

West Sussex County Council
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Your ref: CC803.16504.BM
Our ref: REC00001
alicegoodenough@hglaw.co.uk

27 January 2022

COMPLAINT

Dear Sirs,

Chichester: Westgate Avenue de Chartres and Orchard Street etc Highway Improvements HT12 21/22 (CHS-9038-RC)

We write further to your letter of 14 January.

Our client is disappointed that West Sussex County Council ("the Council") continues to support this shared cycle scheme and has failed to acknowledge the misinterpretation and misapplication of government guidance and the inadequate consultation of groups representing persons with disabilities and others in relation to the scheme.

Our client is further concerned that the Council disputes that this is an Aarhus Convention Claim, despite the fact that the scheme is an administrative matter likely to affect the state of the land, namely the shared use of the pavement, which in turn will impact on the ability of individuals to walk and cycle.

The costs of pursuing a judicial review are prohibitively expensive for our client, this is particularly the case without guarantees of Aarhus Convention protection.

Consequently, while our client is unable to pursue a judicial review, he wishes to make a formal complaint to:

1. draw the Council's attention to unlawfulness, which the Council is under a duty to consider, and
2. to ensure that similar mistakes are not repeated in the future.

Misinterpretation and misapplication of guidance

As was clearly set out in our draft statement of facts and grounds, the Council made mistakes as to material established facts and misinterpreted guidance. The Council's response states that our client's challenge is misconceived because it assumes that technical guidance constitutes binding mandatory requirements on the Council when it does not.

We do not contend that the Council is obliged to follow national Department for Transport guidance. However, if an authority purports to apply guidance it must construe it correctly. The Council has repeatedly stated in relation to this scheme that it is complying with the relevant guidance. For example, OR Appendix C, sections 6 and 8, state:

The width of pedestrian crossing is 2.4m on the Sherborne Road arm, whilst that for the cyclists is 1.8m. The Zebra crossing located west of the mini roundabout is 3.2m wide, which complies with guidance in Traffic Signs Manual Chapter 6.

...

As mentioned section 6 above, the pedestrian crossing width is 2.4m and that for the cyclists is 1.8m, which meets the requirements of cyclists expected to use the facility. The widths are in line with Traffic Signs Manual Chapter 6. [Emphasis added]

However, the guidance is not being followed because the minimum required width for a two-way cycle crossing element should be 3 metres, in addition to the 2.4 metres required for the pedestrian crossing element (para.17.2.6)

As regards errors that were made calculating effective widths of pedestrian crossings because of the failure to take account of crossing beacons, your response states that the officers were plainly aware of what physical apparatus existed. Your evidence in support of that contention is that the beacons were marked on the relevant plans.

The fact that physical apparatus is marked on a plan does not mean that the officer could not have overlooked them. Certainly, the calculated distances suggest they were indeed overlooked. Further, to suggest that the beacons did not affect the effective width is plainly wrong. It is self-evident that a traffic beacon narrows the effective width for cyclists in the same way that any other vertical feature would because a rider will be wary of riding immediately next to it (LTN 1/20).

The Council also states that it is entitled to apply the Design Manual for Roads and Bridges Designing for walking, cycling and horse-riding ("CD 143") "where appropriate". Even if this were accepted, it is not appropriate to cherry pick aspects of guidance that was not designed for the Council's intended purpose. In particular, CD 143 requires separation between the shared use routes and the carriageway and visibility splays. These features provide additional safety, which in turn justifies the reduced shared use width under CD 143. The Council have chosen to apply the reduced shared use width but without the additional safety aspects. Such an approach is unlawful.

Inadequate consultation

In relation to the lack of consultation, the Council's response ignores the reality that what is required in practice under the PSED may vary according to the circumstances, and that where relevant guidance is that there be engagement with the disabled on shared surface proposals that may create a legitimate expectation of such consultation. That this expectation was well founded is confirmed by the Council's response to our client's information request of 24 November 2021. In its response the Council stated:

Specifically in relation to consultation on the Traffic Regulation Order the West Sussex Association for Disabled People were consulted and are on all statutory consultations. They are a large forum representing the interests of disabled people across the whole of West Sussex.

Since the legitimate expectation of consultation with disabled groups existed, it is no defence to argue that the decision is still lawful because it was only revealed post-decision that the Council had consulted with a non-existent organisation. The duty is to consult, not to attempt to consult by contacting groups that ceased to exist over a decade ago.

The Council's response asks for evidence that the Chichester District Access Group ("CDAG") attempted to engage with the consultation and that Glynis Spencer of CDAG was informed that the shared space aspects of the scheme were set. Please see the enclosed email from Glynis Spencer of CDAG to Alice Goodenough of Harrison Grant of 29 December 2021, summarizing Ms Spencer's call with the Council.

It is clear from Ms Spencer's email that she attempted to engage with the consultation on behalf of CDAG and asked how she could raise concerns regarding the safety aspects of the scheme for people with disabilities.

It is also clear from Ms Spencer's email that the Council informed her that a decision regarding the scheme had already been made. This points towards predetermination of the issue, or, as explained in our pre-action letter, that the Council erroneously believed that they had consulted on the proposals as part of outline planning consent, despite the fact that the outline planning consent contained no evidence of the shared space routes at the Westgate/Sherborne Road Junction. Either approach is unlawful.

Information request

In our pre-action letter, we requested correspondence from the Council to disability groups that were consulted in relation to the Decision, including correspondence to the West Sussex Association for the Disabled ("WSAD"). Those requests have not been fully answered. We therefore request the following:

1. all records of communications between the Council and WSAD (by email, phone or post) in relation to the package of TROs,
2. why the Council believed the WSAD had been successfully consulted/contacted using whichever communication method was used,

3. how many times WSAD has been consulted over the past ten years, either by email, letter or phone.

Please respond to this information request within the 20-day statutory time limit.

Please also confirm that this complaint will be fully investigated and provide us with the details of that investigation, including its outcome.

Yours faithfully,

Harrison Grant

HARRISON GRANT

From: [Chichester District Access Group cdag](#)
To: [Alice Goodenough](#)
Subject: Westgate/Sherborne-Rd roundabout Consultation Process
Date: 29 December 2021 14:37:08

Dear Ms Goodenough,

Mark Record has asked me to confirm the key points I made, regarding the telephone conversation I had with WSCC, about TRO CHS9038RC.

My attempts to speak to someone at WSCC regarding this issue was tortuous. At first, nobody could identify the Consultation existed. Eventually. After being transferred to several Officers, I was put through to Mr Stephen Shaw, whom I was told was the Officer responsible for the scheme.

- Firstly, I raised our concerns that CDAG's opinions had not been sought for this scheme, as we have acted as Consultees for WSCC on numerous occasions in the past. (We first heard about the plan for the pavement to be converted into a shared use cycle track from Mr Philip Maber, of Chichester Cycles, only a very short time before the date the Consultation was advertised to expire.) I was not given any explanation why CDAG had not be asked for its comments. The Group are qualified Access Auditors, are all disabled, and would be in an ideal position to comment.
- I enquired which Groups representing people with disabilities had been consulted, but Mr Shaw wasn't certain of who that may have been.
- I asked Mr Shaw how CDAG might raise it's concerns over the dangers we feel adopting such a scheme would definitely pose to people with disabilities. I was told it was too late, as the scheme had been approved and 'all that was left to be decided was the yellow lining'.
- As I had outlined many of the possible dangers that combining a pavement into a shared cycle track would pose for people with disabilities, Mr Shaw expressed his hope that no accidents would result from the scheme and that he hoped any dangers might be mitigated by cyclists "acting responsibly".
- Mr Shaw confirmed there will be no speed limit for cyclists on the proposed track.

It is our Group's opinion that, should WSCC proceed with the scheme as it is currently envisaged, this would pose a hazard to people with disabilities and, possibly, others.

We feel it is the wrong scheme, for the proposed location.

Regards

Glynis Spencer
On behalf of the
Chichester District Access Group