

PLANNING AND DEVELOPMENT SERVICES

LIMITED



Date – Day of electronic submission

Our Ref.: 1890.2

LPA Ref.: DC/26/0286

Dear PINS,

Appeal by Anita Lines

Land at 73 Daux Avenue, Billingshurst, West Sussex RH14 9TD

Demolition of existing garage and erection of a detached garage

I enclose herewith an appeal considered suited for determination by written representations under the 'old rules'. In this respect, the application was validated by the LPA on 18 February 2026 and refused under delegated powers on 15 April 2026 for the 3 reasons set out on the decision notice.

Background

The existing detached 4-bedroom house with attached garage was permitted under DC/13/2043 as a non-material amendment to replace a pair of semi-detached dwellings approved on the site as part of a 46-house estate allowed at appeal (2183078) in 2013 under DC/11/2385.

The appeal had regard to a Tree Preservation Order made on 15 June 2010 that covers a Group and two Woodlands, one of the latter of which stands to the east of the current appeal site. Also taken into account in the appeal held by

Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd Brett Incorporated Ltd

MAILING ADDRESS: 18 SEAL ROAD, SELSEY, CHICHESTER, WEST SUSSEX, PO20 0HW.

Tel: 01403 258800 Mobile: 07710 624420 e-mail: office@brettinc.co.uk

MANAGING DIRECTOR ~~~~~ SIMON BRETT MRTPI

REGD OFFICE: 18 Seal Road, Selsey, PO20 0HW

REGD IN THE UK No: 4869163

www.bretting.co.uk

public inquiry was a tree survey and updated report carried out by Simon Jones Associates Ltd (SJA) Arboriculturalists dated January 2013, extracts of which regarding the trees adjacent to the appeal site are included with this current appeal application. Condition 12 of the appeal decision acknowledges works to various protected trees to facilitate the development and to be carried out in accordance with a Tree Protection Plan with remaining trees being protected from damage during construction with reference to the requirements of BS 5837 entitled 'Trees in Relation to Construction' (2012).

Because woodland trees are not identified individually, helpfully, the surveyed position of preserved trees 1740, 1760, 1765, 1769 and 1773 that stand within W1 of the Order immediately to the east of this current appeal site are detailed in the SJA report along with commentary about their category, health and respective canopy heights and diameters etc.

The technical details of those five trees were as requested by the LPA Tree Officer (TO) checked/updated specifically for this appeal application by Archidata Ltd, specialist land and building surveyors from nearby Steyning using the latest satellite-based technology. The survey located their precise position on the ground as well as their diameter, height and canopy spread etc. Comparison of the 2013 SJA details and the October 2025 survey identified a general increase in trunk diameter, measured at 1.5m above ground level, over a period of about 12 years since the original survey was carried out. This allowed the all-important Root Protection Areas (RPA) of the trees to be established in accordance with BS 5837:2012 and which are kept free of any building works with the appeal development. Indeed, regard has been had to the non-obligatory 1m wide buffer, beyond the RPA's, sought by the Council's Tree Officer (TO) in a Preliminary Enquiry (PE) referred to below carried out before the application was prepared, which will also be kept free of building works.

Despite the presence of protected trees, full domestic permitted development (PD) rights regarding extensions and incidental buildings etc. remain intact with

the appeal property. The appeal site is not within an area that is subject to any special protection that might otherwise curtail those domestic PD rights nor appears subject to an Article 4 Direction removing such rights.

As such, current domestic PD rights for a detached property of this nature include, for example, up to a 3m two-storey high rear extension, a single-storey side extension with a width up to half the original house, which in this case includes an attached garage built at the same time as the house, and incidental buildings up to 4m in height covering up to 50% of the whole curtilage of the property provided they are not forward of the principal elevation.

The existing house measures 11.5m in width, extending up to 14.5m including the garage. As such, a side extension with an overall width of up to 7.25m could be built onto the eastern side of the garage under PD rights. This would project further into the RPA of the preserved trees compared to the appeal dwelling, which at a point roughly in line with the rear face of the existing dwelling, extends only 6m from the existing dwelling towards the eastern boundary and the preserved trees beyond. Provided a location behind the principal elevation of the existing house, which is considered would include the front face of the garage, an incidental building could extend up to the eastern boundary of the property and intrude into the RPA of the protected trees. *(It is accepted that incursion into the RPA's of preserved trees with foundations of PD buildings might have consequences for the preserved trees but that is a matter outside the remit of this appeal. However, the proximity of preserved trees might, in this instance, justify a condition removing PD extensions and incidental buildings between the appeal house and eastern boundary of the site.)*

Overall, PD extensions and incidental buildings could potentially have far more impact on the preserved trees than the appeal development, which has been designed and laid out to have regard to the TO's response to the Appellant's PE referred to below by ensuring no incursion into the RPA's of the preserved trees and ensuring satisfactory light to the house along with sunlight to its garden.

The purpose of the April 2025 PE with the TO, who responded on 27 August 2025, was primarily intended to inform how the Appellant might extend the property under permitted development rights or otherwise make effective, sustainable use of the property, which is now too large for the Appellant's needs. An extract of the Appellant's supporting PE plan is included within the TO's response. The full text of the note on the plan sets out the essence of the enquiry which was to establish 'Is the hatched area developable with a two-storey development relative to the preserved trees'. It is important to note that the tree's locations shown on the PE plan were approximated from the 2013 SJA report which the TO required updating to support any planning application. He also wished to ensure that light factors for any development were taken into account.

Accordingly and immediately prior to the submission of the appeal application the SJA tree report was therefore updated following the Archidata Ltd survey that positioned the trees accurately on the ground and updated their diameter, spread and height from which new RPA's were calculated and shown accordingly on the Block Plan submitted with the appeal application and referred to also in the Appellant's Design and Access Statement that should be taken into account in this appeal. For example, the SJA report notes that tree 1769 has a height of 13.5m, a diameter of 595mm (assumed at 1.5m above the ground in accordance with BS's) and an east-west spread of 10.25m. The Archidata Ltd survey shows the same tree to now have a surveyed height of 16.08m, a diameter of 640mm at 1.5m above the ground and a maximum spread of 13.6m. The RPA for the tree, which is a radius of 12 times the diameter of the tree measured at 1.5m above the ground, as based on the up-to-date Archidata Ltd survey and with reference to requirements of BS 5837:2012, is therefore 7.68m. Whilst it is possible to intrude into an RPA in certain instances, remaining outside of such is a standard approach adopted by this LPA, and at appeal, where there are trees of note on or around a development site. The additional 1m buffer zone required by the TO has been respected.

The updated tree data is shown, for convenience, on the appeal plans including the RPA and 1m buffer required by the TO. The original SJA details were included with the appeal application for reference if need be. It was anticipated any approval would ensure protection of the trees during construction by having a condition reflecting appeal condition 12 of DC/11/2385, which would follow the standard route adopted by the LPA in these circumstances.

The Appellant took valuation advice in combination with considering various options about how best to improve the sustainable characteristics of this large family property so that it might serve better her needs and the market. Making the house larger was rejected, as was extending the property and converting it into say a terrace of three. A particular issue with the latter approach is that it involved extending the existing east-west roof line so that its gable end would stand close to the trees and could have impacted adversely their canopies. Accordingly, the appeal scheme dictated a detached dwelling so that its roof would run north-south with the roof slope running away from the trees' canopies. In turn, and as explained in the Design and Access Statement supporting the appeal application, all ground and first floor windows facing the trees are either secondary or serve non habitable space to respect the views of the TO. Two existing parking spaces will serve the new house whilst two new spaces will be provided to serve the existing house well away from the trees on the western side of the house.

This will be a self-build dwelling designed and laid out to suit the needs of the Appellant who will live in it. In turn, this will free up her existing family house for others in desperate need of housing suffering the consequences of the LPA's failure to facilitate sufficient housing to serve significant local need/demand. The Appellant has lived in the existing house for many years and will occupy the appeal property in the same spirit. In reality, there will be little difference between the two, relative to the trees' impact on the existing and proposed dwelling. It is just that the appeal dwelling and its garden will get the southern sun a short time after it arrives in the rear garden of the existing house. In terms of the impact of the appeal dwelling on the existing dwelling, with an eaves

height of 5m and an overall height of 8m, the existing trees to the east that are mostly double that height, will continue to appear as the dominant backcloth. What is clear is that the trees will not be affected adversely by the appeal development either now or in the future and that the appeal dwelling will not impact on them or the existing dwelling in any harmful way to justify withholding permission. This is a well thought out development that makes optimum use of the site, protects preserved trees from harm and serves the needs of its owner, and others in desperate need of a family house, well.

Prior to the submission of this appeal, the Appellant submitted a post DC/26/0286 decision PE that sought the LPA's advice as to what it considered would be acceptable on the appeal site so that a revised application could be considered. No supporting plans were submitted with the PE because the Appellant anticipated the LPA would provide a small development brief or similar for her to follow. However, the LPA's reply of 29 July 2026 was based on the DC/26/0286 refusal reasons and was not particularly informative because it recommended a tree survey, method statement and tree protection plan already submitted with the appeal application, that the front and rear building lines of the existing dwelling should be respected to avoid an uncharacteristic step in the front and rear street scenes that impacts neighbouring amenity and that a new dwelling might only be possible through a modest extension to the existing dwelling by creating a pair of semi-detached dwellings. The LPA acknowledges this approach would result in the loss of parking to the front of the site but to offset the loss the Appellant should explore whether a single parking space could be provided parallel with the access drive and if there is capacity on the highway for overspill parking. The Appellant decided not to pursue the suggested solution and submitted this appeal.

Planning Policy

The Development Plan for the purposes of this appeal comprises the Horsham District Planning Framework 2015-2031 (HDPF) and the Billingshurst Neighbourhood Plan 2019-2031.

The review of the 2015 HDPF to cover the period 2023 to 2040 commenced in 2018 with subsequent Examination hearings paused by the Inspector on 12 December 2024, it appears primarily as a result of soundness issues arising from the publication of the then revised NPPF on that day, because water neutrality issues had not by that stage been resolved and for associated lack of certainty regarding a rolling supply of housing. However, the process leading to conclusion of Examination has recently recommenced now that water neutrality has been addressed with the Inspector recommending a number of Main Modifications to make the Plan Sound and setting out detailed housing requirement numbers.

On 05 May 2026, the Examination Inspector issued his interim conclusions regarding housing supply within the District that will be examined under the September 2023 NPPF by virtue of various transitional arrangements in place until the end of 2026 and will cover the period 2023 to 2040. Because there is currently a considerable shortfall of housing within the District a minimum of 17,828 dwellings will need to be provided in the plan period with an additional amount to cover the south coast's unmet need.

A Schedule of Proposed Main Modifications was issued in July 2026 with a consultation period expiring 24 August 2026. The Provisional Timetable for the review anticipates Examination Hearings from 13 to 23 October 2026 with adoption early in 2027.

Matter 6c regarding the soundness of the site allocation relating to Strategic Policy HA4 regarding Land East of Billingshurst (including the proposed southern extension) being promoted by the LPA is due to be considered on

Friday 16 October 2026. In its Schedule of Proposed Main Modifications issued in July 2026, under MM226 the LPA proposes increasing allocation HA4 from 650 to 1000 homes in the period to 2040. The attached map shows that site lies east of the current appeal site and includes the preserved trees within it. In the period to 2040, the allocation will include 1,000 C2 & C3 units, with 35% affordable units together with provision for young families, older people and a permanent traveller site. These will be supported by a community hub that will have a community hall, a shop and café along with employment floorspace and recreational facilities.

On 07 September 2026 the Examination Inspector, Jonathan Bore, required the LPA to respond to his questions concerning the proposed main modifications and the site allocations. No questions were raised about proposed allocation HA4 with its increased housing provision. It is however indisputable that there has been a considerable shortfall in housing provision within Horsham District for several years, which will probably persist for several more.

Running alongside the review of the 2015 HDPF, the LPA has commenced work on a new style local plan reflecting the August 2026 NPPF approach, which will be called Horsham District 2045. Its related Call for Sites for residential, employment, and traveller sites etc. ran from 30 June 2026 to 25 August 2026.

In these circumstances, it is expected this appeal will be determined in accordance with the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004 and any saved policies that might arise from the HDPF review but primarily the new approach for the determination of planning applications and appeals set out in the August 2026 NPPF.

The consultation exercise for the latest NPPF commenced December 2025, expired in March 2026 with the revised NPPF being published on 17 August 2026. It sets out the Government's policies for plan-making and for making decisions on development proposals in England. As stated, it is a 'material

consideration of critical importance in both contexts'. It highlights that the purposes of the planning system is to contribute to the achievement of sustainable development by managing the use and development of land in the long-term public interest. Achieving sustainable development means that the planning system has three overarching objectives in providing for homes, commercial development, facilities and infrastructure which society needs. These objectives need to be pursued in mutually supportive ways. They comprise economic, social and environmental objectives.

Transitional arrangements dictate that the review of the 2015 HDPF will take place against previous versions of the NPPF, which contained paragraph 11(d) that triggered the tilted balance in favour of sustainable development arising from out-of-date housing policy when a local authority lacked a five-year housing supply or failed the Housing Delivery Test, which is the case with this LPA at the time it determined the appeal application.

However, the August 2026 NPPF replaced the tilted balance approach with a location-based spatial hierarchy through new policies S3 to S6. Of particular relevance to the appeal application, which involves the sustainable erection of a self-build dwelling on an existing underutilised brownfield site within a defined policy built up area where there is an LPA intention to accommodate 1000 dwellings and other facilities on land immediately to the east of the appeal site, are policies S3 and S4.

Policy S3 requires a presumption in favour of this sustainable development being applied. Policy S4 states development proposals within settlements should be approved unless the benefits of doing so would be substantially outweighed by any adverse effects when assessed against the national decision-making policies in the NPPF. In applying policy S4, part 2 highlights the circumstances where substantial adverse impact might arise, none of which apply here save for S4(2)a(ii), which refers to development within residential curtilages (L2(1)(d)).

Policy L2 concerns itself with making effective use of land. Substantial weight should be given to the current appeal development because it will be compliant with L2(1) (b) and (d) i, ii and iii.

The Appellant's Case

The starting point for the determination of this appeal is S38(6) of the Planning and Compulsory Purchase Act 2004 that requires the determination to be made in accordance with the development plan unless material considerations indicate otherwise. The HDPF 2015 is being reviewed in accordance with transitional arrangement arising from an earlier NPPF and the Billingshurst Neighbourhood Plan predates the August 2026 NPPF, policy PM6 of which dictates that local plans may not include policies that duplicate, substantively restate or are inconsistent with the content of national decision-making policies unless directed by other policies in the NPPF. The LPA is pursuing a significant housing, employment and community allocation on land to the east of the appeal site. It is not clear at this stage if the LPA will defend this appeal in the light of the August 2026 NPPF, particularly policies S3, S4 and L2(1) (b) and (d) i, ii and iii, with which the appeal development is fully compliant.

Dealing with each of the refusal reasons in turn, the following brief comments are made.

1 The proposed development, by reason of the siting, scale and massing of the detached dwelling within a constrained plot, would result in a cramped and contrived form of development that fails to respect the established pattern, spacing and character of the surrounding area. The proposed development would significantly erode the sense of openness between built form and the adjacent protected woodland belt, resulting in a harmful urbanisation of this edge-of-development location. As such, the proposal would constitute an overdevelopment of the site, causing harm to the character and appearance of

the area, contrary to Policies 25, 32, and 33 of the Horsham District Planning Framework (2015).

Comment

The appeal site, which is served by a private drive off Daux Avenue, stands within a housing estate where there is an eclectic mix of styles and design of dwellings where domestic PD rights remain intact. Its existing garage is set back behind the building line and out of view from Daux Avenue. Beyond the intervening play area to the north of the appeal site stands a complex that is two storey and which stands as close to the protected trees on that site, which extend further into that site, as the appeal dwelling will stand to the trees bordering the appeal site. Overall, the opposite building has barn and gable ends with a mixture of tile hanging, boarding and brick elevations. In common with the dwelling to the west of the appeal site, 75, some windows have arches created by a brick soldier course. The eastern flank wall of 75 forms the common boundary with the host dwelling on the appeal site which has a dentil course on its front elevation. The property is about 5m wide, which is the same as the frontage of the appeal dwelling. In terms of its architectural detailing, it is considered the appeal dwelling respects what is about it. The Design and Access Statement submitted with the appeal application explains the concept of the development, which is essentially to make effective sustainable use of the site without affecting adversely the character of the area, the amenities and outlook of neighbours or the protected trees to the east of the site. The roof pitch, width of building and stepped design all have regard to the protected trees to ensure no harm by being outside their RPA and the TO's 1m buffer, either when it is built or in the future. The internal layout takes maximum advantage of natural light to habitable rooms with secondary windows or those serving non-habitable space facing east. Car parking makes use of existing surface that will be extended by no dig methods. Overall, the development will sit comfortably in the street scene, amongst its neighbours and next to the existing dwelling. Because it will be set back from the principal elevation of the existing dwelling, there will only be glimpsed views of it from Daux Avenue.

There will be no discernible impact on the surrounding area or on the proposed housing allocation for 1000 dwellings to the east.

2 The proposed dwelling, by reason of its siting, height and proximity to the existing dwelling at No. 73, would result in a dominant and overbearing form of development, leading to a harmful sense of enclosure and an unacceptable impact on outlook. The proposal therefore fails to provide a satisfactory standard of amenity and is contrary to Policy 33 of the Horsham District Planning Framework (2015).

Comment

It is simply not clear how the appeal development could lead to a dominant development and a harmful sense of enclosure and an unacceptable impact on outlook, assumed with reference to the existing dwelling. There are adequate separation distances with other nearby houses. The rear eastern window on the ground floor of the existing dwelling serves the kitchen, views from which are already obscured by the existing attached garage that has a large pitched roof. The appeal dwelling will not extend further south than the existing garage and there will ample distance to the dwelling to the south, which is in any case offset to the west. There will be ample views out of the bedroom above. Replacing the existing pitched roof garage with the appeal dwelling, which will be set a metre further away, will cause no demonstrable harm to the amenities and outlook of the existing dwelling. The protected trees to the east, at 16m in height, will act as a backcloth to the appeal dwelling that will have an eaves height of 5m and an overall height of 8m. The appeal dwelling will therefore be lower than the protected trees and will not block in any measurable way sunlight or daylight to the existing dwelling. Both existing and proposed dwellings will have the privacy, amenity and outlook expected of development. Any purchasers of the existing dwelling will do so with their eyes open, as the Appellant did when they purchased the existing dwelling next to preserved trees.

3 The application fails to provide adequate and up-to-date arboricultural information, including a Tree Survey, Arboricultural Impact Assessment, and Tree Protection Plan, to demonstrate that the proposed development would not result in harm to the adjacent woodland subject to Tree Preservation Order (TPO) 1423. In the absence of this essential information, the Local Planning Authority cannot be satisfied that the development would avoid direct or indirect harm to trees of high amenity value, or that appropriate protection measures could be implemented. The proposal is therefore contrary to Policy 33 of the Horsham District Planning Framework (2015) and the provisions of the National Planning Policy Framework (2024).

Comment

The comments of the TO set out in the DAAS (Delegated Applications Assessment Sheet) suggest that the updated tree details set out in the Appellant's Design and Access Statement and on the plans supporting the appeal application have not been noticed. The TO states, amongst other things, "The tree information provided with the application dates from when the site was originally developed in 2010 (sic). As such the data is well out of date and cannot be relied upon to make an informed decision."

The TO appears to accept the data available to the appeal Inspector in 2013 allowed an informed decision at that time. That data has been updated, not only with reference to the girth of the trees that has allowed the respective RPA's of each tree to be accurately plotted etc., but also as to their locations that have been obtained by the latest satellite survey equipment relative to the existing dwelling built on the appeal site, rather than drawings of proposed dwellings, which has also been surveyed. In all probability, the information supporting the appeal application which includes surveyed positions of the existing house and trees is far more accurate than was available to the appeal Inspector in 2013 when the estate was permitted and more accurate than was presented to the TO when the PE, which relied on 2013 data, was first submitted. The Appellant has met the requirements of the TO by updating the

tree data and maintaining his 1m buffer to boot. In common with many other applications affected by protected trees, this development, which is wholly outside the RPA's of the protected trees, will cause then no harm. It is considered a pre-commencement condition can ensure the optimum type of foundations, probably piles, to satisfy the Building Regulations and cause minimal impact on the trees along with no dig surfacing for the modest extension to the existing car parking area to accommodate 2 vehicles. A condition can require protective fencing etc. during building works.

It is considered this development complies with development plan policy and, in particular, the August 2026 NPPF. In these circumstances, section 38(6) of the 2004 Act suggests this appeal should be allowed.

The Appellant reserves the right to respond to any LPA comments, if it decides to defend the appeal in the light of the August 2026 NPPF, in which case the Inspector may consider an award of costs for unreasonable behaviour in view of the resounding support for this development.

END