

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0205	Case Officer:	Andrew Horrell
Application Type:	Removal/Variation of Condition		
Proposal:	Variation of condition nos 2 and 3 of Planning Appeal ref AP/24/0032 (DM/24/0128) - Cond. 2 revised materials and Cond. 3 revised drawings.		
Site:	1 Mytten Close, Cuckfield, Haywards Heath, West Sussex, RH17 5LN, , ,		
Validation Date	4 Feb 2025	Overall Expiry Date:	28 Feb 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	31 Mar 2025
Target Date:	1 Apr 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 Mar 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0205

**1 Mytten Close, Cuckfield, Haywards Heath, West Sussex, RH17 5LN, ,
Variation of condition nos 2 and 3 of Planning Appeal ref AP/24/0032 (DM/24/0128) - Cond. 2
revised materials and Cond. 3 revised drawings.
Alex Meraviglia And Will Williams**

SUMMARY OF REPRESENTATIONS

None received

SUMMARY OF CONSULTEES

None received

PARISH COUNCIL OBSERVATIONS

No Objection

INTRODUCTION

Permission is sought to vary of conditions 2 and 3 of appeal reference AP/24/0032 (DM/24/0128 to allow for design changes and change of materials to the previously approved two storey rear extension.

RELEVANT PLANNING HISTORY

06/00157/FUL - New dormer window to the front elevation (approved)
06/00819/FUL - Revised application for new dormer window to the front elevation. (approved)
DM/24/0128 - Two storey rear extension. Existing side windows to ground and first floor to be full height windows. Garage conversion. Larger window proposed to front wall of existing utility room. Wider window to first floor front elevation in bedroom. Pitched roof open porch to front door and new side window to front door. (Allowed at appeal AP/24/0032)

SITE AND SURROUNDINGS

No. 1 Mytten Close is a detached 1950's dwellinghouse located within a generous sized plot on the corner of Mytten Close and Broad Street in Cuckfield. The dwellinghouse lies within a row of similar properties and benefits from a catslide roof to the front that projects over an integral garage, with off road parking for 3 to 4 cars. The dwellinghouse has been extended to the side with a single storey addition and a conservatory to the rear; a modest porch has been added to the front.

The adjoining property at no. 3 Mytten Close lies to the north of the site.

Land levels rise gently to the north.

In terms of planning policy, the site lies within the built-up area of Cuckfield and adjacent to Cuckfield conservation area which adjoins the southern boundary of the property. The site also lies within an area at risk of surface water flooding and where there is suitable habitat for and a high risk of great crested newts.

APPLICATION DETAILS

The application seeks permission to vary conditions numbers 2 and 3 of appeal decision AP/24/0032 (APP/D3830/D/24/3343649)

Condition 2 stated *The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building*

Condition 3 stated *The development shall be carried out in accordance with the following approved plans: OS based Location Plan & Block Plan and Drawing Nos.00; 01; 02; 10; 11 & 12.*

The changes from the original approval is that the new and existing windows are proposed to be a combination of white wood grain upvc windows with horizontal Georgian bar, and anthracite aluminium frame. The new glazed sliding doors are proposed to be anthracite aluminium frame. Two velux rooflights are proposed to be anthracite aluminium frame with new clay-like rooftiles to pitched roof.

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 Cuckfield 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

Cuckfield Neighbourhood Plan

The Cuckfield Neighbourhood Plan was made on 1 October 2014.

Relevant policies:

CNP1 - Design of New Development and Conservation

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

Other Material Considerations

Mid Sussex District Plan 2021-2039 Consultation Draft

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:

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 conditions associated with a AP/24/0032 for the erection of a two storey rear extension, the existing side windows to ground and first floor to be full height windows, a garage conversion with a larger window proposed to

front wall of existing utility room, a wider window to first floor front elevation in bedroom and a pitched roof open porch to front door and new side window to front door.

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.

As outlined above the alterations proposed are the new and existing windows are proposed to be a combination of white wood grain upvc windows with horizontal Georgian bar, and anthracite aluminium frame. The new glazed sliding doors are proposed to be anthracite aluminium frame. 2 velux rooflights are proposed to be anthracite aluminium frame. New clay-like rooftiles to pitched roof.

In this instance, the application is for the amendment to the approved plans to allow changes to the window materials, new door and rooflight material and new rooftiles.

The principle of the development was originally accepted through the previous permission under reference AP/24/0032.

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 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;*

- 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'

Cuckfield Neighbourhood Plan policy CNP1 states:

'New development in accordance with the Neighbourhood Plan will be permitted where it:

- a) Is designed to a high quality which responds to the heritage and distinctive character and reflects the identity of the local context of Cuckfield as defined on Map 3 - Conservation Areas and Character Areas, by way of;*
 - i. height, scale, spacing, layout, orientation, design and materials of buildings,*
 - ii. the scale, design and materials of the public realm (highways, footways, open space and landscape), and*
- b) Is sympathetic to the setting of any heritage asset and*
- c) Follows guidance in the Conservation Area Appraisals and Management Plans, the High Weald AONB Management Plan, and*
- d) Respects the natural contours of a site and protects and sensitively incorporates natural features such as trees, hedges and ponds within the site, and*
- e) Creates safe, accessible and well-connected environments that meet the needs of users, and*
- f) Will not result in unacceptable levels of light, noise, air or water pollution, and*
- g) Makes best use of the site to accommodate development.'*

Principle DG49 of the Mid Sussex Design Guide states:

'Extensions should typically use simple, uncomplicated building forms to compliment and coordinate with the scale, form and massing of the original dwelling. The design approach may benefit from coordinating with the existing pattern of window and door openings as well as employing facing materials to match those of the existing dwelling. Otherwise, it should demonstrate the appropriateness of the alternative approach.'

It should be noted that the application was originally refused on the grounds that the Local Planning Authority considered the proposal to be harmful to the neighbouring 3 Mytten Close. The Planning Inspector did not agree with this assessment and allowed the appeal.

The change of roof materials to clay tiles is not deemed out of character with the varied streetscene, the change to white wood grain uPVC windows on the first floor and the side ground floor is not deemed out of character with the streetscene, to which visually similar white uPVC windows characterise neighbouring 2,3 and 4 Mytten Close.

The changes to the front velux window and the rear and side windows and doors to be anthracite aluminium are not deemed out of character with the existing dwelling and the surrounding area.

The proposal is thereby considered to comply with policy DP26 of the Mid Sussex District Plan, policy CNP1 of the Cuckfield Neighbourhood Plan, the Mid Sussex Design Guide SPD 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 grant of appeal for the development under references AP/24/0032 (DM/24/0128).

The proposed amendments to the previously approved plans detailed in conditions 2 and 3 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, policy CNP1 of the Cuckfield Neighbourhood Plan, the Mid Sussex Design Guide SPD and the relevant provisions of the NPPF.

Decision: Permission

Case Officer: Andrew Horrell