

MID SUSSEX DISTRICT COUNCIL

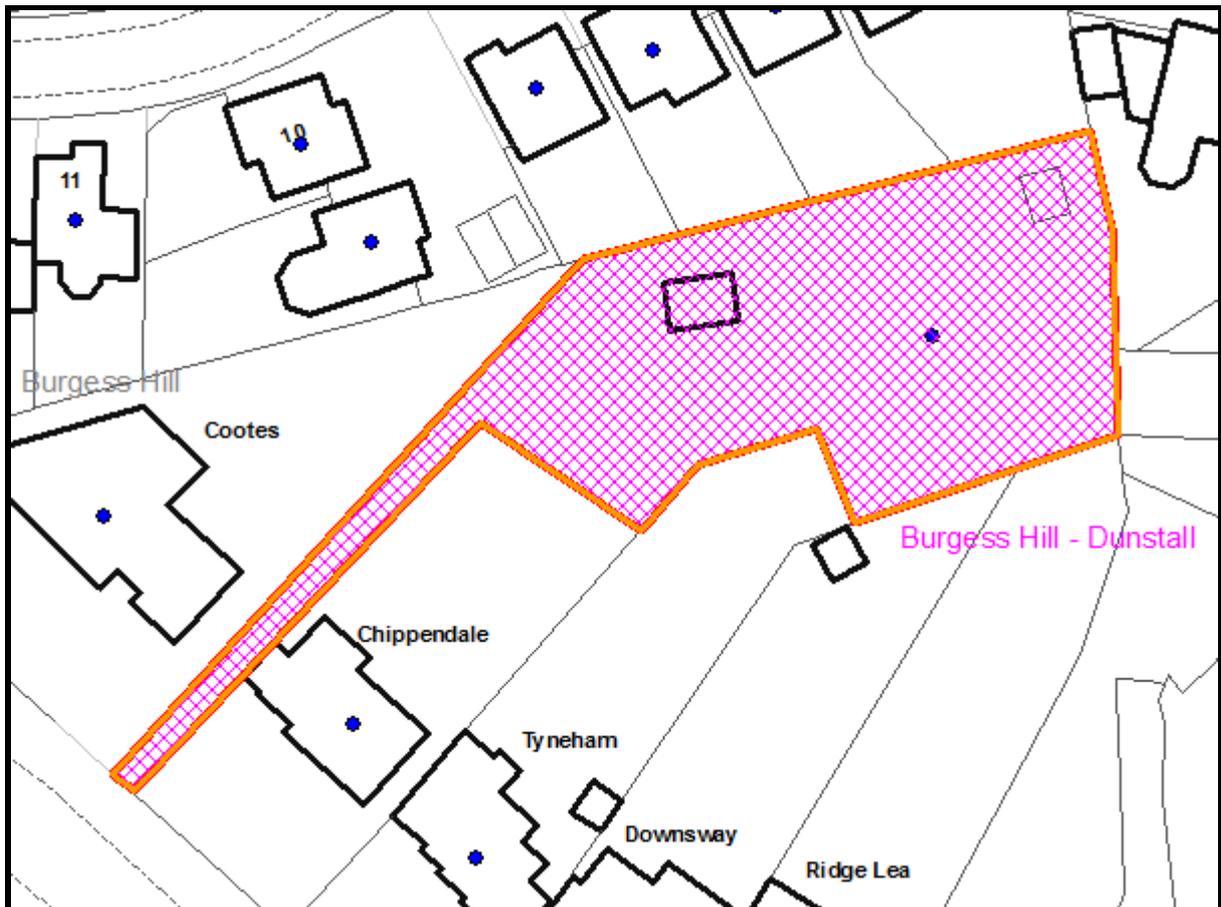
Planning Committee B

**28 MAR 2019**

RECOMMENDED FOR PERMISSION

**Burgess Hill**

**DM/18/4746**



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**LAND AT REAR OF CHIPPENDALE GATEHOUSE LANE BURGESS HILL  
WEST SUSSEX**

**VARIATION OF CONDITION 2 OF DM/17/0537 TO AMEND THE POSITION  
OF THE DWELLING AND REPOSITIONED ROOFLIGHTS AND SOLAR  
PANELS ON FRONT (NW) AND REAR (SE) ELEVATIONS. AMENDED  
PLANS RECEIVED 05.03.2019.**

**MR ROBERT RAYMOND**

POLICY: Built Up Areas / Planning Agreement / Planning Obligation /  
Aerodrome Safeguarding (CAA) / Tree Preservation Order Points /  
Highways and Planning Agreement (WSCC) /

ODPM CODE: Minor Dwellings

8 WEEK DATE: 4th March 2019

WARD MEMBERS: Cllr Andrew Barrett-Miles / Cllr Jacqui Landriani /

CASE OFFICER: Andrew Watt

### **PURPOSE OF REPORT**

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

### **EXECUTIVE SUMMARY**

The application is to vary condition 2 of planning permission DM/17/0537, which was for the erection of a detached dwelling, detached garage and access. The effect of this variation is to substitute revised plans to reflect the amendments that have taken place retrospectively.

The application has been called-in for determination at committee by Cllr Barrett-Miles, and seconded by Cllr Landriani, for the reasons set out in the report below.

The application was deferred from committee on 28 February to obtain an additional site plan from the developers showing the differences in siting of the dwelling as approved (twice) and as built. This drawing has now been received and clarifies that the position of the building as built is further away from the northern boundary and the protected trees than allowed on appeal in 2013.

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

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

Weighing in favour of the scheme is that the development will provide 1 additional residential unit in a sustainable location at a time where there is a general need for Local Authorities to boost significantly the supply of housing and this should be given

positive weight. The New Homes Bonus is a material planning consideration and if permitted the Local Planning Authority would receive a New Homes Bonus for the unit proposed. The planning history of this site remains a significant material consideration that weighs in favour of this scheme.

It is also a highly important material planning consideration that the principle of a residential development has been accepted on the site by the Council by virtue of the fact that planning permission was granted for a detached dwelling and garage at this site in 2017 and this permission is still extant.

Weighing against the scheme is the fact that this dwelling is located in a backland location, which is generally resisted under the relevant Neighbourhood Plan policy.

There will, however, be a neutral impact in respect of a number of issues, such as the design, landscaping, drainage and sustainability. There will be no adverse impact on the Ashdown Forest.

For the above reasons, the scheme is deemed to comply with Policies DP4, DP6, DP17, DP21, DP26, DP27, DP37, DP39 and DP41 of the Mid Sussex District Plan, Policies S4, H2 and H3 of the Burgess Hill Neighbourhood Plan and the objectives of the National Planning Policy Framework. Planning permission should therefore be granted.

### **RECOMMENDATION**

It is recommended that the application be approved subject to the conditions set out in Appendix A.

### **CONSULTATIONS**

#### **MSDC Tree Officer**

Variation to condition 2 has no further impact on the surrounding trees.

#### **WSCC Highways**

The slightly altered position of the dwelling does not impact on the access and parking arrangements which have previously been accepted.

### **TOWN COUNCIL OBSERVATIONS**

RECOMMEND REFUSAL - it was a back garden development which was overbearing. Planning agreement had not been followed - it was not in the right place and should be sited as per the agreed plans. The Tree Officer stated that it was too close to trees.

## LETTERS OF REPRESENTATIONS

5 letters of objection (from 4 neighbouring residents):

- Developers have not followed the planning permission they were granted;
- Previous tree officer objected to siting of the dwelling;
- Inconsistent decision-making;
- Overbearing impact;
- Planning conditions ignored;
- House is sited in the wrong position;
- Windows have been added which were not in the final approved plan;
- Building should be taken down and a new application submitted for a bungalow;
- Overlooking;
- Damage to TPO'd trees;
- Lowered skylights now face our property at eye level;
- If this decision is rubber-stamped, it is an abuse of process;
- Planning permission should never have been granted in the first place

3 additional letters of objection/comment following receipt of amended plans on 5 March:

- Difficult to understand new plans;
- The 2013 permission is not relevant;
- Building appears too big for the plot;
- Not a variation/amendment, it is a new application;
- Plans misleading as the breach relates to the 2017 permission, not the 2013 permission;
- Development is minimum of 1.2m closer to boundary of The Oaks than it should be;
- Photos make this impact clear - it is overbearing and takes away privacy;
- Significant detrimental impact on street view from The Oaks;
- Proposed skylight on NW side is a window, not a skylight, and would it be openable or obscure glazed.

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## INTRODUCTION

The application is to vary condition 2 of planning permission DM/17/0537, which was for the erection of a detached dwelling, detached garage and access. The effect of this variation is to substitute revised plans to reflect the amendments that have taken place retrospectively.

The application has been called-in for determination at committee by Cllr Barrett-Miles, and seconded by Cllr Landriani, as follows:

*'Jacqui Landriani and I would like to call-in the above application. We believe that the revised application for this development does not meet the criteria in the NPPF for sustainable development. The building is unneighbourly with respect to numbers 5 and 6 The Oaks and Corbiere and Ridge Lea in Gatehouse Lane. Further the house*

*is an overdevelopment of the site occupying a significantly larger amount of the site compared with the surrounding houses in Gatehouse Lane and The Oaks. Finally the development is contrary to the Burgess Hill Neighbourhood Plan policy regarding back garden developments which is now current given the approval of the District Plan.'*

The application was deferred from committee on 28 February to obtain an additional site plan from the developers showing the differences in siting of the dwelling as approved (twice) and as built. This drawing has now been received and clarifies that the position of the building as built is further away from the northern boundary and the protected trees than allowed on appeal in 2013.

## **RELEVANT PLANNING HISTORY**

In November 2012, planning permission was refused for the erection of a new detached dwelling and detached double garage with new drive and access to the highway (12/02838/FUL). The reasons for refusal were as follows:

- 1. The proposed backland development is unacceptable in principle, due to its location within a private residential garden, which is classified as greenfield land, and is considered to be harmful to the character of the area, where such backland developments are not characteristic features. As such, the proposal is contrary to paragraphs 14, 53 and 58 of the National Planning Policy Framework.*
- 2. The access to serve the dwelling, being located immediately adjacent to the flank wall of Chippendale and to the boundary of Cootes Veterinary Clinic, is considered to be cramped and harmful to the character and appearance of the area, contrary to paragraphs 56 and 58 of the National Planning Policy Framework and policies B1 and H3 of the Mid Sussex Local Plan.*

An appeal was lodged against this decision (AP/13/0022) and allowed in July 2013. However, this permission was not lawfully implemented within the approved 3 year time period and therefore lapsed.

In September 2017, planning permission was granted for the erection of a new detached dwelling and detached garage with new driveway and access to the highway (DM/17/0537). This permission was implemented, but not in accordance with the approved plans.

## **SITE AND SURROUNDINGS**

The site is an amalgamation of the northernmost parts of rear gardens of Chippendale and Tyneham, both large 2-storey detached dwellings set within sizeable dog-legged plots. These plots have been severed from the host dwellings for some time and a detached 2-storey dwelling is currently under construction, now externally complete.

The site is located on the northern side of Gatehouse Lane in the built-up area of Burgess Hill. Gatehouse Lane has a semi-rural character, particularly on the northern side where the houses, while spaced closely together, are set within

similarly generous plots. This semi-rural character is apparent, despite being enclosed by modern, higher density residential development on all sides, such as The Oaks to the north and Foxglove Close to the east.

Along the northern boundary of the site are two trees with Preservation Orders (HP/2/TPO/95), with two further Preserved trees within Cootes Veterinary Clinic immediately west. The eastern boundary is similarly screened by mature deciduous trees.

## **APPLICATION DETAILS**

The application is to vary condition 2 of planning permission DM/17/0537, which was for the erection of a detached dwelling, detached garage and access. Condition 2 states:

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

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

*Plans Referred to in Consideration of this Application:*

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

<i>Plan Type</i>	<i>Reference</i>	<i>Version</i>	<i>Submitted Date</i>
<i>Site Plan Comparative</i>			<i>13.07.2017</i>
<i>Other SUPPLEMENTARY PLANNING Statement</i>		<i>~</i>	<i>13.07.2017</i>
<i>Site Plan</i>	<i>001/01</i>	<i>A</i>	<i>13.07.2017</i>
<i>Location Plan</i>			<i>02.02.2017</i>
<i>Proposed Floor Plans</i>	<i>001/02-3</i>		<i>02.02.2017</i>
<i>Proposed Elevations</i>	<i>001/04</i>		<i>02.02.2017</i>
<i>Proposed Floor and Elevations Plan</i>	<i>001/05-06</i>	<i>garage</i>	<i>02.02.2017</i>
<i>Proposed Roof Plan</i>	<i>001/05-06</i>		<i>02.02.2017</i>

The effect of this variation is to substitute revised plans to reflect the amendments that have taken place retrospectively in terms of:

- Repositioning the building further to the north;
- Lowering the height of a double set of rooflights to the north elevation;
- Replacing a window on the south elevation with a rooflight; and
- Raising the height of the solar panels on the south elevation.

## **POLICY CONTEXT**

### **Mid Sussex District Plan (Mar 2018)**

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

Policy DP4: Housing  
Policy DP6: Settlement Hierarchy  
Policy DP17: Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC)  
Policy DP21: Transport  
Policy DP26: Character and Design  
Policy DP27: Dwelling Space Standards  
Policy DP28: Accessibility  
Policy DP37: Trees, Woodland and Hedgerows  
Policy DP39: Sustainable Design and Construction  
Policy DP41: Flood Risk and Drainage

Development Infrastructure and Contributions Supplementary Planning Document  
(Jul 2018)

Dormer Window and Rooflight Design Guidance (Aug 2018)

### **Burgess Hill Neighbourhood Plan (Jan 2016)**

Mid Sussex District Council formally 'made' the Burgess Hill Neighbourhood Plan part of the Local Development Plan for the Neighbourhood Plan area of Burgess Hill as of 27 January 2016. The policies contained therein carry full weight as part of the Development Plan for planning decisions within the Burgess Hill Neighbourhood Plan area.

Relevant policies include:

Policy S4: Parking Standards for new developments

*'New housing developments that include the provision of garage space must be of the minimum size for cars - 7.0m x 3.0m (internal dimension) for this to be counted as a parking space. All new housing developments must comply with the new parking standards for Burgess Hill contained in Appendix D. If a garage is proposed then the drive way must be of sufficient length to allow a second car to park clear of the pavement whilst providing space for the garage door to open.'*

*In cases where planning permission is necessary for alterations and extensions to properties, support will not be given for the conversion of garage space to habitable rooms / residential use unless there is adequate space to park cars off street in line with the parking standards.*

*Design and layout of off-site parking areas, on street parking areas, garage/parking blocks will be designed to allow ease of access from driveways and accessibility to parking areas without causing obstruction.'*

Policy H2: Back Garden Development

*'Development in back gardens in residential areas of Burgess Hill will generally not be supported. Exceptionally, proposals to intensify existing residential areas will only be supported where this can be achieved through good design and without harming*

*local amenities. Any attractive prevailing character and appearance of the area must be protected.*

*Where back garden development is proposed; special regard must be paid to:*

- i. The density and height of the proposal;*
- ii. The privacy and outlook from existing dwellings and, in particular, gardens;*
- iii. Any proposed demolition of existing dwellings or parts of dwellings to form access. If this would create an unattractive breach in a consistent street frontage then this will not be permitted;*
- iv. Access arrangements that would cause significant nuisance to neighbouring properties will not be permitted;*
- v. Sufficient garden depth and area should be retained by existing dwellings commensurate with their size and character;*
- vi. The layout, scale and form of housing visible from the street should be compatible with the predominant scale of housing on the street; and,*
- vii. The effect and cumulative impact of the development on the loss of garden habitat/biodiversity.'*

### **Policy H3: Protect Areas of Townscape Value**

*'Proposals for development and redevelopment within Areas of Townscape Value will require special attention to be paid to preserving and enhancing the existing character of the area in terms of spaciousness, building heights, building size and site coverage, building lines, boundary treatments, trees and landscaping.*

*The areas of townscape value are identified on the Proposals Map and are:*

- 1. Folders Lane*
- 2. Keymer Road*
- 3. Gatehouse Lane*
- 4. Malthouse Lane (south side) - area around Grasmere*
- 5. Oakwood Road*
- 6. Janes Lane*
- 7. Leylands Road (from Marle Place to St John's Avenue)'*

### **National Policy and Other Documents**

#### **National Planning Policy Framework (NPPF) (Feb 2019)**

The National Planning Policy Framework (NPPF) 2019 is also a material consideration and paragraphs 8 (overarching objectives), 11 (presumption in favour of sustainable development), 12 (status of development plan), 38 (decision-making), 47 (determining applications), 54 and 55 (use of conditions), 102 and 103 (promoting sustainable transport), 108 and 109 (highways matters), 124 and 127 (design), 130 (refusal on design grounds), 148 (transition to low carbon future), 153 and 154 (sustainability), 155, 158, 159, 160, 161 and 163 (flood risk), 170 (enhancing the natural and local environment) and 177 (habitats sites) are considered to be relevant to this application.

## **Planning Practice Guidance**

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

#### **ASSESSMENT**

The main issues for consideration are:

- The principle of development;
- Material considerations;
- The design and visual impact on the character of the area;
- The impact on neighbouring amenity;
- Highways matters;
- Drainage;
- Sustainability;
- The impact on trees;
- Habitats Regulations;
- Standard of accommodation; and
- Planning Balance and Conclusion

#### **Principle of development**

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

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

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

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

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

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

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

Using this as the starting point, the development plan in Mid Sussex consists of the Mid Sussex District Plan (2018) together with the Burgess Hill Neighbourhood Plan (2016).

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

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

Policy DP6 of the Mid Sussex District Plan states (in part):

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

The site is considered suitably sustainable in location and therefore the proposal accords in principle with the broad aims of the Mid Sussex District Plan, specifically Policies DP4 and DP6. The District Plan itself is deemed to be reflective of the aims of the NPPF. The principle of a residential development has been accepted by the Council by virtue of the fact that planning permission was granted for a detached dwelling and garage at this site in 2017 and this permission is still extant.

At neighbourhood plan level, Policies H2 and H3 are relevant, as set out above.

## **Material considerations**

### Appeal decision

The appeal decision issued on 18 July 2013 (APP/D3830/A/13/2195836) is a material consideration, although the weight to be attached is reduced as a result of the permission no longer being extant and that the Neighbourhood Plan has been adopted subsequently.

The Inspector made the following observations:

Access:

*'4. The proposed access to the dwelling would run alongside the boundary with Cootes which, towards the front comprises a close boarded fence above a retaining wall with a high brick wall beyond. The access would require the removal of shrubs near the front boundary but when seen along the street the proposed driveway across the grass verge would appear to be similar to others in the vicinity. The drawings indicate a close boarded fence alongside the rear garden of Chippendale but no fence is indicated for the front garden thereby retaining the open aspect at the front of the house. Whilst the narrow driveway between high fences at the rear would not be characteristic of this area it would be set some distance back from the road and would not be readily in view from the street.*

*5. With a width of about 4m I consider that the driveway would be capable of being enhanced by planting and that subject to appropriate detailing, which could be*

*achieved by a planning condition, this aspect of the proposal would not detract from the character or appearance of the area.'*

#### Development Site:

*'7. When seen from above the pattern of the proposed development would be different from its immediate surroundings; however the retained gardens of the host dwellings would be of a similar size to others in Gatehouse Lane and the substantial trees and most shrubs and hedges would be retained. I saw no other examples of houses behind the main frontages but the new housing to the north and east can clearly be seen from the older rear gardens. I consider that the proposal would not detract from the spacious partly-wooded character at the rear of the houses and seen against the backdrop of the newer houses the proposal would not be materially harmful to the character and appearance of the area.'*

#### Amenity:

*'8. Concern has been expressed about the effect of the proposal on the privacy and outlook of neighbouring dwellings in The Oaks and Foxglove Close. However I consider that the distance between the proposed dwelling and the boundaries of those properties would be sufficient to prevent it from being over-dominant and views of the dwelling would be partly screened by the intervening trees and other vegetation. The upper floor windows facing the houses to the north serve an en-suite and a bathroom and could be obscure glazed. The secondary bedroom window facing east would look out over the ends of the rear gardens of Foxglove Close; I consider that the extent of overlooking would be limited but this could be eliminated by requiring the window to be glazed in obscured glass.'*

#### Other matters:

*'9. I have not seen an arboricultural report but the Council is satisfied that the proposed dwelling would not adversely affect the trees on the site and from what I saw at the site visit I have no reason to disagree with this assessment.*

*The occupiers of Cootes indicate that there are slow worms on their land but I have seen no indication of where or when these were seen. I have seen no evidence to indicate that the observations of the occupiers of Cootes should inhibit the granting of permission for the development of the appeal site.*

*10. Nearby residents have expressed concern about drainage from the site but the Council has indicated that this could be addressed by a planning condition.'*

#### Policy balance:

*11. The National Planning Policy Framework (the Framework) specifically excludes private gardens in built up areas from the definition of "previously developed land"; however it does not rule out the development of garden land. It indicates in paragraph 53 that local planning authorities should consider the case for setting out policies to resist inappropriate development of residential gardens, for example, where the development would cause harm to the local area. The 2007 "saved"*

*Policies B1 and H3 of the Mid Sussex Local Plan (2004) (LP) indicate that residential development should respect the character of its location but the Council has no specific policy concerning the development of garden land.*

*12. The Council does not have a five year supply of housing land and therefore in this respect its LP policies are not up to date. Paragraph 14 of the Framework indicates that in these circumstances planning permission should be granted unless any adverse effects would significantly and demonstrably outweigh the benefits when assessed against the framework as a whole; or where specific policies in the Framework indicate that development should be restricted. The Framework also indicates that all housing applications should be considered in the context of the presumption in favour of sustainable development.*

*13. The appeal site is close to local shops and services and bus routes and in my view it is in a sustainable location. The dwelling has been designed to safeguard the living conditions of neighbouring residents and provides sufficient amenity space for its occupiers and the host dwellings. Whilst the development is of a modest scale it would also make a positive contribution to the building industry in the area.*

*14. I consider that the proposal would not materially detract from the character or appearance of the area and would satisfy all three dimensions of sustainability set out in the Framework (economic, social and environmental).'*

### Planning history

The most recent planning permission (DM/17/0537) is also a material consideration. This remains extant, even if it has not been implemented in accordance with the approved plans. It should be pointed out that this scheme was assessed under the same Neighbourhood Plan policies that apply to the current application.

### **Design and visual impact on the character of the area**

Policy DP26 of the Mid Sussex District Plan states (in part):

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

- is of high quality design and layout and includes appropriate landscaping and greenspace;*
- creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- protects open spaces, trees and gardens that contribute to the character of the area;*
- protects valued townscapes and the separate identity and character of towns and villages;*
- positively addresses sustainability considerations in the layout and the building design.'*

Officers agree with the Inspector's previous observations regarding the visual impact of the development when viewed from Gatehouse Lane. The retention of the majority of the frontage hedgerow means that the spacious character of the area, including the spacing between frontage buildings, is respected in accordance with NP Policy H3.

To the rear, it is acknowledged that development in back gardens in residential areas of Burgess Hill are generally not supported in the NP (Policy H2). However, it is important to recognise that the policy does not preclude such development; rather, where they can promote good design and not harm local amenities, exceptions can be supported. The policy ensures that special regard is to be had to the density and height of the proposal; privacy and outlook from neighbouring gardens; the formation of new accesses where they do not create an unattractive breach in the street frontage; and where access arrangements would not cause significant nuisance to neighbouring properties.

It is considered that the Inspector's assessment is still applicable, as indeed is the council's previous assessment of DM/17/0537, and in particular that the dwelling would not detract from the spacious partly-wooded character at the rear of the frontage houses and when viewed against the backdrop of the more modern houses to the rear. It is considered that the development and its associated amendments (fenestration and solar panels) would not be materially harmful to the character and appearance of the area.

Accordingly, the scheme would comply with Policy DP26 of the Mid Sussex District Plan, Policies H2 and H3 of the Burgess Hill Neighbourhood Plan and the provisions of the NPPF.

### **Impact on neighbouring amenity**

Policy DP26 of the Mid Sussex District Plan states (in part):

*'All applicants will be required to demonstrate that development:*

*- does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP29)'*

The main properties affected by the development are the host dwelling, Cootes, Tyneham, Corbiere House, Ridge Lea (all on Gatehouse Lane), properties on Foxglove Close (in particular, no. 50) and 5, 6, 7 and 8 The Oaks to the north.

The dwelling was originally designed to minimise the impact on neighbouring properties, utilising the existing screening on the site, and orienting the building so that upper floor windows were directed to the south, rather than the north, west and east. The height of the building was also designed to reduce the potential impact. The appeal Inspector raised no objection to the impact of the proposal onto neighbouring occupiers.

These elements are retained in the current scheme, although the impact of the amendments are as follows.

The repositioning of the building has been set out on drawing 8299-12 and measurements verified on site by two officers and the site manager. The nearest distance to the north is 11m (as correctly set out on this plan) and increases to 12.9m to the north-east (although stated on the plan as being 13.1m). The SE corner distance is 11.2m (correctly shown on the plan) and that to the SW corner is 5.76m (shown as 5.67m on the plan).

The assessment of the impact of the most recent scheme (DM/17/0537) on the dwellings to the north was as follows:

*'To the north of the site are four modern, detached properties (5-8 The Oaks). These exhibit a gentle oblique relationship to the site, with rear gardens ranging from around 9-14m in depth. The boundary is a 2-2.5m high coniferous hedge, together with some mature trees. However, there is a close relationship between these properties and the site. In view of this, the scheme has been designed so that the upper floor windows serve a bathroom and ensuite (and a high level double rooflight serving the landing). This means that overlooking to The Oaks could be mitigated through a condition ensuring that the windows are obscure glazed and non-openable. At a distance of 19m to the nearest point of no. 6 The Oaks, compounded by the boundary screen, it is not considered that the proposed dwelling would be overbearing to the amenity of the occupiers of these four properties on The Oaks.'*

The latest composite plan shows the approved siting of the dwelling in red by the appeal Inspector in 2013; the approved siting in blue by Mid Sussex District Council in 2017; and the solid green line as built.

It is difficult to be precise about exactly how different the positioning of the 'as built' dwelling is, when compared to the original scheme, due to measurements not being specified. The original plan shows that the north elevation of the dwelling was parallel with the north boundary, which indicates that the current scheme was more pivoted from its SW corner. It is thus not dissimilar to the scheme approved by the appeal Inspector, but further away from the northern boundary and sited more obliquely. As a guide, the most recent approval (DM/17/0537, as amended) showed a distance from each corner of the proposed dwelling (measured to the northern boundaries parallel with the flank wall of the building) of around 10.8m to 7 The Oaks and 14m to 5 The Oaks. So the positioning of the building appears similar at the NW end but around 1.1m nearer to 7 The Oaks. The distance to the boundary of 6 The Oaks ranges between these two figures.

It is not considered that the relationship between the new dwelling and properties in The Oaks would be overbearing due to its revised siting.

The internal layout remains as originally approved by the appeal Inspector, such that the dormer windows on the first floor north elevation serve a bathroom and ensuite, so a condition can continue to be imposed to ensure that they are obscure glazed.

The lowering of the double rooflights serving the landing has been measured on site as a minimum height of 1.85m about the floor level (the submitted section plan states 1.79m). On this basis, it is not considered that prospective occupants would be able to overlook properties to the north, particularly as rooflights by their nature are designed to direct views upwards rather than straight outwards or downwards.

The approved half-window to the ensuite on the south elevation has now been amended to a rooflight and thus would not result in any overlooking to neighbouring properties.

As before, the assessment of the previous scheme (DM/17/0537) was as follows:

*'The rear gardens of the properties on Gatehouse Lane are long, ranging from 35-55m. The truncated garden of Chippendale will be 25m, thus retaining a good sized garden area in relation to the house (being some 15m in width, once the access is formed). While the upper floor windows (3 no. bedrooms) will face towards these rear gardens, it is not considered - given the size of these gardens and the relationship with existing dwellings - that the amenities of these neighbouring occupants will be significantly harmed by this proposal. Moreover, the distance to the rear elevations of the houses is more than sufficient to ensure that no significantly harmful overlooking would occur.'*

*'The screening to the east consists of mature deciduous trees and conifers, with 50 Foxglove Close beyond being a 2-storey detached dwelling with rear conservatory and south-facing garden. The dwelling would be sited some 12.5m from the boundary and a further 8m from the nearest corner of the house itself. Given this relationship, it is not considered that the amenities of the occupiers would be significantly harmed by this proposal. It would, however, be considered prudent for the proposed secondary east-facing bedroom window at first floor level to be obscure glazed and non-openable.'*

This assessment remains roughly the same; the distance to 50 Foxglove Close has been reduced to 10.9m but the window highlighted above has been obscure glazed and a condition can continue to be imposed to ensure that this remains the case in perpetuity.

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

## **Highway matters**

The most recent assessment was as follows:

*'The proposed access will be provided 7m further to the north-west along a straight section of Gatehouse Lane from the existing access serving Chippendale. It is not considered that this would result in any highway safety problems. 4 car parking spaces and 2 cycle parking spaces can be provided on site, which is considered acceptable. Although the car parking spaces exceed the council's maximum standards, two of the parking areas would also be used as the turning area.'*

The access has already been deemed acceptable by previous planning permissions. The Highway Authority continue to raise no objection to this latest scheme (which is identical in this respect). Accordingly, the scheme complies with Policy DP21 of the Mid Sussex District Plan.

### **Drainage**

As with the previous planning permission, a standard condition can be placed on any permission. As such, the development would comply with Policy DP41 of the Mid Sussex District Plan.

### **Sustainability**

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

### **Impact on trees**

The council raised no objection to the proposed dwelling under 12/01838/FUL and the appeal Inspector agreed that it would have no harmful impact on the existing trees on the site, subject to the imposition of two landscaping conditions.

Application DM/17/0537 was identical to this scheme but the council's Tree Officer at the time objected to this proposal and suggested that the dwelling be repositioned. It is important to acknowledge that the council would not have refused the application on this basis alone, given that a previous decision had been made at a higher level than MSDC (i.e. by an appeal Inspector), so it would not have been appropriate to persist with an objection to a scheme that an Inspector had previously deemed to be acceptable.

Nonetheless, the applicant agreed to reposition the dwelling and the application was approved on this basis.

As the dwelling was not built in accordance with the approved plan, this current scheme has been submitted and the council's current Tree Officer has made comments, raising no objection.

Clearly this does represent a difference in professional opinion, but this is nonetheless consistent with the Inspector's assessment. The main concern is to ensure that the trees are protected during the construction process and this is sought through a continuation of the conditions previously applied.

Accordingly it is considered that Policy DP37 of the Mid Sussex District Plan would be met.

### **Impact on Ashdown Forest**

Under the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council -

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

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

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

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

### **Standard of accommodation**

Policy DP27 of the Mid Sussex District Plan states:

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

- *Open market dwellings and affordable housing;*
- *The full range of dwelling types; and*
- *Dwellings created through subdivision or conversion.*

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

The proposed dwelling would provide approximately 255 sq m of internal floorspace, exceeding the standard of 115 sq m (4-bed, 7-person, 2-storey). Accordingly, the proposal would comply with the government's Technical Housing Standards - Nationally Described Space Standards document, so would constitute a high quality development and thereby comply with Policies DP26 and DP27 of the Mid Sussex District Plan.

## **PLANNING BALANCE AND CONCLUSION**

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

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

Weighing in favour of the scheme is that the development will provide 1 additional residential unit in a sustainable location at a time where there is a general need for Local Authorities to boost significantly the supply of housing and this should be given positive weight. The New Homes Bonus is a material planning consideration and if permitted the Local Planning Authority would receive a New Homes Bonus for the unit proposed. The planning history of this site remains a significant material consideration that weighs in favour of this scheme.

It is also a highly important material planning consideration that the principle of a residential development has been accepted on the site by the Council by virtue of the fact that planning permission was granted for a detached dwelling and garage at this site in 2017 and this permission is still extant.

Weighing against the scheme is the fact that this dwelling is located in a backland location, which is generally resisted under the relevant Neighbourhood Plan policy.

There will, however, be a neutral impact in respect of a number of issues, such as the design, landscaping, drainage and sustainability. There will be no adverse impact on the Ashdown Forest.

For the above reasons, the scheme is deemed to comply with Policies DP4, DP6, DP17, DP21, DP26, DP27, DP37, DP39 and DP41 of the Mid Sussex District Plan, Policies S4, H2 and H3 of the Burgess Hill Neighbourhood Plan and the objectives of the National Planning Policy Framework. Planning permission should therefore be granted.

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## **APPENDIX A – RECOMMENDED CONDITIONS**

### **Approved Plans**

1. 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.

2. The following outstanding matters shall be implemented in accordance with the details agreed as part of planning permission DM/17/0537:

- Materials;
- Surface treatments;
- Boundary treatments;
- Hard and soft landscaping;
- Drainage;
- Levels;
- Temporary vehicle parking;
- Temporary contractors' buildings, plant and stacks of materials;
- Cycle parking.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve a building of visual quality and to accord with Policies DP21, DP26, DP29 and DP37 of the Mid Sussex District Plan.

### **Construction phase**

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

Reason: To safeguard the amenities of nearby residents and to accord with Policies DP26 and DP29 of the Mid Sussex District Plan.

### **Post-occupation monitoring / management conditions**

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the dwelling shall not be enlarged, extended or altered and no windows or doors other than those expressly authorised by this permission shall be constructed.

Reason: In order to protect the appearance of the area and protect the amenities of adjacent residents and to accord with Policy DP26 of the Mid Sussex District Plan.

5. The north and east facing first floor windows shall be fitted with obscured glass and shall be non-openable below 1.7m above the floor level of the rooms that they serve. The windows shall be permanently retained in that condition.

Reason: In order to protect the amenities of adjacent residents and to accord with Policy DP26 of the Mid Sussex District Plan.

6. The development shall be carried out in accordance with the Sustainability Statement submitted as part of the application. On completion of the development, an independent final report shall be prepared and submitted to the Local Planning Authority to demonstrate that the proposals in the Statement have been implemented.

Reason: To ensure that measures to make the development sustainable and efficient in the use of energy, water and materials are included in the development,

in accordance with Policy B4 of the Mid Sussex Local Plan, Policy DP39 of the draft Mid Sussex District Plan and the National Planning Policy Framework.

## INFORMATIVES

1. In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern within the application (as originally submitted) and negotiating, with the Applicant, acceptable amendments to the proposal to address those concerns. As a result, the Local Planning Authority has been able to grant planning permission for an acceptable proposal, in accordance with the presumption in favour of sustainable development, as set out within the National Planning Policy Framework.
2. You are advised that this planning permission requires compliance with a planning condition(s) **before development commences**. You are therefore advised to contact the case officer as soon as possible, or you can obtain further information from: <https://www.gov.uk/guidance/use-of-planning-conditions#discharging-and-modifying-conditions> (Fee of £116 will be payable per request). If you carry out works prior to a pre-development condition being discharged then a lawful start will not have been made and you will be liable to enforcement action.
3. Your attention is drawn to the requirements of the Environmental Protection Act 1990 with regard to your duty of care not to cause the neighbours of the site a nuisance.

Accordingly, you are requested that:

- Hours of construction/demolition on site are restricted only to: Mondays to Fridays 0800 - 1800 hrs; Saturdays 0900 - 1300 hrs; No construction/demolition work on Sundays or Public Holidays.
- Measures shall be implemented to prevent dust generated on site from crossing the site boundary during the demolition/construction phase of the development.
- No burning of materials shall take place on site at any time.

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

### 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
Landscaping	8299-5	A	22.11.2018
Landscaping Details	8299-6	A	22.11.2018
Location and Block Plan	8299-10		22.11.2018
Site Plan	8299-12		13.12.2018
Proposed Elevations	8299-2	B	21.12.2018
Proposed Floor Plans	8299-13	A	21.12.2018

## **APPENDIX B – CONSULTATIONS**

### **Parish Consultation**

RECOMMEND REFUSAL - it was a back garden development which was overbearing. Planning agreement had not been followed - it was not in the right place and should be sited as per the agreed plans. The Tree Officer stated that it was too close to trees.

### **MSDC Tree Officer**

Variation to condition 2 has no further impact on the surrounding trees.

### **WSCC Highways**

This proposal has been considered by means of a desktop study, using the information and plans submitted with this application, in conjunction with other available WSCC map information. A site visit can be arranged on request.

West Sussex County Council, as the Local Highway Authority (LHA), has been re-consulted on variation of condition 2 of DM/17/0537 (new dwelling and access). Previous comments dated 12th December 2018 still apply:

*The variation of condition is in order to amend the position of the dwelling by replacing approved drawing 001/01A.*

*From an inspection of the plans the slightly altered position of the dwelling does not impact on the access and parking arrangements which have previously been accepted.*

*No highways comment.*