

MID SUSSEX DISTRICT COUNCIL

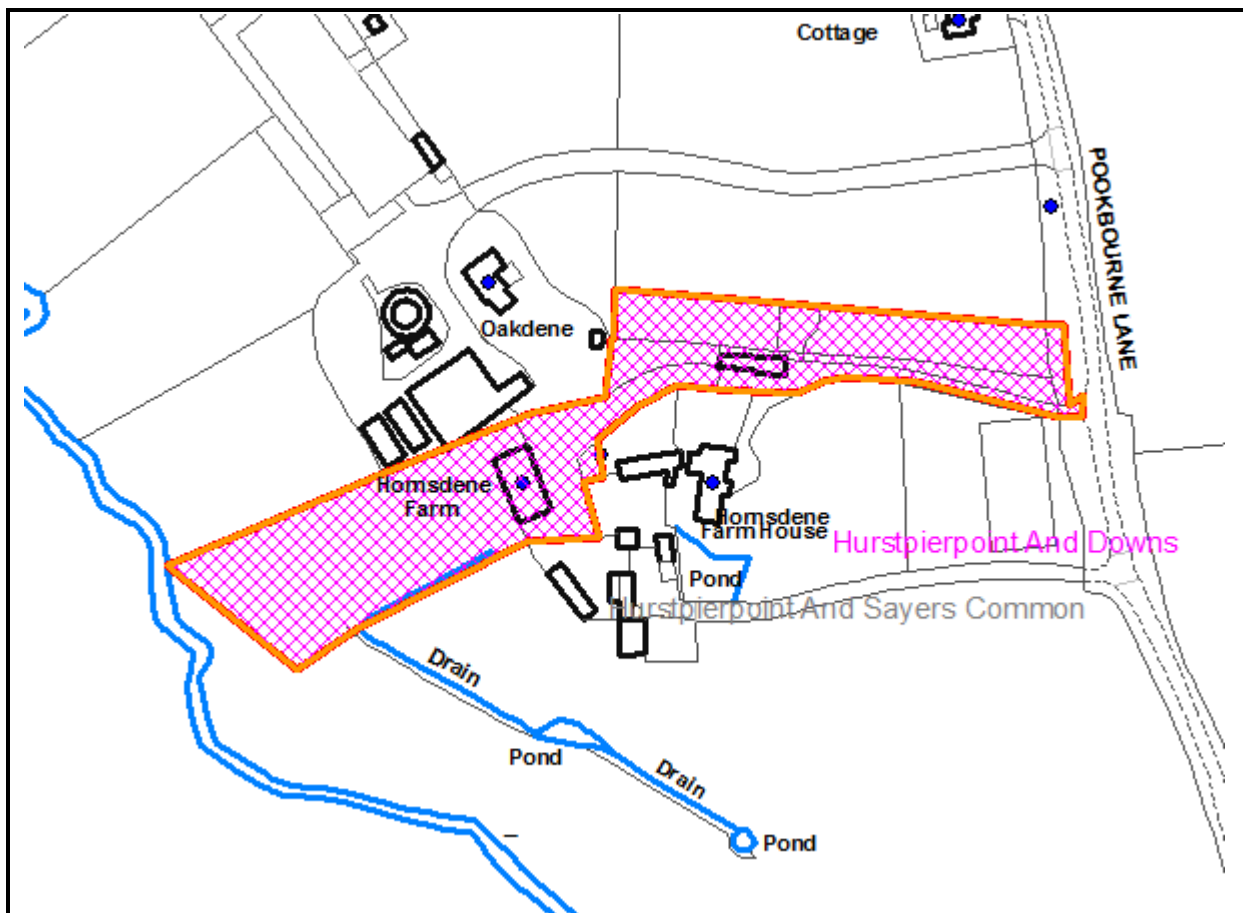
Planning Committee

7 NOV 2019

RECOMMENDED FOR REFUSAL

Hurstpierpoint And Sayers Common

DM/19/1972



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**POOK BARN POOKBOURNE LANE SAYERS COMMON HASSOCKS
RETROSPECTIVE APPLICATION FOR DEMOLITION OF BARN AND
ERECTION OF A FOUR BEDROOM DWELLING.
MR AND MRS MARTIN AND LOU BLAKE**

POLICY: Areas of Special Control for Adverts / Countryside Area of Dev.
Restraint / Flood Map - Zones 2 and 3 / Methane Gas Safeguarding
/ Aerodrome Safeguarding (CAA) /

ODPM CODE: Minor Dwellings

8 WEEK DATE: 15th November 2019

WARD MEMBERS: Cllr Colin Trumble / Cllr Alison Bennett / Cllr Rodney Jackson /

CASE OFFICER: Andrew Clarke

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

Planning permission is sought to regularise the construction of a new residential dwelling in a rural location. The site previously benefitted from a Prior Notification approval for a rural barn conversion, however, this has now lapsed and by virtue of the barn being demolished cannot be implemented and whilst it provides some context, it is afforded no weight in the determination of the application.

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. The Council has a recently adopted District Plan and is able to demonstrate that it has a five year housing land supply. 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.

The application site is within a rural area, designated as countryside and is thus subject of policy DP12 of the District Plan which seeks to protect the countryside in recognition of its intrinsic character and beauty. Policy DP15 of the District Plan concerns new homes in the countryside and the new house does not meet any of the 'special justifications' to permit a dwelling in the countryside. It does not accord with policy DP6 of the District Plan which permits the expansion of settlements subject to a number of criteria. Policies C1 and H1 of the Hurstpierpoint and Sayers Common Neighbourhood Plan have similar aims. The site is not well serviced by public transport and lies away from local services and is considered to lie in an unsustainable location. The new house is thus contrary to the provisions of the development plan in principle.

Whilst the design of the dwelling is not objected to and matches closely that

permitted under the Prior Notification approval, it does, as a matter of fact, represent a completely new building and that development in a rural location means that development plan policies should be afforded full weight and there are no other fall back positions or other forms of development, including changes of use, which could be applied to the development.

The planning history of the site, personal circumstances or that the development was carried on in breach of planning control are not considered to be a material considerations to which any significant weight can be attached.

The application should therefore be considered against the policies of the development plan and as the development is not necessary for the purposes of agriculture and lies within an unsustainable location where occupants would be reliant on the use of a private car to gain access to local services, it is considered to conflict with policies DP6, DP12 and DP15 of the Mid Sussex District Plan, policies C1, C3, H1 and H6 of the Hurstpierpoint and Sayers Common Neighbourhood Plan and the contents of the NPPF.. Accordingly the application is recommended for refusal and enforcement action to remedy the breach of planning control be authorised.

RECOMMENDATION

It is recommended that the planning permission be refused and enforcement action be authorised for reason outlined below in Appendix A.

SUMMARY OF REPRESENTATIONS

One letter of support received referring to the creation of a new dwelling and quality of design.

SUMMARY OF CONSULTEES

The full response from the consultees can be found in Appendix B of this report.

WSSC Highways

No Objection subject to conditions

MSDC Drainage

No objection subject to condition

Hurstpierpoint and Sayers Common Parish Council

Recommendation - Permission is granted

INTRODUCTION

The application seeks permission for demolition of a former agricultural barn and the construction of a new four bed dwelling.

RELEVANT PLANNING HISTORY

Prior approval under Class Q, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 was granted under reference DM/16/0714 on the 13th April 2016. This permitted the change of use of two agricultural buildings to become two independent residential units. This was permitted subject to two conditions relating to a completion date of the entire development within 3 years of the date of the permission and the submission of information prior to development commencing in relation to contaminated land. The plans contained within the Prior Approval do closely match the dwelling now under construction and the scale of the original barn.

At the time of the issue of the Prior Notification approval in April 2016 the two barns were in the same ownership, however, they were subsequently sold off separately. The current application relates solely to the north-western barn.

In early 2019 work commenced on the north-western barn and resulted in the complete demolition and removal of the former agricultural barn. Condition 2 of the Prior Notification approval was not discharged prior to work commencing. The Prior Notification approval was therefore not lawfully implemented and is considered to have lapsed in April 2019. The barn no longer exists in any case.

A new Prior Notification approval under reference DM/19/2129 has been issued for the south-eastern barn, however, this is now a separate site with separate ownership and has no bearing on the determination of the current application.

SITE AND SURROUNDINGS

The site is a former agricultural holding which has been separated and sold off in independent plots. The site is no longer part of an agricultural holding.

The site is a large rural plot set back from Pookbourne Lane and which falls away in level to the west towards the watercourse at Herrings Stream. The western part of the site therefore lies within a Flood Zone Risk Zone 2. The PROW 19Hu also lies to the west of the site with views across the site and up to the property.

To both the north and south lie previous agricultural units which are now private residential properties and which feature a number of large detached building and residential curtilages.

The site lies within a rural area approximately 1.5km from the nearest village centre of Sayers Common.

APPLICATION DETAILS

The application seeks permission to regularise the construction of a four bed dwelling in place of a recently demolished agricultural barn.

The dwelling is a large two storey rectangular building 18.4m in length, 9.3m in depth and 5.9m in height with a large open plan living area on the ground floor and four bedrooms set upon mezzanine floors on the first floor. Orientated broadly with the ridge line running north to south the building lies in the same location as previous barn at a lower level than the land to the east with the garden area to be laid out to the west. The building has a simple design and finish which seeks to reflect the former agricultural barn and features a grey aluminium roof with brick and timber clad walls. The building has large areas of glazing to the west and east elevations.

Access is via an existing access from Pookbourne Lane approximately 150m to the east with open parking and turning areas located to the east of the building at a higher level.

The development began in early 2019 and is now substantially complete (although the dwelling is not habitable) and therefore application is made under S.73a of the Town and Country Planning Act 1990.

LIST OF POLICIES

Mid Sussex District Plan 2014-2031

DP4 - Housing
DP6 - Settlement Hierarchy
DP12 - Protection and Enhancement of the Countryside
DP15 - New Homes in the Countryside
DP17 - Ashdown Forest SPA and SAC
DP21 - Transport
DP22 - Rights of Way
DP26 - Character and Design
DP27 - Dwelling Space Standards
DP38 - Biodiversity
DP39 - Sustainable Construction
DP41 - Drainage

Neighbourhood Plan

The Hurstpierpoint and Sayers Common Neighbourhood Plan has been made and is a material planning consideration with full weight attached. The following policies are considered relevant:

C1 - Countryside
C3 - Local Gaps
H1 - Housing
H6 - Housing Infrastructure

National Policy and Other Legislation

National Planning Policy Framework (NPPF) February 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.

Paragraphs 10 and 11 apply a presumption in favour of sustainable development. Paragraph 11 states:

"For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.'*

Para 12 states *'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'*

Para 38 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.'*

Para 47 states that the planning system is plan-led. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

National Planning Practice Guidance

Technical Housing Standards

Assessment

The primary considerations relate to the principle of the development in respect of its rural location together with any other material considerations, of which the planning history of the site is considered to be one, albeit of little weight.

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.'

Using this as the starting point the development plan in this part of Mid Sussex consists of the District Plan and the Hurstpierpoint and Sayers Common Neighbourhood Plan.

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 development represents a new unit of residential accommodation within a rural area. The contents of policy DP15 are most relevant and state:

'Provided that they would not be in conflict with Policy DP12: Protection and Enhancement of the Countryside, new homes in the countryside will be permitted where special justification exists. Special justification is defined as:

- *Where accommodation is essential to enable agricultural, forestry and certain other full time rural workers to live at, or in the immediate vicinity of, their place of work; or*

- *In the case of new isolated homes in the countryside, where the design of the dwelling is of exceptional quality and it enhances its immediate setting and is sensitive to the character of the area; or*
- *Affordable housing in accordance with Policy DP32: Rural Exception Sites; or*
- *The proposed development meets the requirements of Policy DP6: Settlement Hierarchy.*

Linked to policy DP15 is policy DP12 of the District Plan which states:

'The countryside will be protected in recognition of its intrinsic character and beauty. Development will be permitted in the countryside, defined as the area outside of built-up area boundaries on the Policies Map, provided it maintains or where possible enhances the quality of the rural and landscape character of the District, and:

- *it is necessary for the purposes of agriculture; or*
- *it is supported by a specific policy reference either elsewhere in the Plan, a Development Plan Document or relevant Neighbourhood Plan.'*

Policy DP6 of the District Plan relates to Settlement Hierarchy and designates Sayers Common as a Category 3 Settlement. It states:

'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 settlement edge, and*
3. *The development is demonstrated to be sustainable, including by reference to the settlement hierarchy.'*

The proposal needs to comply with all of the above mentioned criteria to accord with DP6. The application site is set approximately over 1km outside the built up area therefore is not considered to be contiguous, which is defined within the District Plan as: *'sharing a common border, touching'*. The proposal thus conflicts with policy DP6.

The site is no longer an agricultural holding and the dwelling will not be used to support any agricultural holding or enterprise nor does it represent affordable housing. The quality of the design is noted and no objection on design or character grounds is raised, however, it falls well short of being of exceptional design and whilst is sought to be of a sustainable construction, is not exceptional in this regard (is not carbon neutral etc.) and therefore in all respects the development fails to accord with the criteria of policy DP15.

The dwelling is close to other dwellings and therefore cannot be considered '*isolated*' for the purposes of policy DP15, however, the site is only able to be reached by car and any local services lie at least 1.5km from the site in Sayers Common. There is no bus service along Pookbourne Lane and as such the dwelling is considered to unsustainably located

The applicants have noted the presence of the service station at Hickstead which is within walking distance of the site, however, the value of these services were recently considered by the Planning Inspector when considered an appeal for residential development in Hickstead where the provision of services was described as:

'There is a petrol filling station (PFS) at Hickstead services, which is some 11 to 12 minutes' walk south-east from the site, and offers a variety of food and drinks for purchase. However, the range of products is limited and is clearly aimed at the passing driver using the A23 and not as a destination where one could undertake a weekly shop.'

Therefore these services are not considered to be of such a substantial nature as to consider a site 700m away sustainable. Access would also only be possible along unlit lanes with no footpaths and thus the use of a car is likely to be the main form of transport.

The principle of a new dwelling in this location is therefore contrary to the policies of the District Plan.

With respect to the policies of the Neighbourhood Plan the development may not be in direct conflict with the plan, however, a new residential dwelling is not considered an appropriate countryside use for the purposes of policy C1 and that the aims of policy C1 and H1 seek to ensure residential development is sustainably located within the existing settlement pattern of the villages. The application is therefore also considered contrary to the aims of the policies of the Neighbourhood Plan.

The previous grant of a Prior Notification approval for a residential dwelling upon the site is noted. The barn which was to be converted was demolished by the applicant, and that as the development was not completed within 3 years of the date of the Prior Notification approval, that the Prior Notification approval has now lapsed in any event and cannot be implemented. Whilst it provides some context it is not considered to be material to the determination of the application.

Additionally the applicant has also provided details of his own connection to the area and the circumstances which has led them to undertaking the development in breach of planning control. There are no exceptions within the policies of the development plan relating to these matters and again they are not material considerations which can be considered in the planning balance.

For the purposes of the policies of the development plan, in particular the recently adopted District Plan, the development does not accord with the policies and the principle of the development is not supported.

Design and Character

District Plan Policy DP26 addresses issues of character and design and seeks to ensure that:

- all development is of high quality design and layout and includes appropriate landscaping and green space;
- contributes positively to and clearly defines public and private realms, designed with active building frontages to streets and public open spaces;
- creates a sense of place while addressing the character and scale of 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;
- creates a pedestrian friendly layout that is safe well connected legible and accessible;
- incorporates well integrated parking;
- positively addresses sustainability considerations;
- optimises the potential of the site to accommodate development

The site lies in rural location with views of the site from the west. The dwelling replaces a previous hay barn which was of limited architectural value and therefore its loss is not objected to. The replacement dwelling, whilst larger, seeks to retain some agricultural character in its form and material construction and is sensitively sited at a lower level so as to reduce its impact. From wider views it is seen against the backdrop of the residential developments to the north and south and therefore does not cause harm to the character of the area. The design is of good quality and therefore complies with policy DP26.

It is noted that the plans as originally submitted indicated a residential curtilage which extended far to the west to the watercourse. This large curtilage had the potential to cause harm to the rural character were it to be retained as lawn with the residential paraphernalia which accompanies it. The applicants have therefore reduced the size of the curtilage by approximately 50% to bring it into line with others in the area and whilst would still be visible from the PROW to the west would now not be considered to be of a scale or appearance which would not be detrimental to the character and appearance of the area.

Residential Amenity

District Plan Policy DP26 advises that new 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, sunlight and noise, air and light pollution*'.

Whilst there are residential neighbours to the north and east, the site is well screened and set at a lower level than surrounding properties. Therefore any views from the first floor windows are at distance and do not result in additional overlooking being created.

The development therefore provides acceptable levels of amenity in accordance with the relevant Development Plan Policies.

Highways, Access and Parking

Policy DP21 of the District Plan requires development to support the objectives of the West Sussex Transport Plan and take account of:

- whether the development is sustainably located to minimise the need for travel;
- whether it includes appropriate opportunities to facilitate and promote the increased use of alternative means of transport to the private car such as the provision of and access to safe and convenient routes for walking, cycling and public transport;
- is designed to adoptable standards including road widths and sizes of garages;
- provides adequate car parking;
- provides appropriate mitigation to support new development and its impacts on the local and strategic road network;
- avoids severe additional traffic congestion;
- protects the safety of road users and pedestrians;
- does not harm the special qualities of the High Weald AONB

The site utilises the previous agricultural access onto the site and WSCC LHA have made comments on the application and have not raised an objection. Their comments are made on the basis of the previous Prior Notification approval remaining, however, this has lapsed and the building demolished and so little weight can be attributed to it. Nevertheless, the access proposals are not changing and the access serves only one property and therefore any increase in traffic would be negligible and would not cause any harm to highway safety. The property will benefit from a substantial level of parking over and above the level expected and the development therefore complies with policy DP21 of the District Plan.

Ecology

District Plan Policy DP38 seeks to protect and enhance bio diversity taking opportunities to improve, enhance, manage and restore bio diversity where possible. Unavoidable damage must be offset through ecological enhancement and mitigation measures.

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 9 of the Wildlife and Countryside Act 1981 (as amended), all bats and their roosts are protected and any damage or destruction of any structure or place which a protected species may use as shelter is an offence.

Paragraph 175 of the National Planning Policy Framework also 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.'*

Applications for barn conversion or demolition would normally require the submission of a bat survey or scoping report to ensure any suitable habitats for protected species are not removed or destroyed. Obviously as the development has already commenced and the original barn has been removed, such a survey cannot be carried out and cannot be submitted. It is noted, however, that the Prior Notification procedure under Class Q, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 does not include within its consideration matters of ecology or species protection and therefore the barn could have lawfully renovated and converted without such matters being considered by the Council. It is also noted that there is no evidence of bats present in the surrounding area and that any harm to protected species is covered by other legislation outside of planning and that these are material considerations in determining the application in respect of its compliance with policy DP38.

Ashdown Forest

Under the Conservation of Habitats and Species Regulations 2017 (as amended) (the 'Habitats Regulations'), the competent authority - in this case, Mid Sussex District Council - has a duty to ensure that any plans or projects that they regulate (including plan making and determining planning applications) will have no adverse effect on the integrity of a European site of nature conservation importance. The European site of focus is the Ashdown Forest Special Protection Area (SPA) and Special Area of Conservation (SAC).

The potential effects of development on Ashdown Forest were assessed during the Habitats Regulations Assessment process for the Mid Sussex District Plan. This process identified likely significant effects on the Ashdown Forest SPA from recreational disturbance and on the Ashdown Forest SAC from atmospheric pollution.

A Habitats Regulations Assessment screening report has been undertaken for the proposed development.

Recreational disturbance

Increased recreational activity arising from new residential development and related population growth is likely to disturb the protected near-ground and ground nesting birds on Ashdown Forest.

In accordance with advice from Natural England, the HRA for the Mid Sussex District Plan, and as detailed in the District Plan Policy DP17, mitigation measures are necessary to counteract the effects of a potential increase in recreational pressure and are required for developments resulting in a net increase in dwellings within a 7km zone of influence around the Ashdown Forest SPA. A Suitable Alternative Natural Greenspace (SANG) and Strategic Access Management and Monitoring (SAMM) mitigation approach has been developed. This mitigation approach has been agreed with Natural England.

The proposed development is outside the 7km zone of influence and as such, **mitigation is not required.**

Atmospheric pollution

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 has been assessed through the Mid Sussex Transport Study (Updated Transport Analysis) as windfall development, 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. Sufficient windfall capacity exists within the development area. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

Conclusion of the Habitats Regulations Assessment screening report

The screening assessment concludes that there would be no likely significant effects, alone or in combination, on the Ashdown Forest SPA and SAC from the proposed development.

No mitigation is required in relation to the Ashdown Forest SPA or SAC.

A full HRA (that is, the appropriate assessment stage that ascertains the effect on integrity of the European site) of the proposed development is not required.

Drainage and Flooding

The site lies within a Flood Risk Zone 2 and therefore MSDC Drainage Officers requested further information regarding foul and surface water drainage provision. With respect to surface water it is proposed that the development will manage surface water drainage through the use of attenuation before discharging into an adjacent watercourse. Attenuation has been provided to manage runoff during the 1 in 100 year storm event with an additional 40% allowance for climate change. Discharge to the watercourse shall be restricted to 1l/s.

A land drainage system is proposed to reduce the hydrostatic water pressure to rear of the retaining wall at the front of the property. The land drain has been connected to the adjacent watercourse as a safety precaution. It is therefore considered that subject to installation of the drainage scheme that the development does not pose a flood risk.

With respect to foul drainage it is proposed that the development will manage foul water drainage through the use of a package treatment plant with treated foul effluent discharging to the adjacent watercourse. It has been calculated a maximum of 0.8m³/day treated effluent shall be released into the watercourse. This is again acceptable and subject to installation the development would comply with the policy DP41 of the District Plan.

Sustainability

Policy DP21 of the District Plan relates to transport and requires schemes to be *'sustainably located to minimise the need for travel'* and take *'opportunities to facilitate and promote the increased use of alternative means of transport to the private car, such as the provision of, and access to, safe and convenient routes for walking, cycling and public transport, including suitable facilities for secure and safe cycle parking'*. In addition it requires where *'practical and viable, developments should be located and designed to incorporate facilities for charging plug-in and other ultra-low emission vehicles.'*

Paragraph 148 of the NPPF states:

'The planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.'

In addition, the accessibility of the site, or the sustainable location of it, is a key consideration.

As previously considered the development is not situated in a sustainable location and that public transport links to the site are poor and sufficient local facilities are not within practicable walking distance of the site. It is therefore considered that the development does not lie in a sustainable location.

In relation to the use of renewables as part of a sustainable construction District Plan Policy DP39 relates to Sustainable Design and Construction and requires development proposals to improve the sustainability of development and where appropriate and feasible (according to the type and size of development and location), incorporate measures including minimising energy use through the design and layout of the scheme; maximise efficient use of resources, including minimising waste and maximising recycling/re-use of materials through both construction and occupation; and also to limit water use to 110 litres/person/day.

The applicant has provided information as to the sustainable construction of the dwelling including maximising sunlight into the property to use natural lighting and ventilation and the use of locally sourced materials in the construction. It can therefore be considered the development complies with the aims and contents of policy DP39 in respect of sustainable construction, however, by virtue of its location in a rural area with poor public transport links, the location, and therefore the principle of the development, is not considered to be, or represent, sustainable development.

Other Planning Issues

It is also noted that a mobile home is currently present on site and that this does not form part of the planning application. The mobile home is currently used as residential accommodation by the owners whilst the dwelling is under construction, even though the dwelling is considered unlawful. The lawfulness or otherwise of the mobile home is not, however, a matter for consideration in this application and will be addressed separately. It should be noted that the retrospective nature of the application is also not a consideration in the determination of the application and the development should be considered in accordance with the development plan policies unless material circumstances dictate otherwise.

It should be noted that were the application to be refused that it would represent a breach of planning control where it would be considered expedient to pursue formal enforcement action as the development does not comply with the policies of the development plan. Should planning permission be refused for the development Officers would therefore be recommending that members of the committee resolve to enter into enforcement action to remedy the breach of planning control. The likely remedy would be the requirement to cease the breach of planning control by demolishing the building and ceasing the residential use upon the site.

In considering whether to enter into enforcement action the provisions of The Human Rights Act 1998 and the European Convention on Human Rights should be taken into account an Planning Practice Guidance states that the provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant to a decision to pursue formal enforcement action.

Article 8 (right to private and family life) and Article 1 of the First Protocol state that a person is entitled to the right to respect for private and family life and the peaceful enjoyment of his or her property. However, these rights are qualified in that they must be set against the general interest and the protection of the rights and freedoms of others. It is considered that the breach of planning control is contrary to

the Development Plan and does unduly affect the amenity of the area by virtue of creating a residential development in an unsustainable location contrary to the explicit policies of the Development Plan. It is not considered that Article 1 or 8 of the First Protocol should prevent the instigation of enforcement action and that the applicants do have the right of appeal against the issue of the Notice.

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. The Council has a recently adopted District Plan and is able to demonstrate that it has a five year housing land supply. 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.

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.

The application site lies in an unsustainable rural location and is not necessary for the purposes of agricultural unit and is outside the built up area of Sayers Common and otherwise not of exceptional quality and is thus contrary to Policy DP12, DP15, DP21 and DP6 of the District Plan.

With respect to other material considerations, Paragraph: 008 Reference ID: 21b-008-20140306 of the National Planning Practice Guidance (NPPG) provides guidance on what can be considered a material consideration and states:

A material planning consideration is one which is relevant to making the planning decision in question (e.g. whether to grant or refuse an application for planning permission).

The scope of what can constitute a material consideration is very wide and so the courts often do not indicate what cannot be a material consideration. However, in general they have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests such as the impact of a development on the value of a neighbouring property or loss of private rights to light could not be material considerations.'

The issue of a Prior Notification approval for the conversion of the former barn and the potential personal circumstances of the applicants are promoted by the applicant

as being material considerations which should be attributed weight in the determination of the application.

With respect to the Prior Notification approval this permitted the conversion of two agricultural barns into dwellinghouses subject to compliance with the conditions imposed. In issuing this approval the Council can only take into account the matters outlined in Class Q, Part 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 relating transport, contamination, noise, flooding, design, location and siting. All policies of the development plan cannot otherwise be taken into account and the principle of the development of a residential property in a rural location cannot be considered during the Prior Notification determination process.

Officers note the presence of the Prior Notification approval and that it could be considered to carry weight could it be still implemented or else reapplied for (as has occurred on the neighbouring site), however, the barn to which the approval relates no longer exists and has been demolished to allow the construction of the dwelling subject to the application. Therefore it would now not be possible to permit or issue a new Prior Notification approval for the conversion of the barn.

Furthermore the demolition of the previous barn results in the development being considered as a new building rather than any form of rural conversion which again might be viewed differently in respect of compliance with development plan policies. Whilst the design of the dwelling is not objected to and matches closely that permitted under the Prior Notification approval, it does, as a matter of fact, represent a completely new building and that development in a rural location means that the contents of the development plan policies should be afforded full weight and there are no other fall back positions or else other forms of development, including changes of use, which could be applied to the development.

In these circumstances the planning history of the site is not considered to be a material consideration to be taken into account in the determination of the application.

With respect to the personal circumstances of the applicant the NPPG makes it clear that the personal interests of the applicant, or any other party, are not material considerations which can be taken into account in the determination of the application. The application must be considered on its planning merits and the policies of the development plan and these are not affected or can be influenced by the personal circumstances of the applicant or why the development may have been carried on in breach of planning control.

The local history of the applicants is noted, however, there does not appear to be any direct historic relationship to the site itself and whilst their desire to reside in the area close to their upbringing is noted, this is not sufficient to consider that the principled objections to the development be overcome. Additionally the circumstances by which they find themselves in breach of planning control is also noted, but it should have been clear as to the requirements of the Prior Notification approval and the steps required to comply with it. A failure to understand the

planning system or the consequences of not complying with it is therefore not a reason to permit the development in clear conflict with the Development Plan.

The development may result in some employment in relation to its construction and the addition of one new house to both the Council's housing supply and Council Tax base is also noted, however, it is again considered that these are minimal when associated with one single dwelling and therefore very little weight can be attributed to this economic or public benefit.

Therefore taking into all other material considerations, it is not considered that they sufficient to outweigh the principle of the development being contrary to the policies Development Plan and the application is recommended for refusal.

APPENDIX A – REASONS FOR REFUSAL

1. The development is not necessary for the purposes of agriculture and lies within an unsustainable location where occupants would be reliant on the use of a private car to gain access to local services and there are not considered to be any other material considerations that would warrant determining the planning application otherwise than in accordance with the Development Plan. The development thereby conflicts with policies DP6, DP12 and DP15 of the Mid Sussex District Plan, policies C1, C3, H1 and H6 of the Hurstpierpoint and Sayers Common Neighbourhood Plan and the contents of the NPPF.

INFORMATIVES

1. The development to which this decision relates has commenced and therefore is a breach of planning control where it would be considered expedient to pursue formal enforcement action. The Council will be in contact under separate cover to discuss the matter.
2. In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern with the proposal and discussing those with the Applicant. However, the issues are so fundamental to the proposal that it has not been possible to negotiate a satisfactory way forward and due to the harm which has been clearly identified within the reason(s) for the refusal, approval has not been possible.

Plans Referred to in Consideration of this Application

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

Plan Type	Reference	Version	Submitted Date
Existing Site Plan	A107		12.06.2019
Existing Floor and Elevations Plan	A106		12.06.2019
Location Plan	A101	V2	18.07.2019
Proposed Site Plan	A102	V2	23.05.2019
Proposed Elevations	A103	V2	23.05.2019
Proposed Floor Plans	A104	V2	23.05.2019
Proposed Visual	A105	V2	23.05.2019
Proposed Sections	A106	V2	23.05.2019

APPENDIX B – CONSULTATIONS

Parish Consultation

Recommendation - Permission is granted

WSCC Highways Authority

This application has been dealt with in accordance with the Development Control Scheme protocol for small scale proposals which include up to 5 residential units or extensions to single units accessed from roads that do not form part of the Strategic Road Network (SRN). As such the comments provided by Strategic Planning should be considered to be advice only, with respect to this planning application.

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.

I refer to your consultation in respect of the above planning application and would provide the following comments.

The proposal seeks retrospective consent for the demolition of a barn at Pook Barn, Pookbourne Lane, Sayers Common, and the erection of a four bedroom dwelling. Access is to be achieved via an existing point of access onto Pookbourne Lane which is unclassified and subject to the national speed limit. The site had previously benefited from prior approval for conversion to residential under DM/16/0714, however the works were not completed by the 3 year expiry and this application is required to regularise and make amendments to the prior approval scheme.

No material changes are to be made to the access and parking arrangements when compared to the prior approval scheme.

Given the approved planning history of the site the Local Highway Authority does not consider that the proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts 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 is minded to grant planning consent the following conditions would be advised:

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.

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.

MSDC Drainage Engineer

Application Number	DM/19/1972
Planning Officer	Andrew Clarke
Engineering Officer	Natalie James
Date	16 Sep. 19
Location	Pookbourne Lane, Sayers Common
Development Proposal	1 dwelling
Recommendation	No objection subject to conditions

SURFACE WATER DRAINAGE PROPOSAL

It is proposed that the development will manage surface water drainage through the use of attenuation before discharging into an adjacent watercourse. Attenuation has been provided to manage runoff during the 1 in 100 year storm event with an additional 40% allowance for climate change. Discharge to the watercourse shall be restricted to 1l/s.

A land drainage system is proposed to reduce the hydrostatic water pressure to rear of the retaining wall at the front of the property. The land drain has been connected to the adjacent watercourse as a safety precaution.

FOUL WATER DRAINAGE PROPOSAL

It is proposed that the development will manage foul water drainage through the use of a package treatment plant with treated foul effluent discharging to the adjacent watercourse. It has been calculated a maximum of 0.8m³/day treated effluent shall be released into the watercourse.

FLOOD RISK

The redline boundary of the site encompasses flood zones 1, 2 and 3, classified as being at low, medium and high risk of fluvial flood risk by the Environment Agency. The residential development is located within flood zone 1, at low risk of fluvial flooding.

The applicant has confirmed that all surface water drainage attenuation features, and the package treatment plant are to be located within flood zone 1. The applicant has also confirmed that all drainage pipework located within flood zones 2 or 3 shall be sealed and be fitted with non-return valves to prevent flood water surcharging the system.

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.

FLOOD RISK AND DRAINAGE TEAM CONSULTATION

The applicant has provided a detailed drainage design for the site which considers both foul and surface water. It also considers the potential for groundwater emergence at the retaining wall and provides an appropriate means of draining this headwall.

SUGGESTED CONDITION

The drainage should be implemented as per the details provided as part of this application. Specifically as set out on the Drainage Layout plan (Drawing number 56150/10 Rev A).