

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/3104	Case Officer:	Joanne Fisher
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of planning conditions 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 18 relating to planning application DM/24/0433		
Site:	Borde Hill Garden, Borde Hill Lane, Haywards Heath, West Sussex, RH16 1XP, , ,		
Validation Date	3 Dec 2025	Overall Expiry Date:	30 Dec 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	8 Apr 2026
Target Date:	4 Mar 2026	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Stephen Ashdown	Date:	9 Apr 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/3104

**Borde Hill Garden, Borde Hill Lane, Haywards Heath, West Sussex, RH16 1XP, ,
Variation of planning conditions 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 18 relating to planning
application DM/24/0433
Borde Hill Garden Charity**

REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

Highways Authority

No objection to change to conditions 3 and 11.

MSDC Conservation Officer

The proposal raises significant concerns in relation to the impact on the character of South Park arising from the relocated and expanded play area, and from the proposed extended hours of use.

MSDC Flood Risk and Drainage

No objection.

MSDC Tree Officer

No objection.

MSDC Environmental Protection

No objection in relation to conditions 3, 4 and 18. Suggested revised wording for condition 4 and concerns on potential lighting to Sugworth Farm on nearby residents' id hours amended to 8pm 7 days a week.

MSDC Ecology Consultant

No objection to conditions 2, 8, 13 and 14.

MSDC Archaeology Consultant

No recommendations to make on this application.

Historic England

Historic England has concerns regarding the application on heritage grounds. We recommend that an alternative, less harmful location is found for the adventure playground, such as in an area that has already been previously disturbed and used for play equipment in the past.

We also recommend that going forward, a Conservation Management Plan is prepared for Borde Hill so that proposals to support the sustainable future of this site are considered holistically and maintain the significance of the RPG and the house.

Nature Space

No objection.

PARISH COUNCIL OBSERVATIONS

Not received.

INTRODUCTION

Permission is sought to vary conditions 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 18 relating to planning application DM/24/0433 at Borde Hill Gardens, Borde Hill Lane, Haywards Heath.

RELEVANT PLANNING HISTORY

Borde Hill has an extensive planning history. However, the following is considered to be the most relevant to the application site:

DM/25/3104 - Visitor and community hub, outdoor learning and adventure playground, community growing area and historic botanical propagation polytunnels, new and improved access and connectivity infrastructure, wider landscaping and biodiversity enhancements and associated works. Approved.

SITE AND ITS SURROUNDINGS

Borde Hill Gardens is a II* Registered Park and Garden (RPG) dating largely in its current form from the late 19th century onwards. The formal gardens are centred on Borde Hill House, which is Grade II listed and dates from 1598. The extensive parkland stretches approximately 0.7km to both the north and south of the gardens and includes woodlands planted with ornamental trees.

The application site is an area within the southern portion of the RPG known as South Park. The site is bounded along the east and south sides by Borde Hill Lane and Hanlye Lane respectively and partly enclosed by a dense mixed tree belt (along the east boundary) and by intermittent trees (to the southern boundary). To the north and east, the parkland and woodland merge into the adjacent undulating, wooded farmland.

Within the site is Spring Copse, an ancient and semi-natural woodland referred to as 'Dinosaur Wood' in the application submission material. The ancient woodland of Flat Wood can be found outside the application site, to the southern side of the lane leading to Sugworth Farm. South Lodge is set on the southern boundary of the site with stone piers and walling. The property and entrance piers and wall are Grade II Listed and forms the south-eastern entrance into South Park. This is currently occupied by a staff member of the Borde Hill Estate. Opposite this further to the south is a recently completed housing estate separated from the site by Hanlye Lane.

To the north of the site is a public bridleway 56CR which runs east to west through Borde Hill Garden and the visitor car park. To the east is the visitor car park which slopes away to the south and has an existing capacity for the parking of 140 to 180 vehicles.

The application site also includes an area outside of the RPG to the east side of Borde Hill Lane known as Sugworth Farm (although excluding the Grade II listed Sugworth Farmhouse). This part of the site is of agricultural character, occupying a pastoral field on the north side of a lane branching east off Borde Hill Lane, and is bound on the west and south sides by areas of woodland. On this area of land is a single storey brick building.

The site is situated within the countryside and the High Weald Area of Outstanding Natural Beauty (HWAONB) as defined in the District and Neighbourhood Plans.

APPLICATION DETAILS

This application seeks permission to vary condition 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 18 relating to planning application DM/24/0433.

A Heritage and Planning Statement accompanies the application. This sets out that the application seeks *'to amend the approved drawings for development within the South Park, to compartmentalise the site-wide requirements of several pre-commencement and pre-occupation conditions, and to amend opening hours secured by planning condition.*

The proposed design revisions can be summarised as follows:

- Relocation and extension to the approved adventure play area*
- Minor design revisions to the approved community hub ('Eco Lodge')*
- Revisions to the approved pathway network within the South Park*
- Revisions to the soft landscaping scheme and associated works'.*

The proposed design amendments are solely in relation to works within the South Park and do not include amendments to the scheme at Sugworth Farm.

Condition 2 relates to the approved plans, and this application would update the plans approved to address the design revisions proposed.

Condition 3 is a pre-commencement condition relating to the whole of the site requiring a Construction Management Plan to be submitted and approved in the interest of highway safety. It is proposed to revise the wording of the condition to allow the partial discharge in respect of works to South Park and Sugworth Farm so that works can be carried out separately. It is sought to revise the wording to condition 3 as follows:

'3. No development for either South Park or Sugworth Farm shall take place, including any works of demolition, until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority for that part of the site. Thereafter the approved Plan shall be implemented and adhered to throughout the entire construction period. The Plan shall provide details as appropriate but not necessarily be restricted to the following matters,

- the anticipated number, frequency and types of vehicles used during construction,*
- the method of access and routing of vehicles during construction,*
- the parking of vehicles by site operatives and visitors,*
- the loading and unloading of plant, materials and waste,*
- the storage of plant and materials used in construction of the development,*
- the erection and maintenance of security hoarding,*
- the provision of wheel washing facilities and other works required to mitigate the impact of construction upon the public highway (including the provision of temporary Traffic Regulation Orders),*
- details of public engagement both prior to and during construction works.*

Reason: In the interests of highway safety and the amenities of the area and to accord with Policies DP21 and DP26 of the Mid Sussex District Plan 2014 - 2031.'

Condition 4 relates to details of a scheme for the mitigation measures to improve air quality relating to the development. It is a pre-commencement condition relating to the whole of the site. It is sought to revise the wording of this condition to separate out the works for the South Park and Sugworth Farm.

Condition 5 is a pre-commencement condition which requires details of the proposed foul and surface water drainage and means of disposal. It is sought to revise the wording of this condition to separate out the works for the South Park and Sugworth Farm.

Condition 6 is a pre-commencement condition which requires a site protection plan in respect of the watercourse and the lake and adjacent trees. It is sought to revise the wording of this condition to relate solely to the South Park as there are no lakes or watercourses within the Sugworth Farm part of the development.

Condition 7 is a pre-commencement condition which requires a schedule of materials and finished of the proposed buildings and decking areas. It was originally sought that this was revised to buildings within the South Park only. However, as there are to be structures within the Sugworth Farm part of the site, it is sought to revise the wording of this condition to separate out the works for the South Park and Sugworth Farm.

Condition 8 is a pre-commencement condition which requires full details of a hard and soft landscaping scheme including a materials schedule for hard surfacing and parking areas, and any fencing including as appropriate elevations of any new or altered detailed boundary treatments, fencing or other means of enclosure. It is sought to revise the wording of this condition to separate out the works for the South Park and Sugworth Farm.

Condition 9 refers to a drawing number and play equipment that will be superseded by the new play area sought under this s73 application. It was originally requested that revisions to the wording of this condition to address the updated drawing number and proposed play structures. However, during the course of the application, it was requested that this condition is removed in full as all details have been provided in relation to the appearance and materials for the revised play equipment.

Condition 11 is a pre-commencement condition which requires details of cycle parking. It is sought to revise the wording so that the condition relates only to South Park and also remove the requirement for covered storage. It is sought to revise the condition to as follows:

'No part of the South Park development shall be first occupied until 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 and to accord with Policy DP21 of the Mid Sussex District Plan 2014 - 2031.'

Condition 12 requires works to be carried out in accordance with the Arboricultural Impact Assessment and Method Statement dated February 2024. An updated Arboricultural Impact Assessment (Arbortrack Systems) is submitted in support of this s73 application assessing the differing impacts the revised designs will have on existing habitats and trees. As such the condition needs to be amended to reflect the revised report.

Condition 13 requires works to be carried out in accordance with the details contained in the Biodiversity Enhancement Layout (Submitted 14th August 2024), Ecological Impact Assessment Issue 5 (Arbtech Consulting Ltd., January 2024) and Construction Ecological Management Plan and Ecological Enhancement and Management Plan (Arbtech Consulting Ltd., January 2023). A revised Botanical Walkover Biodiversity Net Gain File Note and Metric have been submitted to reflect the changes sought as part of this application. As such the condition needs to be amended to reflect the revised documents submitted.

Condition 14 is a condition which relates to prior to first use that requires a biodiversity enhancement layout. It is sought to revise this condition so that it separates out the works for the South Park and Sugworth Farm and also update so that it also relates to the submitted Botanical Walkover File Note.

Condition 18 restricts the hours on the use of the buildings and the land to 9am to 5pm from 1st March - 31st October and 9am - 3pm from 1st November until the final day of February every year seven days per week. Following discussions during the course of the application, it is sought to amend the condition to as follows:

'The buildings and land subject of this planning application at Sugworth Farm shall not be used except during the following hours of 9am to 5pm from 1st March - 31st October and 9am - 3pm from 1st November until the final day of February every year seven days per week.'

The buildings and land subject of this planning application at South Park shall not be used except during the following hours of 7am to 8pm all year round.

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

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.'

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan, the Site Allocations Development Plan Document and the Ansty, Staplefield and Brook Street 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.

The application is submitted under Section 73 of the Town and Country Planning Act 1990. The Act states that *'On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—*

(a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.'

Mid Sussex District Plan

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

Relevant policies:

DP1 - Sustainable Economic Development
DP12 - Protection and Enhancement of Countryside
DP16 - High Weald AONB
DP19 - Sustainable Tourism
DP21 - Transport
DP22 - Rights of Way and Other Recreational Routes
DP24 - Leisure and Cultural Facilities
DP26 - Character and Design
DP28 - Accessibility
DP29 - Noise, Air and Light Pollution;
DP34 - Listed Buildings and Other Heritage Assets
DP36 - Historic Parks and Gardens
DP37 - Trees, Woodland and Hedgerows
DP38 - Biodiversity

DP39 - Sustainable Design and Construction
DP41 - Flood Risk and Drainage

Mid Sussex Site Allocations Document (DPD)

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

SA38 - Air Quality.

Neighbourhood Plan

The Ansty, Staplefield & Brook Street Neighbourhood Plan was made in February 2017. It carries full weight in the determination of planning applications.

Relevant policies:

AS3 - High Weald Area of Outstanding Natural Beauty
AS8 - Improvement of Community Facilities
AS14 - Walking and Cycling Routes

Other Legislation

Countryside and Rights of Way Act (CRoW) 2000

Planning (Listed Buildings and Conservation Areas) Act 1990

Other Material Considerations

The High Weald Area of Outstanding Natural Beauty Management Plan 2024-2029

The Plan is adopted by all the relevant local authorities with land in the High Weald National Landscape as their policy for the management of the area and for the carrying out of their functions in relation to it and is a material consideration for planning applications affecting the HWNL.

The following objectives are relevant to the application:

S2: To enhance the architectural quality of the High Weald and ensure new development reflects the character of the High Weald in its siting, scale, layout and design.

DS1: To preserve the dark skies of the High Weald AONB by minimising light pollution, obtrusive external lighting and internal light spill from domestic, commercial and public premises in both existing and new developments within the High Weald, and from highways lighting.

DS2: To protect wildlife and habitats from light pollution across the High Weald.

PQ3 - To foster and promote equitable access and informal enjoyment of the High Weald landscape and the integrated management of its resources for the enjoyment of natural beauty by all.

Mid Sussex District Plan 2021 - 2039 - Submission Draft (Regulation 19)

The District Council is reviewing and updating the District Plan. Upon adoption, the new District Plan 2021 - 2039 will replace the current District Plan 2014-2031 and its policies will have full weight. In accordance with the NPPF, Local Planning Authorities may give weight to relevant policies of the emerging plan according to the stage of preparation; the extent to which there are unresolved objections to the relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the NPPF. The draft District Plan 2021-2039 (Regulation 19) is currently at Examination and hearings were concluded on the 19th March 2026. The District Plan remains at Examination until the Inspector has published his report, until that time only minimal weight can be given to the Plan and this planning application has been assessed against the policies of the adopted District Plan.

Relevant policies:

DPS4 - Flood Risk and Drainage
DPS6 - Health and Wellbeing
DPN1 - Biodiversity, Geodiversity and Nature Recovery
DPN2 - Biodiversity Net Gain
DPN4 - Trees, Woodland and Hedgerows
DPN5 - Historic Park and Gardens
DPN6 - Pollution
DPN8 - Light Impacts and Dark Skies
DPC1 - Protection and Enhancement of the Countryside
DPC4 - High Weald Area of Outstanding Natural Beauty
DPB1 - Character and Design
DPB2 - Listed Buildings and Other Heritage Assets
DPT3 - Active and Sustainable Travel
DPE1 - Sustainable Economic Development
DPR9 - Sustainable Tourism and the Visitor Economy

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.

National Planning Policy Framework (NPPF) (December 2024)

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 to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

Paragraph 9 of the NPPF states *'these objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.'*

Paragraph 11 of the NPPF sets out that for both plan-making and decision-taking, the presumption in favour of sustainable development should apply.

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 39 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 48 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

National Planning Policy Guidance

ASSESSMENT

This application seeks permission to vary condition 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 18 relating to planning application DM/24/0433 as detailed above in the application details section.

S73 applications allows for developers to amend conditions attached to planning permissions. Such an application only allows amendments to the conditions which have been granted as part of the original planning permission and cannot amend the operative part of the planning permission i.e. the description of the development. This was clarified in case law of *Finney v Welsh Ministers* [2019] EWCA Civ 1868 where the Court of Appeal held that S73 applications cannot be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission.

In this instance, the application is for the amendment to the conditions relating to the approved plans listed under the decision notice reference DM/24/0433, the wording to a number of pre-commencement conditions to separate out the works for the South Park and Sugworth Farm, updates to documents listed in conditions as well as an amendment to the opening hours of the use of the site. The original planning permission granted under reference DM/24/0433 was for the following description 'Visitor and community hub, outdoor learning and adventure playground, community growing area and historic botanical propagation polytunnels, new and improved access and connectivity infrastructure, wider landscaping and biodiversity enhancements and associated works.' A subsequent non-material amendment was approved to remove reference to amended plans and documents. As the operative part of the permission does not specify the plan numbers, or documents, an application under S73 to allow changes to the approved plans and condition wording can be considered relevant.

The principle of the development has already been accepted through the approval of the original planning application DM/24/0433. Even though the result of this application would result in the issuing of a new planning permission, it is not considered necessary to go through all the planning issues. The only issue that is pertinent is to consider the specific changes that are proposed from the previous approval.

As such the main issue for consideration are:

- design, the impact on the character of the area and the High Weald AONB;
- impact on designated heritage assets;
- the impact on neighbouring amenity.
- highways;
- flood risk and drainage;
- ecology and Biodiversity Net Gain;
- trees and ancient woodland; and
- Ashdown Forest.

Design, impact on the character of the area

One of the key issues is the visual impact on the character of the area. This is particularly important in this case given the site is within the countryside. One of the objectives of achieving sustainable development is to ensure that proposals '*contribute to protecting and enhancing our natural, built and historic environment*' (para 8, NPPF). In addition, the NPPF states that policies and decisions should contribute to and enhance the natural and local environment by '*recognising the intrinsic character and beauty of the countryside*' (para 187b). It is therefore necessary to consider the impact of the proposal in the local landscape in terms of the visual impact on the amenity of the edge of Haywards Heath and Cuckfield.

As the proposed development is located within the countryside policy DP12 of the District Plan is relevant. The principal aim of Policy DP12 of the District Plan states the: *'countryside will be protected in recognition of its intrinsic character and beauty.'* The supporting text sets out in part that all development in the countryside, defined as the area outside of built-up area boundaries, must seek to maintain or enhance the intrinsic beauty and tranquillity of the countryside.

The legal framework for AONBs, (also known as National Landscapes) in England and Wales is provided by the Countryside and Rights of Way Act (CRoW) 2000 which at Section 82 reaffirms the primary purpose of AONBs: to conserve and enhance natural beauty. Section 84 of the CRoW requires Local Planning Authorities to *'take all such action as appears to them expedient for accomplishment of the purpose of conserving and enhancing the natural beauty of the AONB'*. The Levelling-up and Regeneration Act (2023) amended section 85 of the CRoW Act, to create a new duty on relevant authorities to *'seek to further the purpose of conserving and enhancing the natural beauty of the area' when discharging their functions in AONBs'*. A similar ethos is found within The High Weald Area of Outstanding Natural Beauty Management Plan which is a material consideration in the determination of planning applications in the AONB.

Policy DP16 of the District Plan relates to the High Weald AONB and requires proposals to *'conserve or enhance natural beauty'*. There is a similar ethos within Policy AS3 of the Neighbourhood Plan and para 189 of the NPPF which states *'Great weight should be given to conserving and enhancing landscape and scenic beauty'* in National Landscapes (previously known as AONB's).

As part of the consideration of the original application, it was determined that cumulatively the works are not considered to result in a significant adverse impact on the AONB due to the modest scale nature of the buildings, the screening of the site reducing wider views outside of the site, and the proposal being spread throughout the site; and that the retention and continued protection of trees as well as proposed landscape as part of the development would provide opportunities to conserve and enhance the AONB purposes. It is considered that this view remains in relation to the proposed amendments to this S73 application.

Policy DP26 of the District Plan relates to character and design and requires all proposals to be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside as well as addressing the character and scale of the surrounding buildings and landscape. In addition, this policy seeks to protect open spaces, trees and gardens that contribute to the character of the area.

It is considered that the proposed design amendments consisting of the relocation and extension to the approved adventure play area; the minor design revisions to the approved community hub ('Eco Lodge'); the revisions to the approved pathway network within the South Park and revisions to the soft landscaping scheme and associated works are acceptable. As such the proposal would not cause harm to the character of the countryside in this part of the District and would conserve the High Weald Area of Outstanding Natural Beauty.

Whilst it is acknowledged that the play equipment is different to that previously sought, its scale is considered to be modest in relation to the wider site and would use suitable materials to reduce its impact on the character of the area. In addition, the outdoor learning shelter due to its design and scale is considered to be an appropriate character to the site. Due to the position of the playground equipment and outdoor learning shelter set some distance from the main house, close to the existing woodland and proposed landscaping to mitigate its impact, it is considered that the amended playground and outdoor learning area is acceptable.

The design changes to the eco-lodge are considered to be minor including a revised internal layout, reduction in decking and the addition of a rooflight to the northern canopy. These are not considered to affect the overall design or character of the building, and its position would remain the same.

The proposal is thereby considered to comply with policies DP12 and DP26 of the District Plan, the design principles of the Mid Sussex Design Guide and the provisions of the NPPF.

Impact on designated heritage assets

There are a number of heritage assets which will be either directly or indirectly affected by the proposal.

The site forms part of Borde Hill Park and Gardens which is a II* registered park and garden that consists of a late C19 to mid C20 plantsman's and collector's garden, laid out by Colonel Stephenson Clarke, set within an early C20 park with mid C19 origins. The house and formal gardens at the centre of the estate are sited on a ridge, the parkland falling away to the north and south. The southern parkland, which includes streams, lakes, woodlands with ornamental tree plantings and open grassland, falls away to Lullings Gill where a lake was introduced during the 1990s (Robertsmere), before rising again towards its southern boundary. It is bordered to the east and south by roads.

In addition, the site lies in the setting of Borde Hill House which is a Grade II listed country house that lies to the north of the application site. The house is set in extensive formal gardens and parkland, which contain a number of ancillary buildings and structures which would be regarded as curtilage listed.

South Lodge is a Grade II listed building. It is located in a prominent position at the southern tip of the registered parkland, at the junction of Borde Hill Lane and Hanlye Lane. The listing includes the attached walls and gateway, which provides the historic entrance to the South Park and will be affected through the new visitor pedestrian access and kiosk.

Finally, Sugworth Farmhouse on the opposite site of Borde Hill Lane is in close proximity to the proposed community growing area and polytunnels. This is a Grade II listed 17th century or earlier farmhouse is located a short distance to the east of Borde Hill park and is outside the registered park and garden.

In addition, the site falls within a red archaeological notification area.

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Listed Buildings Act) states:

'In considering whether to grant planning permission for development which affects a Listed Building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'

Policy DP34 of the District Plan relates to listed buildings and other heritage assets. It requires developments to protect listed buildings and their settings and that the Council will seek to conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the character and quality of life of the District.

Policy DP36 of the District Plan relates to Historic Parks and Gardens and requires the character, appearance and setting of a registered park, or park or garden of special local historic interest to be protected.

Para's 212-215 of the NPPF are relevant which relate to considering potential impacts to heritage assets. These require great weight to be given to the asset's conservation (and the more important the asset, the greater the weight should be). It requires that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

In the determination of the original proposal, it was considered that *'the buildings proposed are of a modest design and would not be out of place within the visitor areas of Borde Hill. Whilst there would be views of the eco lodge this would be some distance from the main gardens of Borde Hill and from the bridleway to the north of the site. Due to the siting of the eco lodge on the southern edge of the lake, its scale being single storey and the materials proposed that the impact of the building would be minimised from wider views. In addition, due to the scale of the kiosk building to the southern entrance and its position and proposed landscaping this would be considered acceptable. Moreover, the proposed polytunnels, growing and seating areas as well as car parking would be seen in association with the recently approved polytunnels and existing building on the land as well as the access track leading to the farm and commercial units. In addition, due to the distance of these in relation to Sugworth Farm it is*

considered that this would result in less than substantial harm to this listed building. Overall, it is considered that the proposals would result in less than substantial harm to the setting of the surrounding listed buildings and also to the RPG.'

It is acknowledged that Historic England and the Councils Conservation Officer has raised concerns to the proposed amendments sought under this application. However, Officers consider that these amendments do not result in further harm to that previously approved on the site. Whilst the adventure playground is of a larger scale than the previous zipline and swing, due to its positioning, height, materials and proposed tree planting, it is considered that its cumulative impact to the wider RPG would be limited.

As in the determination of the previous scheme, it is considered that the proposal would result in less than substantial harm to the designated heritage assets. Para 215 of the NPPF is relevant. This states: *'Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.'* As the application affects the setting of a number of listed buildings as well as the RPG, the statutory requirement to have special regard to the desirability of preserving the building, its setting and any features of special interest must be taken into account when making any decision. In addition, in enacting section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the desirability of preserving the settings of listed buildings should be given 'considerable importance and weight' when the decision taker carries out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.

The submitted Heritage and Planning Statement sets out that the revised proposal would result in a number of public benefits. It states *'the expanded play area would enhance opportunities for wider public access and community engagement, key aims that support the long-term appreciation and stewardship of the RPG. By providing a more appealing experience for families, schools and visitors, the proposal would draw more people to the park to understand and value its botanical, landscape, and historic significance. In doing so, this strengthens the RPG as a heritage landscape that continues to evolve and contribute to the local community.'*

It is considered that the amendments sought as part of this application do not change Officers views and it is considered that overall, the proposal will result in the formation of enhanced tourist, community and leisure facilities to the site through the provision of opening up the south park for all year use as well as creating a community growing area. It is proposed that the development would attract local schools and organisations representing under-represented groups. The proposal would result in opportunities to enhance health and well-being to the public by opening up the South Park area for a variety of uses as well as the creation of the community growing area. This would provide opportunities for the enjoyment and appreciation of nature. In addition, the proposal would provide additional employment through both the construction phase and for the equivalent of 7.5 full time staff at Borde Hill once the development has been completed. These benefits should be afforded significant positive weight in the planning balance. It is considered the adverse impacts to the setting of the listed building would not on their own significantly and demonstrably outweigh the benefits of the scheme (even when given considerable importance and weight in accordance with S66(1) of the 1990 Act).

Officers are of the view that the amendments sought under this application would protect the listed building and its setting and would also protect the character, appearance and setting of the registered park and garden. The proposal thereby complies with policies DP34 and DP36 of the District Plan and the requirements of the NPPF.

Neighbouring amenity

Policy DP26 of the District Plan relates to character and design of proposals. Within this there is a requirement that proposals do *'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'*.

Policy DP29 relates to Noise, Air and Light Pollution. Due to the proximity of the site adjacent to the Centre for Outdoor Sport which lies to the north and east, consideration is raised on the impact on noise to future occupiers from the sports pitches. In relation to noise this policy states in part:

'Noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development.'

Noise is a material planning consideration. The Planning Practice Guidance (PPG) states neither the Noise Policy Statement for England nor the NPPF (which reflects the Noise Policy Statement) expects noise to be considered in isolation, separately from the economic, social and other environmental dimensions of proposed development.

Permission has already been granted for the proposal under reference DM/24/0433, and this application whilst granting a new planning permission seeks to make amendments to the previous scheme. This includes the enlargement of the play area and equipment within the south park beyond the Ancient Woodland, and the increase in the operation hours of use of the site from 7am - 8pm all year round, seven days a week for the land and buildings at South Park. During the course of the application, the agent has confirmed that the approved hours of use set out in condition 18 for Sugworth Farm was to remain (9am to 5pm from 1st March - 31st October and 9am - 3pm from 1st November until the final day of February every year seven days per week).

As the hours of operation to the Sugworth Farm area are not to be altered, there would be no further harm to the impact on surrounding residential properties in relation to that part of the development.

The submitted Planning Statement sets out that *'Activities occurring outside the current 9am to 3-5pm window will involve only light levels of comings and goings, typically limited to small, standalone sessions. These activities will take place in the centre of South Park at the Eco Lodge and play area, approximately 100 metres from the nearest dwellings to the east (Danesbury, Woodsdale, Hazelwick, Hill Cottage) and 320 metres from the Grade II listed South Lodge.'* Due to the nature of the sessions the Agent has confirmed that motion-sensored lighting would be triggered less frequently.

In respect of South Park, whilst there would be an increase in the use of this part of the site outside daylight hours, due to the nature of this in relation to stand alone sessions and the relationship of this part of the site with residential properties, boundary screening and low level motion sensed lighting, it is considered that there would not be significant detriment through noise or light spill to nearby residents. Whilst there may be a slight increase on the impact to the property of South Lodge, this property is occupied by a staff member ensuring that out-of-hours service is provided when necessary (such as responses to tripped building alarms). The occupier therefore has a connection to the proposed activities associated with the application scheme. Due to the nature on the increase of hours, it is considered that the amendment would not result in significant detriment to the amenities of this occupier.

The proposal thereby complies with policies DP26 and DP29 of the District Plan.

Highways

Policy DP21 of the District Plan seeks to ensure that schemes are sustainably located to minimise the need for travel, and protect the safety of road users and pedestrians, and seeks to provide adequate parking in relation to development proposals.

Paragraph 115 of the NPPF is relevant in respect of transport matters and states that appropriate opportunities to promote sustainable transport modes should be considered; safe and suitable access to the site can be achieved for all users; and any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

In addition, para 116 states *'Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.'*

The Highways Authority has considered the amendments to conditions 3 (CEMP) and 11 (cycle parking). They raise no objection to the proposed amended wording to allow the pre-commencement requirements of the CEMP to be separated between South Park and Sugworth Farm. In relation to cycle parking, the original proposal only provided cycle parking within South Park with Sheffield stands adjacent to the South Lodge by an entrance kiosk. The Highways Authority consider that the removal of the covered nature of the cycle parking is acceptable due to the short-term nature of visits to the park and no requirement for overnight storage.

Officers have no reason to disagree with the above comments of the Highways Authority and consider that the revised wording of conditions 3 and 11 is acceptable and would not result in an impact to highway safety through the separation of the CEMP between development at Sugworth Farm and South Park and would still provide alternative travel options to the site with the cycle parking.

As this is a revised scheme a new unilateral undertaking has been completed to secure the travel plan similar to the original scheme in order to support and encourage sustainable and active travel.

The proposal thereby complies with policy DP21 of the District Plan.

Flood risk and drainage

Policy DP41 relates to flood risk and drainage and requires development to demonstrate it is safe across its lifetime and not increase the risk of flooding elsewhere.

The Councils Flood Risk and Drainage team have considered the proposal. They raise no objection and are satisfied with the amended proposals from a flood risk and drainage perspective. Officers have no reason to come to a different conclusion.

The proposal thereby complies with policy DP41 of the District Plan.

Ecology and Biodiversity Net Gain

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 13 of the Act, all wild plants are protected from being uprooted without the consent of the landowner. In addition to the protection afforded by the Act, certain species are also covered by European legislation. These species are listed in Schedule 2 of the Conservation (Natural Habitats, 7c.) Regulations 1994 (as amended).

Policy DP38 of the District Plan relates to Biodiversity and seeks proposals to protect and enhance biodiversity. There is a requirement for no net loss to biodiversity. The policy does not, however, require a specified net gain to biodiversity from the resulting development.

Para's 192 - 195 of the NPPF relate to habitats and biodiversity. Para 193 states in part *'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'*. In addition, it considers that *'development whose primary objective is to conserve or enhance biodiversity should be supported'*.

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. Under the statutory framework for biodiversity net gain this application is deemed to have been granted subject to the biodiversity net gain condition for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.

The biodiversity net gain condition is set out in the Town and Country Planning Act 1990, Schedule 7A, Part 2, 13 (2). It states:

'The condition is that the development may not be begun unless—

- (a) a biodiversity gain plan has been submitted to the planning authority (see paragraph 14), and*
- (b) the planning authority has approved the plan (see paragraph 15).'*

Conditions 2 (plans), 8 (hard and soft landscaping), 13 (works carried out in accordance with ecology reports) and 14 (biodiversity enhancement layout) are relevant. It is sought to update the plans condition, reword the landscaping condition so it can be discharged separately for the development at Sugworth Farm and South Park and update conditions 13 and 14 so it reflects updated reports.

The submitted Botanical Walkover concludes that the *'proposals would likely have beneficial impact by clearing the ruderal vegetation, bramble and scrub. The proposals will also be designed to replace this with a more "ghyll appropriate" planting scheme.'* The enlarged play area is considered to be acceptable in terms of its impact on ecology.

A revised Biodiversity Net Gain metric and File Note (Arbtech) has been prepared to assess the effects of the amended proposals on existing habitats and the contribution of the additional tree planting to overall biodiversity uplift. The updated metric identifies a 56.57% net gain in habitat units (an increase from 16.84% under the original permission), representing a substantial benefit that further offsets the previously identified heritage harm and enhances the qualities of the High Weald National Landscape.

The Council's Ecology Consultant has considered the revised proposal and information submitted. They raise no objection subject to mitigation measures being secured in line with the agreed Construction Environmental Management Plan and a Biodiversity Enhancement Layout with bat and bird box product specifications and finalised locations. In respect of BNG they note that the pre-development baseline has been revised following the amended proposals as part of this application. Whilst this pre-development baseline is not based on the red line boundary, as required by Statutory Biodiversity Metric - User Guide, but based on the areas proposed to be impacted. As this bespoke and proportionate approach was agreed in principle as part of DM/24/0433, they do not consider it reasonable to require updated metrics for the entire red line boundary for this application.

Officers have no reason to disagree with the comments raised by the Council's Ecology Consultant

In respect of BNG, the previous application noted that this can be controlled through the national condition to ensure that it is provided maintained and monitored for the 30-year period. As the development is considered to be 'significant' the management and monitoring would need to be secured through a legal agreement. The previous application was to deal with BNG following the issuing of the permission and the legal agreement to secure this was to be completed prior to the discharge of the BNG plan condition. An informative concerning the legal agreement was placed on the permission to draw the applicant's attention for the need for this. As the legal agreement to secure the BNG management and monitoring has not yet been entered into, this informative would need to be placed on the permission again.

The proposal is thereby considered to comply with policy DP38 of the District Plan.

Trees and Ancient Woodland

Policy DP37 of the Mid Sussex District Plan states in part that the *'District Council will support the protection and enhancement of trees, woodland and hedgerows, and encourage new planting. In particular, ancient woodland and aged or veteran trees will be protected.'*

'Dinosaur Wood' is Ancient Woodland. As such DP38 is relevant which relates to biodiversity. This policy is set out above in the ecology section.

An updated Tree Survey and Arboricultural Method Statement (Arbortrack Systems) identifies a positive outcome arising from the revised proposals, with several trees previously shown for removal under the original scheme now capable of being retained. All other existing trees can be retained, subject to specific construction materials and methodology recommendations, and as such the wooded qualities that contribute to the significance of the Borde Hill RPG will be preserved.

The revised play area is situated outside of the Ancient Woodland and its buffer zone. Plans show additional new tree planting in the form of a parkland woodland belt within and around the play area to provide screening and mitigation.

The Council's Tree Officer has no objection to the application.

The proposal thereby complies with policy DP37 of the District Plan.

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 (HRA) process for the Mid Sussex District Plan 2014-2031. 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 has been undertaken for the proposed development in this planning application.

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 2014-2031, and as detailed in 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.

This planning application does not result in a net increase in dwellings within the 7km zone of influence and so **mitigation is not required**.

Atmospheric pollution

Increased traffic emissions as a consequence of new development may result in additional 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 potential effects of the proposed development are incorporated into the overall results of the transport model prepared for the Mid Sussex Transport Study, which indicates there would not be an overall impact on Ashdown Forest. This means that there is not considered to be a significant in combination effect on the Ashdown Forest SAC by this development proposal.

Conclusion of the Habitats Regulations Assessment

The Habitats Regulations 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.

CONCLUSION

It has previously been considered that the development of the site for a visitor and community hub, outdoor learning and adventure playground, community growing area and historic botanical propagation polytunnels, new and improved access and connectivity infrastructure, wider landscaping and biodiversity enhancements and associated works is acceptable through the determination of application reference DM/24/0433.

The proposal will result in the formation of enhanced tourist, community and leisure facilities to the site through the provision of opening up the south park for all year use as well as creating a community growing area. The proposal would result in opportunities to enhance health and well-being to the public by opening up the South Park area for a variety of uses as well as the creation of the community growing area. This would provide opportunities for the enjoyment and appreciation of nature and also contribute to the vitality of the economy.

The proposed amendments are considered to ensure the natural beauty and rural character of the countryside and HWAONB is preserved and maintained and would not result in significant detriment to the amenities of nearby residential properties.

The proposals subject of the application would result in less than substantial harm to the setting of the surrounding listed buildings and also to the registered park and gardens. However, the proposal and the amendments sought as part of this scheme would result in a number of public benefits through enhanced tourist, community and leisure facilities as well as the provision of additional employment through both the construction phase and once the development has been completed. It is considered that these public benefits would outweigh the less than substantial harm, which has been given 'considerable importance and weight' in carrying out the balancing exercise, thus properly reflecting the statutory presumption that preservation is desirable.

The application is therefore considered to comply with policies DP1, DP12, DP16, DP19, DP21, DP22, DP24, DP26, DP29, DP37, DP38, DP39 and of the District Plan, policies AS3, AS8 and AS14 of the Neighbourhood Plan, the High Weald AONB Management Plan, the design principles of the Mid Sussex Design Guide, and the requirements of the NPPF. Whilst there is a conflict with policy DP34 it is considered that the proposal complies with the development plan when read as a whole, which is the proper basis for decision making. The application is therefore recommended for approval.

Decision: Permission

Case Officer: Joanne Fisher