

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2924	Case Officer:	Anna Tidey
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of Condition 2 relating to DM/22/0536.		
Site:	Moatlands, Vowels Lane, West Hoathly, East Grinstead, West Sussex, RH19 4LL, ,		
Validation Date	3 Dec 2024	Overall Expiry Date:	30 Dec 2024
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refuse	Recommendation Date:	26 Feb 2025
Target Date:	28 Jan 2025	Recommending Officer Signature:	Anna Tidey

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Stephen Ashdown	Date:	26 Feb 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2924

**Moatlands, Vowels Lane, West Hoathly, East Grinstead, West Sussex, RH19 4LL,
Variation of Condition 2 relating to DM/22/0536.**

Dr Allen Zimble

SUMMARY OF REPRESENTATIONS

None received.

SUMMARY OF CONSULTEEES

WSCC Highways: The LHA is satisfied that sufficient off-street parking provision is available on-site for the permitted use, and no concerns would be raised to the Variation of Condition 2.

In summary, the LHA does not consider that this proposal would have an unacceptable impact on highway safety or result in 'severe' cumulative impacts on the operation of the highway network, therefore is not contrary to the National Planning Policy Framework (paragraph 116), and that there are no transport grounds to resist the proposal.

TOWN/PARISH COUNCIL OBSERVATIONS

West Hoathly Parish Council: No objections.

INTRODUCTION

This application seeks to vary Condition 2 of the approval granted under DM/22/0536 to seek to alter the parking provision for the dwelling permitted under DM/22/0536, to provide two external parking spaces instead of the originally proposed garaging at a vacant property located at Moatlands, Vowels Lane, West Hoathly.

The application under DM/22/0536 was for works described as follows:

'Conversion from existing garages and studio into a dwellinghouse, together with the construction of a detached pair of garages associated with the dwelling (retrospective) (Amended plans and description 14.11.2022) (Amended existing and proposed floor plans and elevations 25/09/2023).'

Condition 2 of DM/22/0536 reads as follows:

'No part of the development shall be first occupied until the car parking spaces within the garages have been constructed in accordance with approved plans. These spaces shall thereafter be retained at all times for their designated purpose.'

Reason: To provide car-parking space for the use and to comply with DP21 of the Mid Sussex District Plan.'

RELEVANT PLANNING HISTORY

DM/22/0536: Conversion from existing garages and studio into a dwellinghouse, together with the construction of a detached pair of garages associated with the dwelling (retrospective). Approved.
DM/21/4282: Extension to Garage and Tractor Garage for gardens. Approved.

DM/21/1001: Excavation and installation 120Kw Ground Source Heat Pump system in fields and existing boiler house. Approved.

DM/21/0376: Variation to condition 1 relating to planning application DM/18/4898 to replace the approved plans to amend the basement level. (Amended description 08/02/2021). Approved.

DM/20/1956: Discharge of conditions 4 and 6 relating to planning application DM/17/3893. Split decision.

DM/20/1952: Discharge of conditions 3 and 5 relating to planning application DM/21/0376. (Amended Description 02.06.2021). Approved.

DM/19/2218: Use of existing garages for B1 and B2 Use, restoration of old cars and offices. Approved.

DM/18/4898: Proposed variation of condition 1 of application DM/17/3776 to allow the substitution of the approved drawings with amended drawings. Approved.

DM/17/3893: Proposed conversion of existing studio and garage into a three bedroom residence for estate worker. Approved.

DM/17/3776: Demolition of existing house and replacement with new 10 bedroom house with seven garages, a covered porch and basement (Description amended 19th July 2018). Approved.

06/00692/FUL: New detached garage. Approved.

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.

Using this as the starting point the development plan for this part of Mid Sussex consists of the District Plan, Site Allocation Development Plan Document (DPD) and the West Hoathly 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
DP15 New Homes in the Countryside
DP16 High Weald Area of Outstanding Natural Beauty
DP17 Ashdown Forest SPA and SAC
DP21 Transport
DP26 Character and Design

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.

West Hoathly Neighbourhood Plan

The Neighbourhood Plan was made on 16 April 2015.

There are no relevant policies.

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
DPT3 - Active Travel
DPT4 - Parking and Electric Vehicle Charging Infrastructure

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)

ASSESSMENT

This application is made under section 73 of the Town and Country Planning Act 1990 to vary a planning condition attached to planning permission DM/22/0536 for 'Conversion from existing garages and studio into a dwellinghouse, together with the construction of a detached pair of garages associated with the dwelling (Retrospective) (Amended plans and description 14.11.2022) (Amended existing and proposed floor plans and elevations 25/09/2023)'.

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 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.

Paragraph 56 of the NPPF states that planning conditions should only be used where they satisfy the following six tests:

1. necessary;
2. relevant to planning;
3. relevant to the development to be permitted;
4. enforceable;
5. precise; and
6. reasonable in all other respects.

It is considered that Condition 2 of DM/22/0536 meets the above tests.

The current application seeks to remove condition 2 from the planning permission DM/22/0536, which secures the parking provision for the dwelling permitted. The approved plans for DM/22/0536 show parking provision for two cars located within the adjacent separate building on the site, referred to in the description as a retrospective development (.. 'together with the construction of a detached pair of garages associated with the dwelling (retrospective)'). The garages were located within the original site boundary, outlined by a red line, and the approved drawings showed the provision of parking, to meet the demands of the new dwellings, within the garages. The wording of condition 2 secured this parking in-line with the application details.

The list of approved drawings for DM/22/0536 does not provide for any designated parking to serve the approved dwelling, other than that shown within the garages. In light of this, it is considered that the condition remains necessary.

It is acknowledged that applicant has provided an alternative plan showing two parking spaces on land adjacent to the dwellings and has, in an alternative, suggested that the condition could be amended to reflect this.

It has been established in the courts that it is not possible to amend a planning permission, via s73 of the Town and Country Planning Act 1990, if the amendments seek to change/or are inconsistent with the operative part (the description of the development) of the original permission. This has been further clarified in *Test Valley v Friske*, and inclusion of the bracketed wording within the description of the development '*(Amended plans and description 14.11.2022) (Amended existing and proposed floor plans and elevations 25/09/2023)*', the dates of which reflect some of the approved plans, result in the approved plans being within the 'operative' part of the permission. As such, no changes to the approved plans are lawfully permissible under s73. In addition, the suggested alternative plan and condition wording could be considered to be inconsistent with the operative part of the permission.

Consequently it is considered that the s73 application route cannot be lawfully used in this case to vary the condition and a such the removal of condition 2, as proposed, would not ensure that suitable provision for the parking of vehicles to serve the dwelling would be secured.

Given the above, this application cannot be supported.

Decision: Refuse

Case Officer: Anna Tidey