use of the site by coaches shall cease on 1st March 2019.

Reason: To enable the use of the site by coaches to have a trial run in order to allow an assessment of the impact of this use on residential amenity to be made at the end of the trial period and to comply with policies DP26 and DP29 of the District Plan.

2. Coaches may only access and exit the site between 08.00 and 21.00.

Reason: To protect the amenity of local residents and to comply with policies DP26 and DP29 of the District Plan.

### **Plans Referred to in Consideration of this Application**

The following plans and documents were considered when making the above decision:

*None*

## **APPENDIX B – CONSULTATIONS**

### **East Grinstead Town Council**

As per East Grinstead Town Council Planning Committee meeting held on 16th May 2018:- Recommend Refusal: The Committee felt it was too early to complete the monitoring of this condition. The usage of the coach park must complete a full year of monitoring before this should be considered further. There remain concerns as to the usage and the timings of this usage which need to be satisfied by the continued monitoring by the District Council.

## Highway Authority

Planning consent was granted on 26th May 2017 for the provision of a coach drop-off area, 6 contractor parking bays, minor alterations to access onto West Hoathly Road and associated landscaping. Condition 1 allowed the operation of the site for a one year period so that the impacts of the use of the site on nearby residential properties could be assessed.

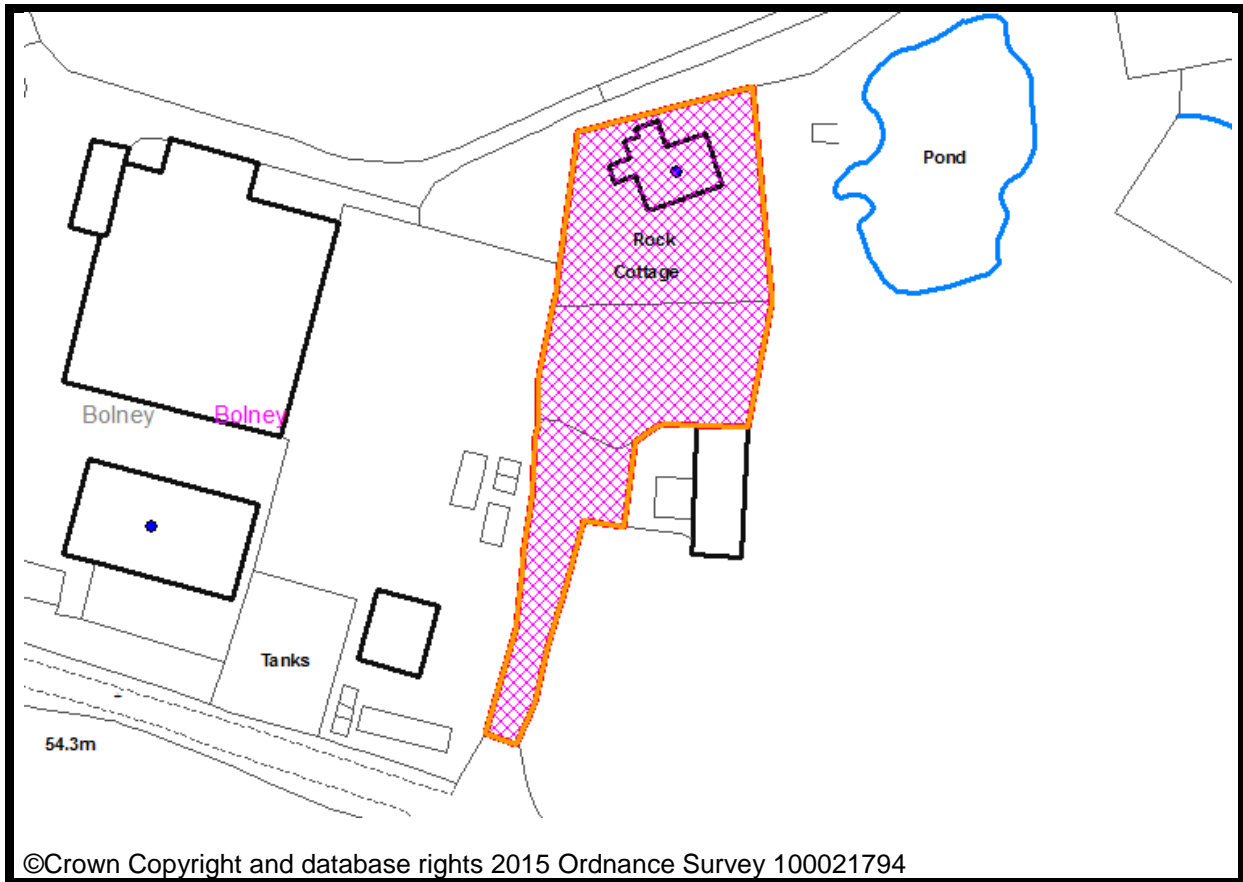
In the period of the past 12 months I am not aware of any adverse comments that may have been made by the Local Highway Authority (LHA), or of any other highway related concerns with this site and the current use. Therefore, I would not foresee there being any significant highway issues to this use continuing.

## Environmental Protection Officer

<b>Comment for Development Control</b>	
<b>Consultee:</b>	Emmett Turner MSc, BSc (Hons), MCIEH Environmental Protection Officer
<b>Date of reply:</b>	14 <sup>th</sup> May 2018
<b>Planning reference</b>	DM/18/1746 in relation to DM/16/3611
<b>Site address:</b>	Saint Hill Manor, Saint Hill Road, East Grinstead, West Sussex RH19 4JY
<b>Description:</b>	DM/18/1746 Removal of Condition 1 (The use of the site by coaches shall cease on 26th May 2018) from Planning Permission DM/16/3611.
<b>My reference:</b>	SR/18/1307
<p><b>Main Comments:</b> The application is for the removal of condition 1 of Decision Notice DM/16/3611.</p> <p>Environmental Protection has no records of any noise complaints relating to coaches for this site going back over several years. We are aware of two complaints to MSDC Planning from the same complainant but they have not been possible to substantiate</p> <p>I would therefore make the following recommendation:</p>	
<p><b>Recommendation:</b> Approve Application DM/18/1746 for the removal of Condition 1 (The use of the site by coaches shall cease on 26th May 2018) from Planning Permission DM/16/3611</p>	
<p><b>Informative:</b> Your attention is drawn to the requirements of the Environmental Protection Act 1990 with regard to your duty of care not to cause the neighbours of the site a nuisance.</p> <p>Please note that the granting of this planning permission does not exempt the operator from liability for any statutory nuisance (e.g. noise or artificial light) caused as a result of the use of the property.</p>	

## Bolney

### 4. DM/18/1814



**THE YARDS CROSS COLWOOD LANE BOLNEY HAYWARDS HEATH  
VARIATION OF CONDITION 1 RELATING TO PLANNING APPLICATION  
DM/16/2857, TO SUBSTITUTE PLANS 203P001B, 203P002B AND 203P004  
FOR PLANS 203P1001C, 203P002C AND 203P004A.**

**MR BURKE**

**GRID REF: EAST 524603 NORTH 124262**

POLICY: Areas of Outstanding Natural Beauty / Areas of Special Control for  
Adverts / Countryside Area of Dev. Restraint / SWT Bat Survey /

ODPM CODE: Minor Dwellings

8 WEEK DATE: 28th June 2018

WARD MEMBERS: Cllr Judy Llewellyn-Burke /

CASE OFFICER: Mrs Joanne Fisher

## **PURPOSE OF REPORT**

To consider the recommendation of the Divisional Lead, Planning and Economy on the application for planning permission as detailed above.

## **EXECUTIVE SUMMARY**

Planning permission was originally granted under reference DM/16/2857 for a replacement dwelling together with a separate bin store/battery store. This current application seeks to vary Condition 1 relating to this original planning permission to substitute plans 203P001B, 203P002B and 203P004 for plans 203P1001C, 203P002C and 203P004A for the inclusion of brise soleil (solar shading) to the south and east elevations at first floor level, and a pergola adjacent to the main living space on the southern side of the dwelling at The Yards (formerly Rock Cottage), Cross Colwood Lane, Bolney.

This application is being referred to Committee as the applicant is a District Council Member.

The proposed amendments to the previously approved plans detailed in condition 1 are considered to be of a scale and design in keeping with the character of the proposed replacement dwelling. Due to the positioning, scale and design of the amendments, the proposal will ensure that neighbouring residential amenity will not be significantly affected and the character of the surrounding area, including the AONB, will be preserved. In addition, the amendments would not cause harm to the setting of the nearby listed building.

The proposal is thereby considered to comply with Policies DP12, DP15, DP16, DP26 and DP34 of the District Plan, Policies BOLE2 and BOLD1 of the Neighbourhood Plan, the NPPF requirements and The High Weald Area of Outstanding Natural Beauty Management Plan 2014-2019.

## **RECOMMENDATION**

It is recommended that permission is granted subject to the conditions outlined at appendix A.

## **SUMMARY OF REPRESENTATIONS**

None received.

## **SUMMARY OF CONSULTATIONS**

None

## **PARISH COUNCIL OBSERVATIONS**

Not yet received.



## **INTRODUCTION**

Permission is sought to vary Condition 1 relating to planning application DM/16/2857, to substitute plans 203P001B, 203P002B and 203P004 for plans 203P1001C, 203P002C and 203P004A for the inclusion of brise soleil (solar shading) to the south and east elevations at first floor level, and a pergola adjacent to the main living space on the southern side of the dwelling at The Yards, Cross Colwood Lane, Bolney.

Under Section 73 of the Town and Country Planning Act 1990 an application can be made to vary or remove conditions associated with a planning permission to seek a minor material amendment, where there is a relevant condition that can be varied (such as the list of the approved plans). Minor material amendments include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.

Where an application under section 73 is granted, the effect is the issue of a new planning permission, sitting alongside the original permission, which remains intact and unamended. However such an application cannot be used to vary the time limit for implementation. As such, this condition must remain unchanged from the original permission.

## **RELEVANT PLANNING HISTORY**

Planning permission was granted under reference DM/16/2857 for a replacement dwelling together with a separate bin store/battery store. Works are currently under way to implement the permission.

Following this approval, a non-material amendment was approved under reference DM/17/3653 for revisions to the external glazing arrangements and the omission of the bin store/battery store.

Conditions 3 (materials) and 4 (landscaping) attached to the original permission has been discharged under reference DM/17/4129, and condition 5 (drainage) has been discharged under reference DM/17/4204.

More recently, a non-material amendment to update glazing details, introduce solar shading to glazing (brise soleil) and introduction of a pergola to the garden was refused under DM/18/1477. It was considered that the proposed amendments would represent a material change to planning permission DM/16/2857, as they would materially alter the appearance of the rear elevation.

## **SITE AND SURROUNDINGS**

The application site comprises a former gardener's cottage which was previously set within the grounds of Chatesgrove, a large Grade II listed property set within a generous curtilage. Rock Cottage dates from the mid -C20th, is not listed and has its own curtilage. However, it is in close proximity to the barn which is set to the south of the existing bungalow.

Rock Cottage is a detached single storey dwelling with a total floor space of some 96.25sqm. The property sits to the north of a large detached outbuilding forming a pottery studio, garaging/workshop which is timber clad with a barn hipped roof. This barn is deemed to be curtilage listed due to its historical relationship with Chatesgrove.

The dwelling benefits from a separate drive to the main dwelling of Chatesgrove.

The dwelling is set some 150metres away from the Grade II Listed dwelling of Chatesgrove and views of this listed dwelling are limited between the two properties as Chatesgrove is set at a significantly lower level and there is vegetation screening between the two dwellings.

Construction of the replacement dwelling previously approved, is currently underway.

The site is situated within the Countryside Area of Development Restraint and the High Weald Area of Outstanding Natural Beauty as defined in the District and Neighbourhood Plan.

## **APPLICATION DETAILS**

The application seeks to vary condition 1 of the original 2016 permission for the replacement dwelling amending the approved drawings to provide the following changes to the proposal:

- the addition of Brise Soleil [solar shading] arrays to the South and East Elevations; and
- the addition of a standalone Pergola in the garden area (not attached to the building).

It is submitted that the reason for varying the condition relates to the natural ventilation and shading strategy of the building, both to improve the internal environment for users and to negate the need for any form of mechanical ventilation.

The proposal for the solar shading is to provide a set of 4 panels (each panel comprising aerofoil fins) reflecting the glazing arrangement of the windows behind, finished in the same colour as the cladding.

The pergola, a simple box frame structure with laser cut panels forming a canopy set into the frame, will act as a feature to the garden linking the interior and exterior spaces and will additionally provide shading to the living area over the large patio doors. The pergola will sit unconnected to the house.

## **LIST OF POLICIES**

### **District Plan**

The District Plan was adopted in March 2018.

Relevant policies:

DP12 - Protection and Enhancement of the Countryside  
DP15 - New Homes in the Countryside  
DP16 - High Weald Area of Outstanding Natural Beauty  
DP26 - Character and Design  
DP34 - Listed Buildings and Other Heritage Assets

## **Neighbourhood Plan**

The Neighbourhood Plan for Bolney was 'made' in September 2016. It forms part of the development plan with full weight.

Relevant policies include:

BOLE2 Protect and Enhance the Countryside;  
BOLD1 Design of New Development and Conservation;

*The High Weald Area of Outstanding Natural Beauty Management Plan 2014-2019*

The legal framework for AONBs in England and Wales is provided by the Countryside and Rights of Way Act (CROW) 2000 which at Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty. Section 84 of the CROW requires Local Planning Authorities to 'take all such action as appears to them expedient for accomplishment of the purpose of conserving and enhancing the natural beauty of the AONB'.

## **National Policy**

*National Planning Policy Framework (NPPF) (March 2012)*

*National Planning Policy Guidance*

*Planning (Listed Buildings and Conservation Areas) Act 1990*

## **ASSESSMENT**

Even though the result of this application would result in the issuing of a new planning permission, it is not considered necessary to go through all the planning issues, such as principle for example, as the development as approved by DM/16/2857 is under construction. The only issue that is pertinent to assess is the impact of the current changes being sought.

## **Impact to the character of the replacement dwelling and to the Area of Outstanding Natural Beauty**

Policy DP26 of the District Plan relates to character and design and states:

*"All development and surrounding spaces, including alterations and extensions to existing buildings and replacement dwellings, will be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside. All applicants will be required to demonstrate that development:*

- *is of high quality design and layout and includes appropriate landscaping and greenspace;*
- *contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *protects valued townscapes and the separate identity and character of towns and villages;*
- *does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP27);*
- *creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*
- *incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- *positively addresses sustainability considerations in the layout and the building design;*
- *take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element;*
- *optimises the potential of the site to accommodate development."*

In addition BOLD1 of the Neighbourhood Plan relates to the design and conservation of new development. Amongst other criteria it requires proposals to be:

*"designed to a high quality which reflects Bolney's rural nature and responds to the heritage and distinctive character by way of;*

- *height, scale, spacing, layout, orientation, design and materials of buildings, and*
- *the scale, design and materials of the public realm (highways, footways, open space and landscape); and*
- *It does not have an unacceptable impact on the setting of any heritage asset"*

The inclusion of the brise soleil to the southern and eastern gables at first floor level will be of a design to complement the external cladding of the dwelling. Whilst the property is set within the site, views of this on the eastern gable would be visible from the garden of the neighbouring property Chatesgrove. However, the design of this solar shading feature will not negatively affect either the visual appearance of the dwelling or the amenity of occupiers of the neighbouring property.

In addition, the inclusion of the pergola within the courtyard of the dwelling due to its scale and design is not considered to cause detract from the design or character of the replacement dwelling.

The proposal thereby complies with policy DP26 of the District Plan and policies BOLE2 and BOLD1 of the Neighbourhood Plan.

The site lies within the High Weald Area of Outstanding Natural Beauty. Paragraph 115 of the NPPF states that *"Great weight should be given to conserving landscape and scenic beauty in ... Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty"*. Due to the scale, position and the design of the proposed amendments, it is considered that the proposals will conserve the landscape and scenic beauty and thereby be appropriate to this part of the Area of Outstanding Natural Beauty. The proposal is thereby considered to comply with policy DP16 of the District Plan.

### **Impact to setting of nearby Listed Building**

Chatesgrove is situated to the south-east of the application site and is a Grade II listed building dating originally from the early 17th century, with later alterations. It is situated in substantial grounds in a rural position outside the village of Bolney.

The application site and barn subject of this application was formerly within the ownership of Chatesgrove, although Rock Cottage had its own curtilage separate to the listed building. Notwithstanding this, the property fell within the setting of the listed building and the barn immediately south of the application site due to its historical relationship with Chatesgrove is deemed to be curtilage listed. Whilst the barn is now in separate ownership, it is still curtilage listed. The impact of the amendments on the setting of these listed buildings is therefore required to be considered.

As such the Planning (Listed Buildings and Conservation Areas) Act 1990 is relevant to the consideration of the application. S. 66 states:

*"66.—(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*

Paragraphs 131 -134 of the NPPF are also relevant and state that:

*"131. In determining planning applications, local planning authorities should take account of:*

- *the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation,*
- *the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality, and*
- *the desirability of new development making a positive contribution to local character and distinctiveness.*

*132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's*

*conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*

*133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

- the nature of the heritage asset prevents all reasonable uses of the site, and*
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation, and conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible, and*
- the harm or loss is outweighed by the benefit of bringing the site back into use.*

*134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use."*

In addition Policy DP34 (listed buildings and other heritage assets) of the District Plan is relevant. This requires developments to protect listed buildings and their settings. It includes within the criteria that "*Special regard is given to protecting the setting of a listed building*".

In the determination of the original application for the replacement dwelling, it was considered that whilst there would be some harm to the setting of the barn, this would be at the lower level of less than substantial harm. It was considered that the replacement of the bungalow with a new dwelling would draw upon and strongly reference the barn and its historic courtyard setting which would result in a dwelling of significantly improved appearance. In addition, it was considered that the current barn is divorced from the main dwelling of Chatesgrove, and the new dwelling would allow the historic barn to retain its ancillary function through the implementation of the current scheme, that is, its use as a combined storage facility, workshop and studio ancillary to the proposed replacement dwelling. The proposal would thus help to secure its optimum viable use helping in its long term conservation.

The proposed amendments of the inclusion of the brise soleil and the pergola are not considered to cause any further harm to the setting of the listed building than that of the previously approved replacement dwelling. The brise soleil is to consist of aerofoil fins finished in the same colour of the external cladding of the dwelling (Anthra-zinc standing seam zinc cladding of a matt appearance). As such it would

blend in with the materials used in the dwelling. In addition, due to the location and scale of the pergola, this would be viewed as a garden feature.

In light of this, it is considered that whilst the proposal would still result in some harm to the setting of the barn this would be at the lower level of less than substantial harm. The replacement of the bungalow with a new dwelling would result in a dwelling of significantly improved appearance, allow the historic barn to retain its ancillary function and help to secure its optimum viable use helping in its long term conservation. As such the proposal is considered to comply with policy DP34 of the District Plan, policy BOLD1 of the Neighbourhood Plan and the relevant paragraphs of the NPPF.

## **CONCLUSION**

The proposed amendments to the previously approved plans detailed in condition 1 are considered to be of a scale and design in keeping with the character of the proposed residential dwelling. Due to the positioning, scale and design of the amendments, the proposal will ensure that neighbouring residential amenity will not be significantly affected and the character of the surrounding area, including the AONB, will be preserved. In addition, whilst it is acknowledged that there would be some harm to the setting of the listed barn the amendments proposed would not result in further harm to the setting of the barn than that previously allowed.

As a result the proposal complies with DP12, DP15, DP16, DP26 and DP34 of the District Plan, Policies BOLE2 and BOLD1 of the Neighbourhood Plan, the NPPF requirements and The High Weald Area of Outstanding Natural Beauty Management Plan 2014-2019.

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## **APPENDIX A – RECOMMENDED CONDITIONS**

1. The development hereby permitted shall be begun before the 21st December 2019.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.

### **Approved Plans**

2. The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".

Reason: For the avoidance of doubt and in the interest of proper planning.

3. The dwelling shall be carried out in accordance with the details of the materials and finishes for external walls and roofs of the new as approved on the 19th October 2017 under discharge of condition reference DM/17/4129.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031 and Policy BOLD1 of the Neighbourhood Plan.

4. The development shall be carried out in accordance with the details approved on the 19th October 2017 under discharge of condition reference DM/17/4129 in relation to details of a hard and soft landscaping scheme and these works shall be carried out as approved. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed by the Local Planning Authority. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of visual amenity and of the environment of the development and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031 and Policy BOLD1 of the Neighbourhood Plan.

5. The development shall be carried out in accordance with the details approved on the 15th November 2017 under discharge of condition reference DM/17/4204 in respect of the proposed surface water drainage and foul water drainage and means of disposal. No building shall be occupied until all approved drainage works have been carried out in accordance with such details.

Reason: To ensure that the proposed development is satisfactorily drained and to accord with Policy DP41 of the Mid Sussex District Plan 2014 - 2031.

6. Within three months of the occupation of the replacement dwelling, the existing dwelling (Rock Cottage) shall be demolished and the debris removed from the site.

Reason: To protect the appearance of the area and to accord with Policies DP12 and DP16 of the Mid Sussex District Plan 2014 - 2031 and Policies BOLE1 and BOLD1 of the Neighbourhood Plan.

7. No part of the development shall be first occupied until covered and secure cycle parking spaces have been provided in accordance with plans and details submitted to and approved by the Local Planning Authority.

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies and to accord with Policy DP21 of the Mid Sussex District Plan 2014 - 2031.

8. The development shall proceed only in accordance with the recommendations set out in the following wildlife reports:

- Bat Survey Report by Phlorum, dated June 2016;



- Great Crested Newt Survey Report by Phlorum, dated May 2016; and
- Preliminary Ecological Appraisal by Phlorum, dated September 2015

Reason: to ensure that the proposals avoid adverse impacts on protected and priority species and contribute to a net gain in biodiversity, in accordance with 109 and 118 of the NPPF.

## INFORMATIVES

1. Your attention is drawn to the requirements of the Environmental Protection Act 1990 with regard to your duty of care not to cause the neighbours of the site a nuisance. Accordingly, you are requested that:
  - Hours of construction/demolition on site are restricted only to: Mondays to Fridays 0800 - 1800 hrs; Saturdays 0900 - 1300 hrs; No construction/demolition work on Sundays or Public Holidays.
  - No burning of materials shall take place on site at any time.

If you require any further information on these issues, please contact Environmental Protection on 01444 477292.

2. In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

### Plans Referred to in Consideration of this Application

The following plans and documents were considered when making the above decision:

<b>Plan Type</b>	<b>Reference</b>	<b>Version</b>	<b>Submitted Date</b>
Proposed Floor Plans	203-P001	C	02.05.2018
Proposed Elevations	203-P002	C	02.05.2018
Proposed Sections	203-P004	A	02.05.2018

# **MID SUSSEX DISTRICT COUNCIL**

PLANNING COMMITTEE A

**21 JUN 2018**

**PART II – RECOMMENDED FOR REFUSAL**

*NONE*

# **MID SUSSEX DISTRICT COUNCIL**

PLANNING COMMITTEE A

**21 JUN 2018**

## **PART III – OTHER MATTERS**

### **Cuckfield**

#### **5. EF/14/0143**

**SITE: Land North of Bylanes Close (now Buttinghill Drive), CUCKFIELD**

### **INTRODUCTION**

This report relates to a planning enforcement investigation and breach of planning control where the land owner has failed to comply with the requirements of an Enforcement Notice

Officers are therefore requesting authorisation from members of the committee to commence prosecution proceedings in relation to the failure to comply with an extant S172 Enforcement Notice.

### **SITE AND SURROUNDING**

The land to which the Enforcement Notice and breach of planning control relates is the public open space and drainage provision association with the residential development of 42 dwellings on land north of Bylanes Close, Cuckfield. This development is now known as Buttinghill Drive.

The land, measuring just under 3ha in size, lies to the north of the development in Cuckfield and is within the High Weald Area of Outstanding Natural Beauty. It is designated as informal public open space and contains the surface water drainage scheme, including a balancing pond, required as mitigation for the residential development.

### **PLANNING AND ENFORCEMENT HISTORY**

Planning permission was granted under appeal on 28<sup>th</sup> April 2011 for the construction of 42 dwellings on land north of Bylanes Close, Cuckfield. This planning permission included, as part of the permission, and which was given considerable weight by the Inspector in considering the impact of the development upon the character and appearance of the Area of Outstanding Natural Beauty, the provision of public open space to the north of the development which would allow residents of Cuckfield to obtain access into the AONB in line with the aims of the High Weald AONB Management Plan.

Also contained within this area of public open space was to be the surface water drainage provision for the development and which included a two-stage balancing pond and outfall to a water course to the east of the site.

The public open space was secured by means of a Unilateral Undertaking which would transfer the land to Cuckfield Parish Council together with an appropriate financial sum for ongoing maintenance. The design, layout and maintenance of the public open space and drainage provision was thereafter secured by planning conditions which were thereafter discharged with the agreement of the Council.

Taylor Wimpey (the developer) thereafter commenced work on the development in 2013 with the residential development now complete and fully occupied. Due to the ongoing matter outlined below, the land upon which the public open space and drainage provision lies remains with Taylor Wimpey and has not been transferred to Cuckfield Parish Council.

## **CURRENT SITUATION**

In 2014 it came to the attention of the Council that the balancing pond, constructed via excavating the land, had not been completed in accordance with the approved plans and that it had suffered a structural collapse to its southern earth bank. It was also noted that elements of maintenance and landscaping (relating to the creation of paths around the public open space and installation of items such as benches and bins) had not taken place.

During the winter of 2014 Taylor Wimpey sought to undertake remedial works to repair the pond, however, in March 2015 it was again noted that pond had been subject to further collapse.

Whilst discussion between the Taylor Wimpey and the Council have been ongoing in the intervening period, no new planning application for revisions to the drainage provision or public open space have been received and whilst the pond has suffered no further collapse, the structural failure has not been addressed and the public open space has not and cannot be completed in accordance with the approved plans.

As such a Breach of Condition Enforcement Notice was issued by the Council on 4<sup>th</sup> May 2017. There was no appeal against the issue of the Enforcement Notice and it thereafter came into effect on 5<sup>th</sup> June 2017 and required the following steps to be undertaken.

1) Regrade and stabilise the southern bank of the balancing pond on the Land and secure the bank to prevent further disintegration. Works to be completed in accordance with submitted drawings WST/E3973/140 and WST/E3973/137

2) Repair and maintain the sustainable drainage system on the Land in accordance with the approved management and maintenance plan (being document reference WST/E3973/14211 and a copy of which is attached to this notice) including, but not exclusively relating to:

i. Remove litter and debris

- ii. Manage vegetation and nuisance plants
- iii. Repair erosion and clear waterways
- iv. Re-level and re-instate design levels
- v. Remove build-up of sediment

3) Maintain and undertake hard landscaping works on the Land in accordance with approved drawing CSa/1843/109 Rev A (a copy of which is attached to this notice) including, but not exclusively relating to:

- i. Creation of pathway around drainage pond
- ii. Installation and maintenance of all timber benches, litter bins, and dog waste bins
- iii. Creation and maintenance of all mown footpaths

A period of three months (up until 5<sup>th</sup> September 2017) was provided for the remedial works to the pond and the installation of the timber benches, litter bins and dog waste bins to be carried out.

Officers have remained in discussion with Taylor Wimpey, however, despite correspondence outlining their intention to address the matter through the submission of revised planning applications, to date no such applications have been received. The balancing pond therefore remains in a state of disrepair in its collapsed state. Whilst it is currently considered that the pond, even in its collapsed state, does not represent a flood risk to residential properties, no further attempts to repair the pond have taken place and the visual appearance of the pond is considered detrimental to the character and appearance of the Area of Outstanding Natural Beauty. Furthermore, the failure to provide footpaths and quality of public open space is contrary to the aims of the High Weald AONB Management Plan and the principles of Sustainable Drainage Systems.

Officers note that there is no guarantee that repairs to the pond will be successful, however, with the matter not progressing and the Parish Council unable to take possession of the land (and responsibility for the maintenance of the drainage system) it is considered that the prospect of prosecution proceedings commencing represents the only means of expediting a resolution to the matter.

With respect to requirement 3, some elements of the hard landscaping have been installed (including benches and gates), however, the litter and dog bins remain absent. It is therefore not considered that requirement 3 of the Notice has been complied with either.

It is therefore open to the Council to pursue a prosecution against the failure to comply with the requirements of the Enforcement Notice in line with S179 of the Town and Country Planning Act 1990.

Should the works to remedy the breaches of planning control commence prior to any prosecution proceedings being concluded, or else the Council approves revisions to the approved drainage scheme, then the Council could choose not to pursue the matter further, however, as the land owner has failed to address the substantive concerns of the Council for over a two years, the reasons for the issue of the

Enforcement Notice relating to the harm to the character and appearance of the Area of Outstanding Natural Beauty remain and the owner can be liable to a prosecution under S179 of the Town and Country Planning Act 1990 and on summary conviction, to a fine not exceeding £20,000.

## **RECOMMENDATION AND CONCLUSIONS**

The developer has failed to maintain the approved drainage system or provide public open space which is of a sufficient quality and which does not comply with the requirements of the extant Enforcement Notice. The harm to the character and appearance of the Area of Outstanding Natural Beauty and the non-compliance with the aims of the High Weald AONB Management Plan and the principles of Sustainable Drainage Systems which the Enforcement Notice seeks to remedy therefore remains.

It is therefore recommended that the owner of the land is prosecuted for non-compliance with the Section 172 Enforcement Notice, subject to the Solicitor to the Council being satisfied that there is sufficient evidence to do so.