

**STATEMENT IN RESPONSE TO OBJECTIONS
FOR PLANNING APPLICATION REFERENCE: DM/25/0289**

APPROVED DEVELOPMENT:

SINGLE STOREY OAK FRAMED GARAGE BUILDING.

**5 SILVERDALE ROAD
BURGESS HILL
RH15 0ED**

Prepared by:

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1. INTRODUCTION

- 1.1 This document is a response to the objection raised by Emily Wade, Conservation Officer at Mid Sussex Council, and to the objection made by the Professional Residents jointly at Argent House 7 Silverdale Road, Burgess Hill, RH15 0ED. It is prepared following the instruction of Mr James Smith, owner and occupier of 5 Silverdale Road and Oakwrights Country Buildings Ltd.
- 1.2 The purpose of this application is, on a without prejudice basis, to seek an amendment to the planning condition relating to the approved plans and drawings.

2. RECENT PLANNING HISTORY AND BACKGROUND INFORMATION

- 2.1 Recent planning history of the site comprises:

Reference: DM/25/0991
Status: Approved 26 May 2025
Proposal: Non-material amendment to reference DM/23/0201 to amend wording on decision notice to read as single storey oak framed garage building

Reference: DM/23/0201
Status: Permission Conditions/Reasons
Proposal: SINGLE STOREY OAK FRAMED GARAGE BUILDING.
(REVISED LANDSCAPE PLAN RECEIVED 13/06/2023)

Received: Tue 24 Jan 2023 | Validated: Tue 24 Jan 2023 | Status: Approved

Reference: DM/23/2367
Status: Approved
Proposal: Discharge of Condition 3 in relation to DM/23/0201
5 Silverdale Road Burgess Hill West Sussex RH15 0ED

Received: Tue 12 Sep 2023 | Validated: Tue 12 Sep 2023 | Status: Approved

Reference: DM/22/1697 |
Status: Refused
Proposal: Proposed erection of an oak framed domestic garage building with home office and annex on the first floor. | 5 Silverdale Road Burgess Hill West Sussex RH15 0ED |

- 2.2 The planning application for a single storey oak-framed garage was approved 17 JUL 2023 and the application for 'Discharge of Condition 3 in relation to DM/23/0201' was approved 23rd October 2023.
- 2.3 The development of the garage was subsequently begun on site. On the 10th of July 2024 Mr James Smith was contacted by Mr Andy Clarke, Senior Planning Officer Investigations and Enforcement, Mid Sussex District Council, regarding an 'Alleged breach of planning control relating to the construction of a detached garage'.

- 2.4 The letter alleges that 'the development varies materially from that approved and is considered that the development as being constructed does not benefit from planning permission.'
- 2.5 Mr Ben Garbett, Consultant Solicitor, Keystone Law, has been appointed by Oakwrights Country Buildings Ltd (the garage building designer and manufacturer) in order to assist with this matter on behalf of the applicant, Mr James Smith.
- 2.6 Mr Ben Garbett draws attention, in his letter to Mr Andy Clarke, dated 17th October 2024, (reproduced at Appendix I) two salient points that the LPA appear to have overlooked:

'Firstly, case law establishes that there may be certain works within the scope of a planning permission which are necessary and reasonable for its implementation, which are impliedly incorporated within the grant of consent, even if not specifically described in the notice of development or featured in the approved plans: R (Martin Grant Homes Limited) v Basildon DC [1987] 53 P&CR 397. That was a case in which there was no condition relating to a drainage scheme. In the present case, the difficulty is the lack of any condition specifying final land levels. The works that have been carried out, including to lay a level plinth, are necessary and reasonable for the implementation of the permission and were incorporated within the general grant of consent.

Secondly, the Government's technical guidance (Permitted development rights for householders) advises in relation to '... references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.)' (Emphasis added).'

- 2.7 It is therefore asserted that the current development does not vary materially from what is approved; however, in order to resolve the issue in a timely manner, it has been decided to instruct Mid West Planning Ltd to submit a Section 73 planning application to vary the conditions of the approved consent (DM/23/0201).
- 2.8 This application to vary conditions seeks to vary condition 1 relating to the approved plans:

1. Approved Plans

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".

3. RESPONSE TO CONSERVATION OFFICER OBJECTIONS

- 3.1 Emily Wade, Conservation Officer at Mid Sussex Council responded to the consultee comment request by confirming that the application before us is in effect for **amendments to an approved scheme (DM/23/0201)** for the demolition of the two existing buildings within a garden area lying to the rear of 7 Silverdale Road (although part of the property of no. 5) and the construction of a substantial single storey L shaped building comprising garaging for cars plus domestic storage

space. Emily then states that 'an assessment of the site and its contribution to the Conservation Area formed part of my comments on the previous application, which I have added below, so I will not repeat that here'.

- 3.2 Emily commented on the 2023 application for the same garage in the same location; 'Further comments on the above application following receipt of revised landscaping plans (the second revision of which I note was in response to comments from the Council's Tree Officer regarding selection of species).

*The revised landscaping plan shows a significant **reduction in the area of hardstanding** associated with new garage building, and the **introduction of more soft landscaping including tree planting**. In light of this, and in the context of the removal of the existing outbuildings on the site, it is considered on balance that a **refusal on grounds of the scale of the building may be difficult to sustain**. On balance, therefore, **the proposal is considered to preserve the character and appearance of the Conservation Area, meeting the requirements of District Plan Policy DP35** and the relevant paragraphs of the NPPF. I would recommend the following conditions:*

Details of roofing and facing materials-

- Garage doors to be side hung timber doors-
- Full details of the material for the hardstanding (the image shown on the landscaping plan is considered acceptable, but a full provenance should be provided).'

- 3.3 Emily Wades comments suggest that there is an 'increase in height to the approved building elevation to the eastern side raises concerns in built heritage terms- in particular the increased scale of the garage appears overbearing in terms of views from the neighbouring garden to the east (9 Silverdale Road)'. This is incorrect. There is no increase in height to the garage building at all. It remains at 4.77m from the original ground level at the western elevation to the ridge, as depicted on the 2023 submitted drawing. This was reiterated on the drawing (Smith - North South elevations 27.05.2025) submitted.

North & South Elevations

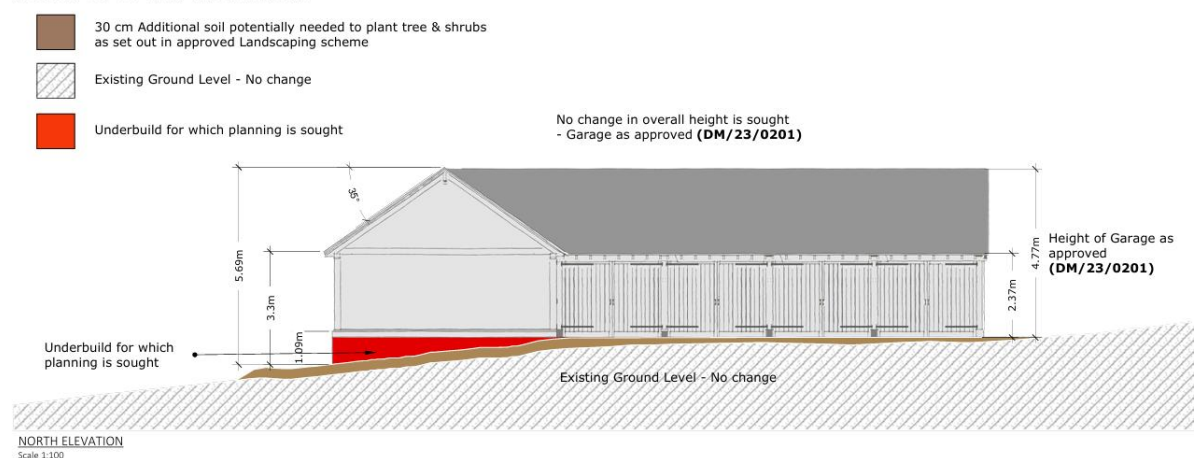


Figure One: Northern elevation showing garage height relative to the existing, original ground level. Note, the red area is the 'underbuild' for which consent is being sought.

- 3.4 It is hard to comprehend how both the Case Officer and the Conservation Officer could not understand the level that the garage had to be built at. If the garage were to be built at a level lower than the level depicted at the western gable, the garage doors would be lower than the surrounding ground levels and would not open, let alone provide access for cars entering the garage.
- 3.5 The fact that the Conservation Officer took the trouble to recommend a series of planning conditions should the application be approved, after reviewing the revised landscaping plans (the second revision, in response to comments from the Council's Tree Officer regarding selection of species) suggests that the application was well scrutinised and at that time no serious concerns were raised about the overall height of the building in relation to neighbouring properties.
- 3.6 The initial Conservation Officer comments confirmed that on the garage **met the requirements of District Plan Policy DP35 and the relevant paragraphs of the NPPF.**
- 3.7 The comments made in response to the current application for the same garage, at the same height as approved states that the development *'results in a degree of harm to the character and appearance of the Area, contrary to the requirements of District Plan Policy DP35. In terms of the NPPF, I would consider the harm caused to be less than substantial, and (in light of the approved scheme) at the lower end of that scale.*
- 3.8 I think that the Conservation Officer considered that, in light of the revised landscaping scheme and in the context of the removal of the existing outbuildings on the site, the proposal had a positive contribution to make to the Conservation Area.
- 3.9 The Conservation Officer has effectively stated that the 'underbuild' has less than substantial harm resulting in a degree of harm to the character and appearance of the Area, contrary to the requirements of District Plan Policy DP35. No statement of the reasons for the Conservation Area status or the impacts that the garage might have on it have been given.
- 3.10 Not all new buildings located in a Conservation Area constitute harm to the Conservation Area. I consider that the impacts of the applicant's garage are the same as in the 2023 approved planning application. The underbuild cannot have a less than substantial harm to the Silverdale Road and Birchwood Grove Road Conservation Area because it has not resulted in a taller or higher building. Nothing else has changed.

4. RESPONSE TO NEIGHBOUR OBJECTIONS

- 4.1 Objections to the application have been received from 'The professional residents jointly at Argent House and 7 Silverdale Road'. The response to these objections will follow the format set out by the objectors.

Scale and Massing in a Conservation Area

- 4.2 The assessment of the garage in terms of scale and massing in the Silverdale Road and Birchwood Grove Road Conservation Area has already been undertaken both by the Case Officer, Joseph Swift, and by Conservation Officer Emily Wade.

- 4.3 The underbuild does not change the number of garage spaces. The garage remains a single storey garage.
- 4.4 The original ground levels have not been changed from prior to the approval of the 2023 planning application for the same garage. The ridge height remains the same at 4.77m to the ridge at the western gable.
- 4.5 The building regulation application submission has dealt with the structural integrity of the garage foundation design. This is not a matter for this application.

Harm to Residential Amenity

- 4.6 Sunlight comes from the east in the morning, south in the middle of the day and from the west in the evening. Loss of light cannot occur from this development to the north of the objectors' homes. Any potential for loss of light would have been assessed by the Case Officer when determining the 2023 application. Clearly this was not a concern at the time.

Loss of Privacy

- 4.7 There cannot be a loss of privacy from a building with no habitable rooms or opening windows or doors facing the objectors' homes. Any potential for loss of privacy would have been assessed by the Case Officer when determining the 2023 application. Again, clearly this was not a concern.

Noise and Disturbance

- 4.8 There is no change in the use, scale of use or intensity the use of the approved garage. Mr Swift assessed the 2023 application against policies DP26 & DP29 as quoted, with regard to noise and pollution and concluded:

'Owing to the proposed domestic nature of the proposal, combined with the existing residential nature of the site, it is not considered that the proposal would give rise to unacceptable levels noise or pollution impacts.'

'It is accepted that there will be a level of noise and disturbance during construction, however this is only for a limited period and would be controlled by the Environmental Protection Act 1990.'

Drainage and Flood Risk

- 4.9 The development is not changing in terms of hard surfaces from that approved in 2023. The proposal included the demolition of two existing buildings and areas of impermeable hard standings.

Arboricultural Concerns

- 4.10 The matter of protecting trees at the site was fully considered by the Council's Tree Officer. This application to incorporate the underbuild on the drawings does not change anything regarding trees at the site.

'As per the previous application, which was refused, I can confirm I would not object to this proposed development on Arboricultural grounds.'

'Following these comments, the landscaping plan has been updated and has been amended to show native trees in accordance with the Tree Officers comments. It is therefore considered to comply with the above-mentioned policy.'

Misrepresentation and Retrospective Justification

- 4.11 The applicant strongly disputes these claims. The 2023 approved development was the second application; the first being for a two-storey garage with home office etc. refused on 3 November 2022. Why would the applicant raise the land levels?

Fire Safety and Overdevelopment Concerns

- 4.12 Fire safety is not an issue for this application to regularise the underbuild element. Building regulation approval has been sought and is therefore dealt with separately.
- 4.13 Future alternative uses of the building, other than the approved householder application for a domestic garage will require planning permission should such an application be made. There is no intention to make such an application and if one were to be made it would be considered against planning policies at that time.
- 4.14 Class MA allows for the change of use from commercial properties (Class E) to residential dwellings (Class C3) under the General Permitted Development Order (GPDO). This is not a commercial building.

Suspected Business Use and Impact on Conservation Integrity

- 4.15 Suspensions of the garage being used for commercial activities is wholly unjustified. The Case Officer took this into consideration and imposed a suitably worded planning condition to control the use of the garage:

'The car parking area within the garage shown on the approved drawings shall not be used for any purpose (including use as living accommodation) other than for the garaging or storage of private motor vehicles and no trade or business shall be carried out therefrom'.

Building Regulations Compliance

- 4.16 If the objectors have any concerns about potential breached of building regulations, they should contact their local Building Regulation Officers. This would not be a planning matter.

5. CONCLUSION

- 5.1 The Case Officer assessed the 2023 application full against local and national planning policies;

The District Plan's relevant policies are:
DP26 Character and Design
DP29 Noise, Air and Light Pollution
DP35 Conservation Areas
DP37 Trees, Woodland and Hedgerows

The Neighbourhood Plan relevant policies are:
H1 protecting and enhancing heritage assets and conservation areas
H2 back garden development

- 5.2 The reason for this amendment is simply to show the ground levels at the site and the works that have been carried out, including to lay a level plinth, which is necessary and reasonable for the implementation of the permission and were

incorporated within the general grant of consent. The overall height of the garage is the same as it was in application reference DM/23/0201, with the ground level, measured as detailed in the Government's technical guidance. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building, and therefore the subject garage has been built in accordance with the approved plans.

- 5.3 The amended drawings are intended to identify the brickwork underbuild that forms the plinth of the garage below the levels shown on the originally submitted planning drawings. Figure one above depicts the brickwork very clearly below the approved garage building. The highest part of the garage building at the ridge remains at 4.77m when measured from the ground level at the highest point on the site prior to the commencement of the development.
- 5.4 The Conservation Officer has not set out any detailed reasons or assessment for concluding less than substantial harm to the Conservation Area that has now led to an objection. The brickwork depicted at Figure One cannot have any material impact on the Conservation Area.
- 5.5 The applicant considers the existing development is lawful because the garage permission has been built out fully in accordance with the approved plans.

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June 2025

APPENDIX I

Andy Clarke
Mid-Sussex District Council
Oaklands Road
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West Sussex
RH16 1SS

Your ref: EF/24/0148
Our ref: BG
Direct dial: 020 3319 3700
ben.garbett@keystonelaw.co.uk

17 October 2024

Dear Mr Clarke,

Re: Alleged Breach of Planning Control Relating to Construction of Detached Garage at 5 Silverdale Road, Burgess Hill, West Sussex RH15 0ED

I refer to recent correspondence:

- Keystone Law letter of 3 September 2024.
- Your email reply of 5 September 2024.
- Email exchange between you and Andrew Mullen dated 17 & 18 September 2024.

Please note that our client is assisting the landowner, Mr Smith, however we are not directly engaged by him.

I shall not repeat the points which have already been canvassed between us, but wish to draw your attention to two salient points:

Firstly, case law establishes that there may be certain works within the scope of a planning permission which are necessary and reasonable for its implementation, which are impliedly incorporated within the grant of consent, even if not specifically described in the notice of development or featured in the approved plans: *R (Martin Grant Homes Limited) v Basildon DC [1987] 53 P&CR 397*. That was a case in which there was no condition relating to a drainage scheme. In the present case, the difficulty is the lack of any condition specifying final land levels. The works that have been carried out, including to lay a level plinth, are necessary and reasonable for the implementation of the permission and were incorporated within the general grant of consent.

Secondly, the Government's technical guidance (Permitted development rights for householders) advises in relation to '... references to height (for example, the heights of the eaves on a house extension) is the height measured from ground level. (Note, ground level is the surface of the ground immediately adjacent to the building in question, and would not include any addition laid on top of the ground such as decking. Where ground level is not uniform (for example if the ground is sloping), then the ground level is the highest part of the surface of the ground next to the building.') (Emphasis added).

<https://www.gov.uk/government/publications/permitted-development-rights-for-householders-technical-guidance>

The authority appears to be taking a different approach to the guidance, which is unreasonable given its failure to require details to be submitted pursuant to a condition.

Please will you respond to the comments above in order that our client may consider any points in reply as it prepares an application for the authority to determine?

Yours sincerely,

Ben Garbett
Consultant Solicitor
Keystone Law



Dear Mr Garbett,

Thank you for the emails below and apologies for the delay in my response.

I note the contents of your letter of 17th October, however, would make the following comments.

With respect to the judgement in *Martin Grant Homes Limited v Basildon DC* (1987), this judgement related primarily to the definition of 'development' and the works required for the implementation of a planning permission. Whilst the judgement confirmed that enabling works (in particular drainage works which on their own potentially would not represent 'development' for the purposes of s.55 of the T&CPA 1990) would be sufficient to consider a planning permission to have been implemented, I do not believe it bears comparison to the situation at 5 Silverdale Road and the alleged breach of planning control. The development there is materially different from that approved, has a significant difference in the impact upon amenity and the character of the Conservation Area, with the addition of the retaining walls forming an integral part of the building and would not be considered 'enabling works'. I am therefore content that these elements, and the garage as a whole, represent development for which planning permission is required.

With respect to the contents of the 'Permitted development rights for householders: Technical Guidance', this relates to the interpretation of the contents of Part 1 of the General Permitted Development Order 2015 (as amended) and in respect of parts quoted the measurement of height for the purposes of assessing compliance with the requirements of the GPDO. For the purposes of establishing whether a development is in accordance with the grant of the planning permission, the starting point is the decision notice of the LPA and the plans considered. In this instance it is clear that the plans, and the comments of the Officer of the LPA in determining the application, that the height and design of the building varies materially from the planning permission granted. I see no evidence to suggest that the overall building as being constructed is in accordance with the planning permission granted.

I therefore remain of the opinion that the development as taking place does not accord with planning permission DM/23/0201 and the development is unauthorised. Noting the length of time the matter has now been under consideration, and that the LPA does not consider the development in accordance with the policies of the development plan and that harm to amenity is being caused, that this matter is now progressed, and that formal enforcement action is likely to be considered expedient to pursue.

I will therefore be writing to the owners of 5 Silverdale Road outlining the position of the Council and that if steps are not taken to remedy the breach of planning control, that enforcement action through the issue of an Enforcement Notice under s.172 of the T&CPA 1990 is likely to take place in early 2025.

Prior to the issue of any Notice, it remains open to any party either make an application for a Certificate of Lawfulness to confirm the lawfulness or otherwise of the development taking place or a planning application to regularise the development. It is noted, however, that it is my informal opinion that neither such application is likely to be supported by the LPA.

The above represents my informal view only and does not preclude the Council making whatever decision it finds appropriate on any application submitted.