

**STATEMENT FOR THE VARIATION OF CONDITION FOR PLANNING APPLICATION
REFERENCE: DM/23/0201**

APPROVED DEVELOPMENT:

**SINGLE STOREY OAK FRAMED GARAGE BUILDING. (REVISED
LANDSCAPE PLAN RECEIVED 13/06/2023)
AT**

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

Prepared by:

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January 2025

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1. INTRODUCTION

- 1.1 Philip Plant holds a Bachelor of Science with Honours Degree in Rural Enterprise and Land Management and is a member of the Royal Institution of Chartered Surveyors.
- 1.2 Philip Plant is the Managing Director of Mid West Planning Limited and is a former Senior Consultant at ADAS and Acorus Rural Property Services. Phil Plant has been the Managing Director of Mid West Planning Ltd since 2010, and he provides rural planning advice to both applicants and to Local Planning Authorities.
- 1.3 This report and planning application have been prepared following the instruction of Mr James Smith, owner and occupier of 5 Silverdale Road and Oakwrights Country Buildings Ltd.
- 1.4 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. USE

Location of Site and Background Information

- 1.6 The application site is located in the grounds of 5 Silverdale Road to the north of the dwelling house. Number 5 Silverdale Road is large, detached, residential dwelling dating from 19th/early 20th century typical of the area. The house is unlisted and located to the east of Burgess Hill in the Silverdale Road/Birchwood Grove Road Conservation Area.
- 1.7 The property benefits from a large L-shaped garden at the rear of the property. The area of the proposed development, to the northeast of the dwelling house, can be accessed by the existing driveway between number 5 and number 7 Silverdale Road.

3. RECENT PLANNING HISTORY

- 3.1 **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
- 3.2 A 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.
- 3.3 The development of the garage was subsequently begun on site. On the 10th 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'. This letter is reproduced at Appendix 1

3.4 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.'

3.5 In particular the letter draws the applicant's attention to the following 'It was evident from my visit that due to the sloping nature of the site (which is not reflected on the submitted and approved plans), that the garage as under construction varies materially from that approved under DM/23/0201. In particular the addition of a brick plinth to enable a level concrete base has resulted in the building being significantly higher than approved and has a total height of approximately 5.5m (rather than the 4.4m approved).'

3.5 The letter goes on to explain the actions open to Mr Smith, these were listed as:

i) Apply for planning permission for the development as being constructed. It should be noted that the Council has concerns regarding the scale of the development and its impact upon the amenities of neighbouring properties and as such an application may not be supported.

ii) Engage with the Council to seek to address the concerns with a view to obtaining planning permission for a revised design and siting of the building.

3.6 A solicitor, 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.

3.7 Mr Ben Garbett draws attention, in his letter to Mr Andy Clarke, dated 17th October 2024, (reproduced at Appendix II) 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).'

3.8 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).

3.9 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".

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

4. THE EXISTING PLANNING CONDITIONS

4.1 The planning condition relating to the approved plans for consent DM/23/0201, is worded as follows:

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".

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

Plans Referred to in the Approval of Application DM/23/0201

The following plans and documents were considered when making the above decision:

Plan type	Reference	Version	Submitted Date
Landscaping	1	1	26.06.2023
Location Plan	101678/SMITH/002/PL-01	0	24.01.2023
Block Plan	101678/SMITH/002/PL-02	0	24.01.2023
Proposed Floor and Elevations Plan	2210283-01	A	24.01.2023
Existing Floor and Elevations Plan	2210283-02	B	24.01.2023
Existing Floor and Elevations Plan	2210283-02	B	24.01.2023

Table One: Approved drawing schedule

5. PROPOSED VARIATION OF PLANNING CONDITIONS

- 5.1 The application proposes the variation of Condition 1 of consent DM/23/0201 in order that the previously approved proposed floor and elevations plan '2210283-01-A' is substituted with the plans in Table Two below.
- 5.2 The reason for this amendment is to explicitly show the ground levels at the site, and the works necessary and reasonable for its implementation that have been carried out, including to lay a level plinth, for the implementation of the permission and were incorporated within the general grant of consent.
- 5.3 It is proposed to vary condition 1 and specifically the "Plans Referred to in Consideration of this Application".

And to update the table as below:

Plan type	Reference	Version	Submitted Date
Landscaping	1	1	26.06.2023
Location Plan	101678/SMITH/002/PL-01	0	24.01.2023
Block Plan	101678/SMITH/002/PL-02	0	24.01.2023
W & E Elevations	101678 003 - 01 - Rev E - Elevations W & E	0	05.02.2025
N & S Elevations	101678 003 - 02 - Rev E - Elevations N & S	0	05.02.2025
Floor & Roof Plans	101678 003 - 03 - Plan	0	05.02.2025
Sections	101678 003 - Rev E - 4 - Sections	0	05.02.2025
W & E Elevations with Landscape Scheme	101678 003 - 05 - Rev E - Elevations W & E with Approved Landscape Scheme	0	05.02.2025
N & S Elevations with Landscape Scheme	101678 003 - 06 - Rev E - Elevations N & S with Approved Landscape Scheme	0	05.02.2025

Table Two: Proposed drawing schedule.

6. CONCLUSION

- 6.1 The reason for this amendment is to show the ground levels at the site and the work 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.

- 6.2 The amended drawings are intended to identify the brickwork that forms the plinth of the garage below the levels shown on the originally submitted planning drawings.
- 6.3 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.

Phil Plant MRICS BSc (Hons)
Senior Consultant
Mid West Planning Ltd

January 2025

APPENDIX I

BACKGROUND CORRESPONDENCE



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OUR REF: EF/24/0148
DATE: 10th July 2024

Alleged breach of planning control relating to the construction of a detached garage

Dear Mr Smith,

I refer to the grant of planning permission DM/23/0201 for a *Single storey oak framed garage building* approved 17th July 2023 and my site visit of 10th July 2024 to assess whether the development is being carried on in accordance with the approved plans.

It was evident from my visit that due to the sloping nature of the site (which is not reflected on the submitted and approved plans), that the garage as under construction varies materially from that approved under DM/23/0201. In particular the addition of a brick plinth to enable a level concrete base has resulted in the building being significantly higher than approved and has a total height of approximately 5.5m (rather than the 4.4m approved)

As such the development varies materially from that approved and is considered that the development as being constructed does not benefit from planning permission. **A breach of planning control has therefore taken place. It is therefore advised that work for the development ceases immediately.**

Whilst planning permission DM/23/0201 remains extant, by virtue of the omission of the change in levels of the land and not depicted on the plans, I do not believe it is possible that this permission could be lawfully implemented.

As such the following options are open to you:

- i) Apply for planning permission for the development as being constructed. It should be noted that the Council has concerns regarding the scale of the development and its impact upon the amenities of neighbouring properties and as such an application may not be supported.
- ii) Engage with the Council to seek to address the concerns with a view to obtaining planning permission for a revised design and siting of the building.

I would be grateful for your intentions in regards of this matter within 14 days of the date of this letter.

Should there be no attempt to address the breach of planning control then it is likely the Council would find it expedient to proceed with formal enforcement action to require the removal of the building to cease the breach of planning control.

PLANNING SERVICES DIVISION

Ann Biggs
Director Planning & Sustainable Economy



I look forward to your co-operation in this matter but should you wish to discuss the matter please contact me on the number above.

Yours sincerely

A solid black rectangular box used to redact the signature of Andy Clarke.

Andy Clarke
Senior Planning Officer – Investigations and Enforcement

CC: Phil Plant - Mid West Planning Ltd
Joseph Swift – Mid Sussex District Council

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Your ref: EF/24/0148
 Our ref: BG
 Direct dial: 020 3319 3700
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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.

Kind regards

Andy Clarke BSc (Econ), PGDip
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