

Delegated Decision

Sign off Sheet

Ref. No:	DM/24/2993	Case Officer:	Andrew Horrell
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of condition no 2 of planning application DM/23/0904 - to allow for design changes.		
Site:	Crabtree, Copyhold Lane, Cuckfield, Haywards Heath, West Sussex, RH17 5ED, ,		
Validation Date	11 Dec 2024	Overall Expiry Date:	6 Jan 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	31 Jan 2025
Target Date:	5 Feb 2025	Recommending Officer Signature:	Andrew Horrell

Date Legal Agreement Completed: (if applicable)		No of Representations:	0
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Signed and Agreed By:	Steven King	Date:	31 Jan 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/24/2993

**Crabtree, Copyhold Lane, Cuckfield, Haywards Heath, West Sussex, RH17 5ED,
Variation of condition no 2 of planning application DM/23/0904 - to allow for design changes.
Mr Marek Robertson**

SUMMARY OF REPRESENTATIONS

None received

SUMMARY OF CONSULTEES

None received

PARISH COUNCIL OBSERVATIONS

None received

INTRODUCTION

Permission is sought to vary of condition 2 of planning permission DM/23/0904 to allow for design changes to the previously approved detached garage with annexe above.

RELEVANT PLANNING HISTORY

CD/021/93 - PROPOSED TWO STOREY EXTENSION TO NORTHERN ELEVATION AND DETACHED DOUBLE GARAGE. (approved)

DM/19/1422 - Two-storey rear extension to main house. Roof alterations and conversion of loft space above detached garage to form ancillary accommodation. Associated internal and external alterations. (approved)

DM/23/0904 - Erection of a new detached garage with accommodation over following demolition of existing detached garage. (approved)

SITE AND SURROUNDINGS

Crabtree is a two-storey hipped roofed detached property within large grounds accessed via a private road. The walls are characterised by a mix of hanging tiles, mock Tudor style render and face brickwork and timber doors and windows.

To the north-west of the site is hedging to the bridleway beyond, to the south-east of the site is the driveway with hedging with electric gates to the highway beyond, to the north-east of the site is the existing dwelling with the driveway, with the triple garage with gates and hedging to the highway beyond and to the south-west of the site is the rear garden with hedging and rail fencing to fields beyond.

The site is within the Countryside.

APPLICATION DETAILS

This application seeks permission to vary condition number 2 in relation to planning application DM/23/0904.

Condition 2 is in relation to approved plans and stated the following:

'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".

Reason: For the avoidance of doubt and in the interest of proper planning.'

The existing triple garage approximately measures 5.5m in depth, 9.1m in width with a height to eaves of 2.1m and an overall height of 5m.

The previously approved garage with ancillary accommodation above approximately measured 5.8m in depth, 11.5m in width with a height to eaves of 2.2m and an overall height of 5.65m. Three dormer windows to the front and rear which measured 2m in depth, 1.45m in width with a height to eaves of 1m and an overall height of 1.8m. The external access staircase to the loft ancillary accommodation measured 3.7m in depth, 1.2m in width with an overall height of 3.3m.

The proposed garage approximately measures 6m in depth, 12.2m in width with a height to eaves of 3.3m and an overall height of 6.6m. The front and rear gables above the open car port approximately measure 2.5m in depth, 3.25m in width with a height to eaves of 4.2m and an overall height of 6m. The proposed one front and rear dormers approximately each measure 2.4m in depth, 1.7m in width with a height to eaves of 1.4m and an overall height of 2.4m.

The external access staircase to the loft ancillary accommodation which measures 4.2m in depth, 1m in width with an overall height of 3.8m.

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, the Site Allocations DPD and the Ansty and Staplefield 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:

DP26 - Character and Design

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.

None relevant

Ansty and Staplefield Neighbourhood Plan

The Ansty and Staplefield Neighbourhood Plan was made on 2 February 2017

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:

DPB1 - Character and Design

National Planning Policy Framework (NPPF) (December 2024)

The NPPF sets out the government's policy in order to ensure that the planning system contributes to the achievement of sustainable development. Paragraph 8 sets out the three 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.

ASSESSMENT

This application is made under section 73 of the Town and Country Planning Act 1990 to vary a condition associated with a planning permission DM/23/0904 for the erection of a new detached garage with accommodation over following demolition of existing detached garage.

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 recently clarified in case law of *Finney v Welsh Ministers* [2019] EWCA Civ 1868 where the Court of Appeal held that S73 applications cannot be used to obtain a varied planning permission when the change sought would require a variation to the terms of the "operative" part of the permission.

In this instance, the application is for the amendment to the approved plans to allow changes to the design and size of the approved garage.

The principle of the development was originally accepted through the previous permission under reference DM/23/0904.

Even though the result of this application would result in the issuing of a new planning permission, it is not considered necessary to go through all the planning issues. The only issue that is pertinent is to consider the specific changes that are proposed from the previous approval.

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

- Design and Character

Design and impact on the character of the area

Policy DP26 of the District Plan relates to character and design. It 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:

- *is of high quality design and layout and includes appropriate landscaping and greenspace;*

- *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;*
- *creates a sense of place while addressing the character and scale of the surrounding buildings and landscape;*
- *protects open spaces, trees and gardens that contribute to the character of the area;*
- *protects valued townscapes and the separate identity and character of towns and villages;*
- *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 Policy DP29);*
- *creates a pedestrian-friendly layout that is safe, well connected, legible and accessible;*
- *incorporates well integrated parking that does not dominate the street environment, particularly where high density housing is proposed;*
- *positively addresses sustainability considerations in the layout and the building design;*
- *take the opportunity to encourage community interaction by creating layouts with a strong neighbourhood focus/centre; larger (300+ unit) schemes will also normally be expected to incorporate a mixed use element'*

With reference to the proposed dormers, principle DG52 of the Mid Sussex Design Guide SPD in part states:

'A loft conversion is a space efficient means of extending the amount of living accommodation in a dwelling. Roof accommodation is normally reliant on dormer windows and rooflights to provide light and ventilation. However, if they are out of scale or out of character with the roofscape and proportions of a dwelling they can have an adverse impact on the character of both the dwelling and the streetscape.

The roof pitch and form are intrinsic to a building's character and roof extensions should be sensitive to this. Roof extensions and dormer windows that alter the existing ridge of the roof or significantly alter the roof profile of a building will not normally be acceptable, particularly on the front roof slope, and where there is a strong established roofline.

Where a clear rhythm of fenestration is established, the position and proportion of dormer windows should respond to existing windows and / or doors.'

This principle also includes reference to further dormer window guidance in Chapter 6 of the Design Guide under sections 6.3.5 to 6.3.7 which state:

'6.3.5 While dormer windows can sometimes be prominent features in the streetscene, care needs to be taken with their design, proportions and position on the roof. The choice of design should be informed by the character and appearance of the local vernacular.

6.3.6 Dormer windows should be visually subordinate to the roof slope, enabling a large proportion of the main roof to remain visible. Excessively wide dormers are likely to look unsatisfactory as they will often be out of proportion with the existing roof.

6.3.7 Dormer windows should normally be positioned below the ridge-line, and above the eaves line.

6.3.8 Rooflights that follow the roof profile can be an appropriate substitute for a dormer where it is important to retain the profile of the roof slope or avoid a dormer that break the eaves line. Care though needs to be taken to avoid them dominating the roof. Rooflights are best designed with a slender-profile that are flush with the roof slope'

The changes to the detached garage are modest alterations to the approved plans and would not affect the character of the area.

Therefore, given the nature of the changes proposed to the approved building, they are not considered to cause detriment to the character of the area.

The proposal is thereby considered to comply with Policy DP26 of the Mid Sussex District Plan and the requirements of the NPPF.

Biodiversity Net Gain

Biodiversity net gain is required under a statutory framework introduced by Schedule 7A of the Town and Country Planning Act 1990. This planning permission is being granted on an application made under Section 73 of the Town and Country Planning Act 1990 and the application for the original planning permission to which the Section 73 planning permission relates was made before 12th February 2024. This application is therefore exempt from the requirement to provide biodiversity net gain.

PLANNING BALANCE AND CONCLUSION

It has previously been considered that the development of the site for householder extensions is acceptable through the determination of the permission reference DM/23/0904.

The proposed amendments to the previously approved plans detailed in condition 2 are considered to be sensitive to the design and character of the building previously approved and would not detract from the character of the area.

The proposal is thereby considered to comply with Policy DP26 of the Mid Sussex District Plan and the relevant provisions of the NPPF.

Decision: Permission

Case Officer: Andrew Horrell