

WEST SUSSEX COUNTY COUNCIL CONSULTATION

TO:	Arun District Council FAO: Anita Gardner
FROM:	WSCC - Highways Authority
DATE:	2 October 2019
LOCATION:	Land adjacent to Church Farm Barn, Horsemere Green Lane, Climping, BN17 5QX
SUBJECT:	CM/36/19/PL Retention of replacement fencing & proposed replacement entrance gates. This application may affect the setting of a Listed Building.
DATE OF SITE VISIT:	01/10/2019
RECOMMENDATION:	Advice
S106 CONTRIBUTION TOTAL:	n/a

This application has been dealt with in accordance with the Development Control Scheme protocol for small scale proposals which include up to 5 residential units or extensions to single units accessed from roads that do not form part of the Strategic Road Network (SRN). As such the comments provided by Planning Services should be considered to be advice only, with respect to this planning application.

This proposal has been considered by means of a desktop study, using the information and plans submitted with this application, in conjunction with other available WSCC map information. A site visit can be arranged on request.

This retrospective application is for the retention of 1.8m high fence to site boundary on Horsemere Green Lane.

The LHA notes that the LPA has approved this application prior to Highways comments being provided.

The LHA conducted a site visit on 1st October to determine whether the fence has been erected within the publicly maintained highway in this location. Following consultation with the Highway Boundary Officer, it was established that the publicly maintained highway is 1.5m in width for a length of 18m from the existing access. This then reduces to 1.5m in width for the next 42m until the boundary with Church Farm Cottages.

On site, it was observed that the fence has been erected within the public highway in this location. As such, the verge proposed to be incorporated forms part of the public highway. In order for the land to be incorporated into the site, the highway rights would need to be formally removed by way of a Stopping Up Order. Ordinarily, this is controlled by Section 247 of Town and Country Planning Act and would be subject to a separate process administered by the Department for Transport's National Casework Team. The Highway Authority along with other statutory undertakers and interested parties would be consultees in this process.

However, given the application is retrospective, if planning consent was to be granted, the development would only become lawful (and exempt from potential enforcement action) if the applicant successfully applies to 'Stop Up' the land, i.e. extinguish the highway rights. Retrospective Stopping Up would have to be undertaken via Section 116 of the Highways Act 1980, which involves an application to the Magistrates' Court for which they will have to pay. This is a legal process and there is no guarantee the stopping up will be successful, this can therefore not be secured via planning condition. Matters pertaining to highway safety and other highways considerations would be assessed at this stage.

The applicant should be aware that should the land in question not be stopped up, they could be liable to enforcement action from the Local Highway Authority. This would be via a separate mechanism to that of the planning process.

Conclusion

The LHA notes that the LPA has approved this application prior to Highways comments being provided. The applicant would be advised to seek Stopping Up as per the details above. Could the LPA make the applicant aware of this informative note regarding how to proceed with Stopping Up.

Informative

The applicant would be advised that to ensure the development is legal the land subject of this application considered to be publicly maintained highways should be formally stopped up via the appropriate legal mechanism. The applicant would be advised to contact WSCC Legal Services to find out further information about the Stopping Up procedure and how to commence an application.



Nicola Fry
West Sussex County Council – Planning Services