

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/2462	Case Officer:	Joanne Fisher
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of condition no 2 relating to planning application DM/22/2218 - to enable the substitution of plans to allow for changes to the material finish of the building elevation - primarily the change from glazed balcony balustrades to railings		
Site:	Site Of Former Maxwellton House, 41 - 43 Boltro Road, Haywards Heath, West Sussex, , , ,		
Validation Date	30 Sep 2025	Overall Expiry Date:	31 Oct 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	22 Dec 2025
Target Date:	30 Dec 2025	Recommending Officer Signature:	<i>Joanne Fisher</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	23 Dec 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/2462

**Site Of Former Maxwellton House, 41 - 43 Boltro Road, Haywards Heath, West Sussex, , ,
Variation of condition no 2 relating to planning application DM/22/2218 - to enable the
substitution of plans to allow for changes to the material finish of the building elevation -
primarily the change from glazed balcony balustrades to railings
Mr Ian Hann**

REPRESENTATIONS

None received.

SUMMARY OF CONSULTATIONS

MSDC Urban Designer

I consider the latest details, additional information, and changes to be acceptable. I have no further comments.

TOWN COUNCIL OBSERVATIONS

No comment.

INTRODUCTION

Permission is sought to vary condition no 2 relating to planning application DM/22/2218 - to enable the substitution of plans to allow for changes to the material finish of the building elevation - primarily the change from glazed balcony balustrades to railings at site of former Maxwellton House, Boltro Road, Haywards Heath.

RELEVANT PLANNING HISTORY

DM/22/2218 - Redevelopment of site to provide a development of 50 retirement living apartments, associated parking, landscaping and amenity provision. AMENDED PLANS received 13/12/2022 removing top floor of communal facilities and rooftop terrace and also submission of a Construction Management Plan and Surface Water Management Plan During construction. Approved.

Various applications have been submitted and approved to discharge conditions attached to the above permission under reference DM/23/2002, DM/23/2004, DM/23/224 and DM/25/0465.

DM/23/2513 - Proposed Non illuminated hoardings with (x2) flags and (2x) Non illuminated sign boards. Approved.

DM/25/2093 - Non-Material Amendment to planning application DM/22/2218 - Amendment to description of development to remove reference to submission of amended plans. Approved.

SITE AND ITS SURROUNDINGS

The site has been cleared, and works have started for the construction of the development. The site is enclosed by hoardings and a metal gate.

To the north of the site is an existing flatted development of 'Winkfield Court' set at a lower level than the highway. To the south of the site is a further car park for the flatted development 'Molineux Place' which consists of two flatted buildings 3-storeys in height. On the opposite side of the site (to the west) is the

Public Library, and 'Oaklands Lodge' a residential dwelling adjacent to the access to car parking for both the Town and Council Offices and a car park. To the rear of the site (to the east) is an area of car parking for Maxwellton House, with trees and vegetation on the rear boundary. The land slopes significantly away at this boundary down to the railway line. There are further trees and vegetation on the slopes of the railway cutting.

On the north-eastern corner to the rear of the site is a group of trees subject to a Tree Preservation Order (HH/05/TPO/90) comprising of 4no Sycamores and 1no Oak tree.

To the south-west on the opposite side of the road some 76 metres away is a Grade II Listed Building (The Old House, 2 Muster Green). In addition, the Muster Green Conservation Area is to the south-west of the site (some 45 metres) from the site.

The site is located within the built-up area of Haywards Heath as defined in the District and Neighbourhood Plan.

APPLICATION DETAILS

This application seeks permission to vary condition 2 relating to DM/22/2218 - to enable the substitution of plans to allow for changes to the material finish of the building elevation - primarily the change from glazed balcony balustrades to railings.

The amendments being sought do not alter the housing mix of the development as approved.

The submitted covering letter accompanying the application sets out the reasoning to the changes from the glazed balcony and balustrade to railings. It sets out that:

- fire safety regulations would require a change to the glazing design if glazing was to be retained that would significantly affect the appearance of this feature and compromise the desired design finish - this is because glazed balustrades would require extensive fitting features;
- railing will require a significantly less level of maintenance and avoid the need for operators to enter private units to clean the balustrade glazing.

As part of the application details have also been submitted to address the requirements of condition 8 attached to the original permission which has not yet been discharged. Condition 8 states:

'No development shall be carried out above ground slab level unless and until there has been submitted to and approved in writing by the Local Planning Authority 1:20 scale sections and elevations (vignettes) of the following shown in context:

- Recess brickwork panels,
- Top floor balustrading,
- The front entrance canopy,
- The solar panels in relation to the parapet upstand on the roof,
- A projecting balcony on the front façade featuring the vertical fins and the brickwork frame.

The development shall be carried out in accordance with the approved details.

Reason: To enable the Local Planning Authority to control the development in detail in the interests of amenity by endeavouring to achieve buildings of visual quality and to accord with Policy DP26 of the District Plan 2014 - 2031 and Policy E9 of the Neighbourhood Plan.'

LEGAL FRAMEWORK AND LIST OF POLICIES

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

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

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

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

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

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

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan, the Site Allocations Development Plan Document and the Haywards Heath Neighbourhood Plan.

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

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

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

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

Mid Sussex District Plan

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

Relevant policies include:

DP26: Character and Design

DP34: Listed Buildings and Other Heritage Assets

DP35: Conservation Areas

Mid Sussex Site Allocations Document (DPD)

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

There are no relevant policies.

Haywards Heath Neighbourhood Plan

The Neighbourhood Plan was made in December 2016. It forms part of the Development Plan for the District and can be given full weight.

The following policy is considered to be relevant:

E9 - Design and Character

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 some 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:

DPB1 - Character and Design

DPB2 - Listed Buildings and Other Heritage Assets

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.

National Planning Policy Framework (NPPF) (December 2024)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three overarching objectives to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

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

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

Paragraph 12 of the NPPF states;

'The presumption in favour of sustainable development does not change the statutory status of the development plan as the starting point for decision-making. Where a planning application conflicts with an up-to-date development plan (including any neighbourhood plans that form part of the development plan), permission should not usually be granted. Local planning authorities may take decisions that depart from an up-to-date development plan, but only if material considerations in a particular case indicate that the plan should not be followed.'

Paragraph 39 of the NPPF states;

'Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will

improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.'

With specific reference to decision-taking paragraph 48 states that planning decisions must be taken in accordance with the development plan unless material considerations indicate otherwise.

National Planning Policy Guidance

ASSESSMENT

This application is made under section 73 of the Town and Country Planning Act 1990 to vary condition 2 of planning application DM/22/2218 to enable the substitution of plans to allow for changes to the material finish of the building elevation - primarily the change from glazed balcony balustrades to railings.

Condition 2 states:

'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.'

S73 applications allows for developers to amend conditions attached to planning permissions. Such an application only allows amendments to the conditions which have been granted as part of the original planning permission and cannot amend the operative part of the planning permission i.e. the description of the development. This was 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 conditions relating to the approved plans listed under the decision notice reference DM/22/2218. The original planning permission was granted under reference DM/22/2218 for the redevelopment of the site to provide a development of 50 retirement living apartments, associated parking, landscaping and amenity provision. As the operative part of the permission does not specify the plan numbers or the materials and design of the balconies, an application under S73 to allow changes to the details within the documents can be considered relevant.

The principle of the development has already been accepted through the approval of the original permission DM/22/2218. Even though the result of this application would result in the issuing of a new planning permission, it is not considered necessary to go through all the planning issues. The only issue that is pertinent is to consider the specific changes that are proposed from the previous approval.

As such the main issue for consideration are:

- design, the impact on the character of the area; and
- the impact on the setting of designated heritage assets.

Design, impact on the character of the area

Policy DP26 of the District Plan relates to and requires all proposals to be well designed and reflect the distinctive character of the towns and villages while being sensitive to the countryside as well as addressing the character and scale of the surrounding buildings and landscape.

Policy E9 of the Neighbourhood Plan seeks to protect and reinforce the local character within the locality of the site.

Within the Mid Sussex 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.

The alteration to railings for the balconies are considered to be of a design and use materials which would complement the external appearance of the building and retain its contemporary appearance. The use of metal railings is not considered to be out of keeping with the character of the area as the site to the south of Molineux Place benefits from metal railings to the Juliette balconies which are on the front elevation of the building facing onto Boltro Road.

The proposal is thereby considered to comply with policy DP26 of the District Plan, policy E9 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 situated to the north-east of 'The Old House' a Grade II Listed Building which lies on the opposite side of Boltro Road, as well as within the setting of the Muster Green Conservation Area.

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 requires development to protect listed buildings and their settings.

Policy DP35 of the District Plan relates to Conservation Areas. It requires developments to protect the setting of the conservation area and in particular views into and out of the area.

Policy E9 of the Neighbourhood Plan in part states:

'Proposals affecting a listed building, conservation area, building of local interest or public park of historic interest or their setting should preserve or enhance their special interest and/or distinctive character.'

The NPPF states that 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.

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 '.*

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: 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 alterations to the design would not result in any greater visual prominence of the development and would therefore result in a neutral impact from that previously approved to the setting of the designated heritage assets.

The proposal is thereby considered to comply with policies DP34 and DP35 of the District Plan, policy E9 of the Neighbourhood Plan and the relevant paragraphs of the NPPF.

Neighbouring amenity

Policy DP26 of the District Plan requires developments to demonstrate that it does not cause significant harm to amenities of existing nearby residents (or future occupiers), taking into account matters such as impact on light, privacy and outlook.

The test, as set out under policy H9 of the Haywards Heath Neighbourhood Plan, is that the privacy, daylight, sunlight and outlook of adjoining residents are safeguarded.

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 alterations from glazing to metal railings to the balconies would not result in any harm to the amenities of surrounding occupiers.

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

CONCLUSION

It has previously been considered that the development of the site for retirement living apartments is acceptable through the determination of the permission reference DM/22/2218.

The proposed amendments to the previously approved plans detailed in condition 2 is considered to be sensitive to the character of the building approved and would not detract from the character of the area. The changes would still result in a high-quality design appropriate to its context. The amendments would preserve the setting of the surrounding designated heritage assets. No harm would be caused to the amenities of surrounding occupiers through the changes proposed.

The proposal is thereby considered to comply with policies DP26, DP34 and DP35 of the District Plan, policy E9 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