

MID SUSSEX DISTRICT COUNCIL

Planning Committee

12 MAY 2022

RECOMMENDED FOR PERMISSION

Burgess Hill

DM/22/0782



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3 ALEXANDRA ROAD BURGESS HILL WEST SUSSEX RH15 0EP

CHANGE OF USE FROM PREVIOUSLY UNDESIGNATED TO GARDEN LAND.

MR PHIL CROSS

POLICY: Built Up Areas / Aerodrome Safeguarding (CAA) /

ODPM CODE: Change of Use

8 WEEK DATE: 12th May 2022

WARD MEMBERS: Cllr Janice Henwood / Cllr Graham Allen /

CASE OFFICER: Lesley Westphal

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

Permission is sought for the change of use of this modest sized piece of land within a residential area from informal open space previously owned by the original developer of the surrounding area to private garden land, to form part of the garden of the adjoining bungalow.

Planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise. Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan and the Burgess Hill Neighbourhood Plan.

The applicant advises that the sale of the site has taken place and some cutting back of boundary shrubs has taken place and the land has been partially fenced off, although public access is still available. The change of use to garden land would not result in a materially harmful loss of public open space nor harm the general spatial character or visual amenities of the surrounding area.

It is considered that subject to appropriate conditions it would comply with the provisions of policies DP21, DP24, DP26, DP29 and DP38 of the Mid Sussex District Plan and policies G1 and G3 of the Burgess Hill Neighbourhood Plan.

RECOMMENDATION

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

SUMMARY OF REPRESENTATIONS

Six Letters of support have been received raising the following issues:

- The scheme would represent a visual improvement to the site which has been overgrown and uncared for
- There is ample informal green open space nearby
- The change of use would be acceptable as long as no buildings are placed on it.

Seven letters of objection have been received raising the following issues:

- It would result in a loss of informal open space used for play and general informal use by the surrounding community
- Loss of outlook to surrounding residents
- Harm to neighbours amenities through the residential use of this site
- Loss of wildlife habitat
- Significant overbearing impact upon local residents
- Harm to neighbours amenities including from loss of outlook if the space is enclosed or built upon and noise and disturbance arising from a residential use of the garden
- Fundamental change to the character of this part of the surrounding area
- Concern that it could be used in a manner ancillary to the adjacent bungalow that would be visually harmful to the character of the surrounding area, ie for a building or extension, storage of ancillary domestic goods and clutter that would be untidy and detract from the site
- Concern about the potential for a private access into the site
- The space has been well kept by the County Council
- Potential highways safety concerns as a result of boundary fencing/hedgerow, reducing sightlines around this part of Alexandra Road
- Contrary to those policies in the Neighbourhood Plan, District Plan, Design Guide and National Planning Policy Framework that protect open space,, visual amenities, design quality, trees, wildlife, highways safety and neighbours amenities.

SUMMARY OF CONSULTEES

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

WSCC Highways Authority:

Do not consider that this proposal would have an unacceptable impact on highways safety nor result in 'severe' cumulative impacts on the operation of the highway network. There are no transport grounds to resist the proposal.

The following informative is recommended: The applicant is advised to contact the DFT National Transport Casework Team to commence the 'stopping up' process.

Officer Note: The Stopping Up application has been made.

TOWN COUNCIL OBSERVATIONS

Recommend refusal. The Committee expressing concerns believing it to be detrimental to the streetscene, as well as concerns regarding the loss of green space.

It would be contrary to the following policies:

District Plan Policies DP24, DP26 and DP29

Burgess Hill Neighbourhood Plan Key Issues:

- C03: Ensure access to facilities including informal recreational space
- CO5: Protect and improve areas of existing landscape value and open space identified by local communities
- CO6: Promote new open spaces particularly where there are deficiencies and encourage new opportunities to protect and enhance bio diversity as part of proposed developments
- Policy G1: Areas of Open space: All areas of formal and informal open space ... as listed in Appendix E and identified on the proposal map will be protected from development and appropriate access to these areas will be maintained. Development that would result in a loss of open space must be either supported by an open space assessment that demonstrates the open space is no longer needed or proposal for equivalent or better alternative provision.
- District Design Guide: Principle DG25 Enhance the Environment and Sense of Place through Open Space
- NPPF Section 2: Existing open spaces should not be built on

INTRODUCTION

Permission is sought for a change of use from informal open space to residential garden land.

The application is before Committee at the request of Cllr Henwood to considers matters relating to the loss of open space and impacts upon the character and amenities of the area and nearby residents.

RELEVANT PLANNING HISTORY

None relevant

SITE AND SURROUNDINGS

The site comprises a broadly triangular piece of land which abuts the public highway along the west/southwest edges of the site and the private gardens of neighbouring dwellings along the east and northern boundaries. It has until recently been in the ownership of the developer of the surrounding area and been in use as informal public open space.

The site lies within a residential area where pieces of informal open space, such as this, of varying sizes are scattered randomly around the neighbourhood. Indeed immediately opposite the site lies more such land and approximately 75m to the south lies another area of land sited between the public highway and the garden boundaries of the two nearest dwellings.

The site has been partially fenced off although public access is still available.

The boundaries with the adjacent gardens are planted although the shrubs appear to have been recently pruned, but otherwise the site is grassed over. The map of the site suggests footpaths parallel to the northern and eastern edges of the site, but these appear to be largely obscured now by grass.

The surrounding area is residential in character with a generally reasonably open and spacious feel to the area facilitated by open front gardens to most dwellings with low boundary walls which open up the individual plots to view. Corner properties nearby have a variety of boundary treatments including some with close boarded fencing - although this is not the predominant character of the area.

APPLICATION DETAILS

The application seeks permission to change the use of the site to a private garden effectively forming a side garden to 3 Alexandra Road which lies to the east of the site.

The land has until recently been owned by the original developer of the neighbourhood and been used as informal open space, albeit no facilities are provided on the land. However residents advise that previously it has been used by children to play on and as a green open space for local residents to view as part of the wider streetscene.

Following the purchase of the land a wire fence was erected along the back edge of the pavement including a gate. The fence does not need planning permission, being permitted development due to its low height. Although the gate did need planning permission that has now been removed and public access is still available to the site.

In addition to the need for planning permission for the change of use, a formal application also needs to be made for the 'stopping up' of public access to the land and that application has been submitted. If successful this would extinguish public access rights to the land. That application will be determined after this application has been determined.

LEGAL FRAMEWORK AND LIST OF POLICIES

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

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

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

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

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

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

The requirement to determine applications "in accordance with the plan" does not mean applications must comply with each and every policy but is to be approached on the basis of the plan taken as a whole. This reflects the fact, acknowledged by the Courts, that development plans can have broad statements of policy, many of which may be mutually irreconcilable so that in a particular case one must give way to another.

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

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan and the Burgess Hill Neighbourhood Plan (made in October 2015)

National policy (which is contained in the National Planning Policy Framework and National Planning Policy Guidance) does not form part of the development plan but is an important material consideration.

Mid Sussex District Plan

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

Relevant policies:

Policy DP21: Transport

Policy DP24: Leisure and Cultural Facilities and Activities

Policy DP26: Character and Design

Policy DP29: Noise, Air and Light Pollution

Policy DP38: Biodiversity

Neighbourhood Plan - Burgess Hill Neighbourhood Plan

Relevant policies:

G1 - Areas of OpenSpace

G3 - Nature Conservation and Bio-diversity

Mid Sussex Design Guide Supplementary Planning Document (SPD)

The Council has adopted a 'Mid Sussex Design Guide' SPD that aims to help deliver high quality development across the district that responds appropriately to its context and is inclusive and sustainable. The Design Guide was adopted by Council on 4th November 2020 as an SPD for use in the consideration and determination of planning applications. The SPD is a material consideration in the determination of planning applications.

Principle:

DG4: Establish a landscape and green infrastructure network

DG6: Design to enhance biodiversity

DG25: Enhance the environment and sense of place through open spaces

National Planning Policy Framework (NPPF) (July 2021)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective. It identifies as a social objective support for amongst others accessible services and open spaces that reflect current and future needs.

Paragraph 12 of the NPPF 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.*'

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

With specific reference to decision-taking paragraph 47 states: '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'.

Paragraphs 98-103 address the issue of open space and recreation. They recognise the benefits of high quality open spaces and opportunities for sport and physical activity advising that existing open space, sports and recreational buildings and land, including playing fields, should not be built on unless the space is surplus to requirement, would be replaced by equivalent or better provision or the development is for alternative sports and recreational provision and the benefits of the development proposed outweigh the loss of the current use.

ASSESSMENT

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

- Loss of Informal Open Space
- Impact upon Character of Streetscene
- Neighbours Amenities
- Highways Impacts
- Biodiversity

Loss of Informal Open Space

Policy DP24 seeks to provide and protect the necessary infrastructure to encourage a healthy and enjoyable lifestyle by the provision of cultural and sporting facilities, informal leisure space and the opportunity to walk, cycle or ride to common destinations. It advises that sites for appropriate leisure and cultural facilities to meet local needs will be identified through Neighbourhood Plans or a Site Allocations Development Plan document produced by the District Council. Proposals that result in the loss of cultural facilities, open space, sports and recreational buildings and land, including playing fields will not be supported unless they can be shown to be surplus to requirements, subject to replacement by equivalent or better facilities or the need for the development proposed would outweigh the loss of the facility.

This policy applies to Open Space, parks and nature conservation sites, amongst other types of space. The site forms a grassed informal area of open space, along with other such nearby spaces and grass verges alongside the highway, but which are not specifically identified within the Leisure and Cultural Strategy for Mid Sussex: Assessment of Open Space, Sport and Recreation, nor the Neighbourhood Plan. When considering the harm caused by this proposal, it is clear that the site would represent a loss of informal open space. However, the site is not identified in the evidence base to the Local Plan and the loss of this site would not be quantifiable therefore against the assessments that have been carried out for Local Plan provision.

Whilst Policy DP24 identifies the evidence base to the policy being the Leisure and Cultural Strategy for Mid Sussex, the policy does not confine itself specifically and solely to space identified within that document. So the potential harm arising from the loss of this space has to be considered. The town has spaces that are specifically identified and protected by Policy DP24 as well as other open spaces in the vicinity of this site that are publicly accessible. Additionally, the general character of the surrounding area is one of reasonable spaciousness with properties with good sized private gardens. Officers do not consider that it would be possible to demonstrate specific and identifiable harm to local resident's health or amenities arising from the loss of this modest space to public use.

The supporting text to Policy G1 of the Neighbourhood Plan advises that *'protecting area of open space is of the utmost importance to the local community in Burgess Hill. Green open space that can be accessed by the public for formal and informal recreation contributes to the wellbeing of residents and the enjoyment of their town.'* Such spaces can also contribute to wildlife and biodiversity of the area. Policy G1 advises that *'all existing areas of formal and informal open space as listed in Appendix E of the Neighbourhood Plan and identified on the proposals map will be protected from development and appropriate access to these areas will be maintained. Development that would result the loss of open space must either be supported by an open space assessment that demonstrates the open space is no longer needed or proposals for equivalent or better alternative provision. Proposed new areas of open space will be supported.'* This site, along with the other modest spaces lying alongside the highway nearby are not identified in the Appendices or on the map and that policy would not therefore appear applicable to this particular space.

The other aspect of the value of this land to the local community is the visual benefit derived from the openness and green appearance of this parcel of land.

Policy DP26 supports development that is sensitive to the character of the District's towns and villages. The character of the surrounding area is one of green open garden space interspersed with some publicly accessible space such as this site. The change of use of this site, subject to appropriate conditions, for instance relating to the use only of low level fencing or boundary walls would protect the general open character of the site. It would be visible just as many other gardens are visible to the surrounding area. It is noted of course that the planting of hedging/trees would not require planning permission and could be used to provide higher boundary screening to create some privacy to this area of garden. This has been done in some other gardens nearby whose rear gardens are close to the public highways and this would not appear out of character with the area.

Overall, the spatial character of the wider area would not change significantly as a result of this scheme although it is acknowledged that this would represent a change of outlook to those immediately adjacent to the site. It would be a different outlook but would not be harmful to the general character and visual amenities of the area. The scheme would comply with the approach of Policy DP26.

Impact upon Character of Streetscene

Policy DP26 seeks development that is well designed and that reflects the District's distinctive towns and villages. Of particular relevance to this application are those parts of Policy P26 which refer to:

- Being of high quality design and layout and including appropriate landscaping and greenspace
- Creating a sense of place whilst addressing the character and scale of the surrounding buildings and landscape
- The protection of open spaces, trees and gardens that contribute to the character of the area.

Principle DG25 of the Design Guide recognises the important contribution to the character of an area made by open spaces providing physical and visual amenity and a focus for social, play and sporting activities and events. Such space should be provided as an integral part of a development and be designed with a specific role or function as part of the wider open space network.

The area within which this site lies is generally one of relative spaciousness and openness with views across the many nearby front gardens adding to the character, whilst rear gardens visible in the public realm are generally protected by boundary fencing or hedging.

If the loss of this space is not considered to materially harm the levels of open space within the area overall, then consideration must be given to the visual impacts of that loss. It is considered that the boundary treatment of this site should not include a fence or wall above 1m in height to maintain views across the site. A standard 1.8-2m fence would be quite obtrusive in this location where the extent and curve of the site boundary would be quite prominent if a standard height fence were erected. The Town and Country Planning (General Permitted Development) (England) Order 2015 would not however allow a treatment above 1m in height without express planning permission so there is no need to attach a condition to achieve this. It is acknowledged that the applicant may wish to treat this land as a private space, rather than a more public front garden and hedging could be planted, which would not require planning permission, but which would provide a softer more visually attractive boundary treatment. This could in due course reach a height of 2m or more and would thus prevent views into the garden. There are other examples of side/rear gardens that are visible from the public realm which are either fenced or have planted boundaries that prevent garden views. The nearest example of a planted boundary is adjacent to the site where an evergreen hedge screens off the rear garden of 1 Alexandra Road. The nearest fenced boundaries lie on the corner of Churchill Way and Marlborough Crescent where two corner properties have fenced off their rear gardens. Both boundary treatments form part of the character of this area and such an approach on this site would be acceptable.

The site lies between the bungalow at number 3 Alexandra Road and the highway and therefore development normally permitted by Class E (buildings etc incidental to the enjoyment of a dwellinghouse) of The Town and Country Planning (General Permitted Development) (England) Order 2015 would require express planning

permission. Likewise, any other applications to extend the bungalow and affecting this land would be subject to the usual planning controls, when impacts upon the streetscene and character of the area would form a material consideration.

Overall, it is not considered that the inclusion of this land within the domestic curtilage of 3 Alexandra Road would be out of character with the character of the surrounding area and nor would the screening of the site with planting adversely affect the character and visual amenities of the area.

Neighbours Amenities

Policy DP26 requires that new development does not cause significant harm to the amenities of the existing nearby residents.

A number of objections have been received to this application including concerns about the impact of the scheme upon neighbours amenities. The use of the land as a garden would not be expected to cause any adverse impact upon the nearby residents.

Highways Impacts

Policy DP21 in this instance requires that new development does not adversely affect highways safety nor the free flow of traffic.

The Highway Authority has assessed the application and raise no objections.

Concern has been raised by residents regarding the potential for boundary fencing/hedging to adversely affect highways safety. Fencing above 1m in height of the boundary will require planning permission when such issues could be assessed, but this issue has not been raised by the Highway Authority.

Overall no highways objections are raised to this scheme.

Biodiversity

Policy DP38 requires development to take opportunities to improve enhance manage and restore biodiversity so that there is a net gain and to protect existing biodiversity, so that there is no net loss of biodiversity.

The neighbourhood plan at Policy G3 requires appropriate improvements to the habitat network in development proposals wherever possible.

The site itself comprises grass that is regularly mown with boundary planting along the shared boundaries with the two adjacent gardens to the north and east (3 Alexandra Road) which has been recently pruned. This is likely to be removed to allow the site to be included within the adjacent garden. The land has been treated similarly to a domestic garden and there is no reason to anticipate that it hosts any protected species. It will be subject to normal domestic use and such planting as desired by the applicant and it is not anticipated that the change of use would result in a loss of bio diversity within the area.

A condition is suggested to address the need to provide a bio diversity enhancement as part of any new development.

Planning Balance and Conclusion

An assessment of relevant planning policies and planning guidance, together with other material considerations, has resulted in a recommendation to approve this proposal.

The site comprises informal open space which has been identified as having been sold to the owner of 3 Alexandra Road who wishes to change the use of this land to a private garden.

Whilst being informal open space, the site is not formally identified as open space in any of the evidence base associated with the District Plan or the Neighbourhood Plan. Its loss would not therefore contribute to a quantifiable loss of open space identified as important by these documents. Policy G1 of the Neighbourhood Plan is more specific about which land it protects than the District Plan and this site is not on the list of protected sites identified in the Plan.

It is not considered possible to demonstrate harm to the local community resulting from the loss of this space, when it is not specifically identified and when other space lies nearby for informal use.

The form of boundary treatment used could be controlled to try to ensure the land remains open but it would be possible to plant hedging that does not require permission and which could in time block views of the land from ground level at least. Even in this event it is not considered that this would cause unacceptable and demonstrable harm to the visual amenities and character of the local area: there being other gardens nearby which form part of the character of the area and are screened from public view by fencing and hedging.

There are not anticipated to be any harms to bio diversity and a suitably worded condition could ensure works to provide some enhancements to ensure policy compliance.

The site would not cause any adverse highways impacts nor harm to the amenities of nearby residents amenities.

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

APPENDIX A – RECOMMENDED CONDITIONS

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

Reason: To comply with Section 91 of the Town and Country Planning Act 1990.
2. The development hereby permitted shall be carried out in accordance with the 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. Prior to the commencement of use of the land, details shall be submitted to and be approved in writing by the District Planning Authority of proposed bio diversity enhancements. The scheme shall be carried out in accordance with the approved details during the next available planting season where necessary or otherwise within 1 month of the grant of permission and shall thereafter be retained.

Reason: To ensure that the scheme provides a bio diversity gain in accordance with the provisions of Policy DP38 of the Mid Sussex District Plan 2014-2031 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 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 Plan	-	-	09.03.2022
Other	-	-	09.03.2022
Planning Statement	-	-	09.03.2022

APPENDIX B – CONSULTATIONS

Parish Consultation

Recommend Refusal. The Committee expressed concerns believing it to be detrimental to the street scene, as well as concerns of the loss of green space. The application contravened the following policies:

District Plan 24; District Plan 26, and District Plan 29.

Burgess Hill Neighbourhood Plan 3, 5 and 6 and policy G1 policy of open space

District Council Design Guide ' 25

National Planning Policy Framework section 2 ' existing open spaces should not be build on.

The Committee decided that Councillors Henwood and Allen would initiate the call-in process.

WEST SUSSEX COUNTY COUNCIL CONSULTATION

This application has been dealt with in accordance with the Development Control Scheme protocol for small scale proposals.

WSSCC acting as the Local Highway's Authority (LHA) refer to your consultation in respect of the above planning application and would provide the following comments. The proposal is located within the Highway Boundary but is not anticipated to obstruct any footways or visibility splays.

The applicant should be made aware that alongside this planning application, the applicant will need to apply for stopping up of the highway boundary. Please see informative below.

Conclusion

The LHA does not consider that this 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 111), and that there are no transport grounds to resist the proposal.

The LHA advises the LPA that if they are mindful to permit the above application than to attach the following informative:

Informative

The LHA advises the applicant to contact the DFT Nation Transport Casework Team to commence the 'Stopping Up' process.

National Transport Casework team
Tyneside House
Skinnerburn Road
Newcastle Business Park
Newcastle upon Tyne
NE4 7AR

Email: nationalcasework@dft.gsi.gov.uk

Phone: 0207 944 4115

Websites:

<https://www.gov.uk/government/publications/stopping-up-and-diversion-of-highways>

<https://www.gov.uk/government/groups/national-transport-casework-team>

Stephen Garrard
West Sussex County Council - Planning Service