



Appeal Decision

Site visit made on 10 December 2025

by Jane Smith MA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2026

Appeal Ref: APP/D3830/W/25/3371598

5 Silverdale Road, Burgess Hill, West Sussex RH15 0ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr James Smith against the decision of Mid Sussex District Council.
 - The application Ref DM/25/0289, dated 5 February 2025, was refused by notice dated 20 June 2025.
 - The application sought planning permission for a single storey oak framed garage building without complying with a condition attached to planning permission Ref DM/23/0201, dated 17 July 2023.
 - The condition in dispute is No. 1 which states that: *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"*.
 - The reason given for the condition is: *For the avoidance of doubt and in the interest of proper planning*.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey oak framed garage building at 5 Silverdale Road, Burgess Hill, West Sussex RH15 0ED in accordance with the application Ref DM/25/0289, without compliance with condition number 1 previously imposed on planning permission Ref DM/23/0201 dated 17 July 2023 and subject to the conditions in the schedule below.

Application for Costs

2. An application for costs was made by Mr James Smith against Mid Sussex District Council. That application is the subject of a separate decision.

Preliminary Matters

3. In the banner heading above, I have used the description of the approved development as amended by an application under s96A of the Town and Country Planning Act 1990 (the Act)¹.
4. Erection of the garage building had commenced prior to the application being submitted. A concrete slab and brick plinth have been constructed, and the timber frame has been erected up to roof level. However, work ceased as a result of an enforcement investigation by the Council and the external cladding, joinery and roof tiles have not been completed.
5. There is no dispute that the siting of the garage, its L-shaped layout with six parking bays, or the form of the timber framed walls and roof are in accordance

¹ Application ref DM/25/0991 for non material amendment to planning permission DM/23/0201

with the approved plans. The application concerns the manner in which the garage has been constructed on the sloping site, with the concrete slab having been formed at the level of the higher, western part of the site. The external surfaces around and beneath the slab are faced in brick, with the exposed brickwork increasing in height as the external ground level falls away to the east.

6. While the lawfulness of the concrete slab and brickwork in the form constructed is contested, there is no dispute that the approved drawings did not show the sloping ground or detail how that would be handled. The extent of the exposed brickwork currently present below the slab was also not shown, and the overall height of the garage above the lowest part of the ground is approximately one metre greater than the dimension given on the approved drawings.
7. While I have noted the full arguments presented, it is not the purpose of this appeal to determine the lawfulness of the garage as constructed. The application was for variation of condition 1, so that alternative plans could be considered. Those show the sloping ground and details of the concrete slab and brickwork below the timber frame. The part-built structure appears to correspond with those alternative plans, to the extent that can be determined in advance of its completion, but for the avoidance of doubt, I have determined the appeal based on the application drawings.
8. The appeal submission included a topographic survey (drawing no. 2210283) which was not included with the application. However, the Council has advised that the version available to them was low resolution and not in a form which could be readily referred to or verified at the point when they or interested parties were providing written representations. I have accordingly not relied on the contents of that drawing and have not included it within the list of approved plans below, in the interests of fairness.
9. The Officer Report refers to the application having been made under s73 of the Act. However, s73A of the Act is applicable where development has commenced in breach of a relevant condition. Notwithstanding the dispute about whether the development accords with the approved plans, when taken at face value, the application seeks to rectify alleged non-compliance with those plans, so s73A is applicable and I have considered the appeal on that basis.

Main Issues

10. The main issues are:

- the effect of the development on living conditions for occupiers of neighbouring properties, with particular regard to the outlook from nos. 7 and 9 Silverdale Road, and
- whether it preserves or enhances the character or appearance of the Silverdale Road/Birchwood Grove Road Conservation Area.

Reasons

Living conditions

11. The appeal site includes a detached house and its rear garden, which wraps behind the plot at no. 7 Silverdale Road. The garage building is sited on the land to the rear of no. 7, which is a large property subdivided into flats, itself with a garage

block and sheds to the rear. The building also adjoins the rear garden of no. 9 Silverdale Road, which is a single dwelling, with a range of outbuildings at the end of the garden. The land slopes down, both within the appeal site and beyond the boundary, with no. 9 being on a lower level.

12. There are several mature trees in and around the site, including along the rear boundary. However, as was detailed in the Tree Survey submitted with the approved application², two trees which were alongside the boundary with no. 7 have been removed. The boundaries with nos. 7 and 9 Silverdale Road are currently quite open, being defined by typical domestic close boarded fences without any significant vegetation.
13. The garage building is highly conspicuous from nos. 7 and 9 and the manner in which it has been constructed maximises its height as viewed from those properties, particularly as no. 9 is at a lower level. It is significantly taller than the garage block and outbuildings on the adjacent sites. However, even allowing for the supporting structure, it is still fundamentally a single storey building. While the ridge line is around one metre higher than was apparently envisaged by the Council, the building provides the same amount of garaging as was previously permitted, on a single level. It is large for a domestic outbuilding, and has been compared to the scale of some modest single storey dwellings. However, it is not a multi-storey structure.
14. Apart from the single south-facing gable, the roof slopes away from the two nearest boundaries. The gable itself is fairly modest and does not equate to the type of extended gable-flank side elevation described in Principle DG41 of the Design Guide³. Once the timber cladding and tiles are installed, the external elevations will have a subdued appearance and the building will not be inherently unsightly, being of a design which has been concluded to be acceptable in this context.
15. The building is sited beyond the garage block at no. 7 and alongside the far end of the rear garden at no. 9. While it will undoubtedly be conspicuous from several windows of both properties, it does not directly adjoin any habitable rooms, so cannot have an unduly enclosing or oppressive effect on the outlook from inside any relevant dwelling. Nor does it directly adjoin the outdoor seating area which I noted at the rear of no. 9. The adjacent gardens remain spacious enough to be enjoyed without feeling excessively enclosed.
16. It is not uncommon for neighbouring buildings to be visible beyond boundaries and the effect of development on views from private properties is not of itself regarded as a planning matter. Nor is it inherently unusual for neighbouring buildings to be set at a higher level, in circumstances where land slopes down from one property to its neighbour. I appreciate that neighbouring occupiers find the building intrusive compared to its smaller predecessors, or the scale of garage they visualised based on the description of the development in the original application. Nevertheless, taking into account the siting of the garage and the layout of the adjacent sites, it is not so dominant or overbearing as to cause unacceptable harm to living conditions within any adjoining dwelling.

² Brown Fisher Environmental Pre-Development Tree Survey BS5837:2012, September 2022

³ Mid Sussex Design Guide SPD adopted November 2020

17. The submitted landscaping plan includes several additional trees and shrubs around the building and driveway, but the planting indicated along the fenced boundaries with nos. 7 and 9 would largely be relatively low level. Although there is no expectation that the building can or should be hidden behind very tall planting, which could itself be intrusive, a revised and more effective planting scheme is required, including plant species which will be meaningfully visible above the level of the boundary fences. Once established, that would soften the appearance of the building and mitigate the effect on outlook from neighbouring properties.
18. The reason for refusal related to the effect on nos. 7 and 9 Silverdale Road, but interested parties have also objected to the effect on outlook from properties on Oakwood Road at the rear. The building is beyond their long rear gardens, not directly adjacent to the boundary and behind a fairly high garden wall. That provides screening at ground level, notwithstanding the raised concrete base, and views of the upper part of the building are filtered by some substantial boundary trees. Consequently, the building does not have an unacceptably overbearing presence in the outlook from properties at the rear.
19. With a condition to ensure that a suitable soft landscaping scheme is implemented, I conclude that the development does not have an unacceptably harmful effect on living conditions for occupiers of neighbouring properties, with regard to the outlook from nos. 7 and 9 Silverdale Road. It does not conflict with relevant requirements in Policy DP26 of the Mid Sussex District Plan 2018 (MSDP), which include that development does not cause significant harm to the amenities of existing nearby residents, including taking account of the impact on outlook. Nor does it conflict to any material extent with the requirement in the National Planning Policy Framework (the Framework) that development should provide a high standard of amenity for existing and future users.

Conservation Area

20. The Silverdale Road/Birchwood Grove Road Conservation Area (the CA) is a predominantly residential area characterised by large, detached dwellings in leafy, spacious plots. There are some existing outbuildings, including examples which are of substantial scale and appear potentially contemporaneous with their host dwellings. Others are clearly later additions.
21. The significance of the CA includes the largely intact pattern of large houses, erected by wealthy new residents following the development of a station in the late 19th Century. Many date from the Victorian and Edwardian periods, and the dwelling on the appeal site is of that style. Generally, the dwellings are substantial, in good condition and of interestingly varied appearance. Views into the rear gardens are limited, but the mature tree cover and spacious, leafy nature of the garden plots is apparent from the street. This spacious, leafy character is among the characteristics of the CA which the Council specifically aims to conserve.
22. In that context, the importance of the spacious rear gardens, and a relative absence of buildings at the rear of the dwellings, has been highlighted by the Council. However, as noted above, there are existing garages and outbuildings elsewhere within the street, some of which are set back on their plots. Furthermore, while the Council's decision to grant the original planning permission is described as having been very much on balance, it did indicate their acceptance

that a sizable garage structure could, in principle, be introduced at the rear of the site without harming the significance of the CA.

23. As constructed, the apex of the garage roof can be glimpsed from the street, but it is set well back and only briefly visible between the much larger and more imposing dwellings. The effect on pre-existing trees appears to have been as envisaged in the Tree Survey, so this application does not have any additional impact on tree cover. The mature trees at the rear maintain a leafy backdrop and there is still a sizable private garden behind the host dwelling. From public viewpoints, the development is a minor element in the street scene, which has little effect on the spacious, leafy character of the area, or the relationship between the large Victorian/Edwardian dwellings and their garden plots. To that extent, the development does acceptably relate to its context, as required in Principle DG39 of the Design Guide.
24. As viewed from neighbouring properties, the degree to which the rear garden land has been developed is much more apparent. The garage block and outbuildings at the rear of nos. 7 and 9 also contribute to that. Nevertheless, taking into account the generally large and spacious plots around the site, including those behind dwellings along Oakwood Road, the garden areas collectively retain a spacious, leafy ambience with many mature trees. Soft landscaping would also help to integrate the building into its garden setting, mitigating the loss of previous trees. Overall, notwithstanding the treatment of the sloping site, the spacious, leafy character of the Conservation Area as a whole is maintained.
25. I therefore conclude that the development preserves the character and appearance of the Silverdale Road/Birchwood Grove Road Conservation Area. That being the case, there is no conflict with Policies DP26 and DP35 of the MSDP or Policy H1 of the Burgess Hill Neighbourhood Plan. Those policies require, amongst other things, that development reflects the distinctive character of towns and preserves the special characteristics of a Conservation Area, with reference to factors including the scale and density of new buildings and the effect on relevant gardens, trees and landscaping.
26. Nor there any conflict with relevant requirements in the Framework for conserving and enhancing the historic environment. In particular, having concluded that the development is not harmful to the significance of the CA, there is no need to consider whether any harm is outweighed by public benefits.
27. The absence of a separate Heritage Statement or Visual Impact Assessment has not prevented the heritage issues from being assessed, either by the Council or by me, in accordance with s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. While I have come to a different view from the Council, that is a matter of judgement based on the evidence before me, which included sufficient heritage evidence, proportionate to the form of development.

Other Matters

28. No window openings are proposed in any of the elevations, so none of the other adjoining properties are overlooked. There is accordingly no objective loss of privacy and no conflict with Principle DG45 of the Design Guide, even when the relative height of adjacent plots is taken into account.

29. The building is to the north of the garden at no. 7, where it could not block direct sunlight. Representations report that there is some overshadowing at the end of the garden to no. 9. However, given the east/west orientation and distance from the boundary, that can affect only a limited area. Since the properties on Oakwood Road have long rear gardens, any shadow cast would also affect only a limited area at the very end of those gardens, which will already have a shady character due to the boundary trees. The Council did not allege that there was any materially harmful effect on daylight or sunlight and I concur with that conclusion.
30. The principle of a garage with capacity for multiple vehicles was established when planning permission was granted and the scope of this s73A application is limited to the effect of varying condition 1. Since the approved and proposed plans have the same internal capacity, there will be no additional effect on living conditions arising from activity in and around the garage or along the access drive. Therefore, there is no conflict with Policy DP29 of the MSDP, which relates to noise, air and light pollution. Nor is there any evidence that additional traffic will be generated.
31. Since the area of the roof and hardstanding is unchanged from the approved plans, there is no substantive evidence that this application triggers any additional requirements for drainage or surface water run-off. Nor is there any additional fire safety risk, since the construction materials and capacity for vehicle and fuel storage is unchanged. There is no substantive evidence that the degree to which the site slopes is inherently prejudicial to construction of a structurally stable building, and the quality of the build is subject to other regulatory measures. Any evidence of rodent infestation is outside the scope of this application.
32. The application is for a domestic garage, and the existing planning permission is subject to a condition restricting use of the internal parking area to garaging or storage of private motor vehicles. I have re-imposed that condition. Therefore, any future proposal for a different use would be subject to planning control. Any current evidence of commercial activity is for the Council to investigate, and not a matter for this application and appeal.
33. In the Neighbourhood Plan, Policy H2 covers back garden development, referring to proposals to intensify existing residential areas. This development does not introduce a new dwelling or plot and is on a site where the principle of a new building had already been agreed by the Council. Having concluded that the garage does not harm the character and appearance of the area and is not unacceptably harmful to the outlook from existing dwellings, there is no conflict with relevant criteria in that policy.
34. There is provision for planning applications to be considered retrospectively, under s73A of the 1990 Act, and the consideration of such applications on their merits does not undermine the operation of the planning system as a whole.

Conditions

35. Since the effect of allowing the appeal would be to grant a fresh planning permission, I have considered which of the conditions imposed on the original planning permission are still required. Where the conditions imposed depart to any material extent from those recommended by the Council, the parties have had the opportunity to comment.

36. I have imposed a condition requiring compliance with the revised plans submitted with this application, in the interests of clarity about what has been approved. However, having clarified the relevant drawings with the main parties, I have not included the Topographic Survey, for the reasons given above.
37. Since the external materials have already been approved by the Council, condition 3 of the original permission is no longer relevant, but I have imposed a modified condition to ensure compliance with the approved details. The original condition regarding the design of the garage doors is still applicable and both conditions are necessary in the interests of the character and appearance of the area.
38. For the reasons given above, a revised landscaping scheme is necessary in the interests of the character and appearance of the area and the outlook from neighbouring properties. I have therefore imposed a condition to that effect, which is substituted for condition 5 of the original permission. There is a strict timetable for compliance because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the landscaping scheme before the development takes place. The condition as worded will ensure that the development can be enforced against if the landscaping requirements are not met.
39. Finally, I have imposed a condition restricting use of the building to domestic garaging, using the same wording as on the original permission, in order that any subsequent proposal for different use is subject to planning control.
40. The approved plans include details of the existing and proposed ground levels, including reinstatement of topsoil for planting of trees and shrubs. In combination with the landscaping condition, that is sufficient to ensure that the ground around the building is reinstated to a suitable form. A condition requiring installation of bird and bat boxes, as mentioned by the appellant, is neither necessary nor within the scope of this s73A application.

Conclusion

41. For the reasons given above I conclude that the appeal should succeed. I grant a new planning permission without the disputed condition but substituting another, restating those undisputed conditions that are still subsisting and capable of taking effect, with modifications where necessary.

Jane Smith

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with drawing nos:
 - 101678/SMITH/002/PL-01 Rev 0: Location Plan
 - 101678/SMITH/002/PL-02 Rev 0: Site Plan
 - 2210283 Rev E: West & East Elevations dated 20/12/2024
 - 2210283 Rev E: North & South Elevations dated 20/12/2024
 - 2210283 Rev E: Sections dated 20/12/2024
 - 2210283 Rev E: East & West Elevations with Landscaping Scheme dated 20/12/2024
 - 2210283 Rev E: North & South Elevations with Landscaping Scheme dated 20/12/2024
 - 2210283 Rev E: North & South Elevations, dated 27/5/2025, identifying 'underbuild' (red), existing ground level (hatched) and 30cm additional soil (brown).
- 2) The development shall be carried out in accordance with the approved schedule of materials approved under condition discharge approval DM/23/2367 dated 23 October 2023. The works shall be carried out in accordance with the approved details.
- 3) The approved garage doors shall be side hung timber doors unless otherwise approved by the Local Planning Authority.
- 4) The building operations hereby permitted shall be demolished to ground level and all equipment and materials resulting from the demolition shall be removed within 2 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a revised Landscape Enhancement Plan shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the submitted Landscape Enhancement Plan or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Landscape Enhancement Plan shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved Landscape Enhancement Plan specified in this condition, those landscaping measures shall thereafter be maintained. Any trees or plants which, within a period of five years from the first occupation of the development die, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 5) The car parking area within the garage shown on the approved drawings shall not be used for any purpose (including use as living accommodation) other than for the garaging or storage of private motor vehicles and no trade or business shall be carried out therefrom.

END of conditions