

MID SUSSEX DISTRICT COUNCIL

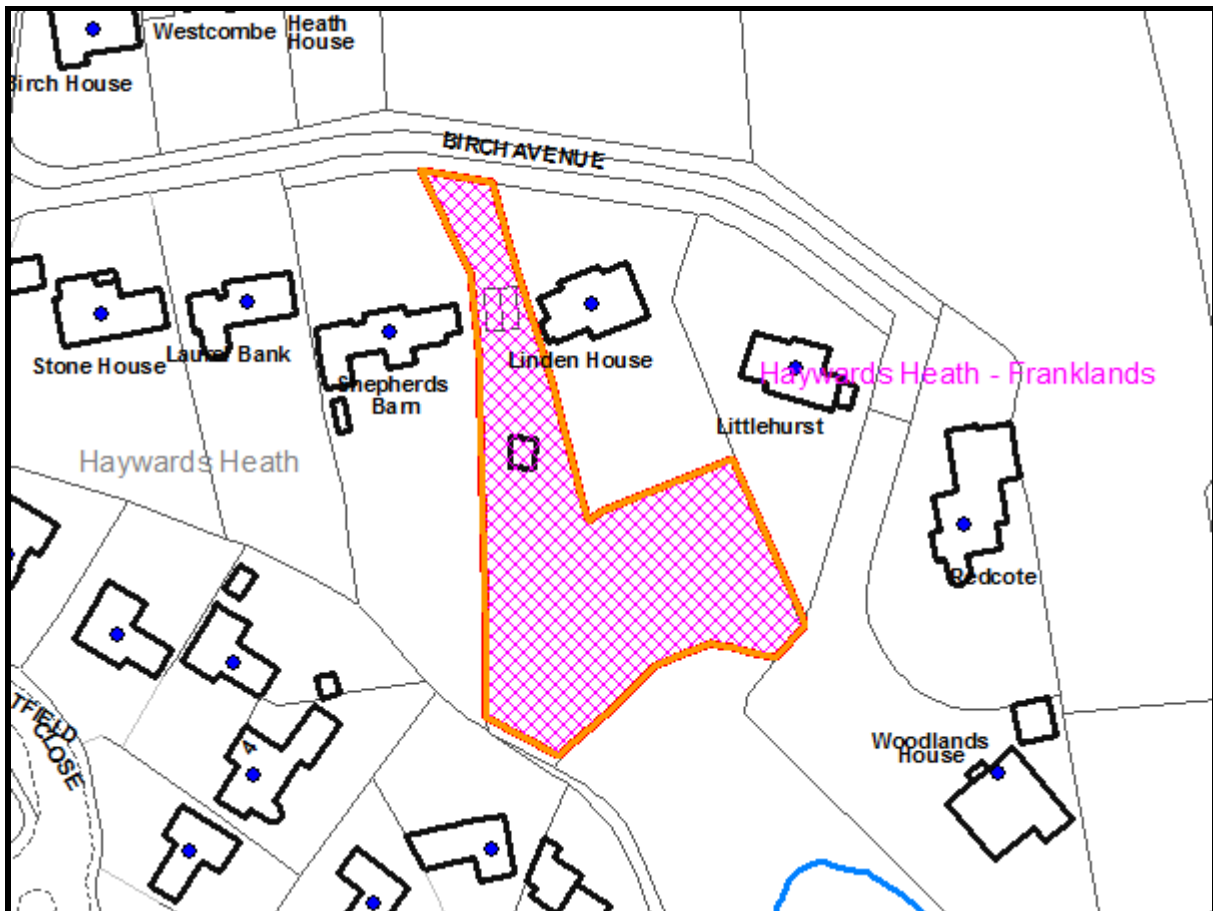
Planning Committee B

13 DEC 2018

RECOMMENDED FOR REFUSAL

Haywards Heath

DM/18/2093



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**LINDEN HOUSE BIRCH AVENUE HAYWARDS HEATH WEST SUSSEX
ERECTION OF DETACHED 2-STOREY, 5-BED HOUSE WITH JULIETTE
BALCONY TO FRONT FIRST FLOOR ELEVATION, 1 DORMER WINDOW
TO REAR FIRST FLOOR ELEVATION, ATTACHED DOUBLE GARAGE
AND NEW ACCESS ONTO BIRCH AVENUE. PROPOSED 1.8M HIGH
CLOSED PANEL FENCING TO REAR (AMENDED PLANS RECEIVED 28
AUGUST AND 4 SEPTEMBER 2018)
SEAN REARDON**

POLICY: Ancient Woodland / Built Up Areas / SWT Bat Survey /

ODPM CODE: Minor Dwellings

8 WEEK DATE: 21st August 2018

WARD MEMBERS: Cllr Garry Wall / Cllr Rod Clarke /

CASE OFFICER: Andrew Watt

PURPOSE OF REPORT

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

EXECUTIVE SUMMARY

Full planning permission is sought for the erection of a 2-storey, 5-bed detached dwelling with attached double garage and access within the rear garden of Linden House, Birch Avenue, Haywards Heath.

Planning legislation requires the application to be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the Development Plan and then to take account of other material planning considerations including the NPPF.

National planning policy states that planning should be genuinely plan-led. Planning decisions should therefore be in accordance with the development plan unless material considerations indicate otherwise. As the Council can demonstrate a 5 year supply of deliverable housing land the planning balance set out in the NPPF is an un-tilted one.

Weighing in favour of the scheme is that the development will provide 1 residential unit within the built up area of the town in a sustainable location 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.

However, weighing against the scheme will be a harmful impact to the visual amenities of the area, and this should be accorded significant weight. A further element against the scheme would be noise and disturbance during the construction phase, but this would be a temporary impact.

There will be a neutral impact in respect of a number of issues such as the setting on the Conservation Area, drainage, highways matters, land contamination and sustainability, which could otherwise be dealt with by conditions. There will also be a neutral impact on the Ashdown Forest.

Weighing all the above, it is considered that the scale and height of the proposed dwelling would result in a significant adverse visual impact to the character of Birch Avenue, due to its visibility in the gaps between the existing dwellings. The extent of this solid built form, including the extension of the driveway past and beyond the host dwelling, would give a clear impression of a backland development that would be harmful to the verdant quality and spacious character of the area. Due to the necessity of providing a buffer zone to the ancient woodland beyond, the available garden area and its resultant location to the side as the main space, would be out of keeping with more spacious plots surrounding the application site. The proposal would therefore fail to comply with Policy DP26 of the Mid Sussex District Plan and Policies E9 and H8 of the Neighbourhood Plan and paragraphs 124, 127 and 130 of the National Planning Policy Framework. Additionally, insufficient information has been provided at this stage to demonstrate that the proposal would not adversely impact on Badgers, and so the application would fail to comply with Policy DP38 of the Mid Sussex District Plan and paragraph 175 of the NPPF.

RECOMMENDATION

It is recommended that the application be refused for the reasons set out in Appendix A.

SUMMARY OF REPRESENTATIONS

Haywards Heath Society: The Society objects to this scheme as it did with previous proposals. It appears to be a complete overdevelopment of the site, is not appreciative of neighbours amenities, and is generally not suitable for this location. Wildlife in the area and local woodland would be adversely affected.

30 objections from 12 residents on the following grounds:

- Applicant's ecological reports have been reviewed with particular attention paid to record the presence of badgers, bats, amphibians and reptiles;
- Several errors identified in terms of site boundary and distances to ponds;
- Direct contradiction to our findings that there is a badger sett located on the boundary between the woodland and the application site and that the actual sett extends into the site;
- Dormouse survey is out of date
- New planting should be implemented to provide enhanced foraging opportunities for bats along with a sensitive lighting strategy to minimise disturbance to foraging bats;
- Application would cause loss or damage to ancient woodland;
- Loss in biodiversity;
- A number of veteran trees have been felled to accommodate this development;
- Buffer zone to ancient woodland is insufficient as it would be subsumed into the garden;
- Severing the existing green corridor;
- Light pollution;

- 2 bat boxes would not mitigate the damage caused by the proposed house;
- Inappropriate size, scale, height and design;
- Existing blind spot at exit next to Shepherds Barn causing highway safety hazard and damage to landscape;
- Birch Avenue drive was damaged by construction vehicles in 2016;
- Flooding from surface rain water;
- No allowance for impact to neighbouring properties or ancient woodland;
- Two restrictive covenants, one deals with vegetation on the Linden House and Littlehurst border, the other prevents tall planting and construction across the diagonal of the rear garden of Linden House;
- Impact on privacy and tranquillity;
- Negative impact on property prices;
- Loss of enjoyment of property;
- Does not relate to street in any way, being backland development;
- Completely dominant, overlooking and overbearing relationship;
- Will cause disputes over screening trees;
- Unnecessary and unwelcome noise and disturbance from vehicular activity to the rear, quiet areas;
- Inadequate spacing between houses;
- Overlooking and loss of privacy;
- No ability to screen ourselves from this new house, as most of the boundary is not in our ownership or control;
- Loss of afternoon sun;
- Excessive shading if screening trees were to be planted (which would be in breach of the restrictive covenant);
- Difference in levels between site and neighbouring property to east;
- No details of foul drainage have been provided;
- No requirement for additional housing supply in the area;
- All developments have been sympathetic to the style of the road;
- Even Woodlands, the last house built, follows the arc of development which is a feature of the road;
- This arc ensures that houses do not encroach on each other's space and do not overlook each other;
- No community benefit; only to the applicant;
- Higher roof lines are intrusive;
- Very small plot for garden out of keeping with other properties in this road;
- Impact on tree roots in neighbouring property;
- Infiltration rate would be low in this vicinity;
- Information supplied is incorrect and inadequate;
- Outline of neighbouring property is incorrect;
- Line of boundary is wrong;
- No cross-sections, long sections or scales have been provided;
- Tree survey lacks a plan;
- House size (3-storeys) out of keeping with 2-storey houses along this road;
- Rationale for rejecting this backland development is clear;
- Travel survey unrealistic
- Gridlock for traffic;
- Amendments do not alter previous objections;

- Still would be the tallest house in the road;
- Reduction in roof height would have a negligible reduction in the useable space within the 2nd floor, such that this accommodation would be reinstated in future;
- Levels information still not supplied;
- Tree information still incorrect;
- Reduction in square footage is de minimis and completely irrelevant.

SUMMARY OF CONSULTATIONS

(Full responses from Consultees are included at the end of this report as Appendix B)

MSDC Conservation Officer

No objection.

MSDC Contaminated Land Officer

No objection, subject to condition.

MSDC Drainage Engineer

No objection, subject to condition.

MSDC Street Naming and Numbering Officer

Informative requested.

MSDC Tree Officer

No objection in principle, subject to amendments to the root protection area and full Arboricultural Method Statement, which can be secured by condition.

Consultant Ecologist

No objection, subject to condition.

Sussex Wildlife Trust

Concerns relating to impact on ancient woodland and protected species, particularly badgers and bats.

TOWN COUNCIL OBSERVATIONS

The Town Council is of the opinion that this latest set of amended plans (received by Mid Sussex District Council (MSDC) on 28 August and 4 September 2018) in no way changes its **strong opposition** to this application. Therefore, its response is **firstly** to reiterate the comments that were submitted when the application was considered the last time round. They remain valid for these latest proposals and are as follows:

The Town Council notes that this latest application for this site seeks permission for the construction of a single dwelling, as opposed to the two proposed under previous (outline) application number DM/17/2764 (permission refused by Mid Sussex District Council (MSDC)). However, this does nothing to alter the Town Council's stance regarding development on this site and, therefore, the Town Council **objects** to the application in the **strongest terms possible**. The reasons for this are as follows:

1. the application is contrary to Policies E9, E13 and H8 of the Haywards Heath Neighbourhood Plan (HHNP);
2. the application is contrary to Policies DP26, DP37 and DP38 of the Mid Sussex District Plan (MSDP) 2014-2031. The adoption of the MSDP in March 2018 reinforces the decision made by MSDC to refuse permission for previous application number DM/17/2764 - the Town Council concurs with the MSDC Officer report that was prepared for that application;
3. it constitutes overdevelopment of the site in the form of opportunistic rear garden development;
4. the provision of a minimum 15 metre 'non-garden' buffer zone between the development and the area of ancient woodland to the south is tenuous. If the buffer zone is to remain within the curtilage of the dwelling, how would it be properly managed and what safeguards would be in place to ensure that it did not ultimately become incorporated into the private amenity area? Not only would the proposed 1.2 metre high boundary fence act as a barrier to the free movement of wildlife, it is also questionable how long it would remain in situ;
5. the development of a major portion of the rear garden of Linden House would destroy part of a valuable 'green corridor' for wildlife in the locality. Habitats for creatures such as badgers, deer and great crested newts would be eroded and compromised. Members are concerned that wildlife activity, as reported in 'Phase 2 Ecology Surveys Rev 01' prepared by The Ecology Co-op Environmental Consultants and dated 21 May 2018, has been grossly misrepresented. This is because the integrity of the results of a terrestrial hand search carried out on 28 March 2018 is likely to have been undermined following tree felling and clearance works in the search area which, it is understood, took place on 16 March 2018;
6. having regard to the relationship of the site to existing residential properties, the proposed dwelling would give rise to an overbearing and unneighbourly form of development which would be detrimental to the amenities of neighbouring residents by virtue of intrusion, loss of privacy and overlooking;
7. development of the site by the construction of a dwelling of this scale would constitute an undesirable intensification of residential development which would be out of keeping with the rest of Birch Avenue. This would detract from the present character and charm of the locality, it would detract from its environmental quality and it would be detrimental to the amenities of neighbouring residents;

8. the formation of a long access drive between Shepherds Barn and Linden House itself would adversely affect the peace and quiet that residents of those properties currently enjoy in their rear gardens. This would be because of vehicular noise and disturbance;
9. the Town Council notes that local residents remain extremely concerned about consistent inaccuracies/incorrect measurements contained within the application relating to boundaries, neighbouring dwellings and trees. It is essential that these issues are reviewed and resolved to the satisfaction of all parties to ensure that a decision is based on accurate information.

cont.

Members of the Town Council are extremely disappointed that another application for the development of this site has been submitted; indeed, they are of the opinion that it is wholly unsuitable for development of any kind at any time. They are also disappointed that the applicant was not represented at the meeting of the Town Council's Planning Committee on 25 June 2018, despite him being invited to attend. This would have provided an opportunity for him to outline the proposals and possibly to clarify any points of uncertainty.'

Secondly, the Town Council adds to its representation as follows:

The Planning Committee have considered the revised application, which is for one dwelling, placed across the rear of the proposed site, close to neighbouring property boundaries and abrading the critical Ancient Woodland location and this important wildlife corridor. Badgers from a nearby sett, along with habitual use by generations of deer highlight the very special nature of this open boundary, which if developed would be destroyed forever.

This site had an earlier application DM/17/2764 for 2 detached dwellings, sited to avoid and strategically border the extant site covenants which were originally applied to the location in order to protect existing and future resident outlook, privacy and amenity. This avant-garde protection is mirrored closely included in Policies DP26 and DP37 of the MSDP supported by our residents' referendum.

The application in essence varies so little from the earlier, amended design that the Town Council now reinforces its earlier comments submitted on 3 July 2018, noting that MSDC Officers are now addressing the considerable ecological concerns raised above and beyond basic planning issues. Haywards Heath Town Council now expands upon these comments, with reference to HHNP and MSDP policies as detailed below.

We have also researched and consider comments made by the site owner, referencing the current site to be relevant, with extracts included for relevance:

DP26: Character and Design

All applicants will be required to demonstrate that development:

"...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..."

DP37: Trees, Woodland and Hedgerows

Trees, woodland and hedgerows make a valuable landscape, amenity and biodiversity contribution to the District, both in urban and rural areas. Mid Sussex is a heavily wooded district with two thirds of this being ancient woodland.

Trees, woodland and hedgerows form part of the District's green infrastructure, and in particular, are important for health and well-being, biodiversity, and increasing resilience to the effects of climate change.

Ancient woods are irreplaceable wildlife habitats with complex ecological conditions that have developed over centuries. They contain a wide range of wildlife including rare species, however, because the resource is limited and highly fragmented, ancient woodland and their associated wildlife are particularly vulnerable and must be protected from damaging effects of adjacent and nearby land uses that could threaten the integrity of the habitat and survival of its special characteristics.

All hedgerows on farmland and open land are protected and consent is required from the District Council to remove them. The Hedgerow Regulations 1997 also define 'important' hedgerows as being of particular archaeological, historical, wildlife or landscape value.

The District Council will make Tree Preservation Orders or attach planning conditions, in line with national guidance, to protect specific trees, a group of trees or woodlands in the interests of amenity or where they are threatened by development. The amenity value of trees will take into account visibility and characteristics relating to the individual, collective and wider impact including:

- Future potential as an amenity; and
- Rarity, cultural or historical value.

DP37: Trees, Woodland and Hedgerows

Strategic Objectives: 3) To protect valued landscapes for their visual, historical and biodiversity qualities; 4) To protect valued characteristics of the built environment for their historical and visual qualities; and 5) To create and maintain easily accessible green infrastructure, green corridors and spaces around and within the towns and villages to act as wildlife corridors, sustainable transport links and leisure and recreational routes.

Evidence Base: Green Infrastructure mapping; Mid Sussex Ancient Woodland Survey, Tree and Woodland Management Guidelines, Tree Preservation Order records.

The District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting. In particular, ancient woodland and aged or veteran trees will be protected.

Development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have landscape, historic or wildlife importance, will not normally be permitted.

Trees, woodland and hedgerows will be protected and enhanced by ensuring development:

- incorporates existing important trees, woodland and hedgerows into the design of new development and its landscape scheme; and
- prevents damage to root systems and takes account of expected future growth; and
- does not sever ecological corridors created by these assets.

The felling of protected trees will only be permitted if there is no appropriate alternative.

Development should be positioned as far as possible from ancient woodland with a minimum buffer of 15 metres maintained between ancient woodland and the development boundary.

DP38: Biodiversity

Strategic Objectives: 3) To protect valued landscapes for their visual, historical and biodiversity qualities; and 5) To create and maintain easily accessible green infrastructure, green corridors and spaces around and within the towns and villages to act as wildlife corridors, sustainable transport links and leisure and recreational routes.

Evidence Base: Biodiversity 2020; Biodiversity Action Plan; Biodiversity Opportunity Areas; Green Infrastructure mapping; Habitats and Species Records; Mid Sussex Ancient Woodland Survey; Mid Sussex Infrastructure Delivery Plan; The Natural Choice: Securing the Value of Nature; West Sussex SNCI Register.

Biodiversity will be protected and enhanced by ensuring development:

- **Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and**
- **Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; and**
- **Avoids damage to, protects and enhances the special characteristics...and locally designated Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland.**

Designated sites will be given protection and appropriate weight according to their importance and the contribution they make to wider ecological networks.

Valued soils will be protected and enhanced, including the best and most versatile agricultural land, and development should not contribute to unacceptable levels of soil pollution.

Geodiversity will be protected by ensuring development prevents harm to geological conservation interests, and where possible, enhances such interests.

Owners of Linden House

The site continues to be owned by Mr and Mrs McCarthy who objected to a previous application (13/04087/FUL) nearby. Their comments therefore become more significant as their own vicarious application proposes a dwelling considerably closer to neighbouring properties and which if approved would devastate this important location. They also raised important drainage issues in that representation.

Overlooking/Loss of privacy

"It is inevitable that a large family home of this size will result in a lot of noise and disturbance. Currently the area is extremely quiet. We often work from home and, because the area is so quiet, we have installed a timber office building in our garden with large glazed folding doors that we open during the summer months. So, the potential for increased noise and disturbance is a very great concern for us (not to mention the fact that the house would probably be able to look straight into our office)."

Ancient Woodland

"any development must have a 15 metre buffer zone, which should not include gardens. This is not the case with this proposal, from the plans issued, there will not be a 15m buffer zone, but then the boundary of the woodland has mysteriously moved."

Drainage/Pond

"During heavy rain, lots of water falling on Birch Avenue flows down the length of the lane into a large concrete drain which runs at 45 degrees across the road into the grass verge at the junction of Redcote and Littlehurst. We presume this water then slowly works its way down the hill and feeds the pond and the ancient woodland site. A large amount of water flows down our drive causing us considerable problems. Any further damage to the road caused by the lorries and trades vans will worsen the drainage issue, as will the improvements especially if no drainage has been planned for the course of the avenue.

If the access road to this new house is put immediately up against the hedge and Littlehurst's boundary and over the existing open drain, how will this affect the water supply to the pond? If they divert the water away with proper drainage how will this feed the pond in a sympathetic way?"

Many of the issues they have raised now echo the objections against the current application and are thankfully protected by more enlightened Government, District and Town Council planning policies, specifically updated National Planning Policy Framework (NPPF) requiring more vigorous proactive protection for trees and Ancient Woodland, DP26, DP36 and DP38 alongside policy requirements detailed in the HHNP.

<https://www.gov.uk/government/news/governments-new-planning-rulebook-to-deliver-more-quality-well-designed-homes>

Additionally the July 2018 revision of the NPPF states:

The new rule book will focus on:

- **stronger protection for the environment**

Stronger protection for the environment

The new framework has also been updated to provide further protection for biodiversity; ensuring wildlife thrives at the same time as addressing the need for new homes.

Changes to the framework see the planning system align more closely with Defra's [25 Year Environment Plan](#), which aims to leave the environment in a better state for future generations. This includes more protection for habitats, and places greater importance on air quality when deciding development proposals.

It provides strengthened protection for ancient woodland and ancient and veteran trees across England, ensuring they can be retained for the benefit of future generations.

Promoting high quality design of new homes and places

Refocusing on the quality and design of proposals which are in line with what local communities want, **the framework ensures councils have the confidence and tools to refuse permission for development that does not prioritise design quality and does not complement its surroundings.**

INTRODUCTION

Full planning permission is sought for the erection of a 2-storey, 5-bed detached dwelling with attached double garage and access within the rear garden of Linden House, Birch Avenue, Haywards Heath.

RELEVANT PLANNING HISTORY

In February 2018, outline planning permission (with all matters reserved) was refused for the erection of 2 no. detached dwellings on land rear of Linden House (DM/17/2764). The reasons for refusal were as follows:

1. It is not considered that the site can satisfactorily accommodate two dwellings without adverse impact to the character of the area or neighbouring amenity. The developable area of the site is reduced as a result of the requirement to provide at least a 15m buffer zone to the ancient woodland, and to avoid excessive shading from existing trees and overlooking to and from neighbouring dwellings. As a result, the useable garden space to both dwellings would be negligible or modest and out of keeping with the likely scale of the proposed dwellings and the spacious character of the surrounding area. Overall, the proposal would be

contrary to Policies B1, B2, B3 and H3 of the Mid Sussex Local Plan, Policies E9, E13 and H8 of the Haywards Heath Neighbourhood Plan, Policy DP24 of the draft Mid Sussex District Plan and paragraphs 7, 8, 14, 17 and 58 of the National Planning Policy Framework.

2. Insufficient information has been provided to demonstrate that the proposed development would not have an adverse impact on the Ancient Woodland or biodiversity of the site, contrary to Policy C5 of the Mid Sussex Local Plan, Policies DP36 and DP37 of the draft Mid Sussex District Plan and paragraph 118 of the National Planning Policy Framework.

It is also relevant that planning permission was granted in February 2014 for the erection of 1 no. detached house with garage to the rear of Redcote (together with access from Birch Avenue) (13/04087/FUL). This has been built and is known as Woodlands House.

SITE AND SURROUNDINGS

The site forms part of the rear garden of a large, detached dwelling (Linden House), which forms part of a cul-de-sac of large, detached dwellings. Birch Avenue is located within the built-up area of Haywards Heath and its northern side (opposite the site) is designated as the Lewes Road Conservation Area. The plot of Linden House is now the largest of the dwellings in this cul-de-sac, as well as being wide. The rear garden slopes down from the house and backs onto an area of Ancient Woodland to the south. To the west is Shepherds Barn, with a similarly lengthy rear garden, and to the east is Littlehurst, with a more truncated and wedge-shaped rear garden. There is clear intervisibility between this property and the site. There are a number of trees within the site, but mainly along the western boundary.

APPLICATION DETAILS

Full planning permission is sought for the erection of a 2-storey, 5-bed detached dwelling with attached double garage and access within the rear garden of Linden House, Birch Avenue, Haywards Heath.

The existing access will be retained but extended further south alongside the western flank of Linden House. This entails the removal of the existing detached garage to the side and a summerhouse outbuilding in the rear garden. A new spur will enable a shared access with the host dwelling. The new building will be located some 32m beyond Linden House, with turning area at the end. A 15m buffer zone will be reserved adjacent to the ancient woodland.

The proposed dwelling will be arranged over 2-storeys with maximum dimensions being 11.6m in depth (excluding garage) by 22.6m in width and 9.2m in height. Elevations will be of brick and tile hanging beneath hipped and gabled roofs of plain tiles.

LIST OF POLICIES

Mid Sussex District Plan (Mar 2018)

The Mid Sussex District Plan 2014-2031 was adopted by Full Council on 28 March 2018. Relevant policies include:

Policy DP4: Housing

Policy DP6: Settlement Hierarchy

Policy DP17: Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)

Policy DP21: Transport

Policy DP26: Character and Design

Policy DP27: Dwelling Space Standards

Policy DP35: Conservation Areas

Policy DP37: Trees, Woodland and Hedgerows

Policy DP38: Biodiversity

Policy DP39: Sustainable Design and Construction

Policy DP41: Flood Risk and Drainage

Haywards Heath Neighbourhood Plan (Dec 2016)

Mid Sussex District Council formally 'made' the Haywards Heath Neighbourhood Plan part of the Local Development Plan for the Haywards Heath Neighbourhood Plan area as of 14 December 2016. The policies contained therein carry full weight as part of the Development Plan for planning decisions within the Haywards Heath Neighbourhood Plan area.

Relevant policies include:

Policy E7: Sustainable Drainage Systems

"Policy E7: New development proposals will be required to incorporate Sustainable Drainage Systems (SuDS), where practical, as part of the design of new housing and commercial development and indicate how such schemes will be managed and maintained."

Policy E9: Local Character

"Policy E9: Developers must demonstrate how their proposal will protect and reinforce the local character within the locality of the site. This will include having regard to the following design elements:

- height, scale, spacing, layout, orientation, design and materials of buildings,*
- the scale, design and materials of the development (highways, footways, open space and landscape), and is sympathetic to the setting of any heritage asset,*
- respects the natural contours of a site and protects and sensitively incorporates natural features such as trees, hedges and ponds within the site,*
- creates safe, accessible and well-connected environments that meet the needs of users,*

- *Will not result in unacceptable levels of light, noise, air or water pollution,*
- *Makes best use of the site to accommodate development,*
- *Car parking is designed and located so that it fits in with the character of the proposed development.*

Proposals affecting a listed building, conservation area, building of local interest or public park of historic interest or their setting should preserve or enhance their special interest and/or distinctive character."

Policy E13: Amenity Space

"Policy E13: Proposals for new residential development should provide good quality private outdoor space which is appropriate to the development proposed. The amount of land used for garden or amenity space should be commensurate with the size and type of dwelling(s) and the character of the area, and should be of appropriate quality having regard to topography, shadowing (from buildings and landscape features) and privacy."

Policy T3: Parking Provision

"Policy T3: Planning applications which result in the loss of existing off-street parking provision will be resisted unless it can be demonstrated that the development will enhance the vitality and viability of the town centre and, where possible, such schemes should aim to improve parking provision in the town centre. Development outside the defined town centre boundary should provide on-site parking in accordance with the standards adopted by MSDC."

Policy H8: Housing Development within the Built up Area Boundary

"Policy H8: Housing Development within the Built up Area Boundary - Housing development within the Haywards Heath built-up area boundary, as defined, will be permitted including infill development and change of use or redevelopment to housing where it meets the following criteria:

- *The scale, height and form fit unobtrusively with the existing buildings and the character of the street scene.*
- *Spacing between buildings would respect the character of the street scene.*
- *Gaps which provide views out of the Town to surrounding countryside are maintained.*
- *Materials are compatible with the materials of the existing building.*
- *The traditional boundary treatment of an area is retained and, where feasible reinforced.*
- *The privacy, daylight, sunlight and outlook of adjoining residents are safeguarded."*

National Policy and Other Documents

National Planning Policy Framework (NPPF) (Jul 2018)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development.

Paragraphs 8 (overarching objectives), 11 (presumption in favour of sustainable development), 12 (status of development plan), 38 (decision-making), 47 (determining applications), 108 and 109 (highways matters), 124 and 127 (design), 153 and 154 (sustainability), 170 (enhancing the natural and local environment), 175 (biodiversity and ancient woodland), 177 (habitats sites), 178 and 179 (land contamination) and 192-196 (heritage assets) are considered to be most relevant.

Planning Practice Guidance

Technical Housing Standards: Nationally Described Space Standard (Mar 2015)

ASSESSMENT

The main issues for consideration are:

- The principle of development;
- The impact on the setting of the Conservation Area;
- The design and visual impact on the character of the area;
- The impact on neighbouring amenity;
- Highways matters;
- Drainage;
- Land contamination;
- Sustainability;
- The impact on trees;
- Biodiversity;
- Habitats Regulations;
- Standard of accommodation;
- Other matters; and
- 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) *Any local finance considerations, so far as material to the application, and*
- c) *Any other material considerations."*

Section 38(6) of the 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 in Mid Sussex consists of the Mid Sussex District Plan (2018) together with the Haywards Heath Neighbourhood Plan (2016).

The District Plan has been adopted and the Council can demonstrate a 5 year supply of deliverable housing land. The balance to be applied in this case is therefore a non-tilted one.

The site falls within the built-up area of Haywards Heath as designated in the Mid Sussex District Plan and Haywards Heath Neighbourhood Plan.

Policy DP4 of the District Plan identifies a minimum District housing requirement of 16,390 dwellings between 2014 and 2031. It sets out a spatial strategy of focusing the majority of housing at Burgess Hill, with the remainder as sustainable developments elsewhere. To this end, a settlement hierarchy has been developed which identifies five categories of settlement within Mid Sussex.

Haywards Heath is identified in this policy as a Category 1 settlement, the largest settlement category in Mid Sussex. Category 1 settlements are defined in Policy DP6 of the District Plan as a "Settlement with a comprehensive range of employment, retail, health, education leisure services and facilities. These settlements will also benefit from good public transport provision and will act as a main service centre for the smaller settlements."

Policy DP6 states (in part):

"Development will be permitted within towns and villages with defined built-up area boundaries. Any infilling and redevelopment will be required to demonstrate that it is of an appropriate nature and scale (with particular regard to DP26: Character and Design), and not cause harm to the character and function of the settlement.

The growth of settlements will be supported where this meets identified local housing, employment and community needs."

While the site would be considered suitably sustainable in location and the proposal would meet the broad requirement of being within the built-up area of a Category 1

settlement, it is not considered that it would be of an appropriate nature and scale within this locality. This is highlighted in more detail below.

At neighbourhood plan level, the following policy is of relevance, being a permissive policy for housing in broad terms:

"Policy H8: Housing Development within the Built up Area Boundary - Housing development within the Haywards Heath built-up area boundary, as defined, will be permitted including infill development and change of use or redevelopment to housing where it meets the following criteria:

- *The scale, height and form fit unobtrusively with the existing buildings and the character of the street scene.*
- *Spacing between buildings would respect the character of the street scene.*
- *Gaps which provide views out of the Town to surrounding countryside are maintained.*
- *Materials are compatible with the materials of the existing building.*
- *The traditional boundary treatment of an area is retained and, where feasible reinforced.*
- *The privacy, daylight, sunlight and outlook of adjoining residents are safeguarded."*

It is considered that the backland nature of the proposed development, together with its scale (bulk) and height, would not fit unobtrusively within the existing character of this street scene and surrounding buildings.

As such, the principle of the development is thus considered to be unacceptable in policy terms, but more detailed assessment is set out below.

Impact on the setting of the Conservation Area

The proposed development is located adjacent to the Lewes Road Conservation Area.

The relevant part of Policy DP35 of the Mid Sussex District Plan states:

"Development will also protect the setting of the conservation area and in particular views into and out of the area."

Paragraphs 192-196 of the NPPF are relevant, as follows:

192. In determining applications, local planning authorities should take account of:

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

193. *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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*

194. *Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:*

- a) *grade II listed buildings, or grade II registered parks or gardens, should be exceptional;*
- b) *assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.*

195. *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 total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:*

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

196. *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, where appropriate, securing its optimum viable use."*

The Council's Conservation Officer has concluded that the proposed dwelling would have a neutral impact on the setting of the Conservation Area, subject to landscaping details to screen the development in views from Birch Avenue. As such, the scheme would comply with Policy DP35 of the Mid Sussex District Plan and paragraph 196 of the NPPF.

Design and visual impact on the character of the area

Policy DP26 of the District Plan 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 prevailing character of this small cul-de-sac is of large dwellings set in spacious plots and softened by mature vegetation throughout. Birch Avenue is a private, unmade road which serves 7 properties on the southern side and 3 on the northern side, the latter within the Lewes Road Conservation Area. It curves round gently to the original property at its terminus, Redcote, where it has more recently been extended adjacent to Littlehurst, in order to provide a new backland development within the rear garden - Woodlands House.

It is contended that this dwelling should not be used as a precedent in support of the current application at Linden House, for two reasons.

One is that the policy background was different, in that the Development Plan at the time consisted of the Mid Sussex Local Plan dating from 2004, and the draft District Plan was formally withdrawn by the council a month earlier, pending further work. There was no Neighbourhood Plan in place and an earlier version of the NPPF was used, dating from 2012. Thus the council did not have an up-to-date Development Plan and nor did it have a 5-year housing land supply. In accordance with government policy at that time, this meant that any applications for housing should be granted planning permission unless any adverse impacts would significantly and demonstrably outweigh the benefits.

The committee report for this application stated:

"Birch Avenue is characterised by good-sized, detached houses set back from the road and occupying substantial plots. Generally the houses are two-storey and vary in design. The gardens are spacious, mature and include an abundance of vegetation and some mature trees. Consequently, the area has a verdant quality, combined with a sense of openness and clear gaps between the houses.

The subdivision of the rear garden of Redcote will result in two plots smaller in size than the majority of the plots along Birch Avenue, however on the basis that the generous spacing between the dwellings will be retained, it is not considered that the proposed dwelling will feel cramped either on its plot or within the general street scene. In fact owing to the position of the dwelling some 70 metres from Birch Avenue and the change in levels across the site, it is not considered that the addition will be significantly visible. Whilst it will be more visible from the private rear gardens of the adjacent properties it is still considered that the spacious nature of the area is maintained by this proposal."

The report further noted that the NPPF did not rule out the development of garden land that the proposal satisfied the economic, social and environmental dimensions of sustainability, so the presumption in favour of granting consent was duly made.

By contrast, the current policy backdrop is that the council can demonstrate a 5-year housing land supply and can rely on an up-to-date Development Plan. Thus when assessing the application at Linden House, the criteria relating specifically to local character in both the District and Neighbourhood Plan policies can be used, with full weight being attached to them.

The second reason follows on from this character assessment. It can be argued that the driveway leading to Woodlands House follows the curvature of Birch Avenue, albeit more sharply, and results in a split in driveways at the terminus of the cul-de-sac. However, a shared driveway at Linden House would be alien to this street scene, whereby each property is served by its own driveway with its own frontage directly onto Birch Avenue. There are no other backland plots built in such close proximity to other buildings, particularly as in this case, where the proposed dwelling would be greatly visible in the gaps between Shepherds Barn and Linden House and also in the gap between and behind Littlehurst and Linden House. The extended driveway would also be apparent from the street.

While the traditional elevations of the proposed dwelling are appropriate in their own right, the dwelling is nonetheless of a sizeable scale and height. In terms of its plot coverage, the available garden area to the dwelling would be very modest in this context of more spacious properties, with the main area being to the side, rather than at the rear (as is the case with all the other dwellings). The requirement to provide a 15m semi-natural buffer zone to the ancient woodland means that the residual garden area to the south of the building would be almost unuseable. The majority of the area to the west would be beneath the canopy of existing trees and most of the land to the north is taken up with driveway or turning space. At 9.2m in height, the dwelling is quite sizeable too, particularly when combined with its scale, such that the main roof is 14.5m in length with the ridge length being 12.6m. This adds to the

visual impact from Birch Avenue through the gaps between existing buildings, where the impression would be of a continuous solid form. As there is a lack of levels information to accompany the application, this harm may be compounded by the height of the building in relation to its surroundings.

For these reasons, it is considered that the proposed dwelling would be of such a scale and height as to be harmful to the spacious character of the area and hence would fail to comply with Policy DP26 of the District Plan and Policies E9 and H8 of the Neighbourhood Plan.

Impact on neighbouring amenity

The main properties affected by the proposal would be Shepherds Barn to the west, the host dwelling, Linden House to the north, and Littlehurst to the east.

The proposed dwelling would be sited a minimum distance of 34m from the rear elevation of Shepherds Barn, and the relationship would be an oblique one and screened to some degree by intervening vegetation. As such, it is not considered that the proposal would be overbearing to this property or result in a loss of privacy.

The proposed dwelling also shows a distance of 32.5m from the rear elevation of Linden House, which is set on higher ground. Even with some new boundary treatment being offered to reduce the mutual impact, the distance is such that there would not be a significantly harmful loss of amenity to this host property.

The proposed dwelling would be sited some 32m obliquely from the rear elevation of Littlehurst. There is limited vegetation screening on the boundary and this property is oriented directly towards the site, so there is clear intervisibility between the two. However, given this distance and due to the revised design of the dwelling, whereby the side first floor window would serve an ensuite (which could be conditioned to be obscure glazed and non-openable), it is not considered that this would result in significantly harmful overlooking to this garden (17m away) or the dwelling. It should be noted that the previous application (for 2 dwellings, albeit in outline form), was not refused on grounds of harm to neighbouring amenity.

Accordingly, the scheme would comply with Policy DP26 of the Mid Sussex District Plan.

Access, parking and impact on highway safety

As Birch Avenue is a private highway serving only 3 more dwellings further along, a greater intensification of usage of the existing access to the site would not result in a highway safety impact and accordingly the scheme would comply with Policy DP21 of the Mid Sussex District Plan.

Drainage

The means of drainage to serve the proposed development could be controlled by condition, as confirmed by the council's Drainage Engineer, and hence the proposal would comply with Policy DP41 of the Mid Sussex District Plan.

Land contamination

The NPPF Glossary defines Site investigation information as:

"Includes a risk assessment of land potentially affected by contamination, or ground stability and slope stability reports, as appropriate. All investigations of land potentially affected by contamination should be carried out in accordance with established procedures (such as BS10175 (2001) Code of Practice for the Investigation of Potentially Contaminated Sites). The minimum information that should be provided by an applicant is the report of a desk study and site reconnaissance."

The Council's Contaminated Land Officer has recommended a condition can be applied to any planning permission to ensure compliance with the NPPF requirements.

Sustainability

The sustainability measures to accompany the scheme can be secured by condition to ensure compliance with Policies DP26 and DP39 of the Mid Sussex District Plan and paragraphs 153 and 154 of the NPPF.

Impact on trees

The applicant has submitted a Tree Report and Tree Protection Plan. However, neighbouring residents have advised that the latest plan has plotted two trees on the boundary with Shepherds Barn incorrectly (T4, Liquidamber and T5, Horse Chestnut). The council's Tree Officer has agreed that this is an error but that it would not fundamentally change his view that the proposal would not be harmful to these trees, given how minor the incursion into the root protection area will be. His latest comments are reported in full in Appendix B. He acknowledges that T4 and T11 (Sycamore) are on third party land (at Shepherds Barn) and hence he allocates the maximum root protection area for these trees, which would avoid further arguments over incorrect measurements and avoid the need for the surveyor to access third party land. Therefore, subject to a pre-commencement landscaping condition, it is considered that the proposal would comply with Policy DP37 of the Mid Sussex District Plan.

Biodiversity

Schedule 5 of the Wildlife and Countryside Act 1981 (as amended) lists species of animal (other than birds) which are provided special protection under the Act. Under Section 13 of the Wildlife and Countryside Act 1981 (as amended), all wild plants are protected from being uprooted without the consent of the landowner. In addition to the protection afforded by the Wildlife and Countryside Act 1981 (as amended), certain species are also covered by European legislation. These species are listed in Schedule 2 of the Conservation (Natural Habitats, 7c.) Regulations 1994 (as amended).

Policy DP38 of the Mid Sussex District Plan states:

"Biodiversity will be protected and enhanced by ensuring development:

- *Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and*
- *Protects existing biodiversity, so that there is no net loss of biodiversity. Appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species. Unavoidable damage to biodiversity must be offset through ecological enhancements and mitigation measures (or compensation measures in exceptional circumstances); and*
- *Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; and*
- *Promotes the restoration, management and expansion of priority habitats in the District; and*
- *Avoids damage to, protects and enhances the special characteristics of internationally designated Special Protection Areas, Special Areas of Conservation; nationally designated Sites of Special Scientific Interest, Areas of Outstanding Natural Beauty; and locally designated Sites of Nature Conservation Importance, Local Nature Reserves and Ancient Woodland or to other areas identified as being of nature conservation or geological interest, including wildlife corridors, aged or veteran trees, Biodiversity Opportunity Areas, and Nature Improvement Areas.*

Designated sites will be given protection and appropriate weight according to their importance and the contribution they make to wider ecological networks.

Valued soils will be protected and enhanced, including the best and most versatile agricultural land, and development should not contribute to unacceptable levels of soil pollution.

Geodiversity will be protected by ensuring development prevents harm to geological conservation interests, and where possible, enhances such interests. Geological conservation interests include Regionally Important Geological and Geomorphological Sites."

Chapter 15 of the NPPF advises that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing sites of biodiversity value by minimising impacts on and providing net gains for biodiversity. In particular, paragraph 175 states:

"When determining planning applications, local planning authorities should apply the following principles:

- a) *if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately*

mitigated, or, as a last resort, compensated for, then planning permission should be refused;

- b) development on land within or outside a Site of Special Scientific Interest, and which is likely to have an adverse effect on it (either individually or in combination with other developments), should not normally be permitted. The only exception is where the benefits of the development in the location proposed clearly outweigh both its likely impact on the features of the site that make it of special scientific interest, and any broader impacts on the national network of Sites of Special Scientific Interest;*
- c) development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused, unless there are wholly exceptional reasons and a suitable compensation strategy exists; and*
- d) development whose primary objective is to conserve or enhance biodiversity should be supported; while opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity."*

A Preliminary Ecological Appraisal has been submitted as part of this application, together with Phase 2 Ecology Surveys on Great Crested Newts and Reptiles. It makes recommendations and suggests ecological enhancements for nesting birds and Bats. It further notes in the section on Badgers that:

"No signs of any badger activity were seen during the survey assessment, though there are habitats of value for this species within the wider landscape. It is likely that if any setts were situated within 30 metres of the site boundary, then some evidence of badger activity would have been observed.

It has been reported that a badger sett is situated within the adjacent Ancient Woodland, however access to this woodland was not granted at the time of the survey.

Records of badgers are not provided by the records center, due to the sensitive nature of this information."

The council's Ecological consultant raises no objection to the application, but notes that precautions are warranted during the pre-construction clearance phase and construction period in respect of other amphibians, badgers, nesting birds and hedgehogs.

Since receipt of these comments, neighbouring residents have raised concerns that their observations of an active badger sett (with its entrance on the edge of the ancient woodland (beyond the site boundary), but which extends under the site of the proposed building) have not been taken into account. The council's Ecological consultant has been asked to respond further to these comments, but in the meantime, it is considered that, while it is acknowledged that the applicant's surveyor has not been able to access this area in full, insufficient information has been provided at this stage for the council to be confident that the proposal would not harm any protected species. Accordingly, the proposal would fail to comply with

Policy DP38 of the Mid Sussex District Plan, Chapter 15 of the NPPF (including paragraph 175) and the legislation outlined above.

No objection is raised to the impact of the proposal on the ancient woodland, as an appropriate 15m buffer zone can be provided, which would take the form of being fenced off in perpetuity and maintained as a semi-natural habitat, as opposed to being actively managed similar to a domestic garden. Such detail would otherwise be secured by condition. In this case, the above policy, guidance and legislation would be met.

Impact on 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.

Standard of accommodation

Policy DP27 of the Mid Sussex District Plan states:

"Minimum nationally described space standards for internal floor space and storage space will be applied to all new residential development. These standards are applicable to:

- *Open market dwellings and affordable housing;*
- *The full range of dwelling types; and*

- *Dwellings created through subdivision or conversion.*

All dwellings will be required to meet these standards, other than in exceptional circumstances, where clear evidence will need to be provided to show that the internal form or special features prevent some of the requirements being met."

The proposed dwelling would comply with the government's Technical Housing Standards - Nationally Described Space Standards document, so would constitute a high quality development and thereby comply with Policies DP26 and DP27 of the Mid Sussex District Plan.

Other matters

All the other issues raised during the consultation period have been taken into account and these other issues are either considered not to warrant a refusal of permission, are items that could otherwise be dealt with effectively by planning conditions or other legislation or are not even material planning considerations.

PLANNING BALANCE AND CONCLUSION

Planning legislation requires the application to be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the policies in the Development Plan and then to take account of other material planning considerations including the NPPF.

National planning policy states that planning should be genuinely plan-led. Planning decisions should therefore be in accordance with the development plan unless material considerations indicate otherwise. As the Council can demonstrate a 5 year supply of deliverable housing land the planning balance set out in the NPPF is an un-tilted one.

Weighing in favour of the scheme is that the development will provide 1 residential unit in a sustainable location 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.

However, weighing against the scheme will be a harmful impact to the visual amenities of the area, and this should be accorded significant weight. A further element against the scheme would be noise and disturbance during the construction phase, but this would be a temporary impact.

There will be a neutral impact in respect of a number of issues such as the setting on the Conservation Area, drainage, highways matters, land contamination and sustainability, which could otherwise be dealt with by conditions. There will also be a neutral impact on the Ashdown Forest.

Weighing all the above, it is considered that the scale and height of the proposed dwelling would result in a significant adverse visual impact to the character of Birch Avenue, due to its visibility in the gaps between the existing dwellings. The extent of

this solid built form, including the extension of the driveway past and beyond the host dwelling, would give a clear impression of a backland development that would be harmful to the verdant quality and spacious character of the area. Due to the necessity of providing a buffer zone to the ancient woodland beyond, the available garden area and its resultant location to the side as the main space, would be out of keeping with more spacious plots surrounding the application site. The proposal would therefore fail to comply with Policy DP26 of the Mid Sussex District Plan and Policies E9 and H8 of the Neighbourhood Plan and paragraphs 124, 127 and 130 of the National Planning Policy Framework. Additionally, insufficient information has been provided at this stage to demonstrate that the proposal would not adversely impact on Badgers, and so the application would fail to comply with Policy DP38 of the Mid Sussex District Plan and paragraph 175 of the NPPF.

APPENDIX A – REASONS FOR REFUSAL

1. The scale and height of the proposed dwelling would result in a significant adverse visual impact to the character of Birch Avenue, due to its visibility in the gaps between the existing dwellings. The extent of this solid built form, including the extension of the driveway past and beyond the host dwelling, would give a clear impression of a backland development that would be harmful to the verdant quality and spacious character of the area. Due to the necessity of providing a buffer zone to the ancient woodland beyond, the available garden area and its resultant location to the side as the main space, would be out of keeping with more spacious plots surrounding the application site. The proposal would therefore fail to comply with Policy DP26 of the Mid Sussex District Plan and Policies E9 and H8 of the Neighbourhood Plan and paragraphs 124, 127 and 130 of the National Planning Policy Framework.

INFORMATIVES

1. 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 identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Plans Referred to in Consideration of this Application

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

Plan Type	Reference	Version	Submitted Date
Site Plan	TSP/SLL/P330		28.05.2018
	0/101 A		
Site Plan	01/02		28.08.2018
Location and Block Plan	01/01		28.08.2018
Proposed Elevations	01/04		28.08.2018
Proposed Roof Plan	01/04		28.08.2018
Proposed Floor Plans	01/03		28.08.2018
General	TPP	Rev A	17.08.2018

APPENDIX B – CONSULTATIONS

Parish Consultation

The Town Council notes that this latest application for this site seeks permission for the construction of a single dwelling, as opposed to the two proposed under previous (outline) application number DM/17/2764 (permission refused by Mid Sussex District Council (MSDC)). However, this does nothing to alter the Town Council's stance regarding development on this site and, therefore, the Town Council OBJECTS to the application in the strongest terms possible. The reasons for this are as follows:

1. the application is contrary to Policies E9, E13 and H8 of the Haywards Heath Neighbourhood Plan;
2. the application is contrary to Policies DP26, DP37 and DP38 of the Mid Sussex District Plan (MSDP) 2014'2031. The adoption of the MSDP in March 2018 reinforces the decision made by MSDC to refuse permission for previous application number DM/17/2764 ' the Town Council concurs with the MSDC Officer report that was prepared for that application;
3. it constitutes overdevelopment of the site in the form of opportunistic rear garden development;
4. the provision of a minimum 15 metre 'non-garden' buffer zone between the development and the area of ancient woodland to the south is tenuous. If the buffer zone is to remain within the curtilage of the dwelling, how would it be properly managed and what safeguards would be in place to ensure that it did not ultimately become incorporated into the private amenity area? Not only would the proposed 1.2 metre high boundary fence act as a barrier to the free movement of wildlife, it is also questionable how long it would remain in situ;
5. the development of a major portion of the rear garden of Linden House would destroy part of a valuable 'green corridor' for wildlife in the locality. Habitats for creatures such as badgers, deer and great crested newts would be eroded and compromised. Members are concerned that wildlife activity, as reported in 'Phase 2 Ecology Surveys Rev 01' prepared by The Ecology Co-op Environmental Consultants and dated 21 May 2018, has been grossly misrepresented. This is because the integrity of the results of a terrestrial hand search carried out on 28 March 2018 is likely to have been undermined following tree felling and clearance works in the search area which, it is understood, took place on 16 March 2018;
6. having regard to the relationship of the site to existing residential properties, the proposed dwelling would give rise to an overbearing and unneighbourly form of development which would be detrimental to the amenities of neighbouring residents by virtue of intrusion, loss of privacy and overlooking;
7. development of the site by the construction of a dwelling of this scale would constitute an undesirable intensification of residential development which would be out of keeping with the rest of Birch Avenue. This would detract from the present character and charm of the locality, it would detract from its environmental quality and it would be detrimental to the amenities of neighbouring residents;
8. the formation of a long access drive between Shepherds Barn and Linden House itself would adversely affect the peace and quiet that residents of those properties currently enjoy in their rear gardens. This would be because of vehicular noise and disturbance;

9. the Town Council notes that local residents remain extremely concerned about consistent inaccuracies/incorrect measurements contained within the application relating to boundaries, neighbouring dwellings and trees. It is essential that these issues are reviewed and resolved to the satisfaction of all parties to ensure that a decision is based on accurate information.

Members of the Town Council are extremely disappointed that another application for the development of this site has been submitted; indeed, they are of the opinion that it is wholly unsuitable for development of any kind at any time. They are also disappointed that the applicant was not represented at the meeting of the Town Council's Planning Committee on 25 June 2018, despite him being invited to attend. This would have provided an opportunity for him to outline the proposals and possibly to clarify any points of uncertainty.

MSDC Conservation Officer

This application, for the erection of a detached 3 storey (ground, first and attic floors) house to the rear of Linden House, Birch Avenue, follows the refusal of a previous outline application for a pair of new houses on the same site (DM/17/2764). In my comments on the previous application I concluded that subject to the detail of the scheme the houses could be accommodated on the site so as to have a neutral impact on the setting of the nearby Lewes Road Conservation Area.

The current proposal is for a single house of a larger footprint than the two smaller dwellings previously proposed. However subject to details of landscaping (in particular screening of the development in views from Birch Avenue) I do not see any reason to deviate from my previous conclusion that the proposal will have a neutral impact on the setting of the Lewes Road Conservation Area.

This would meet the requirements of District Plan Policy DP35 and the relevant paragraphs of the NPPF.

Comments on DM/17/2764:

Linden House is an unlisted modern detached dwelling in a substantial garden situated just to the south of the southern boundary of the Lewes Road Conservation Area. Among the features which contribute to the special character of this Conservation Area the Local Plan identifies the spacious nature of the development and the presence of trees, hedges, grass verges and 'fingers' of surviving agricultural land which contribute to its 'rural' nature. Birch Avenue, on which Linden House is situated, is characterised by large houses in generous gardens. The unsurfaced nature of the road, the presence of a large number of trees, including many mature specimens, and the amount of hedging and other vegetation contribute to a soft and verdant, semi-rural character, which makes a positive contribution to the setting of the Conservation Area and the manner in which its special interest, as identified above, is appreciated.

The current proposal is for outline permission for the construction of two detached dwellings on land to the rear of Linden House, with access from Birch Avenue. Although any proposal which would be harmful to the green and spacious character of Birch Avenue might be of concern in terms of the impact on the setting of the Conservation Area, the indicative site plan suggests that a good part of the existing gardens to Linden House would remain as garden area (subject to a detailed landscaping plan). The new houses would be set at some distance behind Linden House and away from Birch Avenue. This in combination with the topography of the site, which is such that the land drops away to the rear of the existing building, will limit the impact of the new dwellings on views from Birch Avenue.

Subject to the detailed scheme, including the final height and bulk of the new houses, their positioning and a detailed landscaping plan (including screening from Birch Avenue) I consider that the proposal therefore has a neutral impact on the setting of the Lewes Road Conservation Area and the manner in which its special interest is appreciated. This would meet the requirements of Local Plan Policy B12, emerging District Plan Policy DP33 and the relevant paragraphs of the NPPF.

MSDC Contaminated Land Officer

Main Comments:

The application looks to construct a 3 storey house.

The MSDC GIS holds no information suggestive of contaminative past uses, however based on the sensitivity of the proposed end use it is recommended that a discovery strategy be conditioned, in case signs of potential contamination are found during the construction process.

Recommendation:

Approve with the following conditions:

1. In the event that any signs of contamination such as poor plant growth, odour, oily, ashy, odorous or fibrous materials, staining or unusual colouration of the soil, asbestos fragments or fibres, inclusions of putrescible materials, plastics, any liquid other than clean groundwater are found in the soil at any time when carrying out the approved development it must be reported in writing within 14 days to the Local Planning Authority (LPA). The LPA will then consider if the findings have any impact upon the development. The development must be halted on that part of the site and if the LPA considers it necessary then an assessment of the site undertaken in accordance with BS10175: 2011. Where remediation is deemed necessary by the LPA a remediation scheme must be submitted to and approved in writing by the LPA and then implemented in accordance with the submitted details.

On completion of the development and prior to occupation, information either (a) confirming that no signs of contamination were encountered; or (b) summarising the contamination encountered and the mitigation measures implemented must be submitted to and approved in writing by the LPA.

MSDC Drainage Engineer

Flood Risk

The proposed development is within flood zone 1 and is deemed to be at low fluvial flood risk. The proposed development is not within an area identified as having possible surface water (pluvial) flood risk. There are not any historic records of flooding occurring on this site and in this area. This does not mean that flooding has never occurred here, instead, that flooding has just never been reported.

Surface Water Drainage Proposal

It is proposed that the development will manage surface water drainage through a sustainable drainage system. This system is stated to incorporate soakaways and permeable paving.

Foul Water Drainage Proposal

It is proposed that the development will ...

Surface Water Drainage Consultation

It is proposed that the development will discharge to the existing foul water sewer system.

Information into our requirements for foul and surface water drainage are included within the sections; 'surface water drainage advice' and 'further drainage advice'

Suggested Conditions

C18D - Single Dwelling

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. The **extension/building** shall not be occupied until all the approved drainage works have been carried out in accordance with the agreed details.

Reason: To ensure that the proposal is satisfactorily drained and to accord with the NPPF requirements, Policy CS13 of the Mid Sussex Local Plan, Policy DP41 of the Pre-Submission District Plan (2014 - 2031) and Policy ...'z'... of the Neighbourhood Plan.

Surface Water Drainage Advice

The following information will be required for the proposed development. It is acceptable for these details to be provided at discharge of conditions stage.

This proposed development will need to fully consider how it will manage surface water run-off. Guidance is provided at the end of this consultation response for the various possible methods. However, the hierarchy of surface water disposal will need to be followed and full consideration will need to be made towards the development catering for the 1 in 100 year storm event plus extra capacity for climate change.

The proposed development drainage will need to:

- Follow the hierarchy of surface water disposal.
- Protect people and property on the site from the risk of flooding
- Avoid creating and/or exacerbating flood risk to others beyond the boundary of the site.
- Match existing Greenfield rates and follow natural drainage routes as far as possible.
- Calculate Greenfield rates using IH124 or a similar approved method. SAAR and any other rainfall data used in run-off storage calculations should be based upon FEH rainfall values.
- Seek to reduce existing flood risk.
- Fully consider the likely impacts of climate change and changes to impermeable areas over the lifetime of the development.
- Consider a sustainable approach to drainage design considering managing surface water at source and surface.
- Consider the ability to remove pollutants and improve water quality.
- Consider opportunities for biodiversity enhancement.

MSDC Street Naming and Numbering Officer

I note from the list of planning applications received during the week **31 May 2018 to 6 June 2018** that the applications listed below will require address allocation if approved.

Planning application number
DM/18/2159
DM/17/3973
DM/18/1353
DM/18/2199
DM/18/2093
DM/18/2155
DM/18/2170
DM/18/1750

Please could I ask you to ensure that the following informative is added to any decision notice granting approval:

Informative: Info29

The proposed development will require formal address allocation. You are advised to contact the Council's Street Naming & Numbering Officer before work starts on site. Details of fees and advice for developers can be found at www.midsussex.gov.uk/streetnaming or by phone on 01444 477175.

MSDC Tree Officer

Further to reviewing the submitted AIA report that accompanies this application, please find my comments below.

All of the trees that are within influencing distance of the development have been: plotted, measured, identified and classified.

However, errors within the report have recently come to light, namely the incorrect plotting of T4 Liquid Amber and miscalculation of RPA for both T4 & T11. After a visit to site it was confirmed that T4 was in fact plotted incorrectly. Further to correspondence with the surveyor, an amended report was submitted with T4 re-positioned. Its felt this new position is acceptable for the purposes of this survey.

Conflicting evidence has been submitted in regard to the RPA of T11, this tree (as T4) is likely to be in close proximity to construction works during the development, making a correct Root Protection Area calculation a must. However, as the trees are not fully accessible from the applicant's property, the surveyor has had to make an estimation of the DBH (Diameter at Breast Height).

I would suggest at this stage both T4 & T11 are allocated the suggested maximum RPA of 707m², this would end any argument over incorrect measurements and avoids the need for the surveyor to access third party land. I understand this would be an unusual step, but its felt that for the sake of expediency, an agreement on the RPA of these trees should be reached promptly.

Likely ground works within the RPA of T11 have not been addressed within the report. If any groundwork is to be undertaken within the trees RPA, then good working practices (sympathetic treatment of roots etc.) should be detailed within a full AMS report.

I would suggest that a condition is implemented that requires the above mentioned AMS report be submitted pre-commencement of any construction/demolition works on site. The report should include: Specifications of all protection measures (ground protection/fencing etc.) and good working practices to be used within the RPA of retained trees. A final TPP & TCP should be requested also.

The site currently has no trees subject to TPO and is not within a Conservation Area. Although, the site is within the buffer zone of an area designated as ancient woodland.

Several trees (T6 -G10-T14 &T15) are to be removed to facilitate the development. All of the trees recommended for removal have been classified grade C, this is due to the trees being young, having low amenity/landscape value or being in poor health and condition. Trees of this classification (C) should not act as constraint upon the development.

In conclusion, I do not object to the development in principle and would likely support the application subject to the receipt of the above mentioned amendments to RPA and full AMS.

Consultant Ecologist

I note that the proposal shows a 15m buffer between the adjacent ancient woodland and private garden of the proposal. I have been unable to find a red line plan on the planning portal, but the ancient woodland buffer should be clearly outside of the residential curtilage so that it cannot lawfully be used as garden (without permission for a change of use). Subject to this, I am of the view that the proposal would meet the minimum requirements of DP37 in respect of ancient woodland buffering and that other biodiversity issues can be addressed through planning conditions. Therefore, if consent is granted, I would recommend the following conditions:

- No development shall commence until the following details have been submitted to, and approved by, the local planning authority:
- a construction method statement setting out wildlife precautions to be taken in respect of pre-construction site clearance;
- an enhancement plan for the ancient woodland buffer including a planting plan for native woodland edge planting and other habitat enhancements including bird and bat boxes, log and rock piles and a 5-year maintenance programme to ensure successful establishment of planting;
- a specification of fencing and maintenance gate between private garden and the ancient woodland buffer zone and between the buffer zone and ancient woodland, ensuring permeability to wildlife between the buffer zone and the ancient woodland;
- a long-term management statement for the ancient woodland buffer setting out aims, including the importance of the buffer zone and its maintenance as a semi-natural area and the type of maintenance operations that are appropriate and likely to be required over the long term.

The approved details shall be implemented in full unless otherwise approved in writing by the local planning authority and a statement of compliance with initial planting and

enhancement of the buffer zone must be submitted to and approved by the local planning authority prior to occupation of the dwelling.

Comments

The proposal indicates a 15m buffer between ancient woodland and private garden. Whilst the private garden area appears very small, it is obviously for MSDC to determine whether it is considered adequate. However, to ensure that there is a planning constraint over the buffer zone being used as private garden (with consequent problems such as the planting of inappropriate species) the buffer should clearly be outside of the residential curtilage so that the land cannot be used as garden without permission for a change of use.

The fencing between the ancient woodland and the buffer zone should be permeable to wildlife, including badgers. I can see little benefit in attempting pet-proof fencing when the ancient woodland will remain permeable on other sides and there would be greater wildlife benefit, in my view, of enabling wildlife within the woodland to be able to utilise the buffer zone (a 1.2m high fence would be ineffective in keeping out cats in any case). There should be a clear demarcation with a fence between the garden and the buffer zone, but there would need to be a gate for maintenance access;

Existing dumped waste (large piles of woodchip are mentioned and shown in the ecological report) should be removed from the buffer zone (or could be used to mulch new native planting). Any non-native plant species should also be removed and the buffer zone should be enhanced through new native tree and shrub planting, with the emphasis being on creating a graded woodland edge. There would need to be a programme of post planting aftercare and a long-term management statement (which could be a fairly simple document setting out the purpose of the buffer and appropriate maintenance operations so that it is clear to future owners why the buffer is required and what is and isn't appropriate in terms of maintaining it).

The findings of phase 2 surveys suggest that great crested newts are not using the site, at least in significant numbers (no newts were found but survey effort was limited, due to lack of pond access, to a one-off hand search plus reptile surveys, which can also reveal presence of newts). Whilst presence cannot be completely discounted, given the low quality of habitat that would be directly impacted, plus the potential for improving habitat within the buffer zone, there are unlikely to be any conservation significant impacts. Precautions are nevertheless warranted during any site clearance. Precautions are also warranted during pre-construction clearance and during construction in respect of other amphibians, badgers, nesting birds and hedgehogs.

Sussex Wildlife Trust

The Sussex Wildlife Trust objected to the previous application on this site (DM/17/2764) and would like to raise the following concerns relating to this updated proposal.

Ancient woodland

The development site directly abuts Greenhill Shaw, a designated ancient woodland. Development should be positioned as far as possible from this ancient woodland and there is a requirement for an appropriate buffer zone of semi-natural habitat to minimise the impacts of development and ongoing human disturbance.

While a buffer zone of 15 metres has been proposed, this is the minimum acceptable buffer recommended in Natural England and the Forestry Commission's standing advice, and as recognised in Policy DP 37 (Trees, Woodland and Hedgerows) of the Mid Sussex District

Plan, and the site plans indicate the proposed three storey house will be positioned in very close proximity to the edge of the proposed buffer zone. The proposed buffer zone is currently part of a private garden and the existing habitat within this area is defined as ecologically poor. It is not clear what measures, if any, will be put in place to enhance and maintain the buffer zone as semi-natural habitat to maximise its wildlife value and ecological function, or who will be responsible for this. It is important that the buffer zone does provide an ecologically effective screen to protect Greenhill Shaw from ongoing disturbance.

Buffer zone fencing and ecological connectivity

There is some confusion over the height of the proposed fencing along the boundary of the buffer zone; the notifications state 1.8 metres but the site plan indicates 1.2 metres. The fence is intended to prevent pet access to the ancient woodland but at 1.2 m it could easily be scaled by larger dogs and domestic cats - which can be a major predator of birds and small mammals, as well as amphibians and reptiles - and even 1.8 m (6 foot) fences can be scaled by cats.

The proposed fence may not be effective at keeping pets out of Greenhill Shaw ancient woodland but will form an effective barrier to wildlife and further isolate this fragment of ancient woodland from the surrounding landscape. There is also a known badger sett at the development site's southern boundary, which extends under the buffer zone towards the proposed house, and the proposed fence may impede badger movement to and from their sett or foraging areas. Consideration should be given to a more wildlife-friendly barrier to avoid isolating this fragment of ancient woodland and severing an existing green corridor.

Optional hedge planting along the proposed fence line is mentioned and this should incorporate native species to create a species-rich hedgerow. Once established, this would provide a valuable wildlife habitat in itself and also form a wildlife corridor, potentially enhancing the movement of some species along and across the fence line and enhancing the buffer zone's overall effectiveness.

The proposed fence will also serve to clearly mark the boundary of the buffer zone and separate it from the garden area. However, a height of 1.2 m is low enough that grass cuttings and other garden waste could easily be dumped into the buffer zone, reducing its ecological value. Given the substantial size of the proposed house within a relatively small plot and its close proximity to the boundary of the buffer zone, there is potential for the fence to be removed entirely so as to extend the garden by subsuming the buffer zone.

Protected species

As mentioned above, badger activity is confirmed at the boundary of the development site and a sett extends underneath the proposed buffer zone. If active and occupied, badgers and their sett may be disturbed by the proposed construction activity, while construction of the fence itself may also cause disturbance to badgers and their sett. A protected species licence and mitigation strategy may therefore be required.

Lighting

There will be increased levels of artificial lighting falling directly on the buffer zone, which will need to be sufficiently vegetated to effectively shield the ancient woodland from adverse impacts. Bats in particular are sensitive to increased light levels and tend to fly along woodland edges and linear habitat features. Records from the Sussex Biodiversity Record Centre identify the presence of serotine, noctule, pipistrelle, long-eared and brown long-eared bats within 1km of the development site, so measures should be taken to avoid external lighting and minimise light spill as per the Bat Conservation Trust's guidelines.

Cumulative impacts

The cumulative impacts of multiple developments in close proximity to Greenhill Shaw (including 13/04087/FUL) should be taken into account. Further development will increase the woodland's isolation in the landscape and exert greater levels of human disturbance, reducing its overall wildlife value. The proposed buffer zone fencing will directly isolate the woodland from its surrounding landscape.

Ecological enhancements

The District Plan recognises that biodiversity must be protected and enhanced (Policy DP38: Biodiversity) and that development should protect existing biodiversity; avoid or minimise disturbance of sensitive habitats; and take opportunities to enhance, manage and restore biodiversity, ecological corridors and green infrastructure.

There are opportunities to protect and enhance the ancient woodland by creating appropriate semi-natural habitats within the proposed buffer zone - which would have value in themselves as well as helping to shield the ancient woodland - but no information has been provided.

Suggested ecological enhancements are limited to the erection of bird and bat boxes. Far greater biodiversity gains could be made via habitat creation and long-term appropriate management, mainly within the buffer zone but also within the garden itself via appropriate landscaping, the encouragement of wildlife-friendly management and avoidance of invasive plants. If the proposed development is granted planning permission, we would hope to see a requirement for substantial long-term biodiversity gains.