

Delegated Decision

Sign off Sheet

Ref. No:	DM/25/0097	Case Officer:	Andrew Clarke
Application Type:	Householder Application		
Proposal:	Retrospective application for infilling of pond.		
Site:	Sakkara, 5 Shelley Wood, Burgess Hill, West Sussex, RH15 9XL, , ,		
Validation Date	3 Feb 2025	Overall Expiry Date:	23 Apr 2025
Pre-Commencement Conditions Required:		Pre-Com Conditions Date Agreed:	
Recommendation:	Permission	Recommendation Date:	9 May 2025
Target Date:	31 Mar 2025	Recommending Officer Signature:	<i>Andrew Clarke</i>

Date Legal Agreement Completed: (if applicable)		No of Representations:	3
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Signed and Agreed By:	<i>Stephen Ashdown</i>	Date:	9 May 2025
Comments:			

MID SUSSEX DISTRICT COUNCIL

DM/25/0097

**Sakkara, 5 Shelley Wood, Burgess Hill, West Sussex, RH15 9XL, ,
Retrospective application for infilling of pond.
Mr Rob Slaney**

SUMMARY OF REPRESENTATIONS

4 letters of representation received raising the following matters:

- surface water drainage
- presence of underground spring
- harm to amenity
- harm to wildlife
- damage to property
- retrospective nature of application

SUMMARY OF CONSULTEES

Environment Agency

In this case, the information you have requested which has been highlighted within the main email (Do the EA have any information regarding the pond adjacent to RH15 9XF/ historical flooding issues / watercourse / underground springs in the area?) is not held by the Environment Agency, and we are therefore refusing your request on the grounds that there is no information we can provide.

MSDC Drainage

The site is in flood zone 1 and is at low fluvial flood risk (risk of flooding from Main Rivers). The site is shown to be at high surface water flood risk (comparable to flood zone 3b); however, the surface water flood risk is an isolated and confined area that does not appear to be associated with any flood flow route or part of a wider surface water attenuation system. It is also not in-line with any ordinary watercourse system. This appears to be a historic pond. The Flood Risk and Drainage Team have no objection to this retrospective application.

☐ Additional

We have reviewed the additional information submitted . This does not affect the comments made by the Flood Risk and Drainage Team on the 26/02/24

Naturespace Partnership

Retrospective applications cannot be covered under the District Licence as any impacts have already occurred to the habitat. As the pond was infilled several years ago and we have no information regarding the site we cannot make a judgement on whether a wildlife crime occurred.

TOWN COUNCIL OBSERVATIONS

Recommend Approval. The Committee regretted the retrospective nature of the application.

☐ Additional

The Committee had the same view as when this application was previously discussed on 17th February 2025.

INTRODUCTION

The application seeks retrospective planning permission for infilling of a pond.

RELEVANT PLANNING HISTORY

Planning permission BH/101/94 for the property and wider development included the following condition:

25. The existing pond within the north western corner of the site shall be retained and prior to the commencement of development details of measures for the protection of the pond during the course of the development shall be submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the pond and ensure its retention in the interests of amenity and site drainage.

DM/21/1230 - TPO application for 2 x Oaks (T1 and T2) - Fell - Approved 17th May 2021

DM/22/0224 - Proposed new detached single garage - Approved 23rd May 2022

SITE AND SURROUNDINGS

The property is detached two storey dwellinghouse situated in the north-west corner of a new build residential development of five properties granted planning permission in 1994 and lies in a large sheltered plot. The house itself lies on the eastern boundary of the plot with the former pond forming a large part of the garden to the west.

The site is heavily screened by large trees including one which benefit from preservation orders on the northern and eastern boundaries near the former pond. To the east and south lie other residential properties and gardens with the main road at Gatehouse Lane lying immediately to the north.

The surrounding area is wholly residential have once (many years ago) been farmland. The character of the area is defined by large residential dwellings in well screened plots with substantial natural screening.

The site lies within the built up area of Burgess Hill for the policies of the development and lies within a flood zone 1 area.

APPLICATION DETAILS

The application seeks retrospective permission for the infilling of the pond subject to condition 25 of planning permission BH/101/94. The pond was infilled in 2020 using imported soil and has been laid to grass to form part of the garden of the property. The exact dimensions of the pond are unknown but it appears that it may have covered an area of approximately 170 square metres.

It would have been considered that the work for the infilling would not be considered '*development*' for the purposes of s.55 of the Town and Country Planning Act 1990 and would have not required planning permission were it not for the presence of the restrictive condition requiring the ponds retention.

The development is complete and therefore the application is made under s.73a of the Town and Country Planning Act 1990.

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, and*
- b) *Any 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, Site Allocations Development Plan Document (DPD) and the Burgess Hill Neighbourhood Plan.

National policy (which is contained in the National Planning Policy Framework (NPPF) 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 - Design
DP37 - Trees
DP41 - Flood Risk
DP38 - Protected Species

Site Allocations DPD

The SADPD was adopted on 29th June 2022. It allocates sufficient housing and employment land to meet identified needs to 2031.

There are no relevant policies.

Burgess Hill Neighbourhood Plan

The H Burgess Hill Neighbourhood Plan Neighbourhood Plan was made in 2015.

Relevant policies:

G3 - Nature Conservation and Biodiversity
H3 - Protect Areas of Townscape Value

Other Legislation

None

Other Material Considerations

None

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 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:

DPS1 - Climate Change

DPS4 - Drainage

DPN4 - Trees

DPB1 - Design

Mid Sussex Design Guide Supplementary Planning Document (SPD)

The Council has adopted a 'Mid Sussex Design Guide' SPD that aims to help deliver high quality development across the district that responds appropriately to its context and is inclusive and sustainable. The Design Guide was adopted by Council on 4th November 2020 as an SPD for use in the consideration and determination of planning applications. The SPD is a material consideration in the determination of planning applications.

Development Infrastructure and Contributions Supplementary Planning Document (SPD)

Affordable Housing Supplementary Planning Document (SPD)

Development Viability Supplementary Planning Document (SPD)

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 overarching objectives to sustainable development, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives). The three objectives are economic, social and environmental.

Paragraph 9 of the NPPF states; *'these objectives should be delivered through the preparation and implementation of plans and the application of the policies in this Framework; they are not criteria against which every decision can or should be judged. Planning policies and decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.'*

Paragraph 11 of the NPPF sets out that for both plan-making and decision-taking, the presumption in favour of sustainable development should apply.

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.

National Design Guide

Published in 2021, the National Design Guide illustrates how the government consider well-designed places that are beautiful, healthy, greener, enduring and successful can be achieved in practice.

Paragraph 134 of the NPPF sets out that this national document, along with the National Model Design Code, should be used to guide decisions on application in the absence of locally design guides or design codes.

ASSESSMENT

The application seeks to address the reasons related to the imposition of condition 25 of permission BH/101/94 which relate to drainage and amenity. It is therefore considered that the main issues that need to be considered in the determination of this application are as follows;

- o Principle
- o Design and Impact on the character and appearance of the area
- o Flood Risk and Drainage / Neighbour Amenity
- o Trees
- o Protected species
- o Biodiversity Net Gain
- o Other material considerations
- o Planning Balance and Conclusion

Principle

As noted above, planning legislation holds that the determination of a planning application shall be made in accordance with the Development Plan unless material considerations indicate otherwise.

The principle of the development is acceptable in that it lies within the built up area of Burgess Hill and relates to a residential dwellinghouse where development is supported.

The retrospective nature of the development is noted but in accordance with para 12 of the NPPF applications must be considered on their planning merits alone. That the application is retrospective cannot be taken into account in the determination of the application.

Design and Impact on the character and appearance of the area

Condition 25 of permission BH/101/94 states that the pond should be retained, in part, for reasons relating to amenity. The site also lies in an Area of Townscape Character as identified by the Burgess Hill Neighbourhood Plan in policy H3 which states:

'Proposals for development and redevelopment within Areas of Townscape Value will require special attention to be paid to preserving and enhancing the existing character of the area in terms of

spaciousness, building heights, building size and site coverage, building lines, boundary treatments, trees and landscaping.'

In this respect whilst the pond appears to be an historic feature, there is very little information relating to its historic purpose or construction and whilst once potentially in open land, was subsumed into a residential garden when the property at 5 Shelley Wood was constructed. Its value to the character and appearance of the area was therefore diminished and was not visible from wider public views by virtue of the high boundary screening. Therefore whilst a potentially attractive feature, its benefit was solely upon the owner and occupiers of 5 Shelley Wood and its removal and the introduction of a grassed lawn does not represent development which compromises the aims of policy H3 and respects the existing boundary trees which define the plot in particular. The removal of the pond and introduction of lawn in its place has no impact upon the wider character and appearance of the area thereby complying with the policy DP26 of the District Plan and H3 of the Neighbourhood Plan.

Flood Risk and Drainage / Neighbour Amenity

The primary consideration of the application is considered to relate to impact the removal of the pond may have had to water drainage systems with representations having been received alleging an increased risk of flooding (through ground water and surface water) since the work was carried out which have caused harm to neighbouring amenity.

Policy DP41 requires that development is sustainably drained and does not contribute to flood risk.

Paragraph 182 of the NPPF states that applications which could affect drainage on or around the site should

'incorporate sustainable drainage systems to control flow rates and reduce volumes of runoff, and which are proportionate to the nature and scale of the proposal. These should provide multifunctional benefits wherever possible, through facilitating improvements in water quality and biodiversity, as well as benefits for amenity. Sustainable drainage systems provided as part of proposals for major development should:

- a) take account of advice from the Lead Local Flood Authority;*
- b) have appropriate proposed minimum operational standards; and*
- c) have maintenance arrangements in place to ensure an acceptable standard of operation for the lifetime of the development.'*

The site lies within the lowest flood risk zone (zone 1) and as such in line with the requirements of the NPPF and sequential tests, would not normally require a Flood Risk Assessment (FRA) to be submitted. However noting the site is shown to be at high surface water flood risk (comparable to flood zone 3b), an FRA has been requested and submitted as part of the application.

Additionally representations have been received citing the potential presence of an underground spring in the location of the pond and as such investigations and the comments of relevant authorities (the Environment Agency) have been sought in relation to any other information relating to drainage and water sources in the area.

In respect of surface water flooding, the FRA submitted notes that the change in land levels would have had no effect on the routes of surface water and that they would have been unchanged as a result of the development. The land slopes gently from north to south and whilst this is indicated, the report does not show that the surface water flooding risk will be exacerbated by the development. The Council's Drainage Officers have had sight of the report and application and do not raise any objection to the application on the basis of flood risk. On this basis and noting the requirement to take account of the advice of the Lead Local Flood Authority, it is not considered that new sustainable drainage systems need to be employed or introduced as there had not been any change to the previous surface water arrangements.

With respect to ground water whilst this is not explicitly addressed in planning policies, the potential presence of an underground spring has been investigated. The Council hold no records relating to a potential nor do the Environment Agency. The FRA also seeks to address this and states:

'For a spring to exist there must be an aquifer overlying an impervious layer. The geology in this locality is Weald Clay only (no drift deposits)'

That being the case there is no evidence to prove that a spring does, or did, exist at this point. Any comments are therefore circumstantial only and limited weight can be placed upon them.

Officer did note on site visits (conducted in February and March 2025) that neighbouring gardens did appear saturated, however, there is no evidence which directly links this to the infilling of the pond and that other environmental changes (high water table etc) could have resulted in the saturation. Whilst the Council does not deny that changes may have occurred in the gardens of neighbouring properties, applications must be considered against the policies of the Development Plan considering the information submitted and comments of professional consultees. In this instance the application has been supported by appropriate evidence and no objections have been raised by consultees and no evidence of the alleged spring has been found. As such there would be no sustainable grounds to refuse the application on issues relating to flood risk or which cause harm to neighbour amenity.

Trees

The trees on the northern and western boundary benefit from protection under a Tree Preservation Order. The development does not effect the trees and took place outside of the root protection area of the trees. The trees do not appear to have suffered as a result of the work which took place in 2020 and therefore the development is not considered to cause harm to trees important to the character and appearance of the area.

Protected species

The pond had the potential to be home to various forms of wildlife and is within a 'red zone' for the potential habitat for Great Crested Newts. No evidence or record of protected species present at the site exists, however, and the District Licensing Scheme for Great Crested Newts does not cover retrospective development so no objection has been raised by the Council's consultees. Therefore whilst a potential habitat has been lost, this was not a reason for the imposition of the original restrictive condition and there is no evidence that any species with protected status was present at the site, noting the site was, and remains, within a residential garden with the associated level of activity and disturbance. The application is considered therefore to comply with policy G3 of the Neighbourhood Plan and policy DP38 of the District Plan.

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 73a of the Town and Country Planning Act 1990 and as retrospective development and for householder development the application therefore exempt from the requirement to provide biodiversity net gain.

Other material considerations

Comments relating to potential damage to property and the retrospective nature of the application have been received. As previously noted the retrospective nature of the application cannot be taken into consideration in the determination of the application and any alleged damage to private property would be a private matter between the parties involved.

There are therefore no additional material considerations to take into account.

PLANNING BALANCE AND CONCLUSION

Planning legislation requires the application to be determined in accordance with the development plan unless material considerations indicate otherwise. It is therefore necessary for the planning application to be assessed against the content of the application and the policies in the Development Plan and then to take account of other material planning considerations including the NPPF. The Development Plan in this instance consists of the Mid Sussex District Plan, the Site Allocations Development Plan Document and the Burgess Hill Neighbourhood Plan.

Courts have confirmed that the Development Plan must be considered as a whole, not simply in relation to any one individual policy. It is therefore not the case that a proposal must accord with each and every policy within the Development Plan.

It is noted that applications under s.73a of the Town and Country Planning Act 1990 for development which has already taken place should be considered in the same way and against the same policies as prospective development.

The comments of third parties, particularly in respect of drainage and flooding are noted, however, the evidence and information provided, and as assessed by the Council's consultees, do not point to the development as having had a detrimental impact drainage, flooding or the amenities of neighbouring properties. Without evidence of the presence of any underground spring and that the development has not been proved to cause additional surface flooding the development is considered in accordance with policies of the development plan relating to drainage and flooding and the contents of the NPPF.

The development is considered to not cause harm to any protected species and does not cause harm to the Area of Townscape Character or trees important to the character of the area.

The application can therefore be approved and there are no additional planning conditions required to mitigate or address any harm identified.

The application is therefore in compliance with policies DP26, DP37, DP38, DP41 of the District Plan and policies of G3 and H3 of the Neighbourhood Plan and permission is granted.

Decision: Permission

Case Officer: Andrew Clarke