Mr. Neil Barden
6 Swallows Gate
Angmering
West Sussex
BN16 4QG

Date: 23 December 2025

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

Subject: Objection to Section 96A Non-Material Amendment Application (Ref: NM/25.155)
Site: Former Merry England Nurseries, Swallows Gate, Dappers Lane, Angmering BN16 4EN

Dear Sir/Madam,

I am writing as a resident of Swallows Gate to make formal representations in respect of the above Section 96A non-material amendment application. I object to the application. My comments relate solely to the **lawfulness and appropriateness of using Section 96A in this case, which is a threshold issue the Council must determine before considering any other matters**; I do not comment on the wider planning merits of the development.

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1. Clarification of Representation Status

For accuracy in the Council's decision-making process, I consider it important to clarify the following:

- The Swallows Gate Management Company (SGMC) does not own any land covered by planning permission A/142/16/OUT.
- Although Mr Rixon is a director of the SGMC, he does not have authority to make representations on behalf of the company or its members.
- Any submissions made by Mr Rixon should therefore be treated as personal representations only, in his capacity as a private homeowner.

This clarification is important to ensure the Council properly understands the status and weight of representations made in support of the application.

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2. Statutory Limits of Section 96A

Section 96A of the Town and Country Planning Act 1990 allows only non-material amendments to an existing planning permission. The Planning Practice Guidance (PPG) confirms that:

- There is no statutory definition of "non-material".

- The test is whether the amendment would result in a material change to the permission; and
- Section 96A cannot be used to change the permission itself or to remove conditions integral to the original approval.

While the applicant's covering letter correctly sets out these principles, it misapplies them to the facts of this case.

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3. Nature of the Amendments Sought

(a) Deletion of Condition 10

Condition 10 is a pre-commencement condition regulating the construction of the vehicular access and pedestrian footway. It was fundamental to the acceptability of the development and directly reflected the description of development approved under outline permission A/142/16/OUT, which expressly included the provision of a pedestrian footpath adjacent to Dappers Lane.

Its removal would alter the basis on which planning permission was granted **and would amount to a variation of the permission itself**, which is outside the lawful scope of Section 96A.

While the Local Planning Authority has previously indicated that it has no objection in principle to the removal of Condition 10, such a position does not override the statutory framework. The lawful mechanism for removing or varying an integral condition remains Section 73 or a fresh planning application—not Section 96A.

(b) Replacement of the Approved Access Plan in Condition 3

Condition 3 lists the approved plans, including the approved access arrangement. The revised plan submitted with the Section 96A application reflects the "as built" access scheme, which differs from the approved plan.

Approving this change via Section 96A would retrospectively regularise development carried out otherwise than in accordance with the approved permission. **Section 96A is not a lawful mechanism for development control by retrospective amendment.** This is a material amendment and outside the lawful scope of Section 96A.

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4. Ransomed Footpath and Lapsed Section 73

The footpath shown on the original outline permission A/142/16/OUT became subject to a ransom situation, which led to a Section 73 application (A/91/18/PL) to relocate it. Although that application was approved, no reserved matters were ever submitted pursuant to it, and the permission therefore lapsed **by operation of law**, a position confirmed through Appeal APP/C3810/C/25/3364403.

Accordingly, the only planning permission capable of implementation remains A/142/16/OUT. Section 96A cannot lawfully be used to bypass the consequences of a lapsed Section 73 permission.

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5. Legal Implications

Approving this Section 96A application would:

- Potentially retrospectively regularise development not in accordance with the original planning permission.
- Risk setting a precedent for using Section 96A to circumvent statutory safeguards, particularly where development is already largely complete; and
- Raise concerns as to whether the Council would be acting outside the scope of its powers under Section 96A.

The fact that the development is now largely complete does not alter the statutory limits of Section 96A.

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6. Whether the Amendments Are Material

Despite the applicant's conclusions, the proposed amendments are plainly material, as they would:

- Remove a core component of the original development (the footpath).
- Substitute approved plans with an "as built" arrangement.
- Retrospectively regularise development that is now largely complete; and
- Circumvent the statutory safeguards inherent in Section 73 applications and full planning applications, including public consultation.

The reduction of the speed limit on Dappers Lane to 20mph is not a material planning justification for removing a pedestrian footpath that formed an explicit part of the original planning permission.

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7. Public Scrutiny and Public Safety

Section 96A provides no mechanism for public consultation. Given the complex history of the footpath requirement, this is inappropriate.

The absence of a footpath presents ongoing public safety risks, particularly given the nearby CALA Homes development of approximately 525 dwellings nearing completion. Dappers Lane is unlit, proposed as a bus route, and lacks traffic-calming measures.

Any solution must be lawful, safe, and not reliant upon the residents of Swallows Gate to fund, implement, or maintain it.

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8. Developer Accountability

Bilton Fields Homes Limited remains the landowner. Failures in contractor management, inadequate progress of reserved matters pursuant to the Section 73 permission, and delays in

implementing key infrastructure have directly contributed to the current situation. These failures could, and arguably should, have been more rigorously monitored and addressed by Arun District Council through its statutory powers.

The Local Planning Authority had clear opportunities to enforce compliance and ensure that the footpath and access arrangements were delivered in line with the approved permissions. A more proactive approach, including stronger engagement with the developer and their contractors, could have prevented the present issues.

Residents of Swallows Gate and the SGMC should not be required to compensate for these lapses. Any solution to the footpath or access issues must be pursued directly with the responsible parties, and the Council must not rely upon or place obligations on the residents of Swallows Gate to resolve failings that arose due to inadequate developer oversight.

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9. Conclusion

For the reasons set out above:

- The proposed amendments are material.
- Section 96A is not the appropriate mechanism.
- The correct statutory routes are Section 73 or a fresh application; and
- Arun District Council must identify a lawful solution to the footpath issue that does not rely on the residents of Swallows Gate.

I respectfully request that the Council refuse this Section 96A application. The Council must ensure that its decision is made within the limits of its statutory powers.

Yours faithfully,
Mr. Neil Barden

SUPPLEMENTARY REPRESENTATION

Section 96A Application A/188/25/NMA
Former Merry England Nurseries, Swallows Gate, Angmering
Submitted by: Mr Neil Barden
Date: 24/12/2025

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1. Purpose of this Note

This supplementary representation responds specifically to the applicant's covering letter dated **22 December 2025**. It highlights several inaccuracies and omissions in that letter and explains why the proposed amendments **cannot lawfully be treated as non-material** under Section 96A of the Town and Country Planning Act 1990.

This note should be read alongside my primary objection.

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2. The Applicant Confirms the Proposal is an "As-Built" Regularisation

The covering letter states that the revised access plan:

"Reflects the 'as built' access scheme".

This is a critical admission.
Section 96A **cannot** be used to retrospectively regularise development carried out **not in accordance with the approved plans**. The procedure is intended for *minor, non-controversial adjustments* to an existing permission — not for approving unauthorised works after the fact.

This alone places the application outside the lawful scope of Section 96A.

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3. Deletion of Condition 10 Is Material as a Matter of Law

Condition 10 is a **pre-commencement condition** relating to:

- the construction of the vehicular access
- the pedestrian footway
- highway and pedestrian safety

It was fundamental to the acceptability of the outline permission, which expressly included the provision of a footpath adjacent to Dappers Lane.

Removing such a condition:

- alters the basis on which permission was granted
- removes a key safeguard
- changes the nature and scope of the permission

This is **not** a non-material change.
The correct statutory mechanism for removing or varying such a condition is **Section 73**, not Section 96A.

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4. Replacement of the Approved Access Plan Is a Material Amendment

The application seeks to replace approved plan **5804/101 Rev A** with **14183/101 Rev P1**, which depicts a different access arrangement and the removal of the approved footway.

This is not a minor drafting correction. It:

- changes the geometry of the access
- alters pedestrian provision
- affects highway safety
- substitutes the approved scheme with an unauthorised "as-built" layout

Such changes are **material** in planning terms and cannot be approved under Section 96A.

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5. Misinterpretation of the Inspector's Decision

The applicant relies heavily on the recent enforcement appeal decision. However, the Inspector did **not**:

- authorise the deletion of Condition 10
- authorise the as-built access
- state that the amendments were non-material
- direct the Council to use Section 96A

The Inspector simply confirmed that:

- the Section 73 permission had lapsed
- only the original outline permission survives
- the western footway cannot be implemented

These findings do not justify the use of Section 96A.

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6. Informal LPA Comments to the Inspector Are Not a Legal Basis

The applicant quotes informal correspondence from the Council to the Planning Inspectorate suggesting no objection "in principle" to removing Condition 10.

Such comments:

- we're not a formal decision
- we're not made under Section 96A

- we’re not subject to consultation
- do not bind the Council
- cannot override statute

The Council must now make a **fresh, lawful determination**.

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7. Counsel Opinion from Another Site Is Irrelevant

The applicant cites advice from Counsel relating to a completely different development.

This opinion:

- is not binding
- does not relate to this site
- does not address the specific conditions or planning history here
- cannot substitute for the Council’s own legal judgement

The statutory test remains whether the amendment is **material**.

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8. The Amendments Are Material in Every Relevant Sense

The proposed changes:

- remove a key element of the original permission (the footpath)
- alter the approved access arrangement
- regularise unauthorised development
- delete a highway safety condition
- bypass the statutory safeguards of Section 73
- avoid public consultation

These are **material** impacts on the permission, the public realm, and third parties.

They cannot be lawfully approved under Section 96A.

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9. Conclusion

For the reasons set out above, and in my primary objection:

- The amendments sought are **material**.
- Section 96A is **not** the appropriate statutory mechanism.
- The application seeks to regularise unauthorised works and remove a key safety condition.

- The Council would risk acting **ultra vires** if it approved the application under Section 96A.

I respectfully request that the Council **refuse** this application.

[redacted]

PL- Rep- [redacted]

[redacted]

Arun District Council, Civic Centre, Maltravers Rd
Littlehampton, West Sussex, BN17 5LF
www.arun.gov.uk

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From: Neil Barden [redacted]
Sent: 24 December 2025 09:58
To: Planning <Planning@arun.gov.uk>
Cc: Pauline Purcell [redacted]
Subject: Objection & Supplementary Representation – A/188/25/NMA (FAO: Kathryn Welch, Senior Planning Officer)
Importance: High

CAUTION: This email originated from outside of the organisation. You should take extra care when clicking links or opening attachments - if you are unsure the content is safe contact the IT Helpdesk before clicking or opening.

Dear Miss Welch,

Please find attached my formal objection letter and a supplementary representation in respect of Section 96A application **A/188/25/NMA** relating to the Former Merry England Nurseries site at Swallows Gate, Angmering BN16 4EN.

My representations concern the lawful scope of Section 96A, and the materiality of the amendments sought. I would be grateful if you could ensure that both documents are taken into account in your assessment of the application **and uploaded to the public planning portal for inclusion on the case file**.

Thank you for your time and consideration.

Kind regards,
Mr Neil Barden
6 Swallows Gate
Angmering
BN16 4QG

Attachments:

- Objection Letter – A/188/25/NMA
- Supplementary Representation – A/188/25/NMA