

FURTHER SUPPLEMENTARY REPRESENTATION

Section 96A Application: A/188/25/NMA

Site: Former Merry England Nurseries, Swallows Gate, Angmering

Submitted by: Mr Neil Barden

Date: 29/12/2025

1. Introduction

This submission provides supplementary representations regarding the Section 96A application at the above site. It explains why the proposed amendments, specifically the deletion of Condition 10 and the partial removal of the footway via Condition 3, are **material and unlawful under Section 96A**. It also raises procedural and governance concerns that should be addressed before any decision is made.

2. Executive Summary

This Section 96A application seeks to:

1. Amend Condition 3 to replace the approved access plan with the “as-built” access and remove part of the footway.
2. Delete Condition 10, which requires construction of the footpath and submission of detailed schemes prior to development.

Key reasons for refusal:

- **Material Change:** Deletion of Condition 10 is clearly material. Section 96A applies only to non-material amendments and cannot remove enforceable obligations from the developer.
- **Developer Responsibility:** Condition 10 binds Bilton Fields Homes Limited, the landowner and developer. Residents cannot implement the footpath; deletion would frustrate the original planning purpose.
- **Lawful Alternatives Exist:** Delivery could be achieved through a Section 73 application and Section 278 agreement.
- **Procedural Defects:** No visible ownership certificate; consultation period over Christmas limited opportunity to respond; Article 10 notification may be incomplete.
- **Governance Concerns:** The Section 96A application has been presented as supported by the Swallows Gate Management Company, which is factually incorrect.

On these bases, **ADC** should refuse the application.

3. Detailed Representations

3.1 Developer Responsibility Must Be Enforced

Bilton Fields Homes Limited remains the legal owner of land title WSX69504 and retains full responsibility for delivering the footpath under Condition 10. Office copy entries were provided to ADC on 16/12/2024. **Bilton Fields Homes Limited is not in liquidation; the developer remains an active legal entity.**

ADC has previously acknowledged the breach of planning control but has not taken enforcement action. In correspondence, Daniel Vick of ADC stated:

“It is not uncommon for developers to not comply with conditions. For larger sites we pro-actively monitor these to reduce the opportunity for breaches to occur. We do not have sufficient resources to monitor all sites. However, in this case we were clearly aware of the breach of planning control for some time and did not act speedily to resolve the matters.”

It appears that **limited action has been taken by ADC to enforce the outstanding planning conditions against Bilton Fields Homes Limited**, despite repeated requests from residents. This highlights the continued **enforceability of Condition 10** and the need for ADC to act, rather than relying on residents to implement the footpath.

Residents, including the applicant, **have no legal authority, technical expertise, or financial capacity** to implement the footpath. Deletion of Condition 10 would remove the only enforceable mechanism, constituting a material change beyond the scope of Section 96A.

3.2 Section 96A Cannot Delete Condition 10 or Remove Footway via Condition 3

The proposed amendments would:

1. Amend Condition 3 to replace the approved access with the “as-built” access and remove part of the footway.
2. Delete Condition 10 requiring construction and detailed schemes.

While minor updates to drawings may be non-material, the combined effect is **material**, as it would eliminate the developer’s obligation. Section 96A cannot lawfully be used to remove substantive conditions binding the developer.

3.3 Undeliverable Footpath Alignment Does Not Justify Deletion

Although the Planning Inspectorate confirmed that the eastern footpath alignment under A/142/16/OUT is undeliverable, this does not justify deleting the condition. The developer must pursue the statutory route to amend the alignment.

3.4 Lawful and Deliverable Mechanism Exists

Delivery is achievable if ADC requires the developer to:

1. Submit a Section 73 application to vary Condition 10 to a feasible alignment.
2. Enter into a Section 278 agreement with West Sussex County Council to construct the footpath on WSCC land.

When Bilton Fields Homes Limited purchased the land, the western alignment of the footpath had already been approved under **A/91/18/PL**. That permission subsequently lapsed because **reserved matters were not submitted due to an error by the developer's contractor**, not because of any failure on the part of Bilton Fields Homes Limited. Reserved matters were later submitted under **A/142/16/OUT**.

This previously approved western alignment remains a material consideration and is technically deliverable, demonstrating that a lawful solution exists without deleting Condition 10.

3.5 Residents Cannot Implement the Footpath

Residents cannot lawfully, technically, or financially construct the footpath. Transferring the obligation would frustrate the original permission. Enforcement and delivery obligations must remain with the developer.

3.6 Consequences of Deletion

Deleting Condition 10 and part of the footway would:

1. Release Bilton Fields Homes Limited from a clear enforceable obligation.
 2. Leave residents without intended pedestrian infrastructure.
 3. Set a precedent allowing essential infrastructure to be avoided via a Section 96A application submitted by a non-developer.
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3.7 Procedural Concerns

- **Consultation Period:** Notice 1 was received on 22 December 2025 with a 14-day period expiring on 5 January 2026, overlapping multiple public holidays, effectively allowing only five working days to respond.
 - **Ownership Certificate:** No certificate (A, B, C, or D) is visible on the portal. Submission is mandatory under DMPO 2015. Please confirm which certificate was submitted.
 - **Article 10 Notification:** Notification appears incomplete. The following parties should have been served:
 1. Swallows Gate Management Company
 2. Ching Wai (Chargee, Signatory S106 Agreement)
 3. Sally Ip (Planning Appeal APP/C3810/C/25/3364403)
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3.8 Governance Concerns

The Section 96A application was submitted by the applicant, Mr Rixon, **in his own name**, but the covering letter states:

“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.”

This statement is **factually incorrect**. The Management Company does not authorise the submission.

The Management Company has previously obtained professional advice which indicated that **there is no requirement or pressing reason for the company to submit applications to discharge the conditions of permission A/142/16/OUT**. This confirms that the responsibility for pursuing planning amendments or enforcement matters rests with ADC, and that the applicant acts in a personal capacity.

This raises **procedural and governance concerns**, which ADC should consider when weighing the application.

4. Conclusion

The proposed amendments are **material, unlawful under Section 96A**, and remove the only enforceable mechanism securing delivery of the footpath.

I respectfully request ADC:

1. **Refuse this application.**
2. Require the developer to pursue the statutory route to vary the alignment and deliver the footpath in accordance with the original planning intent.
3. Confirm that procedural and validation matters are addressed before any decision is made.
4. Allow a reasonable extension for representations due to the holiday period.

Sam

From: Neil Barden [REDACTED]
Sent: 13 January 2026 14:13
To: Samantha Allen <Samantha.Allen@arun.gov.uk>
Cc: Kathryn Welch <Kathryn.Welch@arun.gov.uk>
Subject: Re: [REDACTED] - Merry England (footpath), Dappers Lane, Angmering, West Sussex BN16 4EN
Importance: High

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Dear Samantha Allen,

I am writing to ensure that a Further Supplementary Representation I submitted on 29 December 2025 regarding Section 96A application A/188/25/NMA, Former Merry England Nurseries, Swallows Gate, Angmering is formally added to the case file and placed on the planning portal.

For ease of reference, I have attached the representation as a PDF. I would be grateful if you could confirm that it has been uploaded and made visible alongside the other public comments for this application.

Thank you very much for your assistance. Please do not hesitate to contact me if any further information or clarification is required.

Kind regards,
Neil Barden
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