

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2794	Case Officer:	Joanne Fisher
Application Type:	Change of Use Application		
Proposal:	Change of use of land to residential garden.		
Site:	Land To Rear Of Mulberry Gate, Copthorne Road, Felbridge, Surrey, , , ,		
Validation Date	11 Dec 2024	Overall Expiry Date:	2 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	24 Jan 2025
Recommendation:	Permission	Recommendation Date:	27 Jan 2025
Target Date:	5 Feb 2025	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	1
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Signed and Agreed By:	Stephen Ashdown	Date:	29 Jan 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2794

**Land To Rear Of Mulberry Gate, Copthorne Road, Felbridge, Surrey, , ,
Change of use of land to residential garden.
Mr David Leppard**

SUMMARY OF REPRESENTATIONS

1 letter of SUPPORT.

SUMMARY OF CONSULTEES

MSDC Tree Officer

No objection. Please condition the method statement.

MSDC Ecology Consultant

Recommended Approval subject to conditions.

TOWN COUNCIL OBSERVATIONS

No comment.

INTRODUCTION

Permission is sought for the change of use of land to residential garden for the use of 6 Longwall at land to the rear of Mulberry Gate, East Grinstead.

RELEVANT PLANNING HISTORY

DM/22/0474 - Outline planning application seeking permission for the erection of up to 2 no. dwellings (with all matters reserved except access) and associated works. Withdrawn.

SITE AND SURROUNDINGS

The site currently comprises of grassland and scrub to the northern part of the site with trees to the southern part of the land. It is enclosed by fencing on all boundaries. Previously there was a vehicular access from a single access drive between no's 4 and 5 Mulberry Gate. There is currently a gate from the rear garden of 6 Longwall into the site.

The site lies within the built-up-area of East Grinstead and is surrounded by housing to the northern, eastern and western boundaries and a commercial area to the south of Birches Industrial Estate. The land is screened from public viewpoints.

APPLICATION DETAILS

Permission is sought for the change of use of land to residential garden for the use of 6 Longwall at land to the rear of Mulberry Gate, East Grinstead. This relates to the non-wooded part of the site only.

It is sought to re-position the existing close boarded fence to the rear boundary of 6 Longwall to incorporate the land within the garden of the property. A new 2 metre high close boarded fence would be erected on the southern boundary of the land to separate the additional garden area from the land to the south which is a wooded area.

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) 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 East Grinstead 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
DP37 - Trees, Woodland and Hedgerows
DP38 - Biodiversity

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.

Neighbourhood Plan

The East Grinstead Neighbourhood Plan was made in November 2016.

Relevant policy:

Other Material Considerations

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 the majority of 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:

DPN2 - Biodiversity Net Gain

DPN4 - Trees, Woodland and Hedgerows

DPB1 - Character and Design

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 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

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

- Design and impact on character of the area;

- Impact on residential amenities;
- Trees; and
- Ecology and Biodiversity Net Gain

Design and impact on character of the area

Policy DP26 of the District Plan relates to character and design considerations and states in part:

'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;*
- 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....'*

A similar ethos is found within Policy EG3 of the East Grinstead Neighbourhood Plan.

The site falls within the built-up area boundary of East Grinstead and is well enclosed surrounded by dwellings with gardens backing on to the site from the north and east. Whilst there would be a change in the appearance of the land from scrub and grassland to a more domesticated appearance and use, due to the location of the site and relationship with surrounding dwellings, it is considered that the proposal would not result in detriment to the character of the area. The woodland to the southern part of the site would be retained and not within the residential use with separation by fencing. Due to the enclosed nature of the site it is not visible from public viewpoints, as such it is considered that the change of use would still retain the character of the area.

The proposal thereby complies with policy DP26 of the District Plan and policy EG3 of the Neighbourhood Plan.

Impact on residential amenities

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'*.

The test as set out under policy EG3 of the East Grinstead Neighbourhood Plan states that proposals should 'not harm' adjoining neighbours amenity.

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. As such, policy DP26 of the MSDP is considered to take precedence and therefore the test in this instance is whether the development causes significant harm to neighbouring amenities as outlined above.

The land is enclosed by 2 metres high fencing on the northern, part eastern and western boundaries. There are three properties to the north of the site where the rear of the dwellings face towards the site with a number of windows. Whilst the proposal would change the use of the land to a residential garden use, the land would still be retained as grassland. Although there would be an intensification of its use and domestication of the land, due to the site being in a residential area surrounded by gardens, it is considered that there would be no significant harm to the amenities of existing nearby residents through an impact on privacy, outlook, daylight and sunlight.

The proposal thereby complies with policy DP26 of the District Plan.

Trees

Policy DP37 of the Mid Sussex District Plan states 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.'*

An Arboricultural Method Statement accompanies the application. This relates to the proposed 2metre high close boarded fence proposed on the southern boundary of the land to separate the garden from the woodland area. It sets out that the *'proposed fence installation has a very low level potential to cause root damage that would affect the health or stability of the woodland edge trees.'* It identifies that impacts are limited to post hole excavation. The post holes would be every 3 metres of length.

The Tree Officer has considered the method statement and raises no objection. A condition can be placed on an approval to ensure works are carried out in accordance with the Arboricultural Method Statement to ensure protection to the trees.

The proposal thereby complies with policy DP37 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. It states in part:

'Biodiversity will be protected and enhanced by ensuring development:

- Protects existing biodiversity, so that there is no net loss of biodiversity. Appropriate measures should be taken to avoid and reduce disturbance to sensitive habitats and species. Unavoidable damage to biodiversity must be offset through ecological enhancements and mitigation measures (or compensation measures in exceptional circumstances); and

- Minimises habitat and species fragmentation and maximises opportunities to enhance and restore ecological corridors to connect natural habitats and increase coherence and resilience; ... '

Para's 192 - 195 of the NPPF relate to habitats and biodiversity. Para 193 states *'if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused'.*

The application has been accompanied by a Preliminary Ecological Appraisal (PEA) and Biodiversity Net Gain report letter and BNG metric to show the pre and post development calculations.

The PEA sets out that *'Habitats within the survey site were assessed as being of local importance. The habitats supported are widespread throughout the landscape, however the site supports features with potential for use by widespread amphibians, breeding birds, foraging bats, hazel dormice and badger. The sites boundaries also contributes to the wider ecological value providing wildlife corridors for more mobile species including bats and badgers to move through the landscape.'* The PEA sets out a number of recommendations for ecological enhancements for the site including the woodland area which is within the blue line of the application. This includes:

- Removal of some alder specimens to create clearings and encourage a richer ground-flora;
- Replacement of some alder with other suitable native species such as oak;
- Installation of log-piles;
- Removal of rhododendron;

- Thinning of areas of holly understorey and planting of hazel and other native shrub layer species with concentrations towards the site boundaries to encourage movement of species into the site; and
- Installation of five bat boxes and five bird boxes on mature trees within the wider site.

The Council's Ecology Consultant has considered the proposal and raises no objection subject to conditions. They consider that the mitigation measures in the Preliminary Ecological Appraisal (JWK Wildlife Surveys, November 2024) should be secured by a condition of any consent and implemented in full. This is necessary to conserve and enhance protected and priority species particularly those recorded in the locality. Officers agree with the recommendation of the Council's Ecologist.

The submitted BNG note and calculations set out that there is to be no change in terms of the baseline of biodiversity value on the site following the change of use of the land to garden.

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 comprises development below the de-minimis threshold meaning that this development is exempt from providing biodiversity net gain.

The proposal thereby complies with Policy DP38 of the District Plan, the provisions of the NPPF and the requirements of Schedule 7A of the Town and Country Planning Act 1990.

Other matters

It is not considered necessary to removed permitted development rights under Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for any buildings incidental to the dwelling as the site is well contained and related to other properties surrounding the site. Any incidental buildings allowed under permitted development would be small scale.

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 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 East Grinstead 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.

The change of use of the land to residential garden is considered to be acceptable to the character of the area, and would not result in significant harm to surrounding residential amenities or biodiversity and trees on the site.

The proposal thereby complies with policies DP26, DP37 and DP38 of the District Plan, policy EG3 of the Neighbourhood Plan and the provisions of the NPPF.

Decision: Permission

Case Officer: Joanne Fisher