

MID SUSSEX DISTRICT COUNCIL

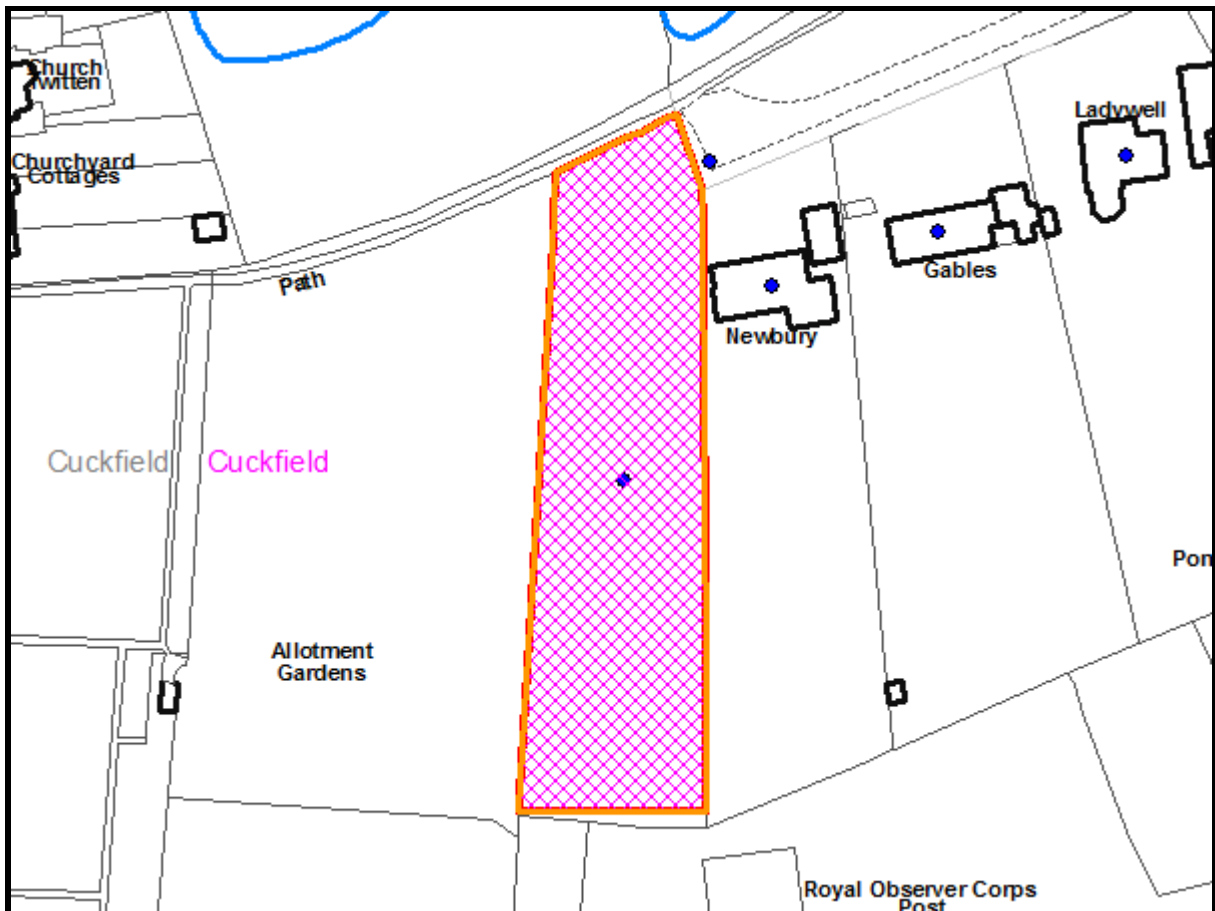
Planning Committee A

17 JANUARY 2019

RECOMMENDED FOR PERMISSION

Cuckfield

DM/18/2912



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**LAND PARCEL ADJACENT NEWBURY COURTMEAD ROAD CUCKFIELD
WEST SUSSEX
ERECTION OF A SINGLE FIVE BEDROOM DWELLING HOUSE AND
DOUBLE GARAGE.
MR T SELELO**

POLICY: Asset of Community Value / Areas of Special Control for Adverts /
Built Up Areas / Conservation Area / Countryside Area of Dev.

Restraint / SWT Bat Survey / Archaeological Notification Area
(WSCC) /

ODPM CODE: Minor Dwellings

8 WEEK DATE: 10th December 2018

WARD MEMBERS: Cllr Robert Salisbury / Cllr Pete Bradbury /

CASE OFFICER: Steven King

PURPOSE OF REPORT

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

EXECUTIVE SUMMARY

Planning permission is sought for the erection of a new detached house on land to the west of Newbury, Courtmead Road, Cuckfield.

There is an extensive planning history to the site which is summarised in the planning history section of this report.

The application must be determined in accordance with the development plan unless material planning considerations indicate otherwise. The development plan in this part of Mid Sussex comprises the Cuckfield Neighbourhood Plan (2014) (CNP) and the Mid Sussex District Plan (2018) (DP).

In terms of planning policy the site falls outside the built up area of Cuckfield as defined by the DP and the CNP and is within the countryside as defined by the DP. In addition the northern half of the site falls within the Cuckfield Conservation Area (CCA). The proposed dwelling would all be within the Conservation Area. The southern end of the rear garden of the proposed property would be outside the CCA.

In relation to the principle of the development, the site is contiguous with the built up area of Cuckfield and the proposal is for a single dwelling. As such it is considered that the principle of the development is supported by policy DP6 in the DP.

As part of the application site is within the Cuckfield Conservation Area (CCA), the Planning Listed Buildings and Conservation Areas Act (PLBCAA) 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The requirements of this Act are reflected in policy DP35 of the DP. The National Planning Policy Framework (NPPF) states that 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. Case law has determined that if a proposal does result in less than

substantial harm as defined by the NPPF, this must be given significant weight in the planning balance to reflect the statutory presumption that preservation is desirable.

The planning history of the site, including the judicial review cases, is set out later in this report. It is the case that at the most recent report relating to this site that was put before Members at the Planning Committee on 23rd March 2017 it was acknowledged that the proposal to erect a house on this site would cause less than substantial harm to the character and appearance of the CCA. It was considered by the author of that report that this harm was at the lower to medium end of the scale of harm. Further, the 2017 report set out that in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA 1990) significant weight should be attached to that less than substantial harm.

It is considered by your Officer that the less than substantial harm to the CCA from this planning application is at the lower end of the scale of harm. The Councils Conservation Officer is of the view that the proposal is acceptable in design terms and does not conflict with policies DP34 and DP35 in the DP. Whilst this is the professional view of the Conservation Officer, your Planning Officer is of the view that the proposal would result in less than substantial harm to the character and appearance of the Conservation Area. Construction of the dwelling will obstruct long views from the western end of Courtmead Road, from the public footpath abutting the northern boundary and from within the site itself. The views across open countryside to the distant South Downs are a distinctive feature of the southern edges of the Cuckfield conservation area and they engender a particularly strong sense of place. Loss of these views will diminish an important quality of this part of the designated area and as a result this weighs against the favourable recommendation of the application proposals.

In order to satisfy the statutory requirements in the PLBCAA this harm must be afforded significant weight. However, the area in which the diminution will be experienced is limited to the western end of Courtmead Road, the public footpath and from within the site itself. From elsewhere in the southern fringes of the conservation area, similar panoramic southerly views will remain. It is your Planning Officer's view that this would result in less than substantial harm as defined in the NPPF. The fact that the Conservation Officer does not object to the current proposal is considered to be relevant to assessing the *extent* of the harm and then weighing this in the planning balance. It is therefore your officers view that there is some harm to the CCA and that this would be classed as less than substantial in NPPF terms. It is further considered that the less than substantial harm to the CCA is at the lower end of the scale of harm. As such there is a conflict with policy DP35 that weighs against the scheme.

It is considered that the proposal would preserve the setting of the listed church to the west of the site. As such there is no conflict with policy DP34 of the DP.

In terms of the wider landscape impact, there would be a conflict with part d) of policy CNP5 in the CNP because by definition, the existing view across the site would not be maintained as the site would change from being undeveloped to having a new dwelling on it. However given the limited nature of the development it is felt that any adverse impact on the landscape setting of Cuckfield village would be very

limited. It is also felt that whilst the site lies within an area defined in the CNP Landscape Character Assessment Summary as having Substantial value, Substantial sensitivity, given the limited scale of the development it is considered that the impact on the wider landscape is minimal.

It is not considered that the proposal would cause a significant loss of residential amenity to the occupiers of the property to the east. As such there would be no conflict with this element of policy DP26 in the DP.

The proposed access and parking arrangements for the proposed dwelling are acceptable. A safe access can be provided to the site and there would be no highway capacity problems with the development. The site is in a sustainable location adjacent to the built up area of Cuckfield. As such the proposal complies with policy DP21 in the DP.

There are not considered to be any ecological reasons to resist the development. The Council's Ecological Consultant has raised no objection to the proposal. As such the proposal complies with policy DP38 in the DP.

There are economic benefits arising from the construction of this dwelling. The provision of a unit of housing will make a contribution to the District Council's housing requirements and this is outlined more fully later in the report.

A previous planning permission for the erection of a dwelling on the site has been implemented and therefore remains extant by virtue of the fact that footings have been constructed on site (it should be noted that due the requirement of Regulation 9 of the Town and Country Planning General Regulations 1992, this consent can only be implemented by the District Council). Therefore the site is no longer classified as in use as open space as a planning permission for a single dwelling on the site has been implemented.

It is also relevant to note that the site was appropriated for planning purposes following a decision made by the District Council's Cabinet on 23 December 2013. The effect of this decision was that after the 23 December 2013 the site was no longer available as allotments or for public open space because it had been appropriated for another purpose by the Council. On the 24th December 2013 the land was then padlocked to prevent any public access to it. The site has remained padlocked with no public access since this date.

To summarise, this is a case where it is considered that the proposal complies with some policies within the development plan but conflicts with others. It is considered the proposal complies with policies DP6, DP21, DP26, DP34 and DP38 of the DP whereas there is a conflict with policy DP35 of the DP. It is considered the proposal complies with parts d), e), f) and g) of policy CNP1 in the CNP. Given your officers view that there would be less than substantial harm to the conservation area it is considered there would be some conflict with parts a) and b) of policy CNP1 in the CNP. It is also considered there would be some conflict with parts a), b), c) and d) of policy CNP5 in the CNP.

It is your Planning Officer's view that there is less than substantial harm caused to

the setting of the conservation area from the proposal (within the scale of "less than substantial harm" it is considered that the harm in this case is at the lower end of the scale) and that given the statutory presumption in favour of preservation, this harm must be given significant importance and weight.

Overall given the degree of compliance with the policies in the development plan that have been identified it is your officer's view that the proposed dwelling is an acceptable development on the site. The public benefits of providing a well designed dwelling on the site are felt to outweigh the less than substantial harm to the CCA (which has been afforded significant importance and weight) that has been identified in this report.

To conclude it is your Officer's view that whilst there is conflict with some policies in the development plan as set out above, overall the planning application complies with the development plan when read as a whole. The scheme is for a dwelling in a sustainable location that accords with policy DP6 of the DP, which is the policy that sets out the settlement hierarchy for the District. As such the principle of the dwelling is supported by DP6. There are not considered to be any other material considerations that would indicate that the application should be refused.

There is a possible fall-back position by virtue of the 2013 Planning Permission. The development proposed in this fallback position would amount to a material consideration where there was a greater than theoretical possibility that it might take place. The 2013 Planning Permission has been implemented and although it is uncertain as to whether the District Council will complete the development permitted by the 2013 Planning Permission, it is considered that there is a greater than theoretical possibility that it might take place. To that extent the fallback position constituted by the 2013 Planning Permission is a material consideration.

However, the weight that can be afforded to a fall-back position as a material planning consideration is dependent on the likelihood of that fall-back position being undertaken. As set out above, in this case it is not certain that the District Council itself would continue to complete the proposed development permitted by the 2013 Planning Permission. As such it is considered that only limited weight can be attached to the 2013 Planning Permission as a material consideration in the determination of this application. As set out below, your officer's planning judgment is that the proposal accords with the development plan as a whole and that there are no material considerations that outweigh the statutory presumption that the decision should be made in accordance with the development plan. Consequently, your officer recommends that planning permission should be granted even if the 2013 planning permission were to be given no weight (as some objectors contend for) as an other material consideration in favour of the grant of planning permission.

In light of all the above it is recommended that the application is approved.

Recommendation

It is recommended that planning permission is granted subject to the conditions listed in the appendix.

SUMMARY OF REPRESENTATIONS

22 letters of objection:

- proposal would have an adverse impact on the Cuckfield Conservation Area
- proposal would have an adverse impact on the setting of the Grade 1 listed Holy Trinity Church
- as the proposal would have an adverse impact on the setting of the conservation area and Holy Trinity Church there would be a conflict with the provisions of sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA 1990) and policies DP34 and DP35 in the District Plan and policies CNP1 and CNP5 in the Cuckfield Neighbourhood Plan
- there are no public benefits to outweigh the less than substantial harm to the heritage assets and therefore the proposal conflicts with paragraph 196 of the National planning Policy Framework
- the proposal would harm the landscape and the setting of Cuckfield village
- the judgement of the High Court by Mr Justice Gilbert which quashed planning permission reference DM/15/1306 is a material planning consideration in the determination of this application
- Mr Justice Gilbert stated that it was very hard to understand how it is said that the construction of one house (albeit an attractive one in a location close to facilities) at this location can amount to substantial public benefits of the kind contemplated in paragraph 132 of the NPPF
- the Local Planning Authority should not give significant weight to the fact that Sir Ross Cranston declined to quash the 2013 planning permission because he did so on the basis of the timing of the challenge and the fact that there had been a reconsideration of the grant of planning permission and he did not consider the substance of the matters that were considered by Mr Justice Gilbert
- the proposal conflicts with an up to date development plan because it is outside the built up area of Cuckfield and should be refused
- the Council can demonstrate a 5 year housing land supply so there the policies in the development plan have full weight
- the proposal would result in the loss of open space and would conflict with paragraph 96 of the NPPF
- the proposal is an over development of the site and does not respect the existing street scene or prevailing design
- there would be an adverse impact on the amenities of the neighbouring property
- the proposal does not form one of the categories of housing that are permitted outside the built up area
- proposal, would result in the loss of the play meadow which should be reopened and restored to its rightful public use
- an application for a new dwelling elsewhere on Courtmead Road was refused so there is clear precedence for refusing this application

SUMMARY OF CONSULTEES (full comments in appendices)

Highway Authority

The LHA does not consider that the proposal for 1 new dwelling would have 'severe' impact on the operation of the Highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 109), and that there are no transport grounds to resist the proposal. We would request conditions regarding cycle parking, vehicle parking and turning.

Public Rights of Way Officer

Working off the current Definitive Map and Statement for Public Rights of Way in Cuckfield I raise no objection to the above planning application as neither the development site itself, nor vehicular access to the site, would affect footpath 22CU which runs adjacent to the site.

It is noted however that an application for a Definitive Map Modification Order has been made to West Sussex County Council on 6th December 2018 which may alter the Definitive Map in the future.

Ecological Consultant

In my opinion, there are no biodiversity policy reasons for refusal or amendment of the proposals, subject to the following conditions:

The recommendations set out in the Extended Phase 1 Habitat Survey Report by D F Clarke Bionomique Ltd. (31 July 2017) shall be implemented in full unless otherwise agreed in writing by the local planning authority.

Reason: to protect biodiversity in accordance with DP38 of the District Plan and para 175 of the NPPF.

Conservation Officer

Subject to the further details reserved by condition on the outline consent, the current proposal is therefore considered acceptable in terms of its design and its impact on the character and appearance of this part of the Conservation Area and on the setting of Grade I listed Holy Trinity Church. It is therefore considered to meet the requirements of District Plan Policies DP34 and DP35 as well as paragraphs 189-202 of the NPPF.

CUCKFIELD PARISH COUNCIL COMMENTS

Objection.

Earlier comments submitted by Cuckfield Parish Council remain relevant. This application conflicts with Neighbourhood Plan (NP) Policies: CNP 1 a) i and ii, b), c), d), e), f) and g) with the out of proportion design and scale being proposed in close proximity to the Grade 1 Listed Holy Trinity Church and neighbouring property. CNP

5 a), b), c), d), outside Built Up Area Boundary, would reduce the viewing point out of the village (Strategic View 10 as noted on Map 5 in the NP), further resulting in a negative impact on landscape. CNP 7 a), b), c), d), e) and f) also apply.

Since the previous planning applications were submitted the District Plan has been made which means the full weight of Cuckfield Neighbourhood Plan should apply. The recent rejection of a planning application for a new dwelling in a garden along Courtmead Road should also be considered, as this was of a much smaller and more sympathetic design to blend into the conservation area, as well as being further away from the Grade 1 Listed Church and also not having a detrimental effect on the medieval views.

Cuckfield Parish Council would like to add the following statement:

In particular, it was resolved that the application would cause significant detriment and harm to the Cuckfield Conservation Area and therefore does not comply with CNP1a and c.

INTRODUCTION

Planning permission is sought for the erection of a new detached house on land to the west of Newbury, Courtmead Road, Cuckfield.

RELEVANT PLANNING HISTORY

Whilst Members will generally be aware of the extensive planning history to the site, it is pertinent to provide the timeline and history to the various applications that have been submitted, approved and withdrawn on the site since 2013.

1. Application 13/03476/OUT - an outline planning application for the erection of a single five bedrooed dwelling house and double garage at this site was submitted in October 2013 (2013 Application). The application was made by the Council for development of Council owned land. The application was considered by Members at Planning Committee B on 12 December 2013 and it was resolved to grant planning permission subject to various conditions and informative including Regulation 9 of the Town and Country Planning General Regulations 1992. The decision notice was issued on 18 December 2013 ("2013 Planning Permission").

2. Application 14/01068/FUL - A detailed 'Full' application was submitted, by the developers 'SDP', on 20 March 2014 for the erection of a similarly new detached house on land to the west of Newbury. Amended plans were submitted by the applicant on 28 April 2014 reducing the scale and bulk of the proposed dwelling. As originally submitted a T-shaped dwelling was proposed with rooms over an attached double garage at the front. The garage was then reduced in size during the consideration of the application to only provide attic storage in the roof space. The main bulk of the dwelling was proposed as an L-shaped building with a family room with master bedroom projecting to the rear. Whilst the application was recommended for approval, the applicant decided to withdraw the application prior to it being considered by committee.

3. Application 14/03388/FUL - on 22 September 2014, a further detailed 'full' application for the erection of a new detached house on land to the west of Newbury was submitted by the applicant, SDP. The committee report, recommending approval subject to planning conditions, was brought before Members on 13 November 2014. Planning permission for the erection of the new detached house was granted on 15 December 2014 ("2014 Planning Permission").

However, proceedings by way of judicial review were brought against the Council in respect of its decision to grant the 2014 Planning Permission. The claim for judicial review was settled by consent between the parties, the effect of which was to quash the Council's decision to grant the 2014 Planning Permission. The judgment by the High Court of Justice on 23 April 2015 held that the Council having concluded that the loss of open space was a material consideration in the determination of the application, Officers erred in advising Members that they should not reconsider the issue on the basis that the Council had already accepted the loss in principle when it issued the 2013 Planning Permission. By way of a consent order the 2014 Planning Permission was quashed and remitted back to the Planning Authority for re-determination and the planning application under ref: 14/03388/FUL was withdrawn.

4. Application DM/15/1306 (2015 Application) - An identical planning application to that submitted under reference 14/03388/FUL was submitted by SDP. No changes were proposed to the size, scale, and layout and/or access arrangement. The application was reported to Planning Committee A on the 30 April 2015 with the decision notice issued on 01 May 2015 ("the 2015 Planning Permission"). Proceedings by way of judicial review were then again brought against the Council in respect of its decision to grant the 2015 Planning Permission ref: DM/15/1306. The 2015 Planning Permission was subsequently quashed on 28 June 2016 and the application withdrawn on 06 October 2016.

5. Application DM/15/2248 - an application for the approval of all reserved matters pursuant to the 2013 Planning Permission for the erection of a 5 bed dwelling house with double garage was submitted in the name of the Council on 02 June 2015. The application was reported to Planning Committee A on 08 October 2015 with the decision notice issued on the 9th October 2015 (2015 Reserved Matters Consent). The 2015 Reserved Matters Consent has been implemented by the provision of footings on site.

On 23 December 2016, the Claimant (Mrs Irving), who brought the successful challenge to the 2015 Planning Permission, brought a challenge to the 2013 Planning Permission. One of the grounds of challenge was that the Council had not considered whether to consent to the quashing of the 2013 Planning Permission. The Claimant contended that the Council should have done so because the report considered by Members before granting the 2013 Planning Permission suffered from the same errors identified by the High Court in relation to the 2015 Planning Permission. The Claimant was given permission for judicial review on this ground.

In light of this challenge to the 2013 Planning Permission, a report was presented to Members at Planning Committee A on 23rd March 2017 to address the question of whether Members should consider to consent to the quashing of the 2013 Planning

Permission. Members agreed with the recommendation set out in the report to committee on 23rd March 2017 which was as follows:

Maintain the planning permission and defend the judicial review claim on the basis that the prejudice caused to the landowner and the harm that would be caused to good administration outweighs any harm caused by allowing the 2013 permission to stand because:

i. Although the 2013 Committee Report adopted an erroneous approach to the impact on the CCA, Members would have made the same decision to grant planning permission if they had been advised of the correct approach as set out above

The Claimants challenge to the 2013 Planning Permission was heard in the High Court on 27th June 2017. The Claimants challenge to the 2013 Planning Permission was dismissed by the High Court by Order of dated 10th July 2017. By an Order dated 3rd October 2017, the Court of Appeal refused permission for the Claimant to appeal the 2017 Order. As such the 2013 planning permission is valid.

The pre commencement conditions attached to the 2013 Planning Permission have been discharged and works have commenced on site to implement the 2013 Planning Permission (the construction of footings). As such this 2013 Planning Permission is extant.

SITE AND SURROUNDINGS

The application site lies at the end of Courtmead Road immediately adjacent to 'Newbury', a large detached two storey dwelling, which is currently undergoing works of improvement/alteration.

The site is roughly rectangular in shape and measures some 98 metres at its maximum length and has a frontage some 24 metres in width. The land slopes very gently from north to south, is grassed and is enclosed by a mixture of close board fencing, hedging, herras fencing and hoardings. Access to the land is currently gained at the north east corner of the site, where the land adjoins Courtmead Road. To the north of the application site, public right of way (PROW) 22CU, runs past the site in an east west direction. This PROW extends the full length of Courtmead Road and provides access to Holy Trinity Church, a Grade I listed building that lies some 110 metres to the west of the application site.

In between this church and the application site, lie allotments (which immediately abut the application site) and the church graveyard.

The other side of the PROW to the north of the application the rear garden of 'The Old Vicarage' is well screened by close boarded fencing and taller mature vegetation and trees.

To the south of the application site, lies the Royal Observer Corps Post, an underground bunker which sits within a larger grassed field.

In terms of planning policy the site falls outside the built up area of Cuckfield as defined by the District Plan (DP) and the Cuckfield Neighbourhood Plan (CNP). In addition the northern half of the site falls within the CCA. The proposed dwelling would all be within the Conservation Area. The southern end of the rear garden of the proposed property would be outside the Conservation Area.

APPLICATION DETAILS

The application proposes the erection of a detached 5 bedroom dwelling at the site. This would have a width of some 20m with a maximum depth of 15m at its deepest point. The ridge height would be 9.5m. The dwelling would have a catslide roof on the east elevation. There would be an integral double garage on the east side. The external materials of the proposed house would feature facing brickwork, clay tile hanging and Oak frame and render infill. The roof would be plain clay tiles and windows and doors would be timber. The dwelling would have a small gable projection on the front elevation and a larger gabled projection on the rear elevation.

LIST OF POLICIES

Mid Sussex District Plan (DP)

The District Plan was adopted at Full Council on 28th March 2018.

Relevant policies:

- DP6 Settlement hierarchy
- DP21 Transport
- DP24 Leisure and Cultural Facilities and Activities
- DP26 Character and Design
- DP34 Listed Buildings and Other Heritage Assets
- DP35 Conservation Areas
- DP38 Biodiversity

Cuckfield Neighbourhood Plan (CNP)

The CNP was formally made on 1 October 2014. As such the CNP is now a part of the adopted development plan for determining planning applications for the CNP plan area. The following policies in the CNP are relevant to the determination of this application.

- CNP1 - Design of New Development and Conservation
- CNP5 - Protect and Enhance the Countryside

The Parish Council have referred in their consultation response to policy CNP7. This is entitled "Housing Development within the Built Up Area Boundary". The site is not shown as being within the built up area boundary as defined in the CNP and therefore this policy is not considered to be applicable to the current application.

National Policy and Legislation

National Planning Policy Framework (NPPF) (July 2018)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective. This means ensuring sufficient land of the right type to support growth; providing a supply of housing and creating a high quality environment with accessible local services; and using natural resources prudently. An overall aim of national policy is to 'boost significantly the supply of housing.'

Paragraph 12 of the NPPF states that the NPPF does not change the statutory status of the development plan as the starting point for decision making. Proposed development that accords with an up-to-date Local Plan should be approved, and proposed development that conflicts should be refused unless other material considerations indicate otherwise. It is highly desirable that local planning authorities should have an up-to-date plan in place.

Paragraph 38 of the NPPF states that Local Planning Authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

With specific reference to decision-taking paragraph 47 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

National Planning Policy Guidance

Technical Housing Standards

ASSESSMENT

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

- The principle of development;
- Impact on the character of the Cuckfield Conservation Area
- Landscape matters
- Impact on setting of listed building
- Design of the Proposed Dwelling
- Neighbour amenity
- Highways matters
- Ecological matters
- Other material considerations

Principle of Development

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

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

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

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

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

'If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.' The "in accordance" determination is one in accordance with the development plan when read as a whole.

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

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan (DP) (2018) and the Cuckfield Neighbourhood Plan (CNP) (2014).

Policy DP6 in the DP states:

'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. Outside defined built-up area boundaries, the expansion of settlements will be supported where:

- 1. The site is allocated in the District Plan, a Neighbourhood Plan or subsequent Development Plan Document or where the proposed development is for fewer than 10 dwellings; and*
- 2. The site is contiguous with an existing built up area of the settlement; and*
- 3. The development is demonstrated to be sustainable, including by reference to the settlement hierarchy.*

The developer will need to satisfy the Council that:

- *The proposal does not represent an underdevelopment of the site with regard to Policy DP26: Character and Design; or*
- *A large site is not brought forward in phases that individually meet the threshold but cumulatively does not.'*

The site is for fewer than 10 dwellings and is contiguous with the built up area boundary of Cuckfield. Cuckfield is designated as a category 2 settlement in the DP (defined in the DP as 'Larger villages acting as Local Service Centres providing key services in the rural area of Mid Sussex. These settlements serve the wider hinterland and benefit from a good range of services and facilities, including employment opportunities and access to public transport). It is considered that the site is clearly sustainable having regard to its location and the settlement hierarchy. It is therefore considered that the application complies with policy DP6 of the DP.

Policy CNP5 of the CNP states

'Outside of the Built up Area Boundary, priority will be given to protecting and enhancing the countryside from inappropriate development. A proposal for development will only be permitted where:

- a) It is allocated for development in Policy CNP 6 (a) and (b) or would be in accordance with Policies CNP 10, CNP 14 and CNP 17 in the Neighbourhood Plan or other relevant planning policies applying to the area, and*
- b) It would not have a detrimental impact on, and would enhance, areas identified in the Cuckfield Landscape Character Assessment (summarised in Table 1) as having major or substantial landscape value or sensitivity, and*
- c) It would not have an adverse impact on the landscape setting of Cuckfield and*
- d) It would maintain the distinctive views of the surrounding countryside from public vantage points within, and adjacent to, the built up area, in particular those defined on Map 5, and*
- e) Within the High Weald Area of Outstanding Natural Beauty it would conserve and enhance landscape and scenic beauty and would have regard to the High Weald AONB Management Plan.'*

It is considered that policy DP6 in the DP is a "relevant policy" as referred to in part a) of policy CNP5 in the CNP. Policy CNP5 requires development to comply with part a) of the policy and the other criteria contained within to be fully compliant with it. For the reasons given below it is your Planning Officer's view that in relation to criteria a) of Policy CNP5, there is a conflict because criteria a) requires compliance with all of the other criteria in the policy and for the reasons summarised below the scheme does not comply with all of the criteria of Policy CNP5.

As the proposal would impact on some views looking towards the village and looking out from the village it is considered that there would be some conflict with criteria b), c) and d) of Policy CNP5. The reason for this conclusion will be set out later in this report.

Impact on the character of the Conservation Area

The northern part of the application site falls within the Cuckfield Conservation Area (CCA). This CCA excludes the allotments to the immediate west of the application site, and the southern half of the application site, but extends along the entire length of Courtmead Road, and encompasses the Holy Trinity Church and yard to the west of the allotments along with an extensive area of the village centre and surrounds.

Special attention must be paid to the desirability of preserving or enhancing the character or appearance of the CCA. The CCA appraisal published in 2006 subdivides the designated Conservation Area into 'character areas' and the Courtmead Road is noted for its detached dwellings set in spacious grounds, with the road and building line dictating the placement of houses. It is noted that at the western end of Courtmead Road the properties are predominantly designed by Turner following the traditional form and detailing of historic Wealden vernacular.

Conservation Areas and their settings are afforded special protection under the planning regime by virtue of section 72 of the PLBCAA 1990; paragraphs 193-196 of the NPPF and policy DP 35 of the DP.

Section 72 of the PLBCAA 1990 states

*'72 General duty as respects conservation areas in exercise of planning functions.
(1) In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'*

Policy DP35 of the DP states

'Development in a conservation area will be required to conserve or enhance its special character, appearance and the range of activities which contribute to it. This will be achieved by ensuring that:

- *Sensitively designed to reflect the special characteristics of the area in terms of their scale, density, design and through the use of complementary materials;*
- *Open spaces, gardens, landscaping and boundary features that contribute to the special character of the area are protected. Any new landscaping or boundary features are designed to reflect that character;*
- *Traditional shop fronts that are a key feature of the conservation area are protected. Any alterations to shopfronts in a conservation area will only be permitted where they do not result in the loss of a traditional shopfront and the new design is sympathetic to the character of the existing building and street scene in which it is located;*
- *Existing buildings that contribute to the character of the conservation area are protected. Where demolition is permitted, the replacement buildings are of a design that reflects the special characteristics of the area;*
- *Activities such as markets, crafts or other activities which contribute to the special character and appearance of the conservation area are supported;*

- *New pavements, roads and other surfaces reflect the materials and scale of the existing streets and surfaces in the conservation area.*

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

New buildings of outstanding or innovative design may be acceptable in conservation areas provided that their impact would not cause material harm to the area.'

Policy CNP1 in the CNP states

'New development in accordance with the Neighbourhood Plan will be permitted where it:

- a) Is designed to a high quality which responds to the heritage and distinctive character and reflects the identity of the local context of Cuckfield as defined on Map 3 - Conservation Areas and Character Areas, by way of;

 - i. height, scale, spacing, layout, orientation, design and materials of buildings,*
 - ii. the scale, design and materials of the public realm (highways, footways, open space and landscape), and**
- b) Is sympathetic to the setting of any heritage asset and*
- c) Follows guidance in the Conservation Area Appraisals and Management Plans, the High Weald AONB Management Plan, and*
- d) Respects the natural contours of a site and protects and sensitively incorporates natural features such as trees, hedges and ponds within the site, and*
- e) Creates safe, accessible and well-connected environments that meet the needs of users, and*
- f) Will not result in unacceptable levels of light, noise, air or water pollution, and*
- g) Makes best use of the site to accommodate development.'*

Paragraphs 193 to 196 of the NPPF state:

'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 officers report on the full planning application reference DM/15/1306 which granted consent for a dwelling on the site and was subsequently quashed by the High Court, concluded the following in relation to the effect on the CCA:

'...some limited harm may arise from this proposal as a result of the loss of panoramic views out of and across the site to the south. However, the views into/across the site are only one component of the Conservation Area as a whole. Whilst there will be some impact on the character of the conservation area through the development of this site it is considered that the overall character and appearance of the conservation area will be preserved.'

The report concluded

'The proposed dwelling is considered to be suitably designed to reflect the character of the surrounding area, and will not appear as an overdevelopment of this generous plot. Whilst it is accepted that the dwelling is substantial in size, it is considered that the character and appearance of the conservation area will be preserved and the setting of the Holy Trinity Church will not be affected. Whilst there is some limited harm to a small component of the conservation area this certainly amounts to less than substantial harm. Overall it is your officer's view that taken as a whole character and appearance of the conservation area will be preserved.'

The Court disagreed with this approach. Justice Gilbert stated 'In my judgement that approach cannot be supported. If there is harm to the character and appearance of one part of the Conservation Area, the fact that the whole will still have a special character does not overcome the fact of that harm. It follows that the character and appearance will be harmed. While I accept that the question of the *extent* of the harm is relevant to consideration of its effects, it cannot be right that harm to one part of a Conservation Area does not amount to harm for the purposes of considering the duty under s 72 PLBCAA 1990.'

'On the facts there set out, it follows that the development would cause harm to the character and appearance of the Conservation Area. That must attract significant weight as a disadvantage of the development, as a matter of law, as the approach set out in *Bath* (per Glidewell LJ) *Heatherington* (per the future Keene LJ) and *Barnwell* (per Sullivan LJ) shows. NPPF paragraphs [132]- [134] and [138] cannot be

read as diminishing the effect of that clear line of authority, emanating from three of the most distinguished judges in this field.'

The Judge went on to state 'On the facts and arguments advanced in the report, the development would undoubtedly harm the character and appearance of it. I would take that view whether or not this particular part of the Conservation Area had the particular importance ascribed to it by the Development Plan, and set out above. But it must also be taken as conflicting with the specific protection given by the development plan in CNP 5(d) and Map 5 of the CNP. While it is true that the report identifies a breach of CNP 5 it does so on the basis that the house would be outside the built up area, and not on the basis that it would obstruct landscape views of importance and sensitivity, which the Development Plan set out to protect.'

In light of these findings the Judge found that the report had erred in law and therefore the planning permission should be quashed.

The planning history section of this report outlines the chronology of events at the site. The most recent report relating to the site was that which was presented to Members at Planning Committee A on 23rd March 2017. This report made it clear that Members were asked to rely on the assessment that the proposal would cause less than substantial harm to the CCA, notwithstanding the view of the Conservation Officer on the application for the 2015 Reserved Matters Consent, that the proposed reserved matters scheme would not cause harm to the CCA. The report to committee on 23rd March 2017 advised that the assessment by the Conservation Officer in relation to the 2015 Reserved Matters Consent was relevant in considering the extent of the less than substantial harm that would be caused by the proposed development. It should be noted that the Conservation Officer who considered the 2013 Application was not the same Conservation Officer who considered the application for the 2015 Reserved Matters Consent.

The Conservation Officer is of the view that the current application is acceptable in terms of its impact on the character and appearance of this part of the CCA and on the setting of the Grade 1 listed Holy Trinity Church. Whilst this is a different view to that of the Conservation Officer who considered the 2013 Proposal, it is considered that two different Conservation Officers are fully entitled to come to their own professional views about the merits of the schemes placed before them.

The position of the Local Planning Authority, was that the Planning Committee accepted the recommendation of the report that was before them in March 2017 in relation to the impact of the 2013 Application on the character of the CCA; namely that the 2013 Application would cause less than substantial harm to the CCA.

Given the above position, it is considered that whilst the views of the current Conservation Officer on this application in relation to the impact on the Conservation Area are noted, it is your Planning Officer's view that this proposal would cause less than substantial harm to the CCA. It is the case that within the bracket of "less than substantial harm", there is range of impacts. It is felt that whilst your Officer has a different view to the Conservation Officer (namely that there would be some harm to the Conservation Area for the reasons set out below), it is considered that the views of the current Conservation Officer lend weight to the view that the "less than

substantial harm" is at the lower end of the scale of harm. The proposed development would lead to the loss of panoramic views to the south. Construction of a two storey dwelling would obstruct long views from the western end of Courtmead Road, from the public footpath abutting the northern boundary and from within the site itself.

The officers report on the 2015 Application stated '*...the main impact of the proposed development would be on the character of the immediate vicinity through the loss of panoramic views to the south. Construction of the dwelling will obstruct long views from the western end of Courtmead Road, from the public footpath abutting the northern boundary and from within the site itself. The views across open countryside to the distant South Downs are a distinctive feature of the southern edges of the Cuckfield conservation area and they engender a particularly strong sense of place. Loss of these views will diminish an important quality of this part of the designated area and as a result this weighs against the favourable recommendation of the application proposals.*'

It is considered that there are no reasons to depart from this assessment. Map 12 in the CNP shows the landscape character assessment areas around the village. To the south of the site the land is classified as having Moderate value and Substantial sensitivity. The site itself is shown as having Substantial value and Substantial Sensitivity. The aim of policy CNP5 (d) is to maintain landscape views of importance and sensitivity.

Given the above points it is considered that there is a conflict with CNP5 (d) in the CNP and this weighs against the proposal. It is also considered that there is a conflict with policy DP35 of the DP because there would be some limited harm to the CCA. It has been accepted that the proposed development would lead to the loss of panoramic views to the south. Construction of a two storey dwelling would obstruct long views from the western end of Courtmead Road, from the public footpath abutting the northern boundary and from within the site itself. Given that the loss of these views would diminish an important quality of this part of the designated area, it is considered that the proposal would be contrary to the objectives of policy DP35 of the DP in relation to the impact on the setting of the CCA.

It is your Officers view that the proposal will cause less than substantial harm to the CCA. This harm arises from a partial loss of views as described above. In accordance with section 72 PLBCAA Act 1990 - significant weight should be attached to that less than substantial harm that arises from this impact on views. However, that does not mean that any harm, however minor, necessarily requires planning permission to be refused. As set out in paragraph 196 of the NPPF, the considerable weight attached to the less than substantial harm needs to be weighed against the public benefits of the proposal. An assessment of both the benefits of the proposal and other material planning considerations will be set out later in this report.

Landscape matters

Parts b), c) and d) of policy CNP5 in the CNP relate to the impact of proposals on the landscape and views. Within the CNP Table 1 entitled Landscape Character Assessment Summary, makes an assessment for each area with regards to its

landscape value, sensitivity and its capacity to accommodate change without significant effects on landscape character (landscape capacity). The site of the application is shown on the accompanying map within the CNP as being of 'substantial value, substantial sensitivity' (this is shown as area 26 on the accompanying map). The accompanying text to the CNP states *'Significant parts of the countryside around the village comprise intact, high quality landscapes. The Historic Landscape Characterisation identifies medieval time depth and low boundary loss across a number of character areas. The Landscape Character Assessment identifies that the majority of the countryside surrounding Cuckfield has major or substantial landscape value or sensitivity, as summarised in Table 1. Development should not have a detrimental impact on such areas and the Landscape Character Assessment will be used as the basis for understanding the landscape value and sensitivity of an area.'*

As set out above, the map accompanying Table 1 shows that the application site lies within area 26. This area measures some 330m from west to east and is some 155m in depth at its deepest point. The width of the application site is 27m. In light of the above facts it is your officer's view that the impact of the proposal on the landscape setting of Cuckfield is minimal. It is accepted that by constructing a house on this site that when looking directly across the site, the current view would not be maintained, since by definition there would be a house on the site where currently it is undeveloped. As such there is a conflict with part d) of policy CNP5. However given the modest nature of the development in relation to the scale of Cuckfield village, it is considered that the adverse impact on the landscape setting of Cuckfield is minimal.

Impact on the setting of the listed building

The Holy Trinity Church, a Grade I listed building is located some 110 metres to the direct west of the application site. Section 66 of the PLBCAA Act 1990 states that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

The proposed dwelling would appear in views to the east from this listed building. The intervening shrubbery will provide some screening to the new dwelling and it will of course be seen against the existing backdrop of trees, shrubbery and occasional buildings. It is considered that the new dwelling will be unlikely to stand out as an individually intrusive element and due to the distance between the site and the Holy Trinity Church it is considered that the proposal will preserve the setting of The Holy Trinity Church. The Council's Conservation Officer does not consider that the proposal will have an adverse impact on the setting of the listed church and considers that the scheme complies with policy DP34 of the DP and the requirements at the PLBCCA Act 1990 as set out above. On this basis it is your officer's view that the proposal complies with policy DP34 of the DP, the requirements of the NPPF and section 66 of the PLBCAA Act 1990.

Design of the Proposed Dwelling

Policy DP26 in the DP seeks a high standard of design in new dwellings. The NPPF is also strongly supportive of good design.

The proposed dwelling is quite substantial in size, both in terms of footprint and overall bulk, however this is a large plot, set at the end of a road of large dwellings sat in similarly large plots. As a result it is not considered that it can be suggested that the proposed dwelling would result in an overdevelopment of the plot. A good setback is maintained between the front line of the house and Courtmead Road, and the new house will retain a substantial garden, which is in keeping with the generally open character of the area. It is considered that the gap of some 2.57m between the proposed dwelling and Newbury to the east is sufficient to mean that the dwelling will fit in satisfactorily within the street scene. The fact that there will be a catslide on the eastern side of the site adjacent to Newbury will mean that the two properties will not appear cramped together.

The applicant has chosen to adopt a traditional aesthetic for the proposed dwelling, utilising traditional stock bricks, a tile hung upper and plain tiled roof. The proposed house is a two storey dwelling with the habitable accommodation arranged over two floors. The Conservation Officer states *'In terms of the architectural treatment of the new building, the proposed steeply pitched hipped roof with gablets, descending to a catslide on the eastern elevation, reflects features of other buildings in the vicinity, and is in keeping with the generally 'vernacular' flavour of the architectural treatment of the new house. Casement windows, overhanging gables, tall chimneys, and the palette of facing materials which incorporates brickwork, clay tile hanging, and oak framing, continue the theme and are sympathetic to the detailing and materials employed in the adjoining, existing buildings.*

The two storey 'timber framed' stair turret to the front (north) elevation of the house adds a quirky feature not inappropriate in the context of nearby houses, which themselves exhibit various interpretations of the 'vernacular' style.

The treatment of the western elevation, which is key in terms of the impact on views from the setting of the Grade I listed church, continues in this vernacular theme, and is simply detailed with no obtrusive or incongruous features which might draw the eye or particularly detract from the open and rural nature of the vista from the churchyard.' Your officer agrees with these comments and considers that the building itself is appropriately designed and is acceptable within the site.

On this basis it is considered that the design of the dwelling is of high quality as sought by policy CNP1 of the CNP and policy DP26 of the DP. The dwelling would comply with the national dwelling space standards as required by policy DP27 in the DP.

Neighbour amenity

Policy DP26 of the DP seeks to avoid development that would have a significant adverse impact on the amenities of neighbouring occupiers. Part f) of policy CNP1 in

the CNP states that new development will be permitted where it *'Will not result in unacceptable levels of light, noise, air or water pollution'*

Newbury, to the east, is the only adjacent neighbouring property to the application site. The proposed dwelling has been positioned on the application site so that it will sit approximately 2.57m from the mutual boundary at the closest point. The eastern elevation of the proposed dwelling has been designed with a catslide roof. There are two roof lights in the east facing roof slope.

Newbury has one ground floor west facing window serving a study and two first floor west facing windows, one serving a bedroom and one serving an ensuite. All of these windows are secondary windows. Whilst therefore the proposed dwelling will be very visible from these openings it is not considered that significant harm would be caused to the amenities of the adjacent occupiers on the basis that the primary aspect for all of these rooms faces away from the proposed development.

In terms of the rear projection of the dwelling, again whilst the dwelling will be clearly visible from the rear facing rooms of Newbury, it is officers opinion that the spacing and orientation and positioning of the dwelling will ensure that no significant harm will be caused through loss of light, loss of privacy or general unneighbourliness.

For these reasons the application is deemed to comply with part f) of policy CNP1 in the CNP and Policy DP26 of the DP.

Highways matters

Policy DP21 in the DP relates to transport. Amongst other things it seeks to sustainably locate development to minimise the need for travel, make adequate provision for car parking, protects the safety of road users and pedestrians and avoid severe additional traffic congestion. Part e) of policy CNP1 in the CNP states that new development will be permitted where it *"Creates safe, accessible and well-connected environments that meet the needs of users"*.

The proposal is for one dwelling at the end of a cul-de-sac. It will not cause any traffic congestion and the access to the highway is satisfactory. The site is sustainably located as it is adjacent to the built up area of a category 2 settlement. The scheme provides for an integral garage that can accommodate one car and there is space on the driveway for at least two cars.

In light of the above part e) of policy CNP1 in the CNP and policy DP21 in the DP is complied with.

Application for a Public Right of Way

On 6th December 2018 the LPA was advised by a solicitor acting for an objector to the scheme that an application had been submitted to West Sussex County Council (WSSCC) to amend the Definitive Map and Statement to record a public footpath through the middle of the application site and the land to the south. It was for this reason that the planning application was withdrawn from the planning committee meeting on 6th December 2018 so the officer's report to Members could be updated.

The application has been made to WSCC under s.53(5) and Schedule 14 of the Wildlife and Countryside Act 1981 ("WCA") ("the PROW Application"). The PROW Application seeks that WSCC, exercising its duty under s.53(2) WCA, makes an order modifying its Definitive Map and Statement ("DMS") to show a public footpath running (generally) north-south between public footpaths 22 Cuckfield (along the northern edge of Courtmead Road) and 6a Cuckfield (along Newbury Lane), in consequence of an event occurring under s.53(3)(c)(i) WCA 1981: the discovery of evidence that a public footpath which is not shown in the DMS subsists or is reasonably alleged to subsist.

The PROW Application sets out the basis on which it is asserted that a public footpath has come into existence through long use. The PROW Application asserts that there is documentary and witness evidence of a clear linear (physical) path through the site of the planning application and the land to the south known as Observer Field between what are now Footpaths 22CU and 6aCU.

The PROW Application to record a public footpath through the site will be determined by WSCC because they are the Local Highway Authority (LHA) with responsibility for roads and public footpaths in the County.

Guidance on public rights of way is contained in the Government Circular entitled 'Rights of Way Circular' (1/09). The Circular gives advice to local authorities on recording, managing and maintaining, protecting and changing public rights of way. The Circular makes clear that 'This advice and guidance sets out Defra's policy on public rights of way and its view of the law. It does not take the place of the legislation, but seeks to give an overview of it within a policy context.'

The Circular states 'Proposals for the development of land affecting public rights of way give rise to two matters of particular concern: the need for adequate consideration of the rights of way before the decision on the planning application is taken and the need, once planning permission has been granted, for the right of way to be kept open and unobstructed until the statutory procedures authorising closure or diversion have been completed.'

The effect of development on a public right of way is a material consideration in the determination of applications for planning permission and local planning authorities should ensure that the potential consequences are taken into account whenever such applications are considered.'

In this case at the time of writing this report there is not a public right of way shown on the definitive map running through the site. It will be for WSCC to determine the PROW Application that has been made to them that seeks to amend the Definitive Map.

However, Circular 01/09 states '*While the information supplied by an applicant should therefore make clear how the potential development will impinge on any rights of way, local planning authorities will need to ensure that all rights of way affected by the development are identified and take into account any applications for the addition of a path or way to the definitive map, any modifications that the highway authority itself may be proposing to make, the possible existence of any*

other rights on the ways shown on the definitive map and any ways not yet recorded on the definitive map.'

It is therefore clear that the LPA should take into account the PROW Application in the determination of this planning application. There will be an opportunity for interested parties to make representations to WSCC about the PROW Application and it is open to the District Council in its capacity as landowner to make what representations it sees fit on the merits of the PROW Application. The LPA is therefore not in a position to assess the merits of the PROW Application.

However, it is your officer's view that the PROW Application, even if successful, does not significantly impact on the planning merits of the planning application that is before Members.

If WSCC were to amend the definitive map and confirm that there was a public right of way running through the site, there are various separate legislative procedures for the applicant to consider pursuing. This could include seeking to have the footpath stopped up or diverted by way of an application to the LPA under section 257 of the Town and Country Planning Act 1990 where the LPA is satisfied that it is necessary to do so in order for development to be carried out with a planning permission granted under Part 3 of the 1990 Act. Alternatively, where any land has been acquired or appropriated for planning purposes and is for the time being held by a local authority for the purposes for which it was acquired or appropriated, the local authority may by order under section 258 of the 1990 Act extinguish any public right of way if satisfied that an alternative right way has been or will be provided or that the provision of an alternative right of way is not required. The LPA is not in a position to take any final view on the likelihood of any such application at this stage. It would be for the applicant to explore the options to stop up, divert or extinguish the public right of way should the PROW Application prove successful.

At the present the Definitive Map shows that there is a PROW (22CU) that runs to the north of the site from the Holy Trinity Church and then onto Courtmead Road. The Definitive Map also shows a PROW (6aCU) that is some 75m to the south of the site of the planning application. This path runs from the Cuckfield by pass to the east and then turns through 90 degrees and goes southwards down Newbury Lane. Therefore at the present time it is possible to use the existing PROW network and the lanes within Cuckfield to walk from the PROW to the south of the application site and then to walk northwards along Newbury Lane and then to loop round to the east to pick up the PROW (22CU).

From a planning perspective and for the purposes of assessing the merits of the current planning application, even assuming the PROW Application to amend the definitive map were successful, the stopping up, diversion or extinguishment of this footpath would not in itself appear to give rise to unacceptable harm in terms of loss of public amenity or highways impact or otherwise. As set out above it would be possible to walk from the PROW to the south, along Newbury Lane and then join the PROW to the north. Whilst a part of this walk would be on Newbury Lane this is a lightly trafficked rural road.

The Public Rights of Way Officer at WSCC has not raised any objection to the planning application. The Public Rights of Way Officer is of the view that that the planning application does not affect the PROW that runs to the north of the site. To summarise on this issue, it is your officer's view that for the reasons outlined above Members can continue to determine this planning application notwithstanding the existence of the PROW Application, and that even if a right of way were held to subsist the impact of this proposal would not lead to unacceptable harm,

Benefits of the scheme

The provision of a new dwelling will make a small but useful contribution to the District's housing supply. It should also be noted that the New Homes Bonus is a material planning consideration and if permitted the LPA would receive a New Homes Bonus for the new dwelling proposed. It is important to note that the five year housing land supply is a floor and not a ceiling. As per the Inspector's report on the District Plan, the position is that the LPA could demonstrate a 5.2 year housing land supply without the Clayton Mills site in Hassocks and a 5.34 year supply with the Clayton Mills site. It is important for the LPA to maintain the 5 year housing land supply so that the policies in the DP continue to command full weight.

The report to Members on 23rd March 2017 stated *'At a wider scale the economic contribution that house building makes to the UK economy has long been recognised by Government and is seen as a crucial driver of economic growth. A defining feature of the house building industry is its significant and complex network of supply chains and contracting relationships - the breadth and depth of these supply chains means that the domestic spin-off benefits from house building activity are far greater than for many other economic sectors. It has been reported (source: HBF Briefing October 2012) that, according to Government figures, housing supply accounts for around 3% of UK GDP and provides between 1 and 1.25 million jobs in the UK. Every £1 spent on housing puts £3 back into the economy. In this case, it could be estimated that the construction of one house would create 1.5 full-time direct jobs and at least three jobs created in the supply chain.'* It is considered that all of these benefits remain relevant material considerations now.

In quashing the 2015 Planning Permission, Mr Justice Gilbart stated *"One then turns to the arguments advanced for the benefits outweighing the harm. It is very hard to understand how it is said that the construction of one house (albeit an attractive one in a location close to facilities) at this location can amount to substantial public benefits of the kind contemplated in paragraph [132] of NPPF, but even if that is a rational view, it is expressed in the context of an approach where the assessment of harm is flawed, for the reasons already given."*

Whilst these comments are noted, Mr Justice Gilbart did not state that the LPA's view about the public benefits of the proposed dwelling were irrational. The assessment of the public benefits of the proposal and the harm to the Conservation Area is a matter of planning judgement for the LPA. It is well established in planning law that matters of planning judgement are for the decision maker and not the Court.

This report has set out previously your Planning Officer's view that the less than substantial harm to the Conservation Area is at the lower end of the scale. This

report has also clearly set out the Council's duty to give that harm significant weight in the planning balance to reflect the statutory requirements set out in the PLBCAA.

The report has identified the clear economic benefits of the proposal. The report also identifies that there is a public benefit in providing new housing in the context where significantly boosting housing is a clear aim of national policy, even when the LPA can demonstrate a 5 year housing land supply.

In principle, the benefits that have been identified above are capable of outweighing the less than substantial harm that has been identified to the Conservation Area, acknowledging that this harm should be given significant weight. Whether or not they do is a matter of planning judgment for Members. It is your Planning Officer's view that the less than substantial harm is at the lower end of the scale and that the public benefits of the proposal as set out above do outweigh that harm.

Ecology

Policy DP38 in the DP seeks to protect and enhance 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 of Habitats and Species Regulations 2017/1012.

Paragraph 170 of the NPPF states:

'Planning policies and decisions should contribute to and enhance the natural and local environment by:

- a) protecting and enhancing valued landscapes, sites of biodiversity or geological value and soils (in a manner commensurate with their statutory status or identified quality in the development plan);*
- b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services - including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland;*
- c) maintaining the character of the undeveloped coast, while improving public access to it where appropriate;*
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures;*
- e) preventing new and existing development from contributing to, being put at unacceptable risk from, or being adversely affected by, unacceptable levels of soil, air, water or noise pollution or land instability. Development should, wherever possible, help to improve local environmental conditions such as air and water quality, taking into account relevant information such as river basin management plans; and*

- f) *remediating and mitigating despoiled, degraded, derelict, contaminated and unstable land, where appropriate.'*

Paragraph 175 of the NPPF 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.'*

The application is accompanied by an Extended Phase 1 Habitat survey that is available on file for inspection. The proposed development site largely consisted of grassland, fencing and hedges. The hedges identified on site qualify as habitats of principal importance under section 41 of the Natural Environment and Rural Communities (NERC) Act 2006.

The Habitat survey accompanying the application states *'The large area of amenity grassland on site has very limited potential to support any notable species, species of principal importance or protected species. However, the hedgerows (particularly the species-rich hedgerows) and trees bounding the site have the potential to support nesting birds, great crested newt, reptiles, foraging and commuting bats, hazel dormice and hedgehogs. The short grassland areas on site support limited biodiversity and is of low wildlife value. The key biodiversity value of the site is within hedgerow borders. These are recommended to be retained as far as possible.'*

The application does not propose any works to the hedgerow on the western side of the site. The plans show that at its closest point the north-western corner of the house would be some 1.4m from the edge of the hedgerow. The applicant's report recommends that a suitable buffer, for example 1m of unsuitable habitat and appropriate barrier is put in place to ensure that no newts or reptiles are affected by construction works. In relation to Hazel Dormice the applicant's report recommends

that a suitable buffer, for example 1-2m of unsuitable habitat and appropriate barrier is put in place to ensure that no dormice are affected by construction works.

The Council's Ecological Consultant has reviewed the ecological information that has been submitted by the applicants. He is of the view that there are no biodiversity reasons for refusal or amendment of the planning application subject to a condition requiring the recommendations of the applicants Extended Phase 1 Habitat Survey Report to be implemented.

In light of all the above it is considered that the application complies with policy DP38 of the DP and the objectives of the NPPF in relation to ecological matters.

Other material considerations

Extant planning permission

It is relevant to note that the 2013 planning permission is valid and has been implemented. A subsequent reserved matters approval in relation to the 2013 Planning Permission was approved by the Council in October 2015. All of the pre commencement planning conditions attached to that consent have been discharged and works have commenced on site to implement the 2013 Planning Permission in the form of footings being dug on site. As such the 2013 Planning Permission is extant and the development it permits can lawfully be completed pursuant to it. The approved plans for the 2013 Planning Permission (and associated 2015 Reserved Matters Consent) show a dwelling house that is virtually identical to that the subject of the current planning application, with the difference being the insertion of roof lights in the front and rear elevations of the current proposal which were not part of the 2013 Planning Permission.

As the 2013 Planning Permission was granted by Mid Sussex District Council to itself, by virtue of Regulation 9 of the Town and Country Planning General Regulations 1992, that planning permission did not run with the land and only Mid Sussex District Council can implement this planning permission. Nonetheless it remains the case that there is an extant planning permission for a virtually identical house on the site that could be completed.

As set out above, the 2013 Planning Permission constitutes a material consideration as a fallback position because there is a greater than theoretical possibility of the development being completed. The 2013 Planning Permission could be progressed and the development it permits be fully completed by the District Council. The weight that can be given to this fall-back position is a matter of planning judgement. If there is a high likelihood of a fall-back position being progressed then that fall-back position can be given significant weight as a material planning consideration. If there is little likelihood of the fall-back position being progressed then it should be afforded limited weight as a material planning consideration.

In this case, it is uncertain as to whether the District Council will complete the development permitted by the 2013 Planning Permission itself. Therefore it is your officer's view that the 2013 Planning Permission should only be afforded limited

weight as a material planning consideration in the determination of this planning application.

Appropriation and Open space issues

If a local authority acquires land for a statutory purpose, it must hold the land for that purpose until it either appropriates or disposes of the land in accordance with its statutory powers.

The Council has a general power to appropriate land from one statutory purpose to another under Section 122(1) of the 1972 Local Government Act (LGA) which provides that:

'Subject to the following provisions of this section, a principal council may appropriate for any purpose for which the council are authorised by this or any other enactment to acquire land by agreement any land which belongs to the council and is no longer required for the purpose for which it is held immediately before the appropriation; but the appropriation of land by a council by virtue of this subsection shall be subject to the rights of other persons in, over or in respect of the land concerned.'

The Council must be satisfied that: (a) the land is no longer required for the purpose or function for which it is held immediately before the appropriation; and (b) the purpose for which they intend to appropriate the land is a purpose for which the Council is authorised by statute to acquire land by agreement.

A principal council can only appropriate land under s.122 (1) LGA'72 if the land is no longer required for the purpose for which it is currently held. In reaching this decision, the council must consider the public need within the area for the existing use. The council's decision cannot be challenged unless it was made in bad faith or if it was a decision that no reasonable authority could possibly have taken.

By way of background the site was acquired by the Council's predecessor in 1938 to provide allotments. Following the creation of Cuckfield Parish Council in 1986, the Council's allotment functions passed to the Parish Council and the Council voluntarily transferred various parcels of land to the Parish Council for allotments and a burial ground. The Courtmead Road Land, which had never been used for allotments, was retained by the Council as the site of a potential building plot. Consent to the appropriation of the Courtmead Road Land from allotments to housing was obtained from the Secretary of State for the Environment in April 1987. No formal appropriation took place at that time, but the consent remains valid. In the meantime the Courtmead Road Land was used informally as open space by members of the public for recreational purposes.

A report was taken to Cabinet on 23 December 2013 recommending that the Council appropriate the said land from statutory allotment land to housing land, and then from housing land to planning purposes pursuant to Section 122 of the Local Government Act 1972 with immediate effect. This recommendation was agreed by Cabinet. From the 24th December 2013 the site was padlocked and has remained locked ever since.

Therefore after the 23 December 2013 the site was no longer available as allotments or for public open space. It was not designated as open space in the recently adopted local plan.

Given the above in your Officer's view the site is not open space for the purposes of the Local Plan or for the purposes of paragraph 96 of the NPPF.

Paragraph 96 of the NPPF described open space as *All open space of public value, including not just land, but also areas of water (such as rivers, canals, lakes and reservoirs) which offer important opportunities for sport and recreation and can act as a visual amenity.'*

Local Plan Policy DP24 states that: *'Proposals that involve the loss of cultural facilities, open space, sports and recreational buildings and land, including playing fields, will not be supported unless:*

- *an assessment has been undertaken which has clearly shown the cultural facility, open space, sports land or recreational building to be surplus to requirements; or*
- *the loss resulting from the proposed development would be replaced by equivalent or better provision in terms of quantity and quality in a suitable location; or*
- *the development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.'*

It is also relevant that in the High Court judgment issued by Mr Justice Gilbart in 2015, he dismissed the suggestion put forward by the Claimant in that case that the Council could not properly consider the site as recreational open space (albeit in relation to the previous local plan policy R2). He stated (at paragraph 70 - 71) that: *'There is little difficulty in understanding that the appropriation and ending of the role of the site as open space was related to the Council seeking to maximise the value of its asset. But be that as it may, the Council has put forward reasons why it did not regard the loss of open space as significant. The fact is that it is not actually public open space, and the Open Space assessment has shown that it is not required. In my judgement, the Council was entitled to form the planning judgement that the land should not be treated as recreational open space'.*

Nothing has changed since that date that would justify a different conclusion to the conclusion reached by both the High Court and the Council's officers in 2015, namely that the site is not actually public open space.

Policy DP24 and paragraph 96 of the NPPF are therefore not engaged and there is not a requirement to assess whether or not the site is surplus to requirements.

Asset of Community Value

The Localism Act 2011 introduced a number of community rights, including provisions to help communities safeguard land and buildings serving a community purpose. The asset of community value, or ACV, regime allows local communities to identify land or buildings that serve a purpose to further the social wellbeing or social interests of the local community, and provide the community with an opportunity to bid for the land or building when the owner decides to sell - known as the community

right to bid. It is a right to bid, not a right to be considered. The site was entered on this Council's list of ACV on 30 December 2013.

The registration of an ACV lasts for 5 years from the date of registration. The 5 year period has now ended and the site is no longer an ACV.

A listing as an ACV can be a material planning consideration. In this case as the site is no longer an ACV this is not a matter that can attract weight in the determination of the planning application.

Consistency in decision making

An objector to the scheme has referred to the decision of the LPA to refuse a planning application for a three bedroom dwelling within the curtilage of Birch House, Courtmead Road, Cuckfield (reference DM/18/2301). This application was refused in August 2018 for the following reason:

'The proposed development would in principle be harmful to the character and appearance of the Cuckfield Conservation Area, in particular due to the subdivision of the plot resulting in a cramped form of development within the site and forward of the established building line along this part of Broad Street. It would therefore be contrary to Policies DP26 and DP35 of the Mid Sussex District Plan, Policies CNP1 and CNP2 of the Cuckfield Neighbourhood Plan and paragraph 196 of the NPPF.'

The point the objector is seeking to make is that as the LPA has refused a scheme for a new dwelling on Courtmead Road, there are material similarities with the current scheme which mean that this should also be refused.

It is well established that like cases should be decided in a like manner so that there is consistency in the planning process. Consistency is self-evidently important to both developers and development control authorities. It is also clearly established that each planning application must be determined on its individual merits.

The scheme at Birch House proposed a new dwelling in the rear garden of Birch House that would have resulted in an incongruous and cramped dwelling. As such it was clearly harmful to the character of the area. The scheme at Birch House represented a form of development that would have been entirely out of character with the layout of the surrounding dwellings. This contrasts with the scheme before Members now which is for a dwelling that will follow the building line of Courtmead Road. The public benefits of providing a new dwelling at Birch House did not outweigh the harm to the character and appearance of the Conservation Area which is materially different to the harm that has been identified at the Courtmead Road site. The impact of the proposal at Birch House is not comparable to the scheme adjacent to Courtmead Road. The harm to the character of the area from the dwelling that was proposed in the rear garden of Birch House was significant. It was a form of back land development that was entirely inappropriate for the area.

The scheme before Members now is clearly different to that which was proposed at Birch House. As such there is no inconsistency in the LPA refusing the application at

Birch House and officers recommending approval of the current scheme on land adjacent to Newbury.

Conclusion and Planning Balance

To conclude, this is a site with an extensive planning history. The position of the Local Planning Authority in respect of the views that it has come to on previous matters relating to this site are relevant to the determination of this planning application.

The application must be determined in accordance with the development plan unless material planning considerations indicate otherwise. The development plan in this part of Mid Sussex comprises the CNP and the DP.

In relation to the principle of the development, the site is contiguous with the built up area of Cuckfield and the proposal is for a single dwelling. As such it is considered that the principle of the development is supported by policy DP6 in the DP.

As part of the application site is within the CCA, the PLBCAA 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The requirements of this Act are reflected in policy DP35 of the DP. The NPPF states that 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. Case law has determined that if a proposal does result in less than substantial harm as defined by the NPPF, this must be given significant weight in the planning balance to reflect the statutory presumption that preservation is desirable.

The planning history of the site, including the judicial review cases, has been set out earlier in this report. It is the case that in the most recent report relating to this site that was put before Members at the Planning Committee on 23rd March 2017 it was acknowledged that the proposal to erect a house on this site would cause less than substantial harm to the character and appearance of the CCA. It was considered by author of that report that this harm was at the lower to medium end of the scale of harm. Nonetheless, this harm did mean that there was a conflict with the PLBCAA 1990.

It is considered by your officer that the harm to the CCA is at the lower end of less than substantial. The Councils Conservation Officer is of the view that the proposal is acceptable in design terms and does not conflict with policies DP34 and DP35 in the DP. Whilst this is the professional view of the Conservation Officer, given the fact the Local Planning Authority accepted in March 2017 that there would be less than substantial harm to the character of the Conservation Area, it is considered by your officer that it would be unwise to depart from this assessment. The fact that the Conservation Officer does not object to the current proposal is considered to be relevant to assessing the extent of the harm and then weighing this in the planning balance. It is therefore your officers view that there is some harm to the CCA and that this would be classed as less than substantial in NPPF terms. It is further considered that the less than substantial harm to the Conservation Area is at the

lower end of the scale. As such there is a conflict with policy DP35 that weighs against the scheme.

It is considered that the proposal would preserve the setting of the listed church to the west of the site. As such there is no conflict with policy DP34 of the DP.

In terms of the wider landscape impact, there would be a conflict with part d) of policy CNP5 in the CNP because by definition, the existing view across the site would not be maintained as the site would change from being undeveloped to having a new dwelling on it. However given the limited nature of the development it is felt that any adverse impact on the landscape setting of Cuckfield village would be very limited. It is also felt that whilst the site lies within an area defined in the CNP Landscape Character Assessment Summary as having Substantial value, Substantial sensitivity, given the limited scale of the development it is considered that the impact on the wider landscape is minimal.

It is not considered that the proposal would cause a significant loss of residential amenity to the occupiers of the property to the east. As such there would be no conflict with this element of policy DP26 in the DP.

The proposed access and parking arrangements for the proposed dwelling are acceptable. A safe access can be provided to the site and there would be no highway capacity problems with the development. The site is in a sustainable location adjacent to the built up area of Cuckfield.

There are not considered to be any ecological reasons to resist the development. The Councils Ecological Consultant has raised no objection to the proposal.

There are economic benefits arising from the construction of this dwelling. The provision of a unit of housing will make a contribution to the District Councils housing requirements.

A previous planning permission for the erection of a dwelling on the site has been implemented and therefore remains extant by virtue of the fact that footings have been constructed on site (it should be noted that due to the requirement of Regulation 9 of the Town and Country Planning General Regulations 1992, this consent can only be implemented by the District Council only). Therefore the site is no longer classified as open space as a planning permission for a single dwelling on the site has been implemented

In summary, this is a case where it is considered that the proposal complies with some policies within the development plan but conflicts with others. It is considered the proposal complies with policies DP6, DP21, DP26, DP34 and DP38 of the DP whereas there is a conflict with policy DP35 of the DP. It is considered the proposal complies with parts d), e), f) and g) of policy CNP1. Given your officers view that there would be less than substantial harm to the conservation area it is considered there would be some conflict with parts a) and b) of policy CNP1 in the CNP. It is also considered there would be some conflict with parts a), b), c) and d) of policy CNP5 in the CNP.

It is your Planning Officer's view that there is less than substantial harm caused to the setting of the conservation area from the proposal (within the scale of "less than substantial harm" it is considered that the harm is at the lower end of the scale) and that given the statutory presumption in favour of preservation, this harm must be given significant importance and weight.

Overall given the degree of compliance with the policies in the development plan that have been identified it is your officer's view that the proposed dwelling is an acceptable development on the site. The public benefits of providing a well designed dwelling on the site are felt to outweigh the less than substantial harm to the CCA (which has been afforded significant importance and weight) that has been identified in this report.

To conclude it is your Officer's view that whilst there is conflict with some policies in the development plan as set out above, overall the planning application complies with the development plan when read as a whole. The scheme is for a dwelling in a sustainable location that accords with policy DP6 of the DP, which is the policy that sets out the settlement hierarchy for the District. As such the principle of the dwelling is supported by DP6. There are not considered to be any other material considerations that would indicate that the application should be refused.

In light of all the above it is recommended that the application is approved.

APPENDIX A – RECOMMENDED CONDITIONS

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

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

2. The development hereby permitted shall be carried out in accordance with the materials details that were approved under condition 2 of planning permission reference 13/03476/OUT unless otherwise approved in writing by the Local Planning Authority.

Reason: In order to protect and enhance the appearance and character of the Conservation Area and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031 and Policy CNP1 of the Neighbourhood Plan.

3. The development hereby permitted shall be carried out in accordance with the drainage details that were approved under condition 3 of planning permission reference 13/03476/OUT unless otherwise approved in writing by the Local Planning Authority.

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

4. Prior to the commencement of development and with particular regard to the species rich hedgerow on the western boundary, all retained vegetation will be protected using Heras type fencing in accordance with BS5837:2012 and the supporting ecological reports that were approved under condition 4 of planning

permission reference 13/03476/OUT unless otherwise approved in writing by the Local Planning Authority.

Reason: To protect the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031.

5. The development shall be implemented in accordance with the wheel wash details that were approved under condition 7 of planning permission reference 13/03476/OUT unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure that vehicles do not leave the site carrying earth and mud on their wheels in a quantity which causes a nuisance or hazard to road users and to accord with Policy DP21 of the Mid Sussex District Plan 2014 - 2031.

6. No removal of any tree or shrub shall be carried out on site between March and August inclusive in any year, unless otherwise approved in writing by the Local Planning Authority. Where vegetation must be cleared during the bird breeding season a check for nesting birds by a suitably qualified ecologist will be required. Any vegetation containing occupied nests will be retained until the young have fledged. The location details of the compensatory nesting provision to be supplied to the Local Planning Authority for approval prior to their erection.

Reason: To protect the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031.

7. Between the date of this approval and the development commencing, the site shall be subject to a regular mowing regime with the grass being kept short (<5cm) until the development has been completed.

Reason: To protect the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031.

8. The dwelling hereby approved shall not be occupied unless and until there has been submitted to, and approved in writing by, the Local Planning Authority full details of a hard and soft landscaping scheme and these works shall be carried out as approved. Any trees or plants which, within a period of five years from the completion of development, die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

9. A working method statement to protect reptiles during construction as set out in the Extended Phase 1 Habitat Survey Report by D F Clarke Bionomique Ltd. (31 July 2017) shall be submitted to the Local Planning Authority for approval prior to any development taking place on site. The scheme shall then be implemented in accordance with the approved details.

Reason: To protect the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031.

10. Prior to the development hereby permitted being occupied, details shall be submitted of the location of one or two bat boxes on the site. The bot box/s shall then be provided in accordance with the approved details.

Reason: To enhance the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031

11. Prior to the development hereby permitted being occupied, details of a lighting scheme for the development shall be submitted to the Local Planning Authority for their written approval. The scheme shall then be implemented in accordance with the approved details.

Reason: To protect the ecology of the area and to comply with policy DP38 of the Mid Sussex District Plan 2014 - 2031

12. No work for the implementation of the development hereby permitted shall be undertaken on the site on Bank or Public Holidays or at any time other than between the hours 8 a m and 6 pm on Mondays to Fridays and between 9 am and 1 pm Saturdays.

Reason: To safeguard the amenities of nearby residents and to accord with Policy DP26 of the Mid Sussex District Plan 2014 - 2031

13. No part of the development shall be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.

Reason: To provide adequate on-site car parking and turning space for the development and to accord with Policy DP21 of the Mid Sussex District Plan 2014 - 2031

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

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

Approved Plans

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

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

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 assessing the proposal against all material considerations, including planning policies and any representations that may have been received and subsequently determining to grant planning permission in

accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.

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

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
Proposed Site Plan	4634/P4	-	13.07.2018

APPENDIX B – CONSULTATIONS

Parish Consultation

Cuckfield Parish Council would like to add the following statement:

In particular, it was resolved that the application would cause significant detriment and harm to the Cuckfield Conservation Area and therefore does not comply with CNP1a and c.

Parish Consultation

Objection.

Earlier comments submitted by Cuckfield Parish Council remain relevant. This application conflicts with Neighbourhood Plan (NP) Policies: CNP 1 a) i and ii, b), c), d), e), f) and g) with the out of proportion design and scale being proposed in close proximity to the Grade 1 Listed Holy Trinity Church and neighbouring property. CNP 5 a), b), c), d), outside Built Up Area Boundary, would reduce the viewing point out of the village (Strategic View 10 as noted on Map 5 in the NP), further resulting in a negative impact on landscape. CNP 7 a), b), c), d), e) and f) also apply.

Since the previous planning applications were submitted the District Plan has been made which means the full weight of Cuckfield Neighbourhood Plan should apply. The recent rejection of a planning application for a new dwelling in a garden along Courtmead Road should also be considered, as this was of a much smaller and more sympathetic design to blend into the conservation area, as well as being further away from the Grade 1 Listed Church and also not having a detrimental effect on the medieval views.

Highway Authority

West Sussex County Council, in its role as the Local Highway Authority (LHA) was previously consulted on the application where concerns on the number of parking spaces and dimensions of the garage were raised.

The applicant has submitted an amended plan showing some amendments to the garage.

Access

There is a Public Right of Way (PROW) footpath no. 22CU that runs along the northern edge of the site the following should be considered in regards to the PROW:

- Safe & convenient public access is to be available at all times across the full width of the PROW. The path is not to be obstructed by vehicles, plant, scaffolding or the temporary storage of materials and/or chemicals.
- Any down pipes or soakaways associated with the development should discharge into an existing drainage system and away from the surface of the PROW. No drainage system is to be installed through the surface of the path without the prior consent of West Sussex County Council's Rights of Way team.
- Any alteration to or replacement of the existing boundary with the PROW or the erection of new fence lines, must be done in consultation with West Sussex County Council's Rights of Way team to ensure the legal width of the path is maintained and there is no unlawful encroachment.
- Access along the PROW by contractor's vehicles, deliveries or plant is only lawful if the applicant can prove they have a vehicular right. If the path surface is considered damaged as a result of the development then the applicant may be required to make good the surface to a standard satisfactory to West Sussex County Council's Rights of Way team.

As stated in previous comments, the applicant must obtain the relevant permissions from the proprietor of Courtmead Road before any works to construct the new access commence.

Parking

The applicant shows only one car parked in the garage which still measures approximately 5.3m in length and 5.7m in width which does not comply with Manual for Streets (MfS) minimum internal dimensions for garages. However, the increase in dimensions for garages compared to open parking spaces is primarily to allow for some storage to occur as well as accommodating a vehicle. Therefore, as the applicant shows the remainder of the garage as storage, the LHA would anticipate that there would be sufficient space to accommodate a car with storage space provided alongside.

Taking approximate measurements of the site, the LHA would anticipate that 2 car parking spaces could be accommodated on the frontage while still providing sufficient space to perform a turn on site.

Sustainability

The site is approximately a 15 minute bicycle ride from Haywards Heath train station. The site is also approximately a 5 minute walk from local shops and amenities and local bus stops. The applicant should consider providing secure and covered bicycle storage to encourage the use of more sustainable transport methods.

Conclusion

The LHA does not consider that the proposal for 1 new dwelling would have 'severe' impact on the operation of the Highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 109), and that there are no transport grounds to resist the proposal. If the Local Planning Authority (LPA) are minded to approve the application the LHA would ask that the following conditions are secured:

Cycle parking

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

Reason: To provide alternative travel options to the use of the car in accordance with current sustainable transport policies.

Vehicle parking and turning

No part of the development shall be first occupied until the vehicle parking and turning spaces have been constructed in accordance with the approved plan. These spaces shall thereafter be retained for their designated use.

Reason: To provide adequate on-site car parking and turning space for the development.

INFORMATIVE:

The applicant should obtain the relevant permissions from the proprietor of Courtmead Road before any works to construct the proposed access are commenced.

Public Rights of Way Officer

Working off the current Definitive Map and Statement for Public Rights of Way in Cuckfield I raise no objection to the above planning application as neither the development site itself, nor vehicular access to the site, would affect footpath 22CU which runs adjacent to the site.

It is noted however that an application for a Definitive Map Modification Order has been made to West Sussex County Council on 6th December 2018 which may alter the Definitive Map in the future.

If the planning application were to be successful the applicant must note the following:-

- The adjacent public footpath is not to be obstructed by vehicles, plant, scaffolding or the temporary storage of materials and / or chemicals during any works; these will constitute an offence of obstruction under the Highways Act 1980
- The applicant must be advised it is an offence to damage the surface of a public footpath without the prior consent of WSCC. Where it is necessary to undertake works within the path width, e.g. install utilities, the applicant must be advised to apply to WSCC for a temporary path closure; the applicant must be advised there is no guarantee an application will be approved and that a minimum of 8 weeks is needed to consider an application.
- Further, any damage to the footpath surface reasonably arising from access to and from the site, both during construction and during future occupation, will be the responsibility of the applicant or occupier; they will be held liable and required to make good the surface to a standard satisfactory to the WSCC.

Ecological Consultant

Recommendation

In my opinion, there are no biodiversity policy reasons for refusal or amendment of the proposals, subject to the following conditions:

The recommendations set out in the Extended Phase 1 Habitat Survey Report by D F Clarke Bionomique Ltd. (31 July 2017) shall be implemented in full unless otherwise agreed in writing by the local planning authority.

Reason: To protect biodiversity in accordance with DP38 of the District Plan and para 175 of the NPPF.

Conservation Officer

The site is an open grassed area, bounded with hedges and post and rail fencing, situated at the western end of Courtmead Road within the Cuckfield Conservation Area.

Courtmead Road is characterised by substantial detached houses of a variety of periods and styles including a number of Arts and Crafts and loosely 'vernacular' buildings. These houses are set in large gardens, with mature trees, hedges and broad grass verges further softening the street scene. As well as the unifying, semi-rural quality to the setting there is also a broad consistency of building line and scale to the development along Courtmead Road.

To its western edge the site adjoins allotments, with beyond these the church yard to Grade I Listed Holy Trinity Church. There are long views of the site from the setting of the listed building. There are also attractive views across the site towards the countryside beyond from a footpath which runs along its northern edge, and from Courtmead Road itself.

The site has a complex planning history including an outline consent for the erection of a 5 bedroom house with double garage which was granted with all matters reserved in 2013. An application for the reserved matters pursuant to this was approved in 2015. The current application is identical to this 2015 reserved matters application. However, this assessment of the current proposal has been made on its own merits, and is not influenced by the existing permissions relating to the site.

The footprint and positioning of the new house within the plot is sympathetic to the existing building line. A good setback is maintained between the front line of the house and Courtmead Road, and the new house will retain a substantial garden, which is in keeping with the generally open character of the area.

The form, massing and height of the new house are broadly consistent with that of other development along Courtmead Road. Although the new house will have an impact on views across the site from Courtmead Road towards the open countryside beyond, and on views from the nearby churchyard to Holy Trinity Church, it is considered that this impact will be acceptable. In the case of views from the direction of the Church, which are considered particularly sensitive, the new building will be read against the background of the existing development on Courtmead Road such that the impact on the openness and rurality of the vista will be limited.

In terms of the architectural treatment of the new building, the proposed steeply pitched hipped roof with gablets, descending to a catslide on the eastern elevation, reflects features of other buildings in the vicinity, and is in keeping with the generally 'vernacular' flavour of the architectural treatment of the new house. Casement windows, overhanging gables, tall chimneys, and the palette of facing materials which incorporates brickwork, clay tile hanging, and oak framing, continue the theme and are sympathetic to the detailing and materials employed in the adjoining, existing buildings.

The two storey 'timber framed' stair turret to the front (north) elevation of the house adds a quirky feature not inappropriate in the context of nearby houses, which themselves exhibit various interpretations of the 'vernacular' style.

The treatment of the western elevation, which is key in terms of the impact on views from the setting of the Grade I listed church, continues in this vernacular theme, and is simply

detailed with no obtrusive or incongruous features which might draw the eye or particularly detract from the open and rural nature of the vista from the churchyard.

Subject to the further details reserved by condition on the outline consent, the current proposal is therefore considered acceptable in terms of its design and its impact on the character and appearance of this part of the Conservation Area and on the setting of Grade I listed Holy Trinity Church. It is therefore considered to meet the requirements of District Plan Policies DP34 and DP35 as well as paragraphs 189-202 of the NPPF.

Drainage Officer

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.

Foul Water Drainage Proposal

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

Surface Water Drainage Proposal

It is proposed that the development will attenuate surface water before discharging to a ditch adjacent to the site at 2l/s.

Surface Water Drainage Guidance

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.

Any proposed run-off to a watercourse or sewer system will need to be restricted in accordance with the Non-statutory Technical Standards for SuDS, so that run-off rates and volumes do not exceed the pre-existing greenfield values for the whole site between the 1 in 1 to the 1 in 100 year event.

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.

Further guidance in relation to this and guidance for specific disposal methods can be found in the 'Further Drainage Advice' section.

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.

Further Drainage Advice

Applicants and their consultants should familiarise themselves with the following information:

Flood Risk and Drainage Information for Planning Applications

The level of drainage information necessary for submission at each stage within the planning process will vary depending on the size of the development, flood risk, site constraints, proposed sustainable drainage system etc. The table below provides a guide and is taken from the [Practice Guidance for the English non-statutory SuDS Standards](#)

Pre-app	Outline	Full	Reserved	Discharge	Document submitted
√	√	√			Flood Risk Assessment / Statement (checklist)
√	√	√			Drainage Strategy / Statement & sketch layout plan (checklist)
	√				Preliminary layout drawings
	√				Preliminary "Outline" hydraulic calculations
	√				Preliminary landscape proposals
	√				Ground investigation report (for infiltration)
	√	√			Evidence of third party agreement for discharge to their system (in principle / consent to discharge)

Pre-app	Outline	Full	Reserved	Discharge	Document submitted
		√		√	Maintenance program and on-going maintenance responsibilities
		√	√		Detailed development layout
		√	√	√	Detailed flood and drainage design drawings
		√	√	√	Full Structural, hydraulic & ground investigations
		√	√	√	Geotechnical factual and interpretive reports, including infiltration results
		√	√	√	Detailing landscaping details
		√	√	√	Discharge agreements (temporary and permanent)
		√	√	√	Development Management & Construction Phasing Plan

Additional information may be required under specific site conditions or development proposals

Useful links:

Planning Practice Guidance - Flood Risk and Coastal Change

Flood Risk Assessment for Planning Applications

Sustainable drainage systems technical standards

Water.People.Places.- A guide for master planning sustainable drainage into developments

Climate change allowances - Detailed guidance - Environment Agency Guidance

Further guidance is available on the Susdrain website at <http://www.susdrain.org/resources/>

1.

For a development located within Flood Zone 2, Flood Zone 3, which is greater than 1 hectare in area, or where a significant flood risk has been identified:

A Flood Risk Assessment will need to be submitted that identifies what the flood risks are and how they will change in the future. Also whether the proposed development will create or exacerbate flood risk, and how it is intended to manage flood risk post development.

2.

For the use of soakaways:

Percolation tests, calculations, plans and details will need to be submitted to demonstrate that the soakaway system will be able to cater for the 1 in 100 year storm event plus have extra capacity for climate change. It will also need to be demonstrated that the proposed soakaway will have a half drain time of at least 24 hours.

3.

For the use of SuDs and Attenuation:

Written Statement (HCWS 161) - Department for Communities and Local Government - sets out the expectation that sustainable drainage systems will be provided to new developments wherever this is appropriate.

Percolation tests, calculations, plans and details will need to be submitted to demonstrate that the development will be able to cater for the 1 in 100 year storm event plus climate change percentages, for some developments this will mean considering between 20 and 40% additional volume for climate change but scenarios should be calculated and a precautionary worst case taken.

Any proposed run-off to a watercourse or sewer system will need to be restricted in accordance with the Non-statutory Technical Standards for SuDS, so that run-off rates and volumes do not exceed the pre-existing greenfield values for the whole site between the 1 in 1 to the 1 in 100 year event.

A maintenance and management plan will also need to be submitted that shows how all SuDS infrastructure will be maintained so it will operate at its optimum for the lifetime of the development. This will need to identify who will undertake this work and how it will be funded. Also, measures and arrangements in place to ensure perpetuity and demonstrate the serviceability requirements, including scheduled maintenance, inspections, repairs and replacements, will need to be submitted. A clear timetable for the schedule of maintenance can help to demonstrate this.

You cannot discharge surface water unrestricted to a watercourse or sewer.

4.

Outfall to Watercourse:

Any proposed run-off to a watercourse will need to be restricted in accordance with the Non-statutory Technical Standards for SuDS, so that run-off rates and volumes do not exceed the pre-existing Greenfield values for the whole site between the 1 in 1 to the 1 in 100 year event. You cannot discharge surface water unrestricted to a watercourse.

If works (including temporary works) are undertaken within, under, over or up to an Ordinary Watercourse, then these works are likely to affect the flow in the watercourse and an Ordinary Watercourse Consent (OWC) may need to be applied for. Guidance into the OWC application process can be found on West Sussex County Council's website at

<https://www.westsussex.gov.uk/fire-emergencies-and-crime/dealing-with-extreme-weather/dealing-with-flooding/flood-risk-management/ordinary-watercourse-land-drainage-consent/>

OWC applications can also be discussed and made with Mid Sussex District Council, Scott Wakely, 01444 477 005.

5.

Outfall to Public Sewer:

Any proposed run-off to a sewer will need to be restricted in accordance with the Non-statutory Technical Standards for SuDS, so that run-off rates and volumes do not exceed the pre-existing Greenfield values for the whole site between the 1 in 1 to the 1 in 100 year event. You cannot discharge surface water unrestricted to a sewer.

Copies of the approval of the adoption of foul and surface water sewers and/or the connection to foul and surface water sewers from the sewerage undertaker, which agrees a

rate of discharge, will need to be submitted. It will be expected that any controlled discharge of surface water will need to be restricted so that the cumulative total run-off rates, from the developed area and remaining greenfield area, is not an increase above the pre-developed greenfield rates.

6.

Public Sewer Under or Adjacent to Site:

Consultation will need to be made with the sewerage undertaker if there is a Public Sewer running under or adjacent to the proposed development. Building any structure over or within close proximity to such sewers will require prior permission from the sewerage undertaker. Evidence of approvals to build over or within close proximity to such sewers will need to be submitted.

7.

MSDC Culvert Under or Adjacent to Site:

Consultation will need to be made with Mid Sussex District Council if there is a MSDC owned culvert running under or adjacent to the proposed development. Building any structure over or within close proximity to such culverts will require prior permission from Mid Sussex District Council. Normally it will be required that an "easement" strip of land, at least 5 to 8 metres wide, is left undeveloped to ensure that access can be made in the event of future maintenance and/or replacement. This matter can be discussed with Mid Sussex District Council, Scott Wakely, 01444 477 055.

8.

Watercourse On or Adjacent to Site:

A watercourse maintenance strip of 5 to 8 metres is required between any building and the top-of-bank of any watercourse that may run through or adjacent to the development site.

Contaminated Land Officer

No comment