

MID SUSSEX DISTRICT COUNCIL

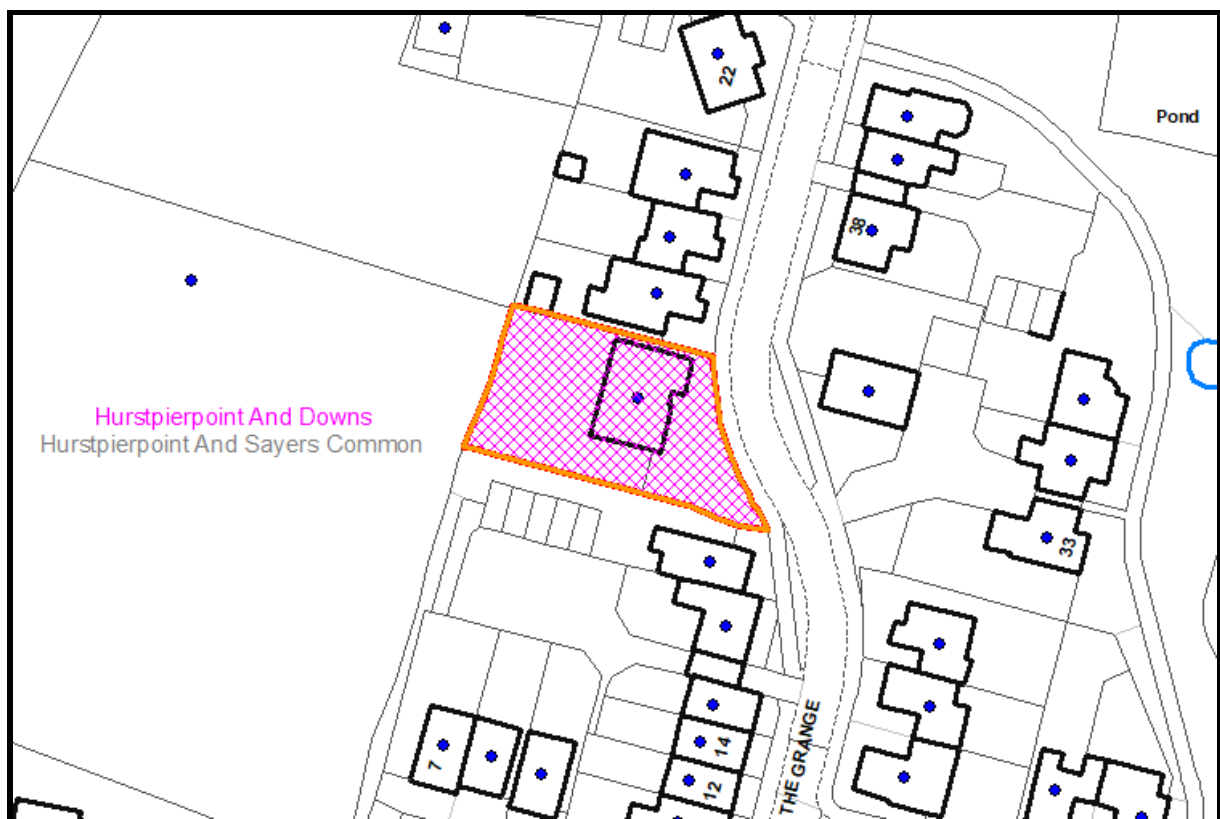
Planning Committee

13 OCT 2022

RECOMMENDED FOR REFUSAL

Hurstpierpoint And Sayers Common

DM/22/2336



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18 THE GRANGE HURSTPIERPOINT HASSECKS WEST SUSSEX BN6

9FD

RETROSPECTIVE LOFT CONVERSION WITH DORMER WINDOW AND BALCONY.

MS YVONNE TYLER

POLICY: Area of Special Control of Adverts / Built Up Areas / Countryside
Area of Dev. Restraint / Countryside Gap / District Plan Policy /
Planning Agreement / Planning Obligation / Aerodrome
Safeguarding (CAA) / Highways and Planning Agreement (WSCC) /
Minerals Local Plan Safeguarding (WSCC) /

ODPM CODE: Householder

8 WEEK DATE: 19th October 2022

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

CASE OFFICER: Andrew Clarke

Purpose of Report

To consider the recommendation of the Assistant Director for Planning and Sustainable Economy on the application for planning permission as detailed above.

Executive Summary

This application seeks planning permission for the retention of a rear dormer window. The development has already been completed and so the application is made under s.73a of the Town and Country Planning Act. The application has been referred to the planning committee by the ward members.

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 National Planning Policy Framework. That the application is for development which has already been carried is not a consideration in the determination of the application, similarly the personal circumstances of the applicant, whilst a material consideration, are not considered to outweigh the consideration of the application against the policies of the development plan.

The development is a large flat roof dormer window which features an enclosed balcony. The development requires planning permission by virtue of the presence of the balcony and that at the time of the construction in 2018, the property did not benefit from permitted development rights.

The dormer is of a scale and design not normally supported by the Council and is contrary to the contents of the adopted Mid Sussex Design Guide which supports high quality design and that states that dormer windows should be visually subordinate to the roof slope, enabling a large proportion of the main roof to remain visible. The window is not subordinate and occupies a majority of the roof slope so as to be considered of a poor design contrary to the aims of policy DP26 of the District Plan and the contents of the Mid Sussex Design Guide as well as the

broader requirements of the NPPF.

Planning permission should therefore be refused and members are requested to agree the issue of an Enforcement Notice for the unauthorised development.

Recommendation

It is recommended that permission be refused for the reason set in in Appendix A and that an Enforcement Notice be issued.

Summary of Representations

No representations have been received in response to this application.

Parish Council Observations

None received.

Introduction

This application seeks planning permission for the retention of a rear dormer window. The development took place in late 2018 and is complete so the application is made under s.73a of the Town and Country Planning Act 1990. The application has been referred to the planning committee by the ward members, with the agreement of the cabinet member.

Planning History

The planning history is relevant in understanding the merits and previous actions by the Council in addressing this matter.

The property formed part of the wider Grange development approved under reference HP/04/02331/FUL and which included the following restrictive condition:

22: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or as amended in the future, no enlargement, improvement or other alteration of the dwellinghouse, whether or not consisting of an addition or alteration to its roof, nor any other alteration to its roof, shall be carried out, (nor shall any building or enclosure, swimming or other pool be provided within the curtilage of the dwellinghouse) without the specific grant of planning permission by the Local Planning Authority.

All extensions and alterations to the property therefore required planning permission.

Planning permission was granted under reference DM/18/1404 for pitched dormers, rear-facing bi-folding doors, new rear window, and internal reconfiguration to the

property. It is not considered that this permission has been implemented and it has now lapsed.

In 2018 a single large flat roof dormer window was constructed without planning permission.

Application DM/19/1322 thereafter sought amendments to the dormer window, however, this application was refused on 30th May 2019 for the following reason:

'By virtue of the scale, design and appearance, the development is considered to cause harm to the character and appearance of the area and does not comply with policy DP26 of the District Plan, the contents of the Mid Sussex Dormer Window and Rooflight Design Guidance and the requirements of the NPPF.'

Subsequently planning permission was permitted under reference DM/19/3290 on 18th October 2019 for a revised development replacing the rear flat roof dormer with three pitched dormers and pitched element. This application included the following condition:

The development hereby permitted shall be completed within 12 months of the date of this permission.

Reason: The current dormer window development is unauthorised and is not acceptable and is contrary to policy DP26 of the District Plan.

The provisions of the Business and Planning Act 2020 extended this time period until 1st May 2021, however, the permission was not implemented and subsequently lapsed.

Application DM/21/1393 sought to renew permission DM/19/1322 with an identical scheme and was approved on 4th June 2021. No deadline for the implementation of the permission was given and it remains extant but has not been implemented.

Application DM/21/2246 was submitted as a s.73 application to seek the removal of the restrictive permitted development rights condition number 22 as imposed on permission HP/04/02331/FUL for the whole development. This was approved on 24th September 2021 with the condition no longer in effect from that date.

Application DM/21/3509 thereafter sought the issue of a certificate of lawfulness for the dormer window under s.191 of the Town and Country Planning Act. This was based on the development no longer needing planning permission by virtue of the restrictive permitted development rights condition no longer being in effect. This application was refused on 29th November 2021 as the condition was in effect at the time of the development being completed and that by virtue of the balcony the dormer could not have been considered permitted development and such the development is not lawful.

Site and Surroundings

The property is a large new-build detached dwellinghouse lying on a relatively new development on the western edge of Hurstpierpoint. The development has a defined character and benefits from a consistent and generally little altered design approach featuring high pitched roofs with small dormer windows in a Sussex vernacular style. Due to the previous absence of permitted development rights, the development retains this consistent design, character, and appearance.

The property itself lies on a flat plot with residential properties to each side and open informal space to the rear. A footpath open to the public leads from the development to Langton Lane to the west and there are therefore views of the property and the rear of the development from the public realm.

Application Details

The application seeks to regularise the development as has taken place and grant planning permission for the dormer window as constructed.

The development as constructed is a flat dormer window measuring 7.1m in width and 2.55m in height and which serves the master bedroom and includes a recessed balcony area with large bi-fold doors. The dormer is finished in grey cladding to match the appearance of the main roofslope.

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 Mid Sussex District Plan, the Site Allocations Development Plan Document and the Hurstpierpoint and Sayers Common Neighbourhood Plan.

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:
DP26 - Character and Design

Site Allocations Development Plan Document

The Site Allocations DPD was adopted on 29th June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031.

There are no relevant policies.

Hurstpierpoint and Sayers Common Neighbourhood Plan

The Hurstpierpoint and Sayers Common Neighbourhood Plan has been made with the following policy being relevant:

H5: development principle

Mid Sussex Design Guide Supplementary Planning Document

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. Paragraphs 6.3.14, 6.3.15 and 6.3.16 relate to the design and siting of dormer windows.

National Planning Policy Framework

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective. This means ensuring sufficient land of the right type to

support growth; providing a supply of housing and creating a high quality environment that is well designed, beautiful and safe, with accessible local services; and using natural resources prudently. An overall aim of national policy is *'significantly boosting the supply of homes.'*

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 that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

Paragraph 134 of the NPPF states:

'Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes. Conversely, significant weight should be given to:
a) *development which reflects local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes; and/or*
b) *outstanding or innovative designs which promote high levels of sustainability, or help raise the standard of design more generally in an area, so long as they fit in with the overall form and layout of their surroundings'.*

Ministerial Statement and National Design Guide

On 1 October 2019 the Secretary of State for the Ministry of Housing, Communities and Local Government made a statement relating to design. The thrust of the statement was that the Government was seeking to improve the quality of design and drive up the quality of new homes. The Government also published a National Design Guide, which is a material planning consideration.

The National Design Guide provides guidance on what the Government considers to be good design and provides examples of good practice. It notes that social, economic and environmental change will influence the planning, design and construction of new homes and places.

ASSESSMENT

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

- Design and impact on the character of the surrounding area,
- Impact on neighbouring properties, and
- Planning balance and conclusions.

Design and impact on the character of the surrounding area

Policy DP26 of the Mid Sussex District Plan relates to character and design and states:

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

- *is of high quality design and layout and includes appropriate landscaping and greenspace;*
- *contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *protects valued townscapes and the separate identity and character of towns and villages;*
- *does not cause significant harm to the amenities of existing nearby residents and future occupants of new dwellings, including taking account of the impact on privacy, outlook, daylight and sunlight, and noise, air and light pollution (see Policy DP27);*
- *creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*
- *incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- *positively addresses sustainability considerations in the layout and the building design;*
- *take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element;*
- *optimises the potential of the site to accommodate development.'*

Policy H5 of the Hurstpierpoint and Sayers Common Neighbourhood Plan states:

House designs and the layouts and densities shall respond to the village character of the area and shall follow the Village Design Statement (May 2004).'

In terms of the Mid Sussex Design Guide SPD, Principle DG38 establishes general principles for high quality design and states:

'Applicants should establish an architectural approach and identity in the design of building that is borne from the place.

The facade and elevational treatment, roofscape fenestration and materials used in existing buildings within the locality should be a starting point for the consideration of architectural design of new buildings. However, this should not result in pastiche replicas of traditional buildings. Instead a re-interpretation of key aspects of their form should be demonstrated.

Good architecture involves the successful co-ordination of proportions, materials, colour and detail. Buildings should therefore be holistically designed with each part in harmony with its whole while appropriately responding to both its context and modern living requirements. This includes:

- *The elevational treatment and overall façade design;*
- *The placement, proportions and design of windows, doors and balconies;*
- *A roofscape and form that creates a harmonious composition and minimises the visual impact of downpipes and guttering;*
- *The appropriate incorporation of dormer windows and chimneys;*
- *An appropriate palette of good quality materials that are preferably locally sourced.'*

Paragraph 6.3.6 in particular refers to dormer window design and state they:

'should be visually subordinate to the roof slope, enabling a large proportion of the main roof to remain visible. Excessively wide dormers are likely to look unsatisfactory as they will often be out of proportion with the existing roof.'

Principle DG52 relates to loft conversions and roof extensions and states:

'A loft conversion is a space efficient means of extending the amount of living accommodation in a dwelling. Roof accommodation is normally reliant on dormer windows and rooflights to provide light and ventilation. However, if they are out of scale or out of character with the roofscape and proportions of a dwelling they can have an adverse impact on the character of both the dwelling and the streetscape.

The roof pitch and form are intrinsic to a building's character and roof extensions should be sensitive to this. Roof extensions and dormer windows that alter the existing ridge of the roof or significantly alter the roof profile of a building will not

normally be acceptable, particularly on the front roof slope, and where there is a strong established roofline.

Where a clear rhythm of fenestration is established, the position and proportion of dormer windows should respond to existing windows and / or doors.

The development is of a large flat roof dormer which are generally not supported by the policies of the development plan and the design guidance which supports them. The dormer occupies a large proportion of the roofslope and is visible from wider views from the rear. Contrasted with the Sussex vernacular design of the overall development, which has largely been kept in its original form by virtue of having its permitted development rights removed, the development appears as an overly large modern addition to the property and is out of keeping with the wider character and appearance of the area.

The policies do not seek to prevent loft conversions or the insertion of dormer windows within roof slopes, and the Council has approved three applications for other forms of dormer windows to this property, however, these have not been implemented. The dormer window as it stands is therefore considered to be of a scale, appearance and design which is contrary to the policies of the development plan and is out of keeping with the original dwellinghouse and causes harm to the character and appearance of the surrounding area.

Impact on neighbouring amenities

Policy DP26 of the Mid Sussex District Plan seeks to ensure 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 and sunlight, and noise, air and light pollution (see Policy DP27)'.

In terms of the impact to neighbouring amenity the test, as set out under policy DP26 is of '*significant harm*' to amenity. The development contains a balcony serving the bedroom upon which it possible to stand and sit forward of the roofslope. To either side of the building are residential neighbours with open rear gardens. To the rear are open fields.

The balcony does allow fairly uninterrupted views into the rear gardens of neighbours and creates additional overlooking. It is noted, however, that a fair degree of overlooking to these gardens already existed by virtue both of the original design of the property with rear facing windows and, were they to be built, the previously approved planning permission, which whilst not containing a balcony, did include rear facing windows which allowed views to the rear and into the rear gardens of neighbouring properties.

That being the case, whilst there is an increase in overlooking from the balcony, it is not considered to be '*significant*' for the purposes of policy DP26 and as such is not considered to contrary the policies of the development plan on this ground.

Other matters

As noted from the extensive planning history this matter has been the subject of lengthy discussion by the applicant and the Council for a number of years. Both parties have sought to find resolutions to remedy the breach of planning control and the Council have granted planning permissions for alternative schemes which address the Officers concerns regarding the design of the dormer window. The applicant has stated that they have sought to implement these permissions, but have been unable to find a builder willing to do the work. The applicant also contends the dormer could be regarded as permitted development and that the work to remove or redesign the dormer would be unsustainable.

With respect to the potential 'fall-back' position related to permitted development (what could be built without requiring planning permission) the Council considered this matter under the CLUED application DM/21/3509 and considered that permitted development rights could not apply and the development was unauthorised. Whilst a new dormer could now potentially be built without requiring planning permission, it could not include the balcony which the dormer benefits from and at the time of construction the dormer would always have required planning permission, as the restrictive condition removing permitted development rights was still in effect. The fall-back position cannot therefore be attributed any weight in the determination of the application.

With respect to the sustainability of the development, the application must be judged solely on its planning merits against the policies of the development plan. The development will require raw materials for its construction and in respect of policy DP39 relating to sustainable construction, the development (and those which have also got planning permission) would be compliant with it. This alone would not be sufficient reason to permit a development which is otherwise not in compliance with the policies of the development plan.

With respect to the circumstances around the development, whilst these are noted, personal circumstances and the availability of builders are matters which lie outside of the planning system and are rarely material considerations which can be attributed weight in the determination of the application. Much as the retrospective nature of the application cannot be taken into account in the determination of the application, nor can the circumstances by which the applicant found themselves in this position. There are no reasons which have been provided which would otherwise find the development so necessary so as to outweigh the policies of the development plan. There are therefore no other material considerations which would mean the policies of the development plan should not be applied in full.

As the development has already been carried out and is considered contrary to the policies of the development plan it would be considered expedient to proceed with formal enforcement action to remedy the breach of planning control. This would consist of the issue of a s.172 Enforcement Notice. The Notice would require the breach of planning control to cease either by requiring the implementation of the extant planning permission for an amended design, or else remove the dormer window in its entirety. The owner can choose which of these requirements to comply with. A period of 12 months would be given for the works to take place. Whilst such

Notices can be issued under power delegated to officers, should members choose to refuse the current application, they are also requested to agree the issue of an Enforcement Notice based on the above requirements. Under the provisions of planning law, the development will become immune from enforcement action in late October 2022 and so any Enforcement Notice would be issued in conjunction with the determination of this application. The owner retains the ability to appeal the issue of an Enforcement Notice.

Planning Balance and Conclusions

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 development, by virtue of its scale, design and siting is considered contrary to the policies of the development plan and the guidance within the Mid Sussex Design Guide. The large flat roof dormer is out of keeping with the traditional design of the dwelling and the surrounding area and causes harm to the character and appearance of the area. The other material considerations are noted; however, these are not considered to attract any weight and the application must be considered solely on its planning merits and the policies of the development. Therefore, on these grounds it is recommended that planning permission should be refused for the following reason:

APPENDIX A – Reasons for Refusal

1. By virtue of its scale, siting and design the dormer window is out of keeping with the original dwellinghouse and it causes harm to the character and appearance of the surrounding area contrary to policy DP26 of the Mid Sussex District Plan, policy H5 of the Hurstpierpoint and Sayers Common Neighbourhood Plan and the contents of the Mid Sussex Design Guide and the National Planning Policy Framework

INFORMATIVES

1. In accordance with Article 35 of the Town and Country Planning (Development Management Procedure) (England) Order 2015, the Local Planning Authority has acted positively and proactively in determining this application by identifying matters of concern 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.

2. You are advised that the development is unauthorised and therefore represents a breach of planning control where it would be considered expedient to proceed with formal enforcement action in the form of an Enforcement Notice. An Enforcement Notice is likely to be issued within 48 hours of this decision.

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	03		25.07.2022
Block Plan			24.08.2022
Existing and Proposed Elevations			25.07.2022
Existing Floor Plans			23.08.2022
Proposed Floor Plans			23.08.2022

APPENDIX B – CONSULTATIONS

Parish Consultation

None received