

## Delegated Decision

### Sign off Sheet

|                                              |                                                                                                                                                                                                                                                                            |                                        |                |
|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|----------------|
| <b>Ref. No:</b>                              | DM/25/0373                                                                                                                                                                                                                                                                 | <b>Case Officer:</b>                   | Andrew Horrell |
| <b>Application Type:</b>                     | Removal/Variation of Condition                                                                                                                                                                                                                                             |                                        |                |
| <b>Proposal:</b>                             | Variation Condition of No: 3 of Planning Permission DM/24/2846 to enable substitution of plans to allow for the materials to be changed on the rear dormer to black timber, with a natural timber infill, in line with the facing materials of the ground floor extension. |                                        |                |
| <b>Site:</b>                                 | 103 Station Road, Burgess Hill, West Sussex, RH15 9ED, , , ,                                                                                                                                                                                                               |                                        |                |
| <b>Validation Date</b>                       | 12 Feb 2025                                                                                                                                                                                                                                                                | <b>Overall Expiry Date:</b>            | 7 Mar 2025     |
| <b>Pre-Commencement Conditions Required:</b> |                                                                                                                                                                                                                                                                            | <b>Pre-Com Conditions Date Agreed:</b> |                |
| <b>Recommendation:</b>                       | Permission                                                                                                                                                                                                                                                                 | <b>Recommendation Date:</b>            | 4 Apr 2025     |
| <b>Target Date:</b>                          | 9 Apr 2025                                                                                                                                                                                                                                                                 | <b>Recommending Officer Signature:</b> | Andrew Horrell |

|                                                        |  |                               |   |
|--------------------------------------------------------|--|-------------------------------|---|
| <b>Date Legal Agreement Completed: (if applicable)</b> |  | <b>No of Representations:</b> | 0 |
|--------------------------------------------------------|--|-------------------------------|---|

|                              |                 |              |            |
|------------------------------|-----------------|--------------|------------|
| <b>Signed and Agreed By:</b> | Stephen Ashdown | <b>Date:</b> | 4 Apr 2025 |
| <b>Comments:</b>             |                 |              |            |

## MID SUSSEX DISTRICT COUNCIL

**DM/25/0373**

103 Station Road, Burgess Hill, West Sussex, RH15 9ED, , ,  
Variation Condition of No: 3 of Planning Permission DM/24/2846 to enable substitution of plans to allow for the materials to be changed on the rear dormer to black timber, with a natural timber infill, in line with the facing materials of the ground floor extension.  
Poutney

### SUMMARY OF REPRESENTATIONS

None received

### SUMMARY OF CONSULTEES

None received

### TOWN COUNCIL OBSERVATIONS

Recommend Approval

### INTRODUCTION

Permission is sought to vary of condition 3 of the approved DM/24/2846 to allow for design changes and change of materials to the previously approved rear dormer.

### RELEVANT PLANNING HISTORY

DM/24/2846 - Alterations to existing rear single storey extension. External alterations including new external materials, side storage wall and associated works. New windows and doors. Hip to gable roof extension with full width rear loft dormer and 2no. front roof lights. (Approved)

### SITE AND SURROUNDINGS

103 Station Road is a two-storey semi-detached plain tiled hipped roofed dwelling and has an existing conservatory. The walls are characterised by a mix of face brickwork and hanging tiles with upvc doors and windows.

To the south of the site is the rear garden with close boarded fencing to set lower Meeds Road beyond, to the north of the site is the driveway to highway beyond, to the east of the site is the adjacent No.101 Station Road and to the west is the adjacent 105 Station Road.

The site is within the built-up area of Burgess Hill.

### APPLICATION DETAILS

The application seeks to vary condition 3 of the approved DM/24/2846.

Condition 3 stated ' **Approved Plans**

*The development hereby permitted shall be carried out in accordance with the plans listed below under the heading "Plans Referred to in Consideration of this Application".*

*Reason: For the avoidance of doubt and in the interest of proper planning'.*

The alteration from the original approval is that the rear dormer is altered from grey tile to black timber with natural timber infill to match the ground floor extension.

## **LEGAL FRAMEWORK AND LIST OF POLICIES**

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

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

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

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

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

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

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

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

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan, the Site Allocations DPD and the Burgess Hill Neighbourhood Plan.

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

### **Mid Sussex District Plan**

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

DP26 - Character and Design

### **Site Allocations 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**

Burgess Hill Neighbourhood Plan was formally 'made' as of 28th January 2016.  
Relevant policies include:

None relevant

## Mid Sussex District Plan 2021-2039 Consultation Draft

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:

DPB1 - Character and Design

### 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 objectives to sustainable development, such that the planning system needs to perform an economic objective, a social objective and an environmental objective.

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.

## **ASSESSMENT**

This application is made under section 73 of the Town and Country Planning Act 1990 to vary condition 3 of DM/24/2846.

As outlined above, the alteration from the original approval is that the rear dormer is altered from grey tile to black timber with natural timber infill to match the ground floor extension.

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.'*

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 condition that are proposed to be amended.

S73 applications allows for developers to amend conditions attached to planning permissions. Such an application only allows the conditions to 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 recently 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 approved plans to allow changes to the dormer window materials.

The principle of the development was originally accepted through the previous permission under reference DM/24/2846.

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.

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

- Design and Character

### **Design and impact on the character of the area**

DP26 of the District Plan states:

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

- *is of high quality design and layout and includes appropriate landscaping and greenspace;- contributes positively to, and clearly defines, public and private realms and should normally be designed with active building frontages facing streets and public open spaces to animate and provide natural surveillance;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *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'*

Principle DG49 of the Mid Sussex Design Guide states:

*'Extensions should typically use simple, uncomplicated building forms to compliment and coordinate with the scale, form and massing of the original dwelling. The design approach may benefit from coordinating with the existing pattern of window and door openings as well as employing facing materials to match those of the existing dwelling. Otherwise, it should demonstrate the appropriateness of the alternative approach.'*

The change of dormer materials to black timber and natural timber is not deemed out of character with the varied streetscene, it is noted that the works would not be visible from the streetscene and would match the ground floor extension approved under DM/24/2846.

The proposal is thereby considered to comply with Policy DP26 of the Mid Sussex District Plan, the Mid Sussex Design Guide SPD and the requirements of the NPPF.

## 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 permission is being granted on an application made under Section 73 of the Town and Country Planning Act 1990 and the application for the original planning permission to which the Section 73 planning permission relates was made before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

## **PLANNING BALANCE AND CONCLUSION**

It has previously been considered that the development of the site for householder extensions is acceptable through the determination of the permission reference DM/24/2846.

The proposed amendments to the previously approved plans detailed in condition 3 are considered to be sensitive to the design and character of the building previously approved and would not detract from the character of the area.

The proposal is thereby considered to comply with Policy DP26 of the Mid Sussex District Plan, the Mid Sussex Design Guide SPD and the relevant provisions of the NPPF.

Decision:       Permission

Case Officer: Andrew Horrell