

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0289	Case Officer:	Andrew Clarke
Application Type:	Removal/Variation of Condition		
Proposal:	Amended description - Variation of condition 1 relating to planning application DM/23/0201 (as amended by s.96a approval DM/25/0991) - to amend the approved plans.		
Site:	5 Silverdale Road, Burgess Hill, West Sussex, RH15 0ED, , , ,		
Validation Date	5 Feb 2025	Overall Expiry Date:	25 Jun 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	20 Jun 2025
Target Date:	2 Apr 2025	Recommending Officer Signature:	<i>Andrew Clarke</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	5
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	20 Jun 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0289

**5 Silverdale Road, Burgess Hill, West Sussex, RH15 0ED, , ,
Amended description - Variation of condition 1 relating to planning application DM/23/0201 (as amended by s.96a approval DM/25/0991) - to amend the approved plans.
Mr James Smith**

SUMMARY OF REPRESENTATIONS

8 letters of representation received raising the following matters:

- harm to neighbour amenity
- impact on Conservation Area
- contrary to Mid Sussex Design Guide
- height and scale
- overbearing
- outlook
- loss of light
- pollution
- drainage
- trees
- usage
- levels
- parking
- impact on health from vehicle movements
- variation from plans
- potential future uses
- building regulations
- rodent infestation

SUMMARY OF CONSULTEES

MSDC Conservation Officer

The application before us is in effect for amendments to an approved scheme (DM/23/0201) for the demolition of the two existing buildings within a garden area lying to the rear of 7 Silverdale Road (although part of the property of no. 5) and the construction of a substantial single storey L shaped building comprising garaging for cars plus domestic storage space. An assessment of the site and its contribution to the Conservation Area formed part of my comments on the previous application, which I have added below, so I will not repeat that here.

As you will see from those comments, the final support for the scheme in terms of the impact on the Conservation Area was very much 'on balance' and followed revisions, and a previously refused application. I had concerns at the time regarding the scale of the proposed new building, and the impact on the open and green character of the space, and the positive contribution which this makes to the Area. In light of this, the current application for an increase in height to the approved building elevation to the eastern side raises concerns in built heritage terms- in particular the increased scale of the garage appears overbearing in terms of views from the neighbouring garden to the east (9 Silverdale Road). This has an adverse impact on the perception of the rear gardens of these properties as largely open and verdant.

I note the intention to introduce some planted screening along the boundaries with no. 9, however we should not rely on screening to mitigate a scheme which would be otherwise unacceptable, particularly

as this can be ephemeral in character- the Council would have no control over its retention in the longer term.

For these reasons the proposal results, in my opinion, in a degree of harm to the character and appearance of the Area, contrary to the requirements of District Plan Policy DP35. In terms of the NPPF, I would consider the harm caused to be less than substantial, and (in light of the approved scheme) at the lower end of that scale.

TOWN COUNCIL OBSERVATIONS

RECOMMENDATION: Recommend Refusal. The Committee felt it contravened:

Mid Sussex District Plan:

DP26 - Character and Design - due to harm to the amenities of nearby residents and impact on privacy.
DP35 Conservation Areas - due to the large scale of the development.

Mid Sussex Design Guide:

DG39 - Deliver appropriately scaled buildings.

DG41 - Addressing sloping sites in relation to prominent retaining walls and over large flank elevations.

Burgess Hill Neighbourhood Plan

H1 - Protecting and Enhancing Heritage Assets and Conservation Areas.

INTRODUCTION

The application is a s.73 planning application seeking to vary previous planning permission relating to the construction of a garage.

RELEVANT PLANNING HISTORY

DM/22/1697 - Proposed erection of an oak framed domestic garage building with home office and annex on the first floor. - Refused 03/11/22 for the following reason:

1) The proposed two storey detached garage, annexe and home office is of a size and scale that is not considered to reflect its context and the scale of the surrounding area. As such the proposal is not considered to be in-keeping with the established character and scale of the wider locality. The proposal therefore fails to comply with Policy DP26 of the Mid Sussex District Plan 2014-2031, Policy H2 of the Burgess Hill Neighbourhood Plan and the Principles DG11, DG38 and DG39 of the Mid Sussex Design Guide SPD.

2. The proposal is detrimental to (causes harm to) the Silverdale Road/Birchwood Grove Conservation Area. The formation of a garage, home office and annexe of this size and scale would detract from the currently relatively open and verdant nature of the site and will constitute less than substantial harm as a result. The application therefore conflicts with Policy DP35 of the Mid Sussex District Plan 2014-2031 and Policy H1 of the Burgess Hill Neighbourhood Plan. Whilst the provision of a garage, home office and annexe is acknowledged, the public benefit of this does not outweigh the less than substantial harm to the heritage asset that has been identified so, in accordance with para 202 of the NPPF, planning permission should be refused.

DM/23/0201 - Single storey oak framed garage building. (revised landscape plan received 13/06/2023) - Approved 17/07/23

DM/25/0991 - s.96a Non material amendment to reference DM/23/0201 to amend wording on decision notice to read as Single Storey Oak Framed Garage Building.- Approved 06/05/25

SITE AND SURROUNDINGS

No. 5 Silverdale Road is a large detached dwellinghouse located on the northern side of Silverdale Road. The dwelling is set back from Silverdale Road, with established tree screening along the front boundary, with an in out driveway and an area of hard standing for parking to the front of the house.

The property sits in a substantial L-shaped plot with rear portion of garden running east alongside the northern boundary of the properties at 7 Silverdale Road (a former large house converted into flats). The development subject to the application is to be situated within this rear L-shaped portion and this area (as with all of Silverdale Road) is an area of sloping land changing levels from east to west across the land by up to 1.5m. This area of garden is screened by high trees to the north and lower 1.8m high close board fencing to the south and west.

The application site is designated within the Mid Sussex District Plan as being within the built up area boundaries of Burgess Hill and is within the Silverdale Road / Birchwood Grove Road Conservation Area.

APPLICATION DETAILS

The application is a s.73 application seeking to vary condition 1 of permission DM/23/0201 which secured the plans by which the planning permission was determined.

The Town and Country Planning Act 1990 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.'

Accordingly, it is not necessary to reassess all of the issues from the original planning application; it is only necessary to assess the issues that are relevant in relation to the conditions that are proposed to be amended.

For wider context the application seeks to regularise the development as being constructed on the land. A garage is currently under construction (work having been paused in July 2024) and the application seeks to amend the approved plans to reflect as being constructed.

The drawings as submitted reflect the development as currently being carried out and include the provision of a 1.09m high brick retaining wall at the western end of the to enable the building to be constructed upon a flat platform. The overall design of the garage and number of bays and siting within the plot is unaltered from the original planning permission, however, it is the opinion of the Council that by virtue of the sloping site and necessity for a retaining wall at the western end of the building, that the building, when measured from the original ground level is now proposed to be 5.69m in height rather than the 4.7m height originally approved.

The application is accompanied with a landscaping scheme seeking to enhance the boundary screening on the north, south and western boundaries as laid out in the Design and Access Statement. The application is also accompanied by a planning statement outlining the applicant's position that the development as being constructed already benefits from planning permission under permission DM/23/0201.

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, and*
- b) Any 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, Site Allocations Development Plan Document (DPD) and the Burgess Hill Neighbourhood Plan.

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

Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states 'In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of conservation preserving or enhancing the character or appearance of that area.'

Mid Sussex District Plan

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

Relevant policies:

DP26 - Design
DP29 - Pollution
DP35 - Conservation Area
DP37 - Trees
DP41 - Flood Ris

Site Allocations DPD

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

There are no relevant policies.

Burgess Hill Neighbourhood Plan

The Burgess Hill Neighbourhood Plan has been made and is a material planning consideration with full weight. The relevant policy is:

H1 - Protecting and Enhancing Heritage Assets and Conservation Areas.

Other Legislation

Planning (Listed Buildings and Conservation Areas) Act 1990

Other Material Considerations

None

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 the stage 1 hearings were concluded on the 31st October 2024. There are unresolved objections to some of the Policies in the draft District Plan and as such, 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:

DPS1 - Climate Change
DPS4 - Drainage
DPN4 - Trees
DNP6 - Pollution
DPB1 - Design
DPB3 - Conservation Areas

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 with the following principles considered relevant:

DG41 - Sloping sites
DG45 - Privacy and Residential Amenity
DG48 - Noise, air and light pollution

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 Design Guide

Published in 2021, the National Design Guide illustrates how the government consider well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.

Paragraph 134 of the NPPF sets out that this national document, along with the National Model Design Code, should be used to guide decisions on application in the absence of locally design guides or design codes.

ASSESSMENT

The application seeks to vary the design of the garage as approved originally under permission DM/23/0201. Noting the representations received and comments of the applicant the following matters are considered of importance and consideration.

- o Principle
- o Neighbour Amenity
- o Design and Impact on the character and appearance of the Conservation Area
- o Biodiversity Net Gain
- o Other material considerations
- o Planning Balance and Conclusion

Principle

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

Planning legislation also holds that planning permissions can be varied through applications made under s.73 of the Town and Country Planning Act. Limitations on the scope of s.73 applications have been established through case law such that applications which seek to vary the operational development or inconsistent with the original description and planning permission granted may lie outside of the scope of s.73 and could not be permitted. To this end, and at the invitation of the Council, a s.96a Non-Material Amendment application was made under reference DM/25/0991 and determined to vary the description of permission DM/23/0201 so that it was amended from *Single storey oak framed garage building*. (revised landscape plan received 13/06/2023) to solely read *'Single storey oak framed garage building'*. This amendment relates solely to the application description and did not amend the plans under which the permission was granted and no assessment of the planning merits of the development was, or could be, made.

The applications otherwise does not seek the substantive form of the application (a domestic garage) and does not change the planning unit upon which the permission was based nor, were the application to be approved, would the grant of planning permission be inconsistent with any other conditions previously imposed upon the permission. The revised description as approved under DM/25/0991 therefore brings the application within the scope of s.73 and the application can be determined on its planning merits taking into account any other material considerations.

Design and Neighbour Amenity

Policy DP26 of the District Plan relates to design and makes reference to neighbour amenity 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:

- o is of high quality design and layout and includes appropriate landscaping and greenspace;*
- o 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;*
- o creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- o protects open spaces, trees and gardens that contribute to the character of the area;*
- o protects valued townscapes and the separate identity and character of towns and villages;*
- o 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 DP29);*
- o creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*
- o incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- o positively addresses sustainability considerations in the layout and the building design;*
- o 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;*
- o optimises the potential of the site to accommodate development.*

The Mid Sussex Design Guide SPD is also relevant and include the following principles:

DG41 (Addressing Sloping sites) advises:

The apparent size of side elevations can be inappropriately accentuated by sloping sites. Consideration should be given to reducing the impact through the roof design. For example, the extended gable-flank wall generated by a standard double pitch roof, should normally be avoided. As well as helping to model the front elevation, hipped rooflines or gable-fronted houses should instead be considered as they reduce the massing of the flank elevations.

Whilst DG45 (Privacy of existing and future residents) makes reference to topography and relative height of adjacent buildings as important factors to consider in design.

A number of representations, including from immediate neighbours at 7 and 9 Silverdale Road have been received regarding the impact of the revised design upon amenity.

The garage as originally approved was predicated on a building with an overall height of 4.7m above ground level and was referred to as such in the Officer's report accompanying permission DM/23/0201. This relationship (a 4.7m high building) was considered not to cause harm to residential amenity. The application currently under consideration is for a building 5.69m high above ground level and therefore 1m higher than previously approved. As a result the building is considered to be considerably more visible and higher in the landscape when viewed from the gardens of numbers 7 and 9 Silverdale Road

where the garage lies within a 2m of the mutual boundary. The result, and noting that the land to the east continues to fall away in level, that from the garden of number 9 Silverdale Road that the formally spacious garden now has a (at minimum) the end gable end of a building 5.69m high and which would be perceived as higher when viewed from the lower level of the garden of number 9. This relationship would be considered overbearing such that it would be considered to cause significant harm to the amenity for the purposes of DP26.

The relationship to the rear garden of number 7 would also be altered although it is noted that ridgeline of the building would remain consistent from east to west across the site as previously approved under DM/23/0201. Nevertheless at the point immediately rear of the garden of number 7 the building would again be 1m higher than previously approved such that the relationship would have deteriorated, and the building would have a greater impact than previously approved.

Comments have been received regarding loss of sunlight as a result of the building but noting the orientation of the building to the north and west of neighbouring gardens, it is not considered that the building will result in a significant loss of light such that the harm would be significant for the purposes of DP26.

Comments relating to pollution for car exhausts are noted, however, the capacity and use of the garage has not changed from the previous permission and no objection was raised on these grounds previously and nothing would have changed in this respect.

Nevertheless by virtue of the height and scale of the building the development is considered to be overbearing such as to cause significant harm to amenity and be contrary to policy DP26 of the Mid Sussex District Plan.

Impact upon the Conservation Area

The site lies in the Silverdale Road / Birchwood Grove Road Conservation Area. Policy DP35 of the District Plan states:

Development in a conservation area will be required to conserve or enhance its special character, appearance and the range of activities which contribute to it. This will be achieved by ensuring that:

o New buildings and extensions are sensitively designed to reflect the special characteristics of the area in terms of their scale, density, design and through the use of complementary materials;

o Open spaces, gardens, landscaping and boundary features that contribute to the special character of the area are protected. Any new landscaping or boundary features are designed to reflect that character;

The contents of the NPPF must also be applied and paras 212 - 215 states:

'212. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance

213. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;

b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional*

214. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d) the harm or loss is outweighed by the benefit of bringing the site back into use*

215. 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.'

The Silverdale / Birchwood Grove Road Conservation Area is characterised by its spacious appearance with large houses in large well screened plots and this character is outlined in the Council's description of the area which states:

The development of a station in 1889 attracted wealthy new residents to the town who built large new houses with large gardens, in contrast to the existing artisans' cottages to the north and west of the town centre which were occupied mainly by employees of the local brick manufacturing companies. Although some infilling has taken place, the character of this area has remained largely intact. The buildings, mostly in Victorian and Edwardian styles, are generally in good repair and are set in large gardens with many mature trees. The character of the area which the Council wishes to conserve depends upon the relationship between the buildings and their settings.

The following features contribute to the character of the Conservation Area:

o the variety in styles of the substantial Victorian and Edwardian houses, set in spacious Gardens'

As noted above, the Council's Conservation Officer has raised objections to the application based upon the increased scale of the building its visibility within the Conservation Area from gardens of surrounding properties. Whilst no objection was raised to the previous planning permission, this was based on the plans as approved which showed, and approved, a building of a height of 4.7m at the eastern end of the site and the resulting visual impact and relationship with neighbouring properties,

It is the opinion, and it is noted that this is disputed by the applicant, that the current application results in an increase in height to the building as previously approved and that the increased scale of the garage appears overbearing in terms of views from the neighbouring garden to the east (9 Silverdale Road). The additional 1m in height allows the building to be viewed as much larger than previously approved and increases its visibility from neighbouring gardens. This has an adverse impact on the perception of the rear gardens of these properties as largely open and verdant contrary to the defined characteristics of the Conservation Area and the requirement to preserve or enhance the character or appearance of the area. As such the development is considered to cause less than substantial harm to the heritage asset such that the balancing exercise as required by paragraph 215 needs to take place.

The building is a new building and therefore no optimum use can be applied and being associated to and solely for private domestic use no public benefit (bar the small amount attributed in economic contribution from employment resulting from the construction process) can be attributed either. Therefore there is no public benefit to outweigh the harm to the openness and character and appearance of the Conservation Area identified such that the application is considered contrary to policy DP34 of the District Plan.

Other matters

Matters relating to drainage and the potential use of the garage are noted but again these elements have not changed from the previous planning permission. These matters could be addressed through the imposition of conditions were the application to be approved.

With respect to matters relating to building regulations, building safety and potential rodent infestation, these matters would lie outside of the planning regime and would be addressed by other legislation (building and environmental protection regulations)

Biodiversity Net Gain

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. This planning application is for householder development and the application is therefore exempt from the requirement to provide biodiversity net gain.

Other material considerations

The previous grant of planning permission DM/23/0201 and the potential imposition of conditions relating to landscaping are considered the primary other material considerations in the determination of the application.

With respect to landscaping, planting proposals have been included as part of the application and the applicants have indicated their agreement to the imposition of conditions securing any planting for the lifetime of the development. This planting takes the form of five new native tree planting and the introduction of shrubs to a height of 8m around the eastern end of the building.

It is considered that such a landscaping condition could be imposed, although the requirement to retain the planting at such a height in perpetuity (noting the development once complete would not be expected to be later removed) may be considered unreasonable. However of greater concern would be the impact of the proposed landscaping. Whilst the proposed planting would screen the building, it would solely replace the overbearing nature of a built form with high vegetation which would have the same impact upon amenity and would also interrupt the openness of Conservation Area as an incongruous and artificially high barrier. The landscaping scheme would therefore not overcome the objections noted above and the failure to comply with the policies of the development plan.

The application has also been accompanied by a planning statement outlining that the development as being constructed is in compliance with the previous planning permission DM/23/0201 and that, in summary, the development as contained within the application is the same as previously approved. This argument is predicated on the basis that the 1.09m high retaining wall is enabling development and that previous plans, which did not indicate the change in levels across the site, were sufficiently accurate and approved the development and relationship as being constructed.

With respect to the accuracy of the plans, it is noted the previous permission did not indicate the change in levels across the site and approved a building 4.7m high at the eastern end of the site. It is clear in the Officer's report, and in assessing the application, that the application was considered on the basis of a building 4.7m above ground level and this relationship was considered acceptable. Whilst reference is made to a brick plinth, no reference to a retaining wall was made nor was it considered part of the previous development. The retaining wall has been constructed to address the changing levels in the site and as a result has increased the total height of the building above the ground level to 5.69m. It is clear that the sloping level of the site could, and perhaps should, have been included on the previous permission, however, the onus and requirement rests solely with the applicant to provide correct plans and thereafter undertake development in accordance with the approved plans. In this case the previous plans did not accurately depict the site conditions and that other development and permissions may have been required to enable the planning permission to be lawfully implement. No such new applications have been made and the construction of the retaining wall, and the change in site levels it enables would be considered '*development*' for the purposes of planning such that it would be considered a material alteration to the development and could not be considered enabling works (such as site clearance, minor levelling or works which otherwise would not be considered development in their own right). As such the Council is content that planning permission DM/23/0201 did not permit the change in land levels nor the creation of a retaining wall which increases the height of the garage above ground level to 5.69m.

The applicant also points to the 'Permitted development rights for householders: technical guidance' which provides guidance as to how to determine the lawfulness of development undertaken under Part 1, Class E of Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") as amended and that 'height' is measured from the highest point of the ground level adjacent to the building. It is acknowledged that the highest point of the ground level adjacent to the building is at the western end where the height is 4.7m, however, this guidance solely relates to the interpretation of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") as amended and does not equate or relate to the requirement for development to be carried on in accordance with the planning permission. In simple terms when measuring the height of the building from the eastern end from the ground level it now measures 5.69m rather than 4.7m from the ground level as approved.

As such the Council is of the opinion that the development contained within the application does not already benefit from planning permission and whilst the grant of permission DM/23/0201 is a material consideration in the determination of the application, the development under consideration is materially different, and that material difference causes harm to amenity and the Conservation Area such as to be contrary to the policies of the development plan.

There are therefore no material considerations which should apply such that the policies of the development plan are not applied in full.

PLANNING BALANCE AND CONCLUSION

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the content of the application and the policies in the Development Plan and then to take account of other material planning considerations including the NPPF. The Development Plan in this instance consists of the Mid Sussex District Plan, the Site Allocations Development Plan Document and the Burgess Hill Neighbourhood Plan.

Courts have confirmed that the Development Plan must be considered as a whole, not simply in relation to any one individual policy. It is therefore not the case that a proposal must accord with each and every policy within the Development Plan.

It is considered that the development contained within the application, by virtue of its height and scale causes significant harm to the amenities of neighbouring residential properties (namely number 7 and 9 Silverdale Road) such as to be contrary to policy DP26 of the Mid Sussex District Plan. The development, again by virtue of its increased scale and height over that previously approved is also considered to cause harm to the openness and appearance and character of the Silverdale Road / Birchwood Grove Road Conservation Area such that less than substantial harm is attributed to it. There is no public benefit to outweigh this harm and as such the development is contrary to policy DP35 of the Mid Sussex District Plan and the contents of the NPPF.

The Council notes the previous grant of planning permission DM/23/0201, however, am content that development subject to the applicant is materially different from that previously approved and that this difference results in the harm identified above. There are no planning conditions which can be imposed to mitigate or address this harm and therefore no material considerations which should apply such that the policies of the development plan are not applied in full.

The development is therefore considered, by virtue of its height and scale, to be overbearing and cause significant harm to the amenities of numbers 7 and 9 Silverdale Road) and to causes harm to the openness and appearance and character of the Silverdale Road / Birchwood Grove Road Conservation Area such as to be contrary to policies DP26 and DP35 of the Mid Sussex District Plan, policy H1 of the Burgess Hill Neighbourhood Plan and the contents of the NPPF and the application is refused.

Decision: Refusal

Case Officer: Andrew Clarke

