



22nd December 2025

Our Ref: NM/25.155

Development Management
Arun District Council
Civic Centre
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Dear Sir/Madam,

SECTION 96A OF THE TOWN AND COUNTRY PLANNING ACT 1990

NON-MATERIAL AMENDMENT APPLICATION TO OUTLINE PLANNING PERMISSION A/142/16/OUT

FORMER MERRY ENGLAND NURSERIES, SWALLOWS GATE, DAPPERS LANE, ANGMERING. BN16 4EN

I herewith enclose on behalf of my client, Mr Rixon, in both his capacity as an owner of a property in the development and in his role as a Director of the Swallows Gate Management Company, who represent the residents of the development, a non-material amendment application made under Section 96A of the Town and Country Planning Act 1990. The application fee has been provided to the Local Planning Authority via the Planning Portal for the sum of £298 (plus a service charge of £85).

BACKGROUND AND CONTEXT

Outline planning permission A/142/16/OUT was granted on 30th June 2017 for:

"... the demolition of existing buildings & erection of 18 No. dwellings and the provision of pedestrian footpath adjacent to Dappers Lane."

It was granted with all matters reserved, aside from scale and access (see Condition 1). As is ordinarily the case with applications of this scale, it was conditionally approved. Relevant planning conditions included:

- **Condition 1** - the reserved matters (layout, appearance and landscaping) had to be made no later than three years from the date of the permission;
- **Condition 2** – which required that the permitted development be begun either before the expiration of five years from the date of the permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever was the later;
- **Condition 3** – lists the approved plans, which included the access plan (ref: 5804/101 Rev A) and various other plans that were approved in relation to scale only.
- **Condition 10** – which is the subject of the enforcement action, states that no development could commence until the vehicular access and footway serving the development had been constructed in accordance with the approved planning drawing. There was also the additional requirement for the

submission of a detailed scheme for the vehicular access and footway, which was required to be approved by the Local Planning Authority, in consultation with West Sussex County Council, before the construction of the footway commenced.

Reserved matters applications were subsequently submitted and approved pursuant to this principal consent (refs: A/168/18/RES and A/124/19/RES).

The footway shown on the approved access plan was to the east of Dappers Lane, from the development site's access, to the north of its junction with Merryfield Crescent.

Subsequently, application A/91/18/PL was made to the Local Planning Authority in June 2018 as a Section 73 application. The applicant's covering letter for the application confirmed that it sought to replace approved access plan 5804/101 Rev A with 5804/101 Rev B and re-locate the approved footway from the eastern side of Dappers Lane, to the west. It also confirmed that the Section 73 application was made due to the owners of Crete Nursery successfully applying to register the verge land adjacent to that property, which created a 'ransom' situation relating to the footway. By granting this Section 73 permission, this was a position that must have been agreed by the Local Planning Authority.

Whilst the Section 73 application was approved by the Local Planning Authority, no reserved matters applications were ever submitted pursuant to it and, therefore, it lapsed. Consequently, the only planning permission that is capable of being implemented is planning permission A/142/16/OUT. This was established through Appeal APP/C3810/C/25/3364403 (see the letter issued by the Planning Inspector dated 17th November 2025).

Through the same planning appeal, the Local Planning Authority also confirmed that the consented footway on the western side of Dappers Lane, as shown on plan 5804/101 Rev B was not capable of being implemented. This was confirmed in correspondence to the Planning Inspectorate on 26th November 2025.

In the same correspondence, the Local Planning Authority also confirmed that:

"The residents are going to explore whether the original footpath planning condition can be formally removed and the Council, fundamentally, have no objection to the condition being removed. This would more than likely be via a section 96A non-material amendment application."

This application gives effect to this agreed position.

THE PROPOSAL

In the context set out above, a detailed review of the decision notice for application A/142/16/OUT has been undertaken and the applicants consider it necessary for a number of non-material amendments to be made. Summarily, these are:

- Condition 3 – replacing approved plan 5804/101 Rev A, with plan 14183/101 Rev P1. The revised plan reflects the 'as built' access scheme and removes the footway along Dappers Lane, from beyond the site's southern boundary, which all parties agree is not capable of being implemented; and
- Condition 10 – as set out in the correspondence issued by the Local Planning Authority to the Planning Inspectorate, is proposed for deletion.

The applicants consider that there is no need to alter the description of development for planning permission A/142/16/OUT, as a footway has been provided on Dappers Lane, to the south of the development's access, to its southern boundary.

The revised wording of Condition 3 is set out in Appendix 1 of this covering letter.

JUSTIFICATION FOR THE SUBMISSION OF THE SECTION 96A APPLICATION

This section of the letter sets out the justification for the amendments to the original scheme and demonstrates how they are non-material. In this context, it summarises why it is appropriate to address these changes via the Section 96A application process.

Section 96A of the Town and Country Planning Act 1990

Section 96A of the Town and Country Planning Act 1990 provides local planning authorities with powers to make non-material changes to planning permissions. Specifically, it allows local planning authorities to make changes to any planning permission, or any permission in principle, relating to land in their area, if they are satisfied that the change is not material.

In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any changes made via the Section 96A process, on the planning permission originally granted. The legislative framework provides powers to:

- impose new conditions; and
- remove or alter existing conditions.

A Section 96A application may only be made by, or on behalf of, a person with an interest in the land to which the planning permission relates, which is the case with this Section 96A submission; Mr Rixon owns, on a freehold basis, 8 Swallows Gate.

Importantly, if successful, the Section 96A application does not result in the grant of a new planning permission, as is the case with a Section 73 permission, rather it amends the existing planning permission.

The Planning Practice Guidance states that there is no statutory definition of what is considered non-material, as it is dependent on the context of the overall scheme; what might be non-material in one context, might be material in another¹.

As there is no statutory definition of what constitutes a non-material amendment to a planning application in England, there are no specific tests that can be used to assess whether an amendment can be considered to be non-material or not.

LRM Planning have been the beneficiary of advice from Counsel on another development site in southern England where amendments to planning conditions were proposed through a Section 96A submission. In that case Counsel (Mr Giles Cannock) confirmed that the Section 96A procedure:

"...is intended to be relatively informal and quick (there is a limited requirement for consultation under art.10). There is no right of appeal. The only means to challenge a LPA appears to be via judicial review. The LPA therefore have a wide measure of discretion in exercising a planning judgment on whether any proposed change is non-material, subject to Wednesbury reasonableness."

He therefore confirmed that:

"In my opinion, a Court would be very reluctant to interfere in such a planning judgment (per Sullivan J in Newsmith), whether the LPA's decision is to: (i) grant the application; or (ii) refuse the application."

Local Planning Authority tests

As set out above, there is no statutory definition of what constitutes a non-material amendment to a planning application in England and there are no specific tests contained within national planning guidance that can be used to assess whether an amendment is considered to be non-material or not. However, whilst not forming national guidance, we are aware that there are a number of tests that are employed by the Local Planning Authority to determine whether an amendment is non-material or not.

¹ National Planning Practice Guidance, Flexible options for planning permissions, paragraph 002, Reference ID 17a-002-20140306

As part of his Instruction on the other case taken forward by LRM Planning, Mr Giles Cannock KC considered the legality of using such tests to determine whether a proposal constitutes a non-material change, or not. He concluded that:

"I am Instructed that the Council have a published set of tests which they employ to determine whether an amendment to a planning permission is non-material (see Instructions para 117 and 118). I do not consider such tests to be either necessary or robust. All the LPA is required to undertake is a planning judgment on whether the proposed amendment is material. No further criteria are required to assist in such a broad planning judgment."

Consequently, as suggested by Mr Giles Cannock KC, the following section considers whether the amendments sought by the applicants are material or not and does not seek to demonstrate compliance with the tests currently used by the Local Planning Authority when considering such applications.

Whether the amendments are material or not

As confirmed by the Local Planning Authority during the determination of Section 73 application A/91/18/PL and during Appeal APP/C3810/C/25/3364403, neither a footway on the eastern or the western side of Dappers Lane from the southern boundary of the Swallows Gate site, to the north of its junction with Merryfield Crescent, is capable of implementation. It is therefore accepted that, through the planning process, it will not be delivered.

Moreover, since the original principal consent was approved, the speed of Dappers Lane has reduced to 20mph. This is a speed limit that is frequently used in shared streets.

Given the above, it is not considered that the amendments proposed could be considered to be anything other than a non-material amendment.

CONCLUSIONS

The above demonstrates that the proposed amendments are non-material in their nature.

I trust the above is set out clearly. If you require any further information, please do not hesitate to contact me.

Yours faithfully,



Neil Mantell
Director



Appendix 1. Changes proposed to Condition 3

The development hereby approved shall be carried out in accordance with the following approved plans:

- Location Plan - 0192 Rev B
- Access Plan – 14183/101 Rev P1

The below plans are approved in so far as they relate to scale only.

- Proposed Floor Plans - House Type A - dwg. 0192-PL003
- Proposed Sections & Elevations - House Type A - dwg. 0192-PL004
- Proposed Floor Plans - House Type B - dwg. 0192-PL005
- Proposed Sections & Elevations - House Type B - dwg. 0192-PL006
- Proposed Floor Plans - House Type C - dwg. 0192-PL007
- Proposed Sections & Elevations - House Type C - dwg. 0192-PL008
- Proposed Floor Plans - House Type D - dwg. 0192-PL009
- Proposed Sections & Elevations - House Type D - dwg. 0192-PL010
- Proposed Floor Plans - House Type E - dwg. 0192-PL011
- Proposed Sections & Elevations - House Type E - dwg. 0192-PL012

Reason: For the avoidance of doubt and in the interests of amenity and the environment in accordance with policy GEN7 of the Arun District Local Plan.