

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/1114	Case Officer:	Stefan Galyas
Application Type:	Full Application		
Proposal:	Part retrospective application for the proposed installation of play equipment and boundary fence as well as a retrospective timber framed summer house		
Site:	Hambrook School, Marle Place, 171 Leylands Road, Burgess Hill, West Sussex, RH15 8HY, ,		
Validation Date	30 May 2025	Overall Expiry Date:	3 Feb 2026
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Refusal	Recommendation Date:	10 Mar 2026
Target Date:	25 Jul 2025	Recommending Officer Signature:	<i>Stefan Galyas</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	3
--	--	-------------------------------	---

Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	11 Mar 2026
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/1114

**Hambrook School, Marle Place, 171 Leylands Road, Burgess Hill, West Sussex, RH15 8HY,
Part retrospective application for the proposed installation of play equipment and boundary
fence as well as a retrospective timber framed summer house
Mr Oliver Peacock**

SUMMARY OF REPRESENTATIONS

There were two letters of representation received in response to the proposed development. Both letters sought to object to the proposal for the following reasons:

- The use of the grassed area for ball games which may lead to damage to windows, plants and garden furniture.
 - Queries over how high the summer house and play equipment would be and whether the summer house would be occupied at all times during the school's opening hours.
- The application underwent some revisions to include a 2.4m boundary fence with topping V mesh fencing. A further letter of representation was received which objected to the proposed development for the following reasons:
- The existing play area giving rise to noise disturbance towards the neighbouring properties.

SUMMARY OF CONSULTEES

Conservation Officer: *'The application has been revised to include the perimeter fence to the property, which it is noted is proposed to be reduced to 2m in height as a solid close boarded structure, with a 400mm high mesh fence above. The applicant has been previously advised that this in conjunction with screening planting to the outer side of the fence may be acceptable compromise. However, I note the following:*

The application does not seem to be accompanied by previously existing drawings showing the fences which were replaced to the south and west sides of the school grounds? These should be provided so that the context of the current proposal can be properly understood.

The proposed planting plan shows hedging to the external side of the fencing, but is annotated 'maintenance by others- off site'. I would query whether this provides the reasonable confidence which the Council would require that the planting would be carried out and maintained in an appropriate manner- if the applicant does not own the land, do they have permission to plant in it? How can the ongoing maintenance and health of the planting be assured if this is outside the applicant's control? The weight which could therefore be attached to this aspect of the application, as it stands, would appear to be very limited. It may be that the line of the fencing, as well as the height and design, would need to be amended so that the required planting can be accommodated within the land which is under the applicant's control.'

Ecological Consultant: *'No objection. We have reviewed the Preliminary Ecological Appraisal and Roost Assessment (Arbtech, May 2025) relating to the likely impacts of development on designated sites, protected and Priority species & habitats and identification of appropriate mitigation measures and mandatory Biodiversity Net Gain.*

We have also reviewed the information submitted relating to mandatory biodiversity net gains. We are satisfied that there is sufficient ecological information available to support determination of this application.'

West Sussex County Council Public Rights of Way: No objection.

Tree Officer: No objection.

Environmental Health: No objection based on the noise impact assessment, ref: WA/0525/NA-828-rev2.

TOWNCOUNCIL OBSERVATIONS

This application was previously discussed on 14th July and 26th August. The Burgess Hill Town Council Committee of 5th January noted the application but raised concerns around the noise impact raised by residents and items being thrown over the fence.

The committee requests in the spirit of neighbourliness that the applicant communicates with local residents about their concerns.

INTRODUCTION

The application seeks part retrospective planning permission for the installation of play equipment as well as for the retrospective approval of a single storey summerhouse outbuilding and alterations to the existing boundary fence.

RELEVANT PLANNING HISTORY

04/00130/C3REG - Single storey extension to existing building to provide additional training rooms and offices. Permit with Conditions 18.05.2004.

05/01992/FUL - To replace plain clay tile covered pitched roof with natural slate to match existing on other buildings within the site boundaries. Permission granted 01.11.2005.

07/02602/C3REG - Timber huts to the rear (south side) of Marle Place Adult Educational Centre. No Objection 29.10.2007.

DM/23/3112 - Installation of multi-use games area (MUGA), play area, trim trail, horticulture area, sensory garden, vehicular access security gate and fence, internal partition fences, perimeter security fences, soft/hard landscaping and associated works. Description amended 11.07.2024 to include formalised play area to front of school building. Amended plans received to show additional fence cladding proposed to outer side of existing close boarded perimeter fence and reduction in height of fence to MUGA. Noise Management Plan and Acoustic Assessment received 11.04.2024, Arboricultural Method Statement and Tree Protection Plan received 01.07.2024 and additional Heritage Statement received 24.05.2024. Refused 29.08.2025.

SITE AND SURROUNDINGS

The site at Hambrook School is comprised of a large, detached period building, formerly known as Marle Place. The building is well set back (approximately 50 metres) to the south of Leylands Road, with a large car park located to the front. An enclosed garden area lies to the rear, with established trees located on the southern and rear western boundaries. The front and eastern boundary of the site is enclosed by a high brick wall. The site benefits from an educational use, having previously served as an adult education centre. The site now serves as an independent school specialising in working with children and young adults with autism and special educational needs; the school opened in September 2023.

The site lies within a residential area, surrounded by properties on Leylands Road and Highlands Drive to the east, properties on Leylands Road and Wyberlye Road to the west and properties on Leylands Road and Marle Avenue to the north. Marle Place Park (owned by Mid Sussex District Council) adjoins the site to the south, with a public right of way (footpath BUH/70BH/1) running parallel to the western boundary of the site, providing pedestrian access from Leylands Road to Wyberlye Road and Marle Place Park. A number of preserved trees fall within the grounds of the school, including 3 no. Wellingtonia trees on the southern boundary of the site.

In terms of planning policy, the site lies within the built up area of Burgess Hill and St Johns Conservation Area. The eastern side of the site also lies within a West Sussex County Council Archaeological Notification Area, grade red, covering the route of the Roman road through Mid Sussex. Marle Place is also noted as a building of merit under the Burgess Hill Neighbourhood Plan and as such can be considered as a non-designated heritage asset (NDHA).

APPLICATION DETAILS

The development proposal includes the installation of play equipment within the rear garden space to the south of the site. The play equipment would include: Monkey Bars, Rope Walk, Stepping Logs, Nest Swing, Tone Up Zone, Gym Equipment (ie. Double Slalom Skier, Health Walker, Sky Stepper and Arm & Pedal Bike) and a Trampoline (Set at ground level).

Moreover, the proposal seeks retrospective permission for a single storey timber-built summerhouse which would also be positioned within the rear garden amenity space to the south, albeit set towards the western boundary. The proposed summerhouse would measure at circa 3m in length, 2.2m wide, 2.1m high to the eaves and 2.4m high to the ridge.

The proposal seeks to alter the existing close board boundary fence to the rear of the site and would increase the height from 1.8m to 2.4m overall. The new fencing would be topped off by a V mesh fencing for the highest 0.4m. A new native perimeter mix would be planted to the outside of the fence, facing away from the application site to the southern and western sides.

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, Site Allocations Development Plan Document (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:

DP1: Sustainable Economic Development
DP22: Rights of Way and Other Recreational Routes
DP25: Community Facilities and Local Services
DP26: Character and Design
DP28: Accessibility
DP29: Noise, Air and Light Pollution
DP34: Listed Buildings and Other Heritage Assets
DP35: Conservation Areas
DP37: Trees, Woodland and Hedgerows
DP38: Biodiversity
DP39: Sustainable Design and Construction

Site Allocations DPD

The SADPD was adopted on 29th June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031.

Relevant policies.

Neighbourhood Plan

Burgess Hill Neighbourhood Plan (Made January 2016)

S3 - Protect and Enhance Existing Community and Medical / Health Facilities

G6 - Footpaths, Rights of Way and Cycle Links

H1 - Protecting and Enhancing Heritage Assets and Conservation Areas

H3 - Protect Areas of Townscape Value

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 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:

DPS1 - Climate Change
DPS2: Sustainable Design and Construction
DPS6 - Health and Wellbeing
DPH12 - Accessibility
DPS2 - Sustainable Design and Construction
DPN1 - Biodiversity, Geodiversity and Nature Recovery
DPN2 - Biodiversity Net Gain
DPN4 - Trees, Woodland and Hedgerows
DPN6 - Pollution
DPN7- Noise Impacts
DPB1 - Character and Design
DPB2 - Listed Buildings and Other Heritage Assets

DPB3 - Conservation Areas
DPT2 - Rights of Way and Other Recreational Routes
DPI6 - Community and Cultural Facilities and Local Services

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 National Planning Policy Framework (NPPF) 2024 is a material consideration. Paragraphs 2, 8, 11, 39, 48, 131, 134, 135, 139, 189, 207, 208, 209, 212-215, 219 & 220.

Planning (Listed Buildings and Conservation Areas) Act 1990

Section 72(1) - Special attention to be paid to preserving or enhancing the character or appearance of a conservation area.

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

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

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

- Principle
- Impact on Character and Design, Including Heritage Assets
- Impact on Trees
- Impact on Neighbouring Amenities
- Impact on the Public Rights of Way
- Other Matters
- Biodiversity Net Gain

Principle

Policy DP25 of the District Plan relates to community facilities and advises that:

'The provision or improvement of community facilities and local services that contribute to creating sustainable communities will be supported.'

Where proposals involve the loss of a community facility, (including those facilities where the loss would reduce the community's ability to meet its day-to-day needs locally) evidence will need to be provided that demonstrates:

- o that the use is no longer viable; or*
- o that there is an existing duplicate facility in the locality which can accommodate the impact of the loss of the facility; or*
- o that a replacement facility will be provided in the locality.'*

Policy S3 of the Neighbourhood Plan states that; *'existing community facilities within Burgess Hill are important resources for the local community and should be retained. Support will be given to allocating new facilities or improving existing ones.'*

The proposed development seeks to enhance the current level of facilities and play areas for pupils in association with the existing established school. As such, the principle of development is considered to be acceptable in this regard and would not be contrary to the provisions of DP25 of the District Plan nor Policy S3 of the Neighbourhood Plan.

Impact on Character and Design, Including Heritage Assets

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:

- 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 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'*

The site lies in St. Johns Conservation Area in Burgess Hill which was established as a conservation area in 1989. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that:

'In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'

This stance is reflected under policy DP35 of the District Plan which states in part that:

'Development in a conservation area will be required to conserve or enhance its special character, appearance and the range of activities which contribute to it. This will be achieved by ensuring that:

o Open spaces, gardens, landscaping and boundary features that contribute to the special character of the area are protected. Any new landscaping or boundary features are designed to reflect that character; Development will also protect the setting of the conservation area and in particular views into and out of the area.'

Policy H1 of the Neighbourhood Plan relates to heritage assets and conservation areas, stating in part that:

'Proposals within the Burgess Hill Conservation Areas will be required to preserve and enhance their special character or appearance. Support will be given to undertaking/updating appraisals and management plans for each Conservation Area.'

The District Council document, 'Conservation Areas in Mid Sussex' (August 2018) refers to St. Johns conservation area on page 13 and notes that:

'Marle Place and its grounds also lie within the Conservation Area. As well as being an important recreational resource, the grounds - which have a considerable number of trees covered by a Tree Preservation Order - contribute to the local amenity and special character of the area by providing an attractive area of open space within a relatively densely built up area.'

Policy H1 of the Neighbourhood Plan also refers to local buildings of merit within Burgess Hill, stating that:

'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 supported in preference to their demolition and redevelopment.

Buildings of Merit within Burgess Hill include:

11. Marle Place, Leylands Road.'

As such, it is considered that Hambrook School, formerly known as Marle Place, can be considered a non-designated heritage asset (NDHA).

Policy DP34 of the District Plan is therefore deemed relevant in this respect, stating in part that:

'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.'

Paragraph 216 of the NPPF is relevant in this instance, stating that:

'The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-

designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.'

Significance is defined in Annex 2 of the NPPF as "The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting."

Paragraph 208 of the NPPF requires the Local Planning Authority to identify and assess the particular significance of any heritage asset that may be affected and take this into account when considering the impact of a proposal.

In addition to the above, it is noted that policy H3 of the Neighbourhood Plan notes 'Leylands Road (from Marle Place to St. Johns Avenue)' as forming part of an area of townscape character. The policy states that:

'Proposals for development and redevelopment within Areas of Townscape Value will require special attention to be paid to preserving and enhancing the existing character of the area in terms of spaciousness, building heights, building size and site coverage, building lines, boundary treatments, trees and landscaping.'

Given the sites location within the St Johns Conservation Area and the buildings identification as a non-designated heritage asset, the Council's Conservation Officer has been consulted. It was noted within their response that the building makes a positive contribution towards the character and appearance of the wider Conservation Area, particularly with regard to the southern elevation facing the park.

Paragraphs 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.

The proposal was originally submitted for just the proposed play equipment and retrospective permission of the summerhouse. However, in light of concerns from the Environmental Health Officer, it was raised that further information regarding the proposed boundary treatment would be required in order to

mitigate against the noise impact. The existing 2.4m close boarded fence is unauthorised and has been previously refused with an appeal dismissed.

As part of the current application, the proposed fence has been revised to a 2m high close boarded fence with 0.4m of V mesh fencing to the highest point. Moreover, the scheme would include a landscaping scheme, featuring planting to the southern and western outer peripheries of the fence. This is likely proposed to soften the fences appearance from public vantage points when observed from the park to the south and the public right of way to the west.

Whilst the height of the close boarded element of the fence has been reduced, it is considered that this would still appear stark when observed from these public vantage points. The acceptability of the proposed fence is therefore considered to hinge on the proposed planting scheme which would likely mature and soften the appearance of the proposed fence over time.

The submitted proposed landscaping scheme appears to show that the proposed planting scheme would be located outside of the site's boundary. Furthermore, an annotation has been included to show that the proposed planting would be maintained by 'others off site'. It is considered that this would provide the Council with no security or confirmation that the proposed planting would be properly maintained. Accordingly, there is no guarantee that the proposed planting would actually mature over time to allow the fences harm to be softened. The proposal will therefore be assessed on the basis that the proposed planting would not be sufficiently maintained and that the fence would remain a visually prevalent feature. Due to its utilitarian appearance, the proposed fence is considered to result in less than substantial harm on the St Johns Conservation Area.

The proposed summer house out building is considered to be of an overall limited size and would be set to a single storey height with a pitched roof design. The use of the timber material throughout, coupled with the outbuildings limited size is considered to help soften the outbuildings overall appearance and the outbuilding is considered to appear subservient towards the main building on site.

With regard to the proposed play equipment, a range of units would be installed within the existing garden area to the south of the site. Whilst this would result in loss of some grassed garden space, it is considered that the structures would be lightweight in nature would not appear to be dominant permanent structures on site. It is therefore considered that on balance, the proposed play equipment would be of an acceptable appearance.

Where the harm would be less than substantial, in terms of the NPPF, the criteria set out in paragraph 215 of that document would apply. This states that '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.' This is the balancing exercise that must be undertaken by the decision maker, ensuring that considerable importance and weight is given to the less than substantial harm to the heritage asset that has been identified.

The continued use of the premises as an educational facility for children with special educational needs undoubtedly provides a valuable community facility and local service that can be considered as a public benefit. As considered by the Planning Inspector within the previously dismissed appeal, the proposed fence would benefit the students at the school as would the proposed new play equipment and summerhouse. However, the 2.4m overall height of the fence has not been demonstrated to be necessary for the safeguarding of the students or that a lower height would not be acceptable.

In view of the above, whilst the proposed development would provide an enhanced play area and external facilities for the school and its pupils, in this instance, it is not considered that the public benefits of the proposal would not outweigh the harm caused to the appearance and character of the conservation area, also considering that there may be alternative options that have a less harmful impact upon the appearance and character of the conservation area. In addition, it is not considered that the existing use is necessarily the optimal viable use for the building considering that alternative uses, such as residential, may be more sympathetic in terms of impact upon the setting of the building and conservation area. The proposal therefore conflicts with policy DP35 of the District Plan and H1 of the Neighbourhood Plan.

In addition to the above, it is noted that Leylands Road is an Area of Townscape Value as designated by the Neighbourhood Plan. Whilst the development is considered to adversely impact upon the conservation area and NDHA, as the proposed development is considered to have relatively limited impact in views from Leylands Road, the proposal is not considered to have a harmful impact upon the appearance and character of the area of townscape value.

The proposed total height of 2.4m and without the guarantee of future planting mitigation it is considered that the proposal would result in a harmful impact upon the general appearance and character of the area, appearing imposing in relation to the public footpath and in views from Marle Place Park, thereby failing to create a sense of place and conflicting with policy DP26 of the Mid Sussex District Plan.

Impact on Trees

DP37 of the District Plan relates to trees and states in part that:

'Development that will damage or lead to the loss of trees, woodland or hedgerows that contribute, either individually or as part of a group, to the visual amenity value or character of an area, and/ or that have landscape, historic or wildlife importance, will not normally be permitted... Trees, woodland and hedgerows will be protected and enhanced by ensuring development:

- incorporates existing important trees, woodland and hedgerows into the design of new development and its landscape scheme; and*
- prevents damage to root systems and takes account of expected future growth; and*
- where possible, incorporates retained trees, woodland and hedgerows within public open space rather than private space to safeguard their long-term management; and*
- has appropriate protection measures throughout the development process; and*
- takes opportunities to plant new trees, woodland and hedgerows within the new development to enhance on-site green infrastructure and increase resilience to the effects of climate change; and*
- does not sever ecological corridors created by these assets.*

Proposals for works to trees will be considered taking into account:

- the condition and health of the trees; and*
- the contribution of the trees to the character and visual amenity of the local area; and*
- the amenity and nature conservation value of the trees; and*
- the extent and impact of the works; and*
- any replanting proposals.*

The felling of protected trees will only be permitted if there is no appropriate alternative. Where a protected tree or group of trees is felled, a replacement tree or group of trees, on a minimum of a 1:1 basis and of an appropriate size and type, will normally be required. The replanting should take place as close to the felled tree or trees as possible having regard to the proximity of adjacent properties.'

An Arboricultural Tree Report including a Method Statement and Tree Protection Plan were submitted as part of the application. The report was revised over the course of the application in order to correctly reference the current development scheme. Whilst the proposal would remove a total of four trees, no objection was raised from the Tree Officer following on from a consultation. Accordingly, the proposal would accord with Policy DP37 of the District Plan.

Impact on Neighbouring Amenities

In terms of impact upon neighbouring amenities, Policy DP26 in part seeks to ensure that development: '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 (see DP29);'

DP29 then relates to noise, air and light pollution:

The environment, including nationally designated environmental sites, nationally protected landscapes, areas of nature conservation or geological interest, wildlife habitats, and the quality of people's life will be

protected from unacceptable levels of noise, light and air pollution by only permitting development where:

Noise pollution:

- o It is designed, located and controlled to minimise the impact of noise on health and quality of life, neighbouring properties and the surrounding area;*
- o If it is likely to generate significant levels of noise it incorporates appropriate noise attenuation measures;*

Noise sensitive development, such as residential, will not be permitted in close proximity to existing or proposed development generating high levels of noise unless adequate sound insulation measures, as supported by a noise assessment are incorporated within the development.

In appropriate circumstances, the applicant will be required to provide:

- o an assessment of the impact of noise generated by a proposed development; or*
- o an assessment of the effect of noise by an existing noise source upon a proposed development;*

Light pollution:

- o The impact on local amenity, intrinsically dark landscapes and nature conservation areas of artificial lighting proposals (including floodlighting) is minimised, in terms of intensity and number of fittings;*
- o The applicant can demonstrate good design including fittings to restrict emissions from proposed lighting schemes;*

Air Pollution:

- o It does not cause unacceptable levels of air pollution;*
- o Development on land adjacent to an existing use which generates air pollution or odour would not cause any adverse effects on the proposed development or can be mitigated to reduce exposure to poor air quality to recognised and acceptable levels;*
- o Development proposals (where appropriate) are consistent with Air Quality Management Plans.*

The degree of the impact of noise and light pollution from new development or change of use is likely to be greater in rural locations, especially where it is in or close to specially designated areas and sites.

The proposed summerhouse would be set towards the sites western boundary which abuts a public right of way with a property set further in the distance at No.17. It is considered that the proposed summerhouse would be of a limited overall size and scale and would wholly be contained to single storey level. Accordingly, it is not considered that the proposal would give rise to a significant overbearing impact.

With regard to the play equipment, a Noise Impact Assessment was submitted in support of the application which concluded that the noise levels from the proposed use would remain below the relevant thresholds.

It is noted that part of the original Noise Impact Assessment was calculated with the existing unauthorised 2.4m high boundary fence as providing attenuation towards the noise generated. The existing fence is also subject to a live enforcement case at this time of writing. It should be noted that the current boundary fence has not been authorised through a valid planning permission.

Plans were subsequently revised to include amended boundary treatment in order to assess the mitigation from the boundary against the noise generated from the new play equipment.

The Council's Environmental Health Officer has been consulted in response to the proposed application and noted that the submitted Noise Impact Assessment relies on operational constraints that are not enforceable unless this is secured through a planning condition. The proposed fence was assumed to provide 10dB attenuation which was concluded to be a reasonable estimate. The maintenance and upkeep of the fence and play equipment would be required in order to prevent an undue level of noise disturbance.

A condition was put forward by the Environmental Health Officer to restrict the number of students that can use the play area at one time. However, this condition is not considered to be enforceable and would fail the six tests of planning conditions.

Accordingly, the proposal is considered to comply with the provisions of DP26 and DP29 of the Mid Sussex District Plan in terms of neighbouring amenities.

Impact on the Public Rights of Way

The western boundary of the site adjoins a public footpath, reference BUH/70BH/1.

Policy DP22 of the District Plan relates to public rights of way and other recreational routes and advises in part that rights of way will be protected by ensuring that development does not result in the loss or adversely affect a right of way.

Policy G6 of the Neighbourhood Plan refers to footpaths and rights of way and states in part that 'all existing footpaths, public rights of way and cycleways within Burgess Hill will be retained and maintained by the appropriate authorities and owners.'

The County Public Rights of Way Officer has been consulted regarding the proposal and raised no objection provided that the footpath would not be interrupted as part of the developed or narrowed without prior discussions with West Sussex County Council's Public Rights of Way team. Accordingly, the proposal is considered to be acceptable in this regard and would not adversely impact the right of way.

Other Matters

Policy DP38 of the District Plan notes among other matters that:

'Biodiversity will be protected and enhanced by ensuring development:

- Contributes and takes opportunities to improve, enhance, manage and restore biodiversity and green infrastructure, so that there is a net gain in biodiversity, including through creating new designated sites and locally relevant habitats, and incorporating biodiversity features within developments; and*
- 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.'*

A consultation response was received from the Council's Ecology contractor which raised no objection towards the submitted supporting information. The details within the Preliminary Ecological Appraisal and Roost Assessment were considered to be sufficient ecological information to support the determination of the current application.

Biodiversity Net Gain

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

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 Burgess Hill 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 proposed 2.4m high fence without the provision of softening boundary planting on site is considered to have a harmful impact upon the St Johns Conservation Area, failing to preserve its character and appearance. The proposal would therefore detract from the verdant and spacious character of this part of the Conservation Area. Such harm caused is considered to be less than substantial, however this should be given considerable weight. The proposal would provide enhanced external play areas and security for the school, however the public benefits are not considered to outweigh the harm that the development would cause to the appearance and character of the conservation area. The proposal therefore conflicts with policies DP26 and DP35 of the Mid Sussex District Plan, policy H1 of the Burgess Hill Neighbourhood Plan and relevant paragraphs of the NPPF.

Decision: Refusal

Case Officer: Stefan Galyas