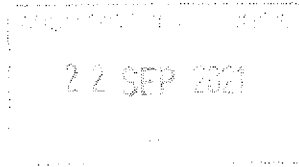


FAO Neil Crowther
Planning Services Department
Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF



Date 21 September 2021

Our ref: 4549\49177432.1\128067.052\4549

BY 'SIGNED FOR' DELIVERY

Dear All

**Application BN/120/21/DOC
97 Barnham Road - approval of drainage details**

We are writing to draw your attention to the application recently submitted by our client Sigma Homes Limited, to discharge Condition 3 attached to the decision issued on appeal under reference APP/C3810/W/15/3135355 (Arun DC's reference EG/38/15/PL)).

The application has now been registered and assigned to Mr S Davis for consideration, under reference BN/120/21/DOC.

We enclose a copy of our letter to you of 22 July 2021 summarising the long history of our client's attempts to discharge this condition. We wish to reiterate that any refusal would be unreasonable for the reasons explained in that letter. If you are minded to refuse the application then we would ask that you contact us in advance of issuing a formal decision, which might otherwise result in our client incurring further cost and delay.

Yours faithfully



Gateley Legal

c.c. Head of Legal Services – Arun District Council
c.c. S. Davis – Arun District Council

2000 Cathedral Square
Cathedral Hill
Guildford GU2 7YL
DX 141450 Guildford 12

gateleylegal.com

FAO Neil Crowther
Planning Services Department
Arun District Council
Maltravers Road
Littlehampton
West Sussex
BN17 5LF

Date 22 July 2021

Our ref: 4549\48060202.2\128067.052\4549



BY 'SIGNED FOR' DELIVERY

Dear All

97 Barnham Road - approval of drainage details

We are instructed by our client Sigma Homes Limited to write to you in relation to their development at 97 Barnham Road, and specifically, their attempts to discharge Condition 3 attached to the decision issued on appeal under reference APP/C3810/W/15/3135355 (Arun District Council ("ADC") reference EG/38/15/PL). We write to draw your attention to our client's attempts in good faith to comply with the terms of the Condition and the unreasonable behaviour of the Council in declining to approve the submitted details.

The First Application

Our client's first application to discharge Condition 3 was refused on 10 July 2018. The reasons for refusal were given as follows:

"The Council's Drainage Engineers have raised an objection to the proposed discharge of surface water into the foul water sewer on the grounds that you have refused to include an additional manhole and length of gravity pipe (to be laid at an agreed gradient) at the downstream extent of the rising main" (our emphasis)

"These are required to slow down the flow from the surface water system into the foul system so that flow velocity discrepancies between foul and surface water are far less. Therefore reducing the risk of backing up, damage to the pipe, and blockages." This is referred to as Refusal 1.

ADC waived the pre-occupation requirement of the Condition, by letter dated 21 September 2018, in which the Principal Planning Officer explained that while the question of ownership of the Elm Grove drain remained outstanding it would be *"inappropriate to force connections to the foul sewer"*. Further, the final paragraph of that letter stated that:

*"If the surface water sewer to the south of the development site is indeed proven to be public then you will instead revert back to the originally approved drainage connection. **However, if this is not the case then it will be necessary for you to submit a new discharge of condition application to us and include the necessary gravity pipe to allow approval of the connection to the foul sewer**" (our emphasis).*

The Second Application

Having ascertained from Southern Water that the status of the Elm Grove South sewer is indeed private (refer to the enclosed exchange of emails from February 2020 with Southern Water) and in reliance on both ADC's letter of 21 September 2020 and the reasons for refusal notified in the decision of 10 July 2018 highlighted in bold above, our client duly submitted a further application to discharge Condition 3. The drainage layout as shown on the submitted plan S17-03-01 K included both the gravity pipe and the additional manhole into the surface water drain which was at that time (and still is) discharging into the public sewer to the north, at Barnham Road. This application was given the reference BN/114/20/DOC.

ADC issued a further refusal on 24 November 2020 and this time the reasons given comprised a complete repetition of the Drainage Officer's email dated 12 November 2020. No regard was given to the fact that our client had complied with the requirements referred to in Refusal 1.

Our client is now of the view that further discussion is fruitless while the Drainage Officer continues to insist on drainage via the Elm Grove South. Our client wants to make absolutely clear that it will not be seeking a requisition from Southern Water as the costs are prohibitive. Events have moved on: the site is connected to the public sewer system and not contributing to any flooding, and it is entirely unreasonable to continue to require any alternative layout.

It must be emphasised that Southern Water has given its consent to discharge into the public sewer on Barnham Road, under Section 106 of the Water Industry Act 1991, notified by letter dated 21 December 2017. That letter specified that *"If the sewer in the land located to the rear is found to be a public apparatus from the ongoing investigation, the connection will have to be redirected to this surface water system."* Since this pre-condition has been negated, the requirement falls away, and our client is entitled to rely on Southern Water's given consent.

Summary

We are therefore instructed to inform you that:

1. Drainage into the private sewer at Elm Grove South or by any means other than the public sewer in Barnham Road is categorically not an option and moreover, the Council has no reasonable basis for insisting on the same.
2. Our client intends to submit a further application to discharge Condition 3, in reliance on the fact that it has satisfied the reasons given in Refusal 1; and
3. In the event that such application is refused, our client will consider all procedural options available and reserves the right to produce this letter and all related correspondence in any and all relevant future appeals, complaints and proceedings to demonstrate a) ADC's unreasonable behaviour in this matter; and b) our client's legitimate expectation that having provided the gravity pipe and manhole Condition 3 would be discharged. It will be shown that ADC having declined to enforce at the relevant time (prior to occupation) and having specified the gravity pipe and manhole as specific requirements in both Refusal 1 and your letter of 21 September 2018, any subsequent retrenchment constitutes an abuse of power.

Our client is suffering prejudice as a result of your Council's failure to deal with this matter fairly and reasonably. You are on notice that any 'new' reasons for refusal given in response to such application will be carefully scrutinised (in the context of previous correspondence with the Council) and all potential avenues of redress will be thereafter be explored.

Yours faithfully

A large black rectangular box redacting the signature of the sender.

Gateley Legal

c.c. Head of Legal Services – Arun District Council