

MID SUSSEX DISTRICT COUNCIL

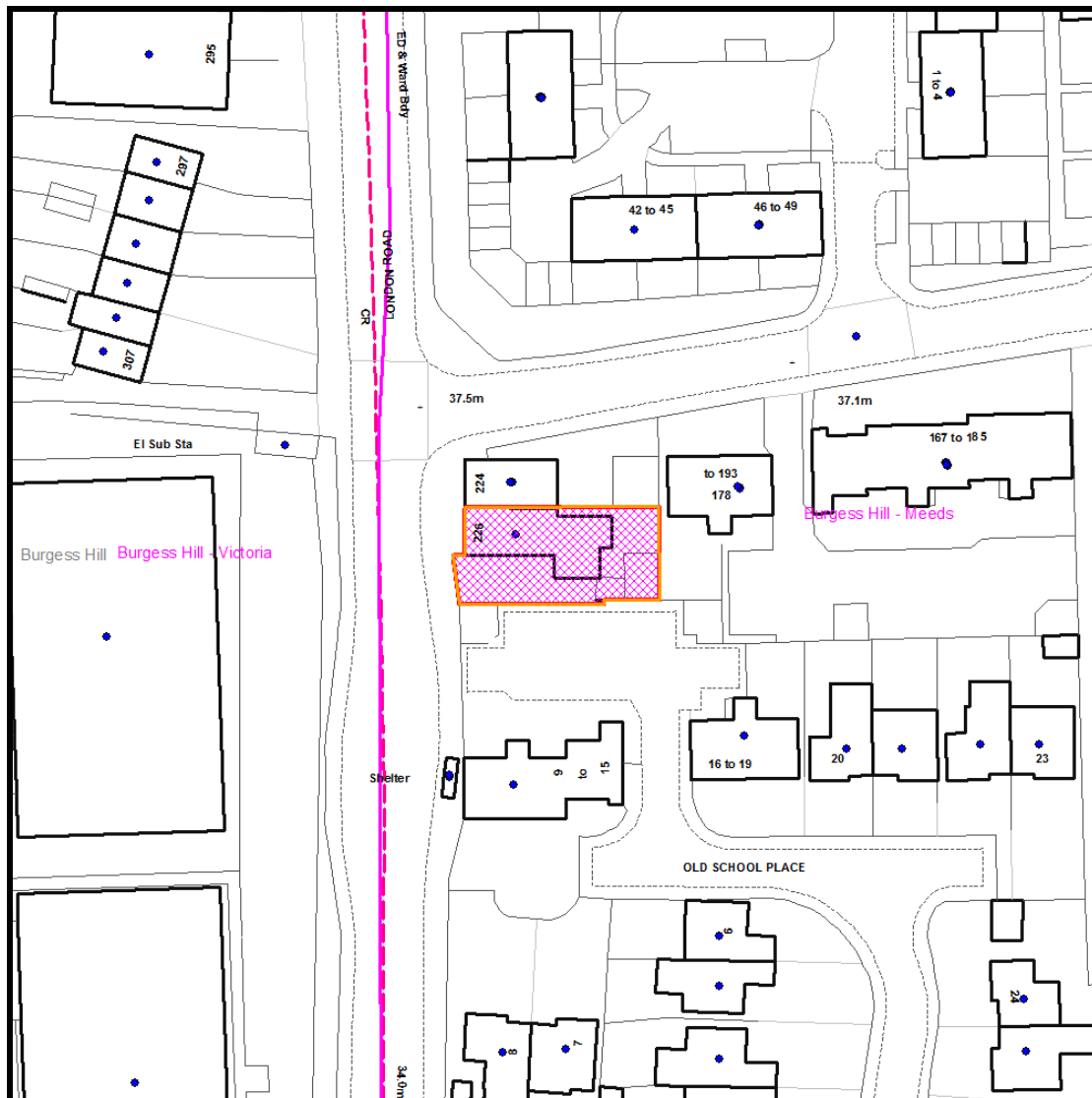
Planning Committee

26 SEP 2019

RECOMMENDED FOR PERMISSION

Burgess Hill

DM/19/3204



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**226 LONDON ROAD BURGESS HILL WEST SUSSEX RH15 9QR
RETROSPECTIVE APPLICATION FOR THE CONSTRUCTION OF A
RAISED DECK IN THE PRIVATE REAR AMENITY AREA, WITH A NEW
REAR BOUNDARY FENCE.
MR ATHIKUR RAHMAN**

POLICY: Built Up Areas / Classified Roads - 20m buffer / Aerodrome Safeguarding (CAA) / Sewer Line (Southern Water) / Highways Agreement (WSCC) /

ODPM CODE: Minor Other

8 WEEK DATE: 4th October 2019

WARD MEMBERS: Cllr Robert Eggleston / Cllr Tofojjul Hussain /

CASE OFFICER: Andrew Clarke

Purpose of Report

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

Executive Summary

This application seeks planning permission for the retention of decking and a fence to the rear of an A3 restaurant for use by staff and the occupants of the first floor accommodation.

The application is before committee as a Member for the Burgess Meeds Ward has an interest in the land.

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 application to be assessed against the policies in the development plan and then to take account of other material planning considerations including the National Planning Policy Framework.

The decking has been laid on a courtyard already used in association with the first floor residential accommodation and no change of use of the land has taken place. The decking is well screened and does not cause harm to the character and appearance of the area. The fence is visible but is considered necessary to mitigate any potential harm to amenity.

The area borders onto an outdoor amenity space serving neighbouring properties to which a level of overlooking already occurs. On the basis that the decking is solely for use of occupants of the first floor flats, as the courtyard already is, and that conditions can be imposed preventing its use by patrons of the A3 restaurant, it is considered that there is no additional harm to amenity.

The development is therefore deemed to comply with policy DP26 of the Mid Sussex District Plan 2014-2031, the contents of the Burgess Hill Neighbourhood Plan and

the requirements of the NPPF.

Planning permission should therefore be granted.

Recommendation

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

Summary of Representations

No representations have been received in response to this application.

Parish Council Observations

Burgess Hill Town Council noted the application had been referred to this Committee.

Introduction

This application seeks planning permission under S.73A of the Town and Country Planning Act to retain an area of decking and the erection of a new boundary fence.

The application is before committee as a Member for the Burgess Meeds Ward has an interest in the land.

Relevant Planning History

There is no planning history relevant to the determination of the application. Whilst the business occupying the premises has recently changed it remains as a lawful mixed A3/A5 use.

Site and Surroundings

The property at 226 London Road Burgess Hill is a restaurant operating under the name Naasta under an A3/A5 restaurant / takeaway use. The building forms the southern part of a three storey semi-detached building lying on the main London Road on the southern approach to Burgess Hill town centre. The other side of the semi-detached building is also in use as an A5 takeaway.

The site lies at the junction of London Road and Station Road with traffic lights and a pedestrian crossing in front with the site having significant wider views from the main road and traffic passing through the town.

To the rear of the property lies the residential flats at 178 to 193 Station Road which benefit from a small outdoor amenity space which borders onto the site and which is separated from the area of decking by a low brick wall.

Application Details

The application seeks planning permission of the installation of decking to the rear of the restaurant. The decking is raised and occupies an enclosed area which was already in use as informal amenity space for the occupants of the flats, who are staff at the restaurant. The decking is of timber construction and approximately 0.3m high with an access ramp. There is a 1m high timber barrier to one edge of the decking close to the building and to the eastern edge bordering the flats, a 1.5m high close boarded fence has been erected in front of the wall.

The decking was constructed during the summer of 2019 and is now complete. The application is retrospective and therefore made under S.73a of the Town and Country Planning Act 1990.

List of Policies

Mid Sussex District Plan 2014-2031

The District Plan was formerly adopted on the 28th March 2018.

DP26 - Character and Design

Burgess Hill Neighbourhood Plan

The Burgess Hill Neighbour Plan has been made and is a material consideration with full weight attached.

National Policy

National Planning Policy Framework (NPPF - 2019)

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 overarching objectives economic, social and environmental. This means ensuring sufficient land of the right types is available in the right places and at the right time to support growth; supporting strong, vibrant and healthy communities by ensuring a sufficient number and range of homes can be provided; fostering a well-designed and safe built environment; and contributing to protecting and enhancing the natural, built and historic environment; and using natural resources prudently.

Paragraph 47 states: *'Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. Decisions on applications should be made as quickly as possible, and within statutory timescales unless a longer period has been agreed by the applicant in writing.'*

National Planning Policy Guidance

Assessment (Consideration of Key Issues)

Planning legislation holds that the determination of applications shall be made in accordance with the Development Plan unless material considerations indicate otherwise. The main issues considered relevant to this application are the impact on the character of the area and impact on neighbour amenity.

Impact on the Character of the Area

The area in which the decking lies is a small courtyard surrounded on three sides by high walls forming the buildings at 226 and 224 London Road. The area is visible from within the amenity area serving the flats at 178 to 193 Station Road but these are not substantial views and the rear courtyard does not contribute to the character and appearance of the area. The decking is of a high quality design and finish and represents a visual improvement to the courtyard. The fence is of an acceptable design and whilst it obscures views of the more attractive wall it should be noted that the fence in itself does not require planning permission and, as is noted below, seeks to address any concerns relating to neighbour amenity.

The development is therefore considered to be acceptable in respect of its design and impact upon the character and appearance of the surrounding area.

Neighbour amenity

The rear courtyard abuts an outdoor amenity area used collectively by the flats at 178 to 193 Station Road. Whilst not completely hidden from wider public views the area is secluded and provides some outdoor space for the flats.

Policy DP26 of the District Plan states that development can be supported where it:

'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

The test is therefore which there is *'significant'* harm to amenity by virtue of privacy and noise. The area upon which the decking is placed was already used as amenity space for the first floor accommodation above the restaurant and therefore no change of use has taken place. The installation of the decking improves the area and does make it more likely that the area will be used by occupants, however, considering the small size of the flats and the small area of decking it is unlikely that the use would be intensive. It is noted that the decking is raised and therefore allows additional views into the amenity space serving the flats at 178 to 193 Station Road, however, any additional impact has sought to be mitigated by the erection of the timber fence. This reduces views and ensures any additional impact to privacy is minimal. Therefore considering the courtyard is not being used any differently and that any harm has been mitigated it is not considered that any additional impact upon amenity can be considered to be significant for the purposes of policy DP26.

It is noted that the decking is adjacent to the restaurant, although there is no direct access to or for patrons. The application states that the decking is to be used solely in connection with the residential flats above the restaurant and will not be used by patrons either for eating or congregating. Should the decking be used in connection with the restaurant this would require further consideration and a different view and recommendation may be formed. As such it is necessary to impose a condition restricting the use of the decking solely to occupants of the first floor flat and that it shall not be used in association with the A3 use in order to ensure the protection of neighbour amenities.

Other matters

It is noted that the development has already taken place without planning permission and as such the application is made under S.73a of the Town and Country Planning Act. Whilst the undertaking of development without planning permission is not condoned, as stated above planning applications must be solely considered against the policies of the development plan and that the development has already taken place is not a planning consideration and the application cannot be prejudiced by virtue of its retrospective nature.

Planning Balance and Conclusions

In accordance with paragraph 47 of the NPPF application must be considered unless material considerations indicate otherwise.

The installation of the decking and erection of a fence is considered to be of an acceptable design which does not harm the character and appearance of the area. The decking is to be used solely by occupants of the first floor flat and as such the area has not undergone a change of use and whilst by virtue of its improved quality may now be used more intensively, there would not be a substantial change in the relationship with the amenity space serving the flats at 178 to 193 Station Road and the erection of a fence prevents overlooking. Conditions pertaining to its use and preventing its use by patrons of the A3 use can be imposed and therefore neighbour amenity can be protected.

The development therefore does not cause harm to the character and appearance of the surrounding area nor results in a significant harm to neighbour amenity and as such complies with policy DP26 of the Mid Sussex District Plan 2014-2031, the contents of the Burgess Hill Neighbourhood Plan, as well as those of the NPPF and the application is recommended for permission.

APPENDIX A – RECOMMENDED CONDITIONS

1. The decking hereby approved shall be not be used in association with the A3 use (or any other commercial use) operating from the site.

Reason: To protect the amenities of neighbours and to accord with policy DP26 of the District Plan.

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

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

3. No external lighting or floodlighting shall be installed without the prior written approval of the Local Planning Authority.

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

4. The fencing to the eastern boundary as shown on approved drawing NBH.002 shall be retained at all times and should not be altered, amended or removed without the prior written approval of the Local Planning Authority.

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

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.

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
Location and Block Plan	NBH.001		09.08.2019
Proposed Floor and Elevations Plan	NBH.002		09.08.2019

APPENDIX B – CONSULTATIONS

Parish Consultation

OBSERVATIONS: This application had been referred to Mid Sussex District Council Planning Committee.