

From: Elaine Walby on behalf of Planning.Responses
Sent: 13 January 2026 11:45
To: Planning Scanning
Subject: FW: URGENT: Time-critical planning compliance and legal issues – S96A A/188/25/NMA (Decision due 20 January 2026)
Attachments: Approved SLP.pdf

Importance: High

PL- Rep

Please redact

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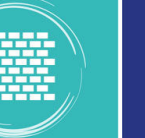
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From: Kathryn Welch <Kathryn.Welch@arun.gov.uk>
Sent: 13 January 2026 09:25
To: Planning.Responses <Planning.Responses@arun.gov.uk>
Subject: FW: URGENT: Time-critical planning compliance and legal issues – S96A A/188/25/NMA (Decision due 20 January 2026)
Importance: High

Please upload this as an objection. Inc the attached plan.

Thanks,

Kathryn Welch
Senior Planning Officer, Planning Department

Please note: My working hours are currently split between Development Management and ADC Engineers, which may result in extended response times. **Development Management:** Tuesdays and Thursdays **ADC Engineers:** Mondays, Wednesdays, and Fridays

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From: Neil Barden [REDACTED]
Sent: 13 January 2026 08:28
To: Kathryn Welch <Kathryn.Welch@arun.gov.uk>
Cc: Neil Crowther <Neil.Crowther@arun.gov.uk>
Subject: URGENT: Time-critical planning compliance and legal issues – S96A A/188/25/NMA (Decision due 20 January 2026)
Importance: High

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Dear Kathryn Welch,

I write in relation to **Section 96A application A/188/25/NMA**, which is scheduled for determination on **20 January 2026**, to set out a **time-critical representation** raising material **legal and procedural issues** that must be taken into account prior to any decision being issued.

Set out below is my detailed submission concerning the continued **legal enforceability of Condition 10** of planning permission **A/142/16/OUT**, together with substantive procedural deficiencies arising from the current Section 96A application.

Given the proximity of the determination date, the matters raised constitute **material considerations** which go directly to the lawfulness of determining the application under Section 96A. I would be grateful for confirmation that this representation will be placed on the planning file and addressed in the officer's assessment prior to determination.

Kind regards,

Mr Neil Barden
6 Swallows Gate
Angmering
BN16 4QG

Dear Mr Trevelyan,

I write further to your email of 9 January 2026 regarding Section 96A application A/188/25/NMA and Condition 10 of planning permission A/142/16/OUT. With the application imminent for determination on 20 January 2026, I set out the full legal and procedural position, reference the approved drawings, and seek the Council's unequivocal position on the enforceability of Condition 10.

1. Condition 10 of A/142/16/OUT remains fully enforceable

Condition 10 requires the delivery of a pedestrian footpath. The original outline permission A/142/16/OUT included approved drawings (attached) clearly showing the footpath alignment on the east side of Dappers Lane.

These drawings were submitted by the current Section 96A applicant and can be independently verified on the ADC planning portal. The fact that the applicant itself relies on these drawings confirms that the Council's statement that "there are no approved drawings attached to A/142/16/OUT to practically deliver this footpath" is factually incorrect. Condition 10 remains fully enforceable regardless of practical delivery challenges, such as the ransom strip, which is a practical obstacle, not a legal excuse.

Section 73 application A/91/18/PL proposed a west-side alternative, but this permission lapsed due to no Reserved Matters submissions and therefore did not replace or extinguish the original Condition 10 requirement. All Reserved Matters approvals relate solely to A/142/16/OUT; none were approved under A/91/18/PL. Accordingly, A/142/16/OUT remains the operative permission, and Condition 10 continues to have full legal force. Practical obstacles do not alter enforceability. Until lawfully varied or removed by a fresh permission, Condition 10 must be complied with.

2. Enforcement action remains available

While the previous Enforcement Notice (EN) was withdrawn, this was due to procedural error and did not extinguish Condition 10. Advice from counsel confirms that:

- The EN attempted to enforce Condition 10 across both A/142/16/OUT and the lapsed Section 73 permission A/91/18/PL and referenced plans attached to the lapsed permission.
- Procedural errors, including mis-applied discharge notices, do not nullify the legal enforceability of Condition 10.
- The Enforcement Notice could have been corrected, re-served, or supplemented with a Breach of Condition Notice against the proper landowner.

Reliance on the EN withdrawal or lapsed Section 73 permission to justify deletion of Condition 10 via Section 96A is legally unfounded.

3. Section 96A application is procedurally and legally deficient

Critically, the S96A applicant is a homeowner and director of the Swallows Gate Management Company. Although the application form indicates that the applicant has an interest in the land, **Bilton Fields Homes Ltd remains the registered owner of the land to which Condition 10 applies**. The applicant therefore lacks legal standing to seek the removal of this condition. Any determination of the application on this basis would be procedurally and legally vulnerable.

The Section 96A application also seeks to remove Condition 10 and substitute “as-built” arrangements. These are **material changes**, not non-material amendments, and fall outside the lawful scope of Section 96A.

I note your prior comment that “fundamentally there is no objection with this condition being removed by an NMA (subject to the details of the application, it is not an application in which we can consider the positive or negative merits of the application, just if it is, or is not, a non-material application).” It is essential to clarify that this statement is **purely procedural**, relating only to the non-material amendment test. It does **not constitute approval or endorsement** to delete Condition 10. Any attempt to determine the application as if it authorised the removal of this condition would be procedurally and legally vulnerable.

Condition 10 expressly requires consultation with West Sussex County Council (WSCC) Highways. WSCC are now engaging directly with Arun District Council following procedural omissions. Any determination without full WSCC consultation would be procedurally defective and open to legal challenge. The submission of this application itself confirms that Condition 10 continues to have practical and legal effect.

4. Procedural and factual errors cannot extinguish Condition 10

The sole Ground (e) appeal against the EN was factually incorrect: the appellant was not the owner of the Farmhouse; **Bilton Fields Homes Ltd is the registered owner**, and the Council was aware of this.

Procedural errors, including withdrawal of the EN, do not extinguish legal enforceability. The Enforcement Notice could have been corrected and re-served; the artificial “enforcement gap” created by withdrawal does not justify deletion of a substantive planning condition.

5. Apparent inconsistency regarding Council position

You previously advised the Planning Inspectorate 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.”

If Condition 10 were genuinely unenforceable, there would be no reason for the applicant to seek its deletion. The application itself confirms that the condition continues to have legal and practical effect, reinforcing enforceability. This inconsistency requires urgent clarification.

6. Requested actions

To ensure lawful and procedurally robust handling of the Section 96A application, I request that the Council:

- Confirm whether it intends to refuse the Section 96A application.
- Provide the legal basis for its position regarding enforceability of Condition 10.
- Confirm the lawful steps it will take, in consultation with WSCC, to secure compliance with Condition 10.

I would be grateful for a written response within **five days** to avoid ambiguity prior to the **20 January 2026** determination. Please find attached the approved drawing from A/142/16/OUT, which provides the legal basis for the footpath requirement under Condition 10.

I trust the Council will engage constructively to ensure that the approved footpath requirement under Condition 10 is respected and addressed, recognising that while practical delivery may be constrained by the ransom strip, the legal obligation remains in full force and any determination ignoring these points would be procedurally vulnerable.

Kind regards,

Mr Neil Barden
6 Swallows Gate
Angmering
BN16 4QG

Merry England Nursery, Dappers Lane, Angmering,
West Sussex, BN16 4EN

