

Mr. Neil Barden
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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.

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.

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.

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.

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.

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.

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.

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.

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.

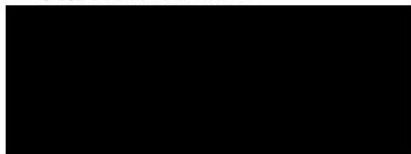
9. Conclusion

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



[REDACTED]

This is a paper rep as well as the email I just sent through

PL- REP [REDACTED]

[REDACTED]

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

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