

COMMENTS ON SECTION 73 APPLICATION – DM/26/0121

Site: 62 Wickham Hill, Hurstpierpoint, Hassocks, BN6 9NP

Applicant: Mr Chris Nutley

Proposal: Variation of Condition 4 (Section 73)

Address: 60 Wickham Hill, Hurstpierpoint, Hassocks, BN6 9NP

To Development Management, Mid Sussex District Council,

I submit the following comments on the above **Section 73 application DM/26/0121**, which seeks to vary **Condition 4** of planning permission **DM/23/2011** to allow the outbuilding to be used as ancillary or annexe accommodation.

These comments are made on material planning grounds, having regard to the site's planning history, enforcement record, and the development as constructed.

1. Planning History and Enforcement Context

Relevant planning history:

- DM/19/0112 (2019) – Detached double garage refused due to prominence. Amended plans reduced scale and repositioned the structure.
- DM/23/2011 (2023) – Permission granted to convert the garage/garden store into a work-from-home office. *Condition 4 restricted the use to purposes incidental to the main dwelling and prohibited its use as a separate unit of accommodation.*
- **EF/25/0121** (2025) – Enforcement investigation opened following evidence of use of the outbuilding as a residential dwellinghouse by an unrelated third party. The breach of planning control ceased in December 2025.
- Current application: Section 73 application (DM/26/0121) – Seeks variation of Condition 4 of planning permission DM/23/2011 to allow ancillary or annexe accommodation.

This planning history demonstrates a consistent concern regarding scale, prominence, and the potential for independent occupation. The approved office use was not carried forward in practice. The sequence of enforcement action, followed shortly by the submission of the present Section 73 application, is a material planning consideration when assessing whether Condition 4 remains necessary, reasonable, and enforceable.

2. Continued Policy Basis for Condition 4 (DM/23/2011)

Condition 4 was imposed by the Council in granting planning permission for the following reason:

“The establishment of an additional independent unit of accommodation would give rise to an over-intensive use of the site and lead to an unsatisfactory relationship between independent dwellings, in accordance with Policy DP26 of the Mid Sussex District Plan.”

The circumstances that led to this reasoning have not materially changed. The outbuilding is detached, located to the front of the site, and physically separate from the main dwelling. Its relationship with the main house and wider site context is therefore critical in maintaining the character, intensity of use, and functional arrangements originally intended.

Evidence from Enforcement Case EF/25/0121 confirms that the outbuilding has been occupied independently, demonstrating that it is fully self-contained and capable of functioning separately from the main dwelling. This reinforces the ongoing necessity of the condition as an effective planning control.

In these circumstances, Condition 4 continues to serve a clear planning purpose.

3. Material Change of Use and Planning Status

The approved work-from-home office layout included:

- Meeting room
- Customer lounge, including kitchenette
- WC

Enforcement evidence confirms that the building was used as an independent residential unit for approximately six months, evidencing its ability to function separately from the main dwelling in practice.

Furthermore, the applicant's Section 73 Planning Statement for DM/26/0121 confirms that the building was “...completed to a full Building Regulations standard, including kitchen and bathroom...”, “...fitted out to meet all standards for safe, modern living...”, “...provided with one dedicated on-site parking space”.

Taken together, these factors demonstrate that the building has functioned as an independent residential unit and therefore represents a material change in character and use from the originally approved incidental office.

Section 73 enables an applicant to seek variation or removal of conditions attached to an existing planning permission, provided that the resulting development remains within the scope and description of the original permission. It is not intended to authorise a development that is materially different in character or nature from that originally permitted.

4. Incidental, Ancillary, and Annexe Use

For clarity:

- Incidental use is subordinate and functionally dependent on the main dwelling. It cannot operate independently.
- Ancillary or annexe accommodation may be self-contained, but it must remain subordinate in planning terms and cannot function as a separate dwelling.

While ancillary or annexe accommodation can be acceptable in principle, it must remain within the same planning unit as the main dwelling, be functionally subordinate to it, and must not possess the characteristics of a separate dwelling capable of independent occupation.

In this case, the building's detached location, combined with self-containment, full residential facilities and dedicated parking, along with recent evidence of independent occupation, demonstrate that it possesses the characteristics of a separate dwelling and cannot reasonably be regarded as functionally subordinate in planning terms.

5. Accuracy of Submitted Section 73 Plans (DM/26/0121)

The plans submitted in support of the Section 73 application replicate those originally approved under DM/23/2011, showing a meeting room, customer lounge with kitchenette, and WC. However, they do not accurately reflect the building as constructed, nor its description in the applicant's own statement.

The building as constructed now includes:

- Full residential facilities, including a bathroom and full kitchen
- New openings to the exterior, including a side window and skylight

Accurate plans reflecting the building as constructed are essential to the proper determination of this application. The assessment should be based on accurate and up-to-date drawings. Where the building as constructed differs materially from the approved plans, those alterations may constitute operational development requiring separate planning permission.

In the absence of accurate plans, the Council cannot properly assess the impact on character, amenity, site relationships, or the implications of varying Condition 4. Determination of the Section 73 application on the basis of inaccurate drawings would risk undermining the integrity of the planning process.

6. Section 73 Considerations

Section 73 allows the variation of conditions attached to an existing planning permission, provided that the resulting development remains within the scope and description of the original permission. It is not intended to authorise development that differs materially in character or nature from that originally approved.

As set out above, the building as constructed includes internal reconfiguration, additional openings to the exterior, and a residential standard of fit-out consistent with independent occupation. It has also been the subject of enforcement investigation in respect of use as a separate residential unit.

In these circumstances, varying Condition 4 through a Section 73 application raises significant concerns as to whether the development now falls outside the scope of the original permission for a work-from-home office.

A full planning application would enable comprehensive assessment of the development as constructed, including site capacity, intensity of use, amenity impacts, infrastructure implications, and compliance with the relevant development plan policies.

7. Planning Implications

If the outbuilding were to be used as ancillary or annexe accommodation, rather than for the approved incidental use, it would introduce a range of planning implications that materially alter the character and function of the site. The building's detached position, self-contained layout, and physical independence show that it is capable of functioning independently from the main dwelling, reinforcing the ongoing necessity of Condition 4.

The practical consequences of such use would include:

- An additional locus of domestic activity within the site
- Increased comings and goings
- Additional servicing and parking demand
- Continued pressure on shared infrastructure, including the shared private sewer

These implications directly engage with Mid Sussex District Plan policies: DP26 (Character and Design), DP29 (Amenity), DP22 (Transport), and DP12 (Infrastructure and Services). Collectively, they highlight the risk of over-intensification of the site, increased activity and disturbance, and pressure on shared infrastructure.

In light of the preceding evidence, the building is capable of independent occupation, and its use in this way would materially alter the character and rhythm of the street, in a manner consistent with the concern identified under Policy DP26 regarding the relationship between dwellings.

Enforcement evidence confirms that the building has been occupied as an independent residential unit, demonstrating that its separate use is not merely theoretical but has occurred in practice.

Allowing a materially different use in this case may be relied upon in support of future proposals for similar detached annexes or independent units on comparable sites, potentially making it more difficult for the Council to apply development plan policies consistently.

The occurrence of independent occupation shows that these planning implications are tangible and real, extending beyond the scope of the originally approved incidental use. This reinforces that Condition 4 remains necessary to prevent the establishment of a separate residential unit and to protect the character, amenity, and functional relationships on the site.

8. Enforceability

The enforcement history demonstrates that monitoring and controlling occupation on this site has been necessary.

Where a building is physically capable of independent occupation, the removal or dilution of restrictive conditions can materially reduce the effectiveness of future enforcement action. The National Planning Policy Framework (NPPF) supports the use of conditions that are clear, necessary, and capable of effective enforcement.

Conclusion

In summary:

- The Section 73 application seeks to vary Condition 4 to allow the outbuilding to be used as ancillary/annexe accommodation, which would materially alter its planning status and depart from the originally approved incidental office use.
- The building as constructed goes beyond the scope of the original permission, with internal reconfiguration, full residential facilities, and new openings to the exterior.
- It is physically configured and functionally capable of independent occupation, as evidenced by prior use and confirmed by Enforcement Case EF/25/0121
- Use as ancillary or annexe accommodation would introduce planning impacts, including regular domestic activity independent of the main dwelling, increased comings and goings, and additional servicing and parking demand.
- The policy basis for Condition 4, including concerns regarding over-intensification, character, and relationships between dwellings, remains fully applicable.
- The submitted Section 73 drawings do not accurately reflect the building as constructed, preventing a full and proper assessment of the proposed variation to Condition 4 and ancillary/annexe use.
- Retaining Condition 4 is essential to ensure that the approved planning framework is upheld and that the outbuilding remains clearly subordinate to the main dwelling, consistent with the Council's policies and the original permission.
- Allowing the proposed variation could be relied upon in support of future applications, potentially making it more difficult for the Council to apply development plan policies consistently.

Accordingly, I respectfully request that the Council refuse **Section 73 application DM/26/0121** and retain Condition 4 as originally imposed on planning permission DM/23/2011.