

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2981	Case Officer:	Joanne Fisher
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of condition 4 of planning appeal ref AP/23/0015 (DM/22/0867) - To allow for design changes		
Site:	Palmers Autocentre Tyres, Palmers Autocentre Tyres, Turners Hill Road, Crawley Down, Crawley, West Sussex, RH10 4HQ,		
Validation Date	6 Dec 2024	Overall Expiry Date:	1 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	10 Feb 2025
Target Date:	31 Jan 2025	Recommending Officer Signature:	Joanne Fisher

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	11 Feb 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2981

Palmers Autocentre Tyres, Palmers Autocentre Tyres, Turners Hill Road, Crawley Down, Crawley, West Sussex, RH10 4HQ

Variation of condition 4 of planning appeal ref AP/23/0015 (DM/22/0867) - To allow for design changes

Mr James Meachim

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

MSDC Tree Officer

I have reviewed the Landscape Plan and Soft Landscape Plan Schedule and Specification and would favour a higher percentage of native trees. Would it be possible to favour more native trees?

Highways Authority

No objection. Suggested conditions on vehicle parking, cycle parking, construction plan and materials.

PARISH COUNCIL OBSERVATIONS

Defer to Officer.

INTRODUCTION

Permission is sought to vary condition 4 of planning appeal ref AP/23/0015 (DM/22/0867) - to allow for design changes at Palmers Autocentre Tyres, Turners Hill Road, Crawley Down.

RELEVANT PLANNING HISTORY

DM/22/0867 - Outline application for the demolition of all existing buildings on-site, currently used for MOT/Garage/Tyre centre (B1/B2 Sui Generis), to be replaced with 5 dwellings (Residential C3) and associated parking. Refused.

AP/23/0015 - Appeal against DM/22/0867 (see above). Allowed.

DM/22/2589 - Outline application for the demolition of all existing buildings on-site, previously used as a MOT/Garage/Tyre centre (B1/B2 Sui Generis) to be replaced with 4 dwellings (C3) and associated parking. Refused.

AP/23/0016 - Appeal against DM/22/2589 (see above). Allowed.

DM/25/0067 - Discharge of Condition 5 (Construction Method Statement) relating to DM/22/0867 (AP/23/0015). Approved.

SITE AND ITS SURROUNDINGS

Palmers Autocentre Tyres is a commercial site set off the Turners Hill Road in a rearward setting behind a row of detached dwellings. The site is accessed by a wide vehicular entrance bounded by hedgerow leading to the site itself which is set in a large area of hardstanding with a large commercial building

constructed in brick and metal cladding with roller shutter doors as well as a brick detached two storey building and a single storey building.

The site is closed and vacant but was previously used for commercial purposes of MOT/Tyre Centre and Garage repairs.

The site is relatively level with hedgerow, trees and fencing on the boundaries.

To the south-east of the existing access is a Grade II Listed Building - Chelsea Cottage. This is not visible from the rear of the site due to the boundary vegetation and an outbuilding outside of the application site.

The surrounding area is characterised by sporadic linear development of dwellings adjacent to the Turners Hill Road. These dwellings are set on large plots and are of varying designs and scales. Along the front boundaries of these dwellings are vegetation providing a verdant character along the highway.

The site can be glimpsed in part between some of the dwellings along the highway.

The application site is situated within the countryside as designated within the Mid Sussex District Plan and the Neighbourhood Plan.

APPLICATION DETAILS

This application seeks permission to vary condition 4 relating to planning approval which was allowed at appeal under reference AP/23/0015.

This condition relates to the list of approved plans and states:

'The development hereby permitted shall be carried out in accordance with the following approved plans:

- Location Plan - CSW:348/100
- Existing and Proposed Block Plans - CSW:348/101
- Access Provision/Sight Lines - CSW:348/102
- Proposed Site Plan - CSW:348/103
- Proposed Ground Floor Plan and Proposed First Floor Plan (Plots 1 and 2) - CSW:348/104
- Proposed Elevations (Plots 1 and 2) - CSW:348/105
- Proposed Ground Floor Plan and Proposed First Floor Plan (Plots 3 and 5) - CSW:348/106
- Proposed Elevations (Plots 3 and 5): CSW:348/107
- Proposed Ground Floor Plan and Proposed First Floor Plan (Plot 4) - CSW:348/108
- Proposed Elevations (Plot 4): CSW:348/109'

This application seeks to amend all the approved plans to comprise of the reduction to the amount of hardstanding from that previously approved, improving the on-site turning areas, providing two visitor parking spaces to the access road into the site, removing parking to the front of dwellings so that parking is to the side of properties, formation of a detached garage for plots 3 and 4 and a detached car port for plot 5, amending the external appearance of the properties to better integrate with the immediate setting of Chelsea Cottage, and amending the internal layouts to the dwellings.

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 Crawley Down 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 include:

DP12 - Protection and enhancement of the countryside
DP21 - Transport
DP26 - Character and Design
DP34 - Listed Buildings and Other Heritage Assets

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.

There are no relevant policies.

Crawley Down Neighbourhood Plan

The Neighbourhood Plan was made in January 2016.

The following policies are considered to be relevant:

CDNP05: Control of New Developments
CDNP10: Promoting Sustainable Transport

Other Legislation

Planning (Listed Buildings and Conservation Areas) Act 1990

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

DPC1 - Protection and enhancement of the countryside
DPB1 - Character and Design
DPB2 - Listed Buildings and Other Heritage Assets
DPT3 - Active Travel
DPT4 - Parking and Electric Vehicle Charging Infrastructure

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.

National Planning Policy Guidance

National Design Guide/Code

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

This application is made under section 73 of the Town and Country Planning Act 1990 to vary a condition associated with planning permission AP/23/0015 for outline consent for the demolition of all existing buildings on-site, currently used for MOT/Garage/Tyre centre (B1/B2 Sui Generis), to be replaced with 5 dwellings (Residential C3) and associated parking.

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 various changes to the design of the dwellings and the layout. The principle of the development has already been accepted through the approval of the AP/23/0015. 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;
- the impact on the setting of designated heritage assets;
- the impact to the access and parking; and
- Biodiversity net gain.

Design and impact on the character of the area

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.'*

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

'All development and surrounding spaces, including alterations and extension to existing buildings and replacement dwellings, will be well designed and reflect and 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.*
- 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 plus unit) scheme will also normally be expected to incorporate a mixed use element;
o optimises the potential of the site to accommodate development.'

Policy CDNP05 of the Neighbourhood Plan is relevant and relates to the control of new developments. In part this requires:

'a) The scale height and form fit unobtrusively with the surrounding buildings and the character of the area or street scene and where appropriate, special regard should be had to sustaining and enhancing the setting and features of heritage assets and the Areas of Townscape Character...
f) Construction materials are compatible with the materials of the general area and are locally sourced where practical.'

Para 135 of the NPPF relates to design and states:

'Planning policies and decisions should ensure that developments:

a) will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development;
b) are visually attractive as a result of good architecture, layout and appropriate and effective landscaping;
c) are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities);
d) establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit;
e) optimise the potential of the site to accommodate and sustain an appropriate amount and mix of development (including green and other public space) and support local facilities and transport networks; and
f) create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users⁴⁶; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.'

Within the Design Guide there is support for innovative and inventive designs that responds to the sustainability agenda within DG37. There is support for architectural integrity and a sense of place within DG38 where the facade and elevational treatment, roofscape fenestration and materials used in existing buildings within the locality should be a starting point for the consideration of architectural design of new buildings. In addition, design principle DG39 requires the scale of new buildings to relate to their context.

The amendments to the scheme are acceptable in design terms. The changes to the layout with parking to the side of properties reduces the amount of hard surfacing within the site to provide more landscaped areas. The changes to the external appearance of the dwellings provides a better designed development which seeks to reflect the design of dwellings within the vicinity. In addition, the change of the materials would still result in a high quality design appropriate to its context and would maintain the character of this part of the district.

The proposal is thereby considered to comply with policies DP12 and DP26 of the District Plan, Policy CDNP05 of the Neighbourhood Plan, the design principles of the Mid Sussex Design Guide, and the requirements of the NPPF.

Impact on the setting of designated heritage assets

The site is within the setting of a Grade II listed building of Chelsea Cottage which is to the south-west of the site and adjacent to the existing access road into the site.

S.66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 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 refers to listed buildings and other heritage assets. It states:

'Listed Buildings

Development will be required to protect listed buildings and their settings. This will be achieved by ensuring that:

- o A thorough understanding of the significance of the listed building and its setting has been demonstrated. This will be proportionate to the importance of the building and potential impact of the proposal;*
- o Alterations or extensions to a listed building respect its historic form, scale, setting, significance and fabric. Proposals for the conversion or change of use of a listed building retain its significance and character whilst ensuring that the building remains in a viable use;*
- o Traditional building materials and construction techniques are normally used. The installation of uPVC windows and doors will not be acceptable;*
- o Satellite antennae, solar panels or other renewable energy installations are not sited in a prominent location, and where possible within the curtilage rather than on the building itself;*
- o Special regard is given to protecting the setting of a listed building;*
- o Where the historic fabric of a building may be affected by alterations or other proposals, the applicant is expected to fund the recording or exploratory opening up of historic fabric.*

Other Heritage Assets

Development that retains buildings which are not listed but are of architectural or historic merit, or which make a significant and positive contribution to the street scene will be permitted in preference to their demolition and redevelopment.

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. Significance can be defined as the special interest of a heritage asset, which may be archaeological, architectural, artistic or historic.

Proposals affecting such heritage assets will be considered in accordance with the policies in the National Planning Policy Framework (NPPF) and current Government guidance.'

Paras 212 - 215 of the NPPF 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.'

In the determination of the previous application Officers acknowledged that along the existing boundary of Chelsea Cottage with the access road is a dense hedge providing screening of the access. On the south-western boundary between the site and this listed property is high conifer trees. The screening between the sites would be maintained to minimise the impact to the listed building and additional planting undertaken. In addition, the proposal would remove a large area of hardstanding within the site and a number of commercial buildings. It was acknowledged by Officers that the proposal would still result in built form on the site as well as hardstanding. The Inspector in their determination of the appeal considered that the development would not adversely affect the setting of the listed building of Chelsea Cottage and would preserve its significance.

It is considered that the proposed amendments would still result in the same impact to the setting of the listed building. The proposal thereby complies with Policy DP34 of the District Plan and the provisions of the NPPF.

Impact to access and parking

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.

Policy CDNP10 relates to promoting sustainable transport and states:

'Development that does not conflict with other Policies will be permitted provided that it promotes sustainable transport within the Neighbourhood Area by:

- a) Providing safely located vehicular and pedestrian access with adequate visibility.*
- b) Demonstrating that adequate sustainable transport links to the principal village facilities including the village centre, the primary school, Health Centre and recreation open space already exist or will be provided.*
- c) Identifying and undertaking appropriate measures, such as highway improvements, to address any transport infrastructure inadequacies.*
- d) Where development would add to traffic congestion in the village or inappropriate traffic on rural lanes, proposals should be brought forward to mitigate any traffic impact or contribute funding towards local transport schemes.*
- e) Development proposals for new developments should include secure cycle storage and ideally storage for children's buggies and mobility scooters where appropriate.*
- f) Development proposals would maintain or enhance the existing public footpaths, rights of way, bridle paths and twittens.*
- g) A full transport assessment is provided using current data and identified issues addressed developments of more than 50houses.'*

Para's 115 and 116 of the NPPF states:

*'115. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that:
sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location;
b) safe and suitable access to the site can be achieved for all users;
c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code⁴⁸; and
d) 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 through a vision-led approach.*

116. 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, following mitigation, would be severe, taking into account all reasonable future scenarios.'

The access arrangements remain unchanged as part of the variation, however, a footway is proposed to part of the access road to link the development with the footpath along Turners Hill Road with 2no. visitor parking spaces along the access way entrance into the site and rumble strips. The development would also now provide a gated access into the site. In addition, the parking layout has been amended to facilitate the turning head within the site.

The Highways Authority has considered the application and revised plans and raise no objection subject to conditions. They consider that the proposal would not have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network.

The proposal thereby complies with policy DP21 of the District Plan, policy CDNP10 of the Neighbourhood Plan 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 original planning permission to which the Section 73 planning permission relates was granted before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

Other matters

The comments of the Council's Tree Officer are noted. However, landscaping is a reserved matter which cannot be dealt with as part of this application.

CONCLUSION

It has previously been considered that the development of the site for housing is acceptable through the determination of the permission reference AP/23/0015.

The proposed amendments to the previously approved plans detailed in condition 4 would still result in a high quality design appropriate to its context and would not detract from the character of the area. The amendments would preserve the setting of the adjacent listed building and not result in an unacceptable impact to highway safety.

The proposal is thereby considered to comply with policies DP12, DP21, DP26 and DP34 of the District Plan, policies CDNP05 and CDNP10 of the Neighbourhood Plan, the design principles of the Mid Sussex Design Guide, and the relevant provisions of the NPPF.

Decision: Permission

Case Officer: Joanne Fisher

