

AGENDA

Meeting: Western Area Planning Committee

Place: Council Chamber - County Hall, Bythesea Road, Trowbridge, BA14 8JN

Date: Wednesday 4 December 2024

Time: 3.00 pm

Please direct any enquiries on this Agenda to Ellen Ghey of Democratic Services, County Hall, Bythesea Road, Trowbridge, direct line 01225 718259 or email ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications on direct lines 01225 713114/713115.

This Agenda and all the documents referred to within it are available on the Council's website at www.wiltshire.gov.uk

Membership

Cllr Christopher Newbury (Chairman)
Cllr Bill Parks (Vice-Chairman)
Cllr Trevor Carbin
Cllr Ernie Clark
Cllr Andrew Davis
Cllr Stewart Palmen

Cllr Horace Prickett
Cllr Pip Ridout
Cllr Jonathon Seed
Cllr David Vigar
Cllr Suzanne Wickham

Substitutes

Cllr Matthew Dean
Cllr Jon Hubbard
Cllr Tony Jackson
Cllr Mel Jacob
Cllr George Jeans
Cllr Gordon King

Cllr Tamara Reay
Cllr Bridget Wayman
Cllr Graham Wright
Cllr Nick Holder
Cllr Stuart Wheeler

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Public Participation

Please see the agenda list on following pages for details of deadlines for submission of questions and statements for this meeting.

For extended details on meeting procedure, submission and scope of questions and other matters, please consult [Part 4 of the council's constitution](#).

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AGENDA

Part I

Items to be considered when the meeting is open to the public

1 **Apologies**

To receive any apologies or substitutions for the meeting.

2 **Minutes of the Previous Meeting** (*Pages 7 - 20*)

To approve and sign as a correct record the minutes of the meeting held on 6 November 2024.

3 **Declarations of Interest**

To receive any declarations of disclosable interests or dispensations granted by the Standards Committee.

4 **Chairman's Announcements**

To receive any announcements through the Chair.

5 **Public Participation**

The Council welcomes contributions from members of the public.

Statements

Members of the public who wish to speak either in favour or against an application or any other item on this agenda are asked to register **no later than 10 minutes before the start of the meeting**. If it is on the day of the meeting registration should be done in person.

The rules on public participation in respect of planning applications are linked to in the Council's Planning Code of Good Practice. The Chairman will allow up to 3 speakers in favour and up to 3 speakers against an application, and up to 3 speakers on any other item on this agenda. Each speaker will be given up to 3 minutes and invited to speak immediately prior to the item being considered.

Members of the public and others will have had the opportunity to make representations on planning applications and other items on the agenda, and to contact and lobby their local elected member and any other members of the planning committee, prior to the meeting.

Those circulating such information prior to the meeting, written or photographic, are advised to also provide a copy to the case officer for the application or item, in order to officially log the material as a representation, which will be verbally summarised at the meeting by the relevant officer, not included within any officer slide presentation if one is made. Circulation of new information which has not been verified by planning officers or case officers is also not permitted during the

meetings.

Questions

To receive any questions from members of the public or members of the Council received in accordance with the constitution which excludes, in particular, questions on non-determined planning applications.

Those wishing to ask questions are required to give notice of any such questions in writing to the officer named on the front of this agenda no later than 5pm on **Wednesday 27 November 2024** in order to be guaranteed of a written response. In order to receive a verbal response, questions must be submitted no later than 5pm on **Friday 29 November 2024**. Please contact the officer named on the front of this agenda for further advice. Questions may be asked without notice if the Chairman decides that the matter is urgent.

Details of any questions received will be circulated to Committee members prior to the meeting and made available at the meeting and on the Council's website.

6 **Planning Appeals and Updates** (*Pages 21 - 34*)

To receive details of completed and pending appeals and other updates as appropriate.

Commons Act 2006 - Sections 15(1) and (2) - Application to Register Land as Town or Village Green

7 **Southwick Court Fields: Southwick and North Bradley - Application No. 2020/02TVG** (*Pages 35 - 66*)

To consider Legal Advice requested by the Western Area Planning Committee (WAPC) at its meeting dated 6 November 2024, to assist in its determination of an application made under s.15(1) and (2) of the Commons Act 2006 to register land as a Town or Village Green (TVG), Southwick Court Fields, in the parishes of Southwick and North Bradley.

Planning Applications

To consider and determine the following planning applications:

8 **PL/2022/09425: Elm Grove Farm, Drynham Road, Trowbridge, Wilts, BA14 0PL** (*Pages 67 - 100*)

Demolition of existing buildings and structures and construction of 248 residential homes, playing pitches, allotments, areas of open space, upgrading

of existing play area, sustainable drainage infrastructure, internal roads, paths and parking areas, landscaping and associated works, plant and infrastructure (Reserved Matters Application pursuant to 19/11459/OUT - relating to appearance, landscape, layout and scale) (Amended Details)

9 **Urgent Items**

Any other items of business which, in the opinion of the Chairman, should be taken as a matter of urgency.

Part II

Item during whose consideration it is recommended that the public should be excluded because of the likelihood that exempt information would be disclosed

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Western Area Planning Committee

MINUTES OF THE WESTERN AREA PLANNING COMMITTEE MEETING HELD ON 6 NOVEMBER 2024 AT COUNCIL CHAMBER - COUNTY HALL, BYTHESEA ROAD, TROWBRIDGE, BA14 8JN.

Present:

Cllr Christopher Newbury (Chairman), Cllr Bill Parks (Vice-Chairman), Cllr Trevor Carbin, Cllr Ernie Clark, Cllr Andrew Davis, Cllr Stewart Palmen, Cllr Horace Prickett, Cllr Pip Ridout, Cllr Jonathon Seed, Cllr Suzanne Wickham, and Cllr Gordon King (Substitute)

Also Present:

Cllr David Vigar and Cllr Tony Jackson

75 **Apologies**

Apologies for absence were received from:

- Councillor David Vigar, who was substituted by Councillor Gordon King

76 **Minutes of the Previous Meeting**

The minutes of the previous meeting held on 9 October 2024 were considered. Following which, it was:

Resolved:

The Committee approved and signed the minutes of the previous meeting held on 9 October 2024 as a true and correct record.

77 **Declarations of Interest**

There were no declarations of interest.

78 **Chairman's Announcements**

There were no specific Chairman's announcements.

79 **Public Participation**

The Chairman explained the rules of public participation and the procedure to be followed at the meeting.

There were no questions or statements submitted by Councillors or members of the public.

80 **Planning Appeals and Updates**

The Chairman invited Kenny Green, as the Planning Manager for Development Management, to update the Committee on the pending and determined appeals as per the appeals report included within the Agenda Pack.

The reported determined appeal was explained to Members pursuant to a Listed Building Consent application that had been refused under PL/2024/01084 for the widening of a door opening within and alterations to a masonry wall. It was explained that the Planning Inspector concluded that the proposal would not result in the loss of any historic fabric due to the development being conducted mainly internally which would not affect the significance of the listed building.

Members were then informed of a subsequent appeal decision at Siennas Valley Farm for the erection of a two storey dwelling located off Huntenhull Lane that had been issued after the agenda had been published, and which was of some material relevance to the consideration of Agenda Item 8: PL/2024/04800: Land South of 92 High Street, Chapmanslade, BA13 4AN. Members were informed that the Siennas Valley appeal was allowed despite a series of previous refusals and a dismissed appeal for a single storey dwelling, with Members being further informed that the decision included some irrational commentary which appeared to merit a letter being sent to the Planning Inspectorate to highlight specific concerns about the inconsistent decision making and the planning assessment made by the appointed Planning Inspector.

In response, Members expressed their dismay on the inconsistency of the Planning Inspectorate decisions relating to the appeal site and gave unanimous support to the officer in terms of drafting a letter to send onto the Planning Inspectorate.

On a separate matter, a query was raised on the procedure for arranging of Committee site visits. The Chairman again invited Kenny Green to explain the procedures followed with due reference given to Protocol 4 and Schedule 1 to Protocol of the Constitution.

It was explained that in the past, officers had always sought to arrange Member site visits for the scheduled day of the Committee meeting, but that two recent cases had merited site visits being scheduled for a different day. Officers also noted that all such officer requests were raised and agreed with the Chairman

and Vice-Chairman prior to any invitations being sent to Members by the Democratic Services Team.

In response, Members formally requested that officers organise Member site visits directly prior to a Committee meeting, where possible.

Following which, it was:

Resolved:

- **The Committee noted the appeals report for the period 27 September 2024 to 25 October 2024.**
- **The Committee endorsed the submission of a letter to the Planning Inspectorate by Kenny Green, Development Management Team Leader.**

81 **Southwick Court Fields: Southwick and North Bradley - Application No. 2020/02TVG**

Public Participation

- Mr Francis Morland spoke in objection to the recommendation.
- Mr Geoff Whiffen spoke objection to the recommendation.
- Councillor Graham Hill, on behalf of Trowbridge Town Council, spoke in objection to the recommendation.

The Senior Definitive Map Officer, Janice Green, presented the report considering the Counsel's Advice as requested by the Western Area Planning Committee on 10 April 2024, to assist in its determination of an application made under S.15(1) and (2) of the Commons Act 2006 to register land as a Town or Village Green (TVG), and which recommended that the Inspector's Advisory Report be accepted in part, and that the application be rejected on the ground that all of the criteria for registration laid down in S.15(2) of the Commons Act 2006 had not been satisfied, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024.

Officers including Sally Madgwick (Definitive Map and Highway Records Manager), Claire Lovelock (Principal Legal Executive), and Trevor Slack (Solicitor), explained the background to the application including planning trigger and terminating events which extinguish the right to apply to register land as a TVG; the legislation which governs applications; the accepted application plan; and the previous referral to the Committee on 10 April 2024 which resulted in a deferral to seek Counsel's Opinion on the question of whether the Draft Wiltshire Housing Sites Allocation Plan (WHSAP) formed a valid trigger event at the time of application.

The Counsel's Advice, as prepared by Douglas Edwards KC of Francis Taylor Building, was summarised, and officers explained that whilst it was not open to

the Inspector to consider the application dated 13 January 2020 in his Advisory Report, the Inspector's conclusions as to the merits of the application would be the same for the period ending 30 November 2020, and therefore the Inspector's recommendation can be relied upon by the Commons Registration Authority (CRA) in determining the application received on 30 November 2020. Members were reminded that although it was open to the CRA to reject the Inspector's report and recommendation, it can only lawfully do so if the CRA finds that the Inspector has made a significant error of fact or law. As such, if the Inspector's recommendation was rejected, the CRA must provide legally valid reasons, supported by evidence, of the error of fact or law, where the CRA's decision is open to legal challenge.

Attention was drawn to Agenda Supplement 2 which detailed a series of questions and responses that had been submitted ahead of the meeting.

Members of the Committee then had the opportunity to ask technical questions to the officer. Members sought further clarity on the timeline for the TVG applications; planning triggers and terminating events in line with Counsel's Advice; the decision to instruct a non-statutory public inquiry; and if the applicant had been advised on their right to claim judicial review of the decision to return the application dated 13 January 2020.

In response, officers explained that the draft WHSAP was not a trigger event on 13 January 2020 which meant that the CRA was therefore wrong to determine that the application dated 13 January 2020 was invalid, and that the CRA was wrong to have also rejected the application dated 11 June 2020 as the trigger events at that time affected only part of the application land. However, it was emphasised that it was not open to the Inspector to consider the application dated 13 January 2020, as the application before him was that received on 30 November 2020 and that this was the "time" of the application relevant to whether the right to make an application ceased to apply.

The named public speakers as detailed above then had the opportunity to present their views to the Committee.

Councillor David Vigar, as the Local Unitary Member for the identified locality of the application, then spoke to the application and recapped the sequence of events leading to Counsel's Advice being received and the importance of retaining the green space for the residents of Trowbridge Grove. Considering Counsel's Advice, Cllr Vigar then made the case to re-examine the option of processing the application made on 13 January 2020 as it should have been processed originally.

A debate then followed where Members discussed the points raised by Cllr Vigar alongside the legally complex nature of the application, and the benefits of deferring the application in order to further understand Counsel's Advice, the questions and answers published as Agenda Supplement 2, and the balance of prejudice relating to any decision made by the Committee. Members further discussed the powers of the Committee to override/alter a decision made by an

officer under delegated authority and felt that further advice was needed in order to make an informed decision.

At the conclusion of the debate, Councillor Horace Prickett moved to defer the application to allow for a more detailed report to be prepared, seconded by Councillor Jonathon Seed.

Following a vote on the motion, it was then:

Resolved:

The Committee DEFERRED determination of the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a Town or Village Green, to seek a further report on whether the application of January 2020 could be processed with the wider application area examined.

Members took a comfort break from 4.30pm to 4.37pm.

82 **PL/2024/04800: Land South of 92 High Street, Chapmanslade, BA13 4AN**

Public Participation

- Mr Terry Hulbert, local resident, spoke in objection to the application.
- Ms Dagmar Steffens, local resident, spoke in objection to the application.
- Mr Mark Foster, local resident, spoke in objection to the application.
- Mr John Foster, applicant, spoke in support of the application.
- Councillor Philip Holihead, on behalf of Chapmanslade Parish Council, spoke on the application.

Gen Collins, as Principal Planning Officer, presented the report which recommended that the Committee delegate authority to the Head of Development Management to grant planning permission subject to conditions and informatives and officers securing a completed Section 106 unilateral undertaking from the applicant to establish the proposals as a self-build development for the demolition of stables and construction of new sustainable self-build dwelling with associated works and change of use of land to C3.

It was noted that Members of the Committee had undertaken a site visit on Tuesday 5 November 2024, the day prior to the Committee meeting, with the Case Officer, Arboricultural Officer, and Highways Officers being present.

Key material considerations were identified including the principle of development; design and landscape; impact on trees; earthworks/land stability; heritage; residential amenity; highways; biodiversity; and drainage.

Attention was drawn to late representations that had been submitted following publication of the agenda, however it was confirmed by officers that the material considerations raised had already been taken into account within the report.

Members of the Committee then had the opportunity to ask technical questions to the officer. Members queried aspects relating to highway safety including traffic generation, potential conflicts with traffic movements, and the nature of the access as a private, unadopted road. Further queries were made in respect to fire safety and access to a suitable water supply, the width of the private lane being suitable for an emergency vehicle, and the minimum distances required pursuant to overhead power lines and new housing. Members also sought clarity on the separation distances between neighbouring properties and the proposed new dwelling with regard to overlooking and potential loss of residential amenity.

In response, the Case Officer and attending Highways Officers explained that the baseline existing land use was a material consideration in terms of the site being a previously developed site that had existing traffic generation currently used by one party, and with the site having three stables, there was the potential to have an even greater associated traffic generating on-site use. Members also heard from the attending Highways Officers who represented the Local Highways Authority, that the proposed single dwelling would not likely result in an increase in traffic generation when compared against the existing/potential stabling use. Moreover, the Highways Officers argued that the residential use would not result in substantive highway harm using the private lane and entering the public highway.

Members were also informed that the applicant had committed to relocating the stables to other land owned by the applicant which would be accessed from an existing agricultural access point and not through this proposed site, thus mitigating the risk of exacerbating the use of the private lane. Members were also advised that sufficient separation distance existed between the proposed new dwelling and existing dwellings to safeguard neighbouring amenity. This would be further mitigated by the presence of existing mature boundary trees, and in addition, a suggested planning condition which would require the submission of a detailed Landscape Plan to secure additional tree planting. As such, officers had concluded that the development would not result in a material impact to the residential amenity to warrant a refusal.

Members were reassured that the Case Officer had consulted with Dorset & Wiltshire Fire Rescue Service and that no objection to the scheme had been raised. It was further noted that fire and rescue considerations fell under building control regulations rather than being within the remit of the Highway or Planning Authority. Furthermore, it was highlighted that the applicant would be notifying the electricity provider to discuss the proposal and that the subsequent Construction Management Plan and Construction Method Statement would outline the necessary details to make the site serviceable in terms of construction.

The named public speakers as detailed above then had the opportunity to present their views to the Committee.

Councillor Bill Parks, as the Local Unitary Member, then spoke to the application where he thanked officers for their hard work throughout the planning history of the site.

A debate then followed where Members acknowledged the representations made by neighbouring residents and the Parish Council, and considered the suitability of the site to accommodate a dwelling with regard to access, traffic generation, and fire safety. Additional input was sought from the attending Legal and Highways Officers on the use of the lane as the only means of vehicular access to serve the proposal, and Members were advised to consider the material planning considerations as set out in the published report, from what they saw in person at the scheduled Member site visit, and from hearing the planning issues being debated.

At the conclusion of the debate, Councillor Jonathon Seed moved to approve the application in line with officer recommendations which was seconded by Councillor Stewart Palmen. Following a vote on the motion, it was:

Resolved:

The Committee delegated authority to the Head of Development Management to GRANT planning permission subject to officers securing a completed S.106 unilateral undertaking from the applicant to establish the proposal as a self-build development and be bound by the following planning conditions and informatives listed below:

Conditions

- 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.**

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

- 2. The development hereby permitted shall be carried out in accordance with the approved plans and documents set out on the drawing issue sheet dated 07/08/2024.**

REASON: For the avoidance of doubt and in the interests of proper planning.

- 3. No development shall commence on site (including any works of demolition), until a Construction Method Statement and a Construction Environmental Management Plan (CEMP), which shall include the following:**

- a) the parking of vehicles of site operatives and visitors;**
- b) loading and unloading of plant and materials;**

- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- h) hours of construction, including deliveries;
- i) Identification of ecological protection areas/buffer zones and tree root protection areas and details of physical means of protection, e.g. exclusion fencing.
- j) Working method statements for protected/priority species, such as nesting birds and reptiles.
- k) Mitigation strategies already agreed with the local planning authority prior to determination, such as for bats; this should comprise the pre-construction/construction related elements of strategies only.
- l) Work schedules for activities with specific timing requirements in order to avoid/reduce potential harm to ecological receptors; including details of when a licensed ecologist and/or ecological clerk of works (ECoW) shall be present on site.
- m) Key personnel, responsibilities and contact details (including Site Manager and ecologist/ECoW).

has been submitted to, and approved in writing by, the Local Planning Authority.

The approved Statement and CEMP shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

REASON: To minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase. To ensure adequate protection and mitigation for ecological receptors prior to and during construction, and that works are undertaken in line with current best practice and industry standards and are supervised by a suitably licensed and competent professional ecological consultant where applicable.

4. No development shall commence on site (except for demolition and site clearance works) until full technical design details for the retaining walls, and a supporting statement and methodology of proposed earthworks together with structural calculations prepared by a suitably qualified independent professional demonstrating

land stability can be achieved on site, has been submitted to and approved in writing by the LPA.

Thereafter the development shall be implemented in accordance with the approved details.

REASON: To ensure the proposal can be built safely with structural integrity

5. No development shall commence on site above ground slab level (except for demolition and site clearance works) until details of waste & recycling facilities (including location, collection and range of facilities) have been submitted to and approved in writing by the Local Planning Authority.

The development shall not be first occupied until the approved recycling facilities have been completed and made available for use in accordance with the approved details and they shall be subsequently maintained in accordance with the approved details thereafter.

REASON: In the interests of public health and safety.

6. No development shall commence on site above ground slab level (except for demolition and site clearance works) until manufacturer's details and photographs of the materials to be used for the external walls, roofs, windows and doors have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the character and appearance of the area.

7. No development shall commence on site until a scheme of hard and soft landscaping has been submitted to and approved in writing by the Local Planning Authority, the details of which shall include:
 - location and current canopy spread of all existing trees and hedgerows on the land;
 - full details of any to be retained, together with measures for their protection in the course of development;
 - a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
 - finished levels and contours;
 - means of enclosure;
 - car park layouts;
 - other vehicle and pedestrian access and circulation areas;
 - all hard and soft surfacing materials;
 - minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting);

- proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines indicating lines, manholes, supports);

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

8. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

9. The development hereby approved shall not be brought into use until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area [and neighbouring amenities].

10. The development shall not be first occupied until the turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

11. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.

REASON: To ensure that the development can be adequately drained.

12. The development hereby approved (including demolition and site clearance) shall be carried out in strict accordance with the approved details shown on plan ref: Proposed Site Plan 2338.FOS-03B Rev O and in accordance with the Arboricultural Impact

Assessment and Method Statement of Works dated 19 April 2024. In particular, the arboricultural method statement must provide the following:

In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant, the designated site foreman and a representative from the Local Planning Authority, to discuss details of the proposed work and working procedures.

Subsequently, and until the completion of all site works, site visits should be carried out on a monthly basis by the developer's arboricultural consultant. A report detailing the results of site supervision and any necessary remedial works undertaken or required should then be submitted to the Local Planning Authority. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant following that approval.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990.

- 13. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending those Orders with or without modification), no development within Part 1, Classes A, AA, B, C, D, E and F and Part 1 Class A shall take place on the dwellinghouse hereby permitted or within their curtilage.**

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

- 14. No external light fixture or fitting will be installed within the application site unless details of existing and proposed new lighting have been submitted to and approved by the Local Planning Authority in writing. The submitted details will demonstrate how the proposed lighting will impact on bat habitat compared to the existing situation.**

REASON: To avoid illumination of habitat used by bats and additional sky glow in a sensitive development landscape edge location.

15. No development shall commence on site until the trees on the site and along the site boundaries have been enclosed by protective fencing, in accordance with British Standard 5837 (2005): Trees in Relation to Construction. Before the fencing is erected, the exact type and position shall require the written approval of the Local Planning Authority and after it has been erected, it shall be maintained for the full duration of the construction works and no vehicle, plant, temporary building or materials, including raising and or, lowering of ground levels, shall be allowed within the protected areas(s).

REASON: To enable the Local Planning Authority to ensure the protection of trees on the site and along the site boundary (on land within the applicant's control) in the interests of visual amenity.

Planning Informatives

The proposed development will require separate approval and a separate license from the EA for any sewerage treatment plant to be installed on site.

The applicant should note that under the terms of the Wildlife and Countryside Act (1981) and the Habitats Regulations (2010) it is an offence to disturb or harm any protected species including for example, bats, breeding birds and reptiles. The protection offered to some species such as bats, extends beyond the individual animals to the places they use for shelter or resting.

Please note that this consent does not override the statutory protection afforded to any such species.

In the event that your proposals could potentially affect a protected species you should seek the advice of a suitably qualified and experienced ecologist and consider the need for a licence from Natural England prior to commencing works. Please see Natural England's website for further information on protected species.

The habitat within the proposed development site and the surrounding area is suitable for roosting, foraging and commuting bats. An increase in artificial lux levels can deter bats which could result in roost abandonment and/or the severance of key foraging areas. This will likely result in a significant negative impact upon the health of bat populations across the region. Artificial light at night can have a substantial adverse effect on biodiversity. Any new lighting should be for the purposes for safe access and security and be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08-18 "Bats and artificial lighting in the UK", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on land outside their control. If such works are required, it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.

Councillors Andrew Davis, Bill Parks, and Pip Ridout requested that their votes in abstention be recorded.

Councillor Ernie Clark requested that his vote against the motion be recorded.

83 **Urgent Items**

There were no urgent items.

(Duration of meeting: 3.00 - 6.10 pm)

The Officer who has produced these minutes is Ellen Ghey of Democratic Services, direct line 01225 718259, e-mail ellen.ghey@wiltshire.gov.uk

Press enquiries to Communications, direct line 01225 713114 or email communications@wiltshire.gov.uk

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**PL/2023/02682 Wiltshire Council
Western Area Committee
4th December 2024**

Planning Appeals Received between 25/10/2024 and 22/11/2024

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Start Date	Overturn at Cttee
PL/2023/02682	6 Ash Walk, Warminster, BA12 8PY	Warminster	Conversion and extension to a partially constructed single storey ancillary garden building to a 2-storey detached dwelling and associated works	WAPC	Written Representation	Refuse	29/10/2024	No
PL/2024/07006	Land at Penn Farm, Capps Lane, Heywood, Westbury, BA13 4NF	Bratton	Extension and alterations to existing storage building to provide function room, kitchen, toilets and washing facilities in association with on site public camping, and associated use of outdoor seating and play space, together with the provision of 1No G	DEL	Written Representation	Refuse	12/11/2024	No

Planning Appeals Decided between 25/10/2024 and 22/11/2024

Application No	Site Location	Parish	Proposal	DEL or COMM	Appeal Type	Officer Recommend	Appeal Decision	Decision Date	Costs Awarded?
PL/2023/05142	Siennas Valley Farm, Huntenhull Lane, Chapmanslade, Westbury, BA13 4AS	Chapmanslade	Erection of rural workers dwellinghouse	DEL	Written Reps	Refuse	Allowed with Conditions	28/10/2024	None
PL/2023/07590	Woodlands, 20 Smallbrook Lane, Warminster, BA12 9HP	Warminster	Outline application with some matters reserved for the erection of a dwelling in the garden (access only)	DEL	Written Reps	Refuse	Dismissed	18/11/2024	None

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Appeal Decision

Site visit made on 30 September 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2024

Appeal Ref: APP/Y3940/W/24/3337482

Sienna's Valley Farm, Huntenhull Lane, Chapmanslade, Westbury BA13 4AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Sharon Snook against the decision of Wiltshire Council.
 - The application Ref is PL/2023/05142.
 - The development proposed is a rural workers dwellinghouse.
-

Decision

1. The appeal is allowed and planning permission is granted for a rural workers dwellinghouse at Sienna's Valley Farm, Huntenhull Lane, Chapmanslade, Westbury BA13 4AS in accordance with the terms of the application, Ref PL/2023/05142, subject to the conditions in the attached schedule.

Preliminary Matter

2. There is an extensive planning history related to the site, which includes 7 previous appeal decisions¹, all of which were dismissed. These decisions related to new agricultural buildings, extensions to an existing agricultural building and the siting of a mobile home for use as a rural workers dwelling, as well as the associated appeals against enforcement notices. I have had regard to these decisions insofar as they are relevant to the proposal before me now.

Main Issue

3. The main issue is the effect on the character and appearance of the area, with particular regard to the Corsley Heath to Chapmanslade Greensand Ridge Special Landscape Area (SLA).

Reasons

4. Sienna's Valley Farm is an established alpaca breeding and rearing unit. It is accessed off Huntenhull Lane, which runs to the east, with an established hedge running along the road frontage. Immediately to the south are a group of former farm buildings that have been converted into dwellings. Beyond this, open undulating countryside lies to the south and east. The village of Chapmanslade is situated approximately a quarter of a mile to the northeast, with its built-up form visible from parts of the appeal site and surrounding Public Rights of Way (PROW's).

¹ Appeal References APP/Y3940/X/11/2157699, APP/Y3940/A/11/2157722, APP/Y3940/W/14/3001801, APP/Y3940/C/15/3132119, APP/Y3940/C/15/3140845, APP/Y3940/W/15/3132117 and APP/Y3940/W/19/3238918

5. The alpaca enterprise has an existing steel portal frame barn, which runs parallel to Huntenhull Lane. Attached to the north of the barn is a temporary lean-to structure, which provides accommodation for the appellant and their family, as a temporary rural worker's dwelling². The site is relatively well enclosed with existing mature trees and established vegetation along the site's boundaries. The land associated with the appeal site runs behind the converted buildings to the south and the land levels rise from the road.
6. The site lies within the Corsley Heath to Chapmanslade Greensand Ridge Special Landscape Area (SLA). I acknowledge the findings of the Inspectors in the earlier appeal decisions and their descriptions of the appeal site, with one of the Inspectors³ noting that 'there are attractive views across towards the countryside beyond'. The same Inspector continues to state that 'the countryside is made up of farmland with small fields and many intact hedgerows, creating a strong sense of tranquillity and enclosure'. Another Inspector⁴ found it to be 'an attractive area of countryside with an undulating landscape and relatively intimate views of surrounding land'. Taking in to account the above and my observations on site, whilst the appeal site makes a positive contribution to the overall character and appearance of the area, I consider that due to its enclosed nature, existing use and the built form in the local context, the appeal site contrasts, to some extent, with the verdant open countryside which extends to the south and east.
7. Whilst the site is situated in open countryside, the Independent Agricultural Assessment instructed by the Council stated that the business case has been proved and an agricultural worker's dwelling has been found to be justified. Based on the evidence before me, I see no reason to come to a different conclusion. Therefore, despite the concerns of interested parties and the Parish Council, the creation of a permanent agricultural worker's dwelling in the open countryside would be in accordance with CP48 of the Wiltshire Core Strategy (Core Strategy) (adopted 2015), which permits residential development in the countryside where it meets the accommodation needs required to enable workers to live at/or in the immediate vicinity of their place of work and supported by functional and financial evidence.
8. Nevertheless, the proposal, by virtue of it being a new building, would alter the character and appearance of the appeal site and the wider open countryside. However, it would be seen in the context of the surrounding built form along Huntenhull Lane, including the existing barn and the converted barns to the south. I note that the size of the dwelling has been kept to a minimum whilst still serving the needs of the appellant. The proposed form and bulk would not be out of character with nearby residential buildings. This would allow the proposed dwelling to be introduced without appearing as a particularly intrusive feature in the countryside setting. Therefore, the proposed development would relate closely to existing built form and would be suitably designed.
9. The proposal would be taller than the existing barn. However, the ground level would be cut down slightly in order to try and minimise the visual impact of the dwelling. I note that a sectional drawing shows only the roof would be visible over the top of the barn, with the majority of the bulk screened by the existing barn. The proposal would be situated towards the bottom of the valley floor

² Approved under application reference 18/09857/FUL

³ APP/Y3940/W/15/3132117

⁴ APP/Y3940/W/14/3001801

and not on the more exposed part of the site, with mature trees screening it from the north. The slope of the field extends further up beyond the building, which would help to soften its impact, both visually and on landscape character. Therefore, any visual impact on the 'intimate views of the surrounding land' or the 'views across the countryside beyond' would be mitigated by the fact that the site lies at a lower level in the landscape and due to the intervening vegetation. Its siting allows it to relate well to its functional need, being situated adjacent to the existing barn serving the enterprise, whilst also taking in to account the sloping topography.

10. I acknowledge that the dwelling cannot be positioned any closer to the existing barn, as suggested by the Council, due to the opening doors of the barn and the functional use of this building. Therefore, taking in to account the functional need of the alpaca enterprise and the sites other constraints, the siting of the proposal would be appropriate in these circumstances.
11. The Council state that there is a large amount of 'clutter and domestic paraphernalia already adjacent to the barn and within the yard'. However, my site visit confirmed that the 'domestic paraphernalia' was kept mostly in front of the temporary dwelling to the north of the site. Furthermore, any other 'clutter' was associated with the functional use of the site and its positioning in the yard to the front of the barn did not interfere with the opening of the barn doors, in the same way the positioning of a dwelling closer to the barn would.
12. I walked a number of the PROW's in the area, including CHAP8, CHAP10, CHAP11 and CHAP34. From the PROW's, whilst there are views across the countryside, I noted that residential dwellings and associated agricultural buildings form part of the landscape character. There are also residential dwellings to the north that are positioned on the ridgeline and are consequently prominent in views from the footpaths. Thus, residential development is not uncharacteristic of the area surrounding the appeal site, despite its designation as an SLA. Any views would be seen in the context of the existing built development in the local context of Sienna's Valley Farm. Furthermore, the established roadside hedgerow and the existing barn would help to mitigate any views from the vehicular entrance. Consequently, the proposal would not be particularly prominent or significantly incongruous in the landscape and would preserve the special character and local distinctiveness of the SLA.
13. The construction materials would reflect the local landscape character, with the materials being similar to those used on the adjacent converted barns at Huntenhull Farm, as well as the existing barn on the appeal site itself. The use of black weatherboarding on the upper elevations, would help to mitigate the prominence of the proposal, as the appellant sets out. In addition, the landscaping measures, such as the orchard planting to the southwest, would help to anchor the building into the surrounding landscape and would mitigate any wider views of the building. A suitably worded condition would secure a hard and soft landscaping scheme to ensure that the landscape character of the SLA would be preserved. In my mind, taking into account the special characteristics of the area, including the 'strong sense of tranquillity and enclosure', the sensitive design of the proposal would conserve the high quality of the landscape character in the SLA.
14. I note that there was a scheme for a permanent mobile home, which was sited near to the footprint of the current proposal. This was dismissed under an

earlier appeal, in part due to the harm that would be caused to the SLA⁵. From the limited information before me, I note that the mobile home was to be positioned slightly further south than the proposal before me now. Nevertheless, I have determined this appeal on its own merits.

15. Therefore, for the reasons set out above, the proposal would not harm the character and appearance of the countryside, with particular regard to the Corsley Heath to Chapmanslade Greensand Ridge SLA. The proposal would be in accordance with Core Policy 51 of the Core Strategy and Saved Policy C3 of the West Wiltshire District Local Plan (adopted 2004). These policies, in combination, state that the landscape character of Special Landscape Areas will be conserved and enhanced, and development will not be permitted which is considered to be detrimental to the high quality of these landscapes, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.
16. It would also be in accordance with the objectives set out in Chapter 15 of the National Planning Policy Framework 2023 (the Framework), most notably criteria a) and b) of paragraph 180 in regard to protecting and enhancing valued landscapes, whilst recognising the intrinsic character and beauty of the countryside.

Other Matters

17. Surface water drainage has been raised by interested parties as a particular area of concern. I note that the 1 in 100 year (+40%) surface water flooding risk area lies to the southeast of the site, following Huntenhull Lane. The groundwater conditions of the site are such that the level of the water table sits between 0.025m and 0.5m below the surface. It is also recognised that the neighbouring properties to the southwest of the appeal site have experienced recent history of surface water flooding. However, whilst there is some potential for groundwater or surface water flooding, I consider that in these circumstances, a suitable scheme would be able to be achieved to ensure that surface water from the development site would be adequately dealt with. There is no evidence to suggest that the proposal would exacerbate existing flood risk and it is not the role of new development to resolve any existing local issues. I also note that the Council did not consider this to be a substantive issue during the application phase. I have no technical evidence before me to come to a different conclusion on this matter.
18. Consequently, subject to a suitably worded planning condition which would require a detailed surface water drainage scheme to be agreed with the Council prior to development taking place, including an assessment of the hydrological and hydrogeological context of the development, I am satisfied that surface water from the development site would be adequately dealt with.
19. I acknowledge the concerns of the neighbouring properties raised in relation to the noise associated with the appeal site. However, there is already residential occupation on the appeal site, albeit on a temporary basis. I have no substantial evidence before me to suggest that the resultant noise levels and disturbances arising from the development would result in undue harm to the living conditions of adjacent occupants. I also note the Council did not raise an objection to the proposal on these grounds.

⁵ APP/Y3940/W/15/3132117

20. Interested parties and the Parish Council have also expressed concerns in regard to highway safety matters. However, having considered the technical evidence before me and the views of the relevant statutory consultees and that of the Council, I consider that these matters can be controlled and maintained by appropriately worded conditions. Concerns in regard to existing issues in relation to the current use of land at Sienna's Valley Farm, including the introduction of hardcore, roads and tracks running throughout the appeal site, and the implications these have had on land stability and water run-off, do not alter the merits of the case and would be beyond the parameters of this appeal.
21. I also note the reference to another appeal decision in the district for an agricultural workers dwelling which was again dismissed⁶. However, from the limited information before me, I note that this site was situated in the Green Belt, which is a notable difference to the site at Sienna's Valley Farm. My attention has also been drawn to a number of other appeal decisions⁷ which have also considered character and appearance and the need for a rural worker dwelling. Again, I have been provided with limited information in regard to these earlier decisions so I cannot be sure that they would be directly comparable to the proposal before me now. Nevertheless, my decision is based firmly on the merits and circumstances of the appeal development before me now.
22. Finally, the Parish Council has also briefly referred to the emerging policies within the Wiltshire Council's Pre-Submission Draft Local Plan 2020- 2038 (dated September 2023), which I understand is at Regulation 19 stage. However, I am not aware of the extent of unresolved objections or whether the emerging policies will be considered as consistent with the Framework. Consequently, I consider that only limited weight should be given to the emerging policies at the current time in relation to this appeal.

Conditions

23. I have assessed the Council's suggested conditions in light of the advice provided in the Planning Practice Guidance (PPG). A condition setting a time limit for the commencement of the development is required by statute. It is necessary that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty.
24. Given that the dwelling is located in a countryside location where new residential development is not normally permissible, a condition restricting its occupation, to a person working in connection with agriculture, is necessary. I have amended it slightly to include reference to a surviving civil partner.
25. The Council have also suggested the removal of permitted development rights in relation to extensions and outbuildings. The PPG states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. However, in order to protect the character and appearance of the SLA, it would be both reasonable and necessary to ensure that the dwellings do not extend in size.
26. A condition regarding further details of the materials to be used externally is necessary to safeguard the character and appearance of the area.

⁶ APP/Y3946/W/23/3327751

⁷ Including APP/Y3940/W/22/3310345, APP/Y3940/C/20/3246154 and APP/Y3940/C/20/3246564

27. In the interests of highway safety, conditions are considered necessary to ensure that the access, parking and turning areas are all constructed as approved, as well as a condition to ensure that the approved access is consolidated and surfaced for the first 10 metres of the access. For the same reasons, a condition is also considered necessary to ensure that any gates associated with the vehicular access are appropriately sited. I have amended the wording slightly for clarity purposes.
28. As already alluded to, a condition which requires a detailed surface water drainage scheme to be submitted and approved is considered necessary to ensure that the development is provided with a satisfactory method of surface water drainage as well as in the interests of flood risk management. Finally, again as already mentioned, in order to conserve the landscape character of the SLA, details of both hard and soft landscape works are considered necessary.

Conclusion

29. For the reasons set out above, having considered all other matters raised, I conclude that the appeal is allowed.

Laura Cuthbert

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos: Application Forms, Planning, Access and Design Statement (PL.4745), Reading Agricultural Consultants "Rural Worker's Dwelling Appraisal" (dated April 2022), Drawings Nos. PL4745/1A, PL4745/2, PL4745/3C, PL4745/4A, PL4745/5A, PL4745/6D, and Additional Agricultural Consultants Report.
- 3) The occupation of the dwelling shall be limited to a person solely or mainly working, or last working, in the locality in agriculture or in forestry, or a widow or widower or surviving civil partner of such a person, and to any resident dependants.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.
- 5) No development shall proceed above slab level until details of the external materials to be used on the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) The development hereby permitted shall not be first brought into use until the first ten metres of the access, measured from the edge of the

carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

- 7) Any gates shall be set back a minimum of 10m from the edge of the carriageway, with any such gates to open inwards only, and shall be maintained as such thereafter.
- 8) No part of the development hereby permitted shall be first occupied until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter and maintained free from the storage of materials.
- 9) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 10) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing existing and proposed finished levels or contours;
 - iii) means of enclosure and retaining structures;
 - iv) boundary treatments;
 - v) vehicle parking layouts and other vehicle and pedestrian access and circulation areas;
 - vi) hard surfacing materials;
 - vii) minor artefacts and structures [e.g. furniture, play equipment, refuse or other storage units, signs, etc.];
 - viii) proposed and existing functional services above and below ground;

- ix) an implementation programme; and
- x) a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all landscape areas.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme. The completed scheme shall be managed in accordance with the approved landscape management plan.



Appeal Decision

Site visit made on 29 October 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 November 2024

Appeal Ref: APP/Y3940/W/24/3339371

Woodlands, 20 Smallbrook Lane, Warminster, Wiltshire BA12 9HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr F Tieman against the decision of Wiltshire Council.
 - The application Ref is PL/2023/07590.
 - The development proposed is the erection of a dwellinghouse.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal scheme is for outline planning permission with all matters reserved for future approval except for access. As a result, I have treated any details relating to layout, scale, appearance and landscaping submitted with the application, including on the plans, as indicative only.

Main Issue

3. The main issue is the effect of the proposal on the safety of users of Smallbrook Lane and Boreham Road.

Reasons

4. The appeal site is accessed via Smallbrook Lane, a single-width road which serves several dwellings including the property known as Woodlands, located immediately adjacent to the site. Between 18 Smallbrook Lane (No.18) and Woodlands, hedgerows and mature trees define the boundary between the lane and fields beyond. Combined with narrow grassy verges to both sides of the carriageway, these landscape features enclose this stretch of the lane and limit the locations where pedestrians could move to a safe position should a vehicle be approaching.
5. The lane terminates for vehicles alongside the appeal site where it becomes a Public Right of Way (PRoW). Whilst a snapshot in time, several people were using the lane and PRoW for walking, with and without a dog, and jogging during my site visit. Whilst these may be residents or locals, and their visitors, who may be familiar with the conditions of the lane, this is not guaranteed. Moreover, an awareness of the conditions of the lane does not negate the need to ensure development does not harm the safety of the users of the lane.
6. Whilst the number of additional daily vehicle trips anticipated from the proposal is low and the width of the lane limits traffic speeds, nevertheless any increase would also lead to a heightened potential for conflict between

pedestrians and vehicles. Even if there have been no recorded accidents along the lane, nonetheless, additional traffic movements would be detrimental to the safety of other users. This is particularly the case within the section between No.18 and Woodlands where refuge places are lacking.

7. Similarly, the absence of formal or informal bays in this part of the lane also restricts vehicles from passing without driving on the verge or reversing to where verges are not present. Such manoeuvres could also be hazardous to pedestrians. Consequently, whilst this would not lead to severe residual cumulative impacts on the road network, the impact on highway safety would, nevertheless, be unacceptable and contrary to the principles set out in the National Planning Policy Framework (the Framework).
8. Irrespective of any conclusion on the turning space provided for vehicles on the site or the fact that vehicles already use the lane to access Woodlands, these are not reasons to permit unacceptable development. Even if I were to conclude that the access on to the appeal site from the lane is acceptable, this would not weigh in favour of the appeal scheme.
9. I have been referred to an appeal¹ for another proposal along the lane which was dismissed as the Inspector concluded the safety of users of the junction between Smallbrook Lane and Boreham Road would have been unacceptably reduced. The evidence before me, however, indicates that alterations have been made to this junction since this decision, including a reduction in the speed limit along the main road and the introduction of formal on-street parking spaces. Whilst vehicles parked in the on-street bays during my site visit does partially restrict visibility when leaving the lane, this was to a small degree which did not prevent drivers from making a safe exit. As such, the proposal would not harm the safety of users of Boreham Road.
10. Despite this, I conclude that the proposal would harm the safety of users of Smallbrook Lane and is contrary to policies 60 and 61 of the Wiltshire Core Strategy. In combination, these policies support and encourage the sustainable, safe and efficient movement of people within Wiltshire by ensuring development is capable of being served by safe access to the highway network, amongst other provisions.

Other Matters

11. The proposal would provide social and economic benefits from the construction and occupation of an additional dwelling, which supports the Framework's objective of significantly boosting the supply of housing. Whilst small-scale sites can have a meaningful impact in contributing towards this objective, nevertheless, the benefits from a net gain of one dwelling would be limited. No details of any environmental benefits which could be derived from the appeal scheme have been provided as part of the outline planning application. Therefore, no weight is attributed to this aspect, with limited weight given to the social and economic benefits of the appeal scheme.
12. Although the Council is unable to demonstrate a five-year supply of deliverable housing sites, the status of the emerging Local Plan² means that a minimum of four, rather than five, years' worth of housing supply is required by the Framework. The evidence before me indicates that the current position is

¹ APP/F3925/A/02/1088646

² Regulation 19

approximately 4.6 years. This is not disputed by the appellant and I have no reason to disagree. Any contribution to the supply of housing would be minimal and the presumption is favour of sustainable development does not apply.

13. The appeal site is located within the catchment of the River Avon Special Area of Conservation (SAC), a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017. The Council have indicated that sufficient information has now been provided by the appellant as part of the appeal to satisfy their concerns regarding the proposal's impact on the SAC. Nonetheless, if the circumstances leading to the grant of planning permission had been present, it would have been my duty, as the competent authority, to consider if the proposal would be likely to have a significant adverse effect on the integrity of the SAC. However, as I am dismissing the appeal on the main issue above, I have not found it necessary to consider this matter further.

Conclusion

14. The proposal conflicts with the development plan when taken as a whole and there are no material considerations, either individually or in combination, which indicate that a decision should be made other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

Juliet Rogers

INSPECTOR

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WILTSHIRE COUNCIL

AGENDA ITEM NO.

WESTERN AREA PLANNING COMMITTEE

4 DECEMBER 2024

Commons Act 2006 – Sections 15(1) and (2)
Application to Register Land as Town or Village Green – Southwick Court
Fields, Southwick and North Bradley – Application no.2020/02TVG

Purpose of Report

- A. To consider Legal Advice requested by the Western Area Planning Committee (WAPC) at its meeting dated 6 November 2024, to assist in its determination of an application made under s.15(1) and (2) of the Commons Act 2006 to register land as a Town or Village Green (TVG), Southwick Court Fields, in the parishes of Southwick and North Bradley.

Relevance to the Council's Business Plan

- B. Working with the local community to provide an accurate register of TVGs and Common Land, making Wiltshire an even better place to live, work and visit.

Background

- C. Wiltshire Council as the Commons Registration Authority (CRA) are in receipt of an application to register land known as Southwick Court Fields, in the parishes of Southwick and North Bradley as a TVG, as yet undetermined. The WAPC considered Counsel's Advice in this matter at their meeting dated 6 November 2024 and made the following resolution:

The Committee DEFERRED determination of the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, as a Town or Village Green, to seek a further report on whether the application of January 2020 could be processed with the wider application area examined.

Please see WAPC Report and Appendices dated 6 November 2024, which may be viewed using the following link:

[Agenda - Democratic Services - Wiltshire Council](#)

- D. Representations and Questions received further to the Committee meeting dated 6 November 2024 are attached at **Appendix A**:
- i) Cllr D Vigar – Address to Committee 6 November 2024
 - ii) Cllr D Vigar – Questions 12 November 2024
 - iii) Mr F Morland – Representations 18 November 2024

- E. At **Appendix B** please see Legal Opinion from Lord Banner KC dated 20 November 2024, submitted by Mr D Richardson (Ashfords LLP) on behalf of Waddeton Park Ltd, with covering e-mail dated 22 November 2024.

Main Considerations for the Council

- F. Mr Frank Cain, Consultant (Employed Barrister), Wiltshire Council has provided the following advice:

In respect of the question that the Committee has raised, my advice is as follows: -

1. There have been three separate applications for registration of land in Southwick as a Village Green under section 15 of the Commons Act 2006 (the 2006 Act).
 - a) The Application lodged with the Council as Commons Registration Authority (CRA) on 13 January 2020.
 - b) The Application lodged with the Council as CRA on 11 June 2020.
 - c) The Application lodged with the Council as CRA on 30 November 2020.
2. In respect of the first two applications, the Council as CRA determined, on 24 February 2020 and 7 October 2020 respectively, that there were triggering events with no corresponding terminating events and therefore under section 15C(1) of the 2006 Act the applications could not be accepted and progressed to determination and the applications were returned to the applicant.
3. As a result of those determinations the Council as CRA did not have to meet the requirements of Regulation 5(1) of the 2007 Regulations i.e. provide notice to owners, tenants or occupiers, and publication of a notice and the application for consultation purposes.
4. The Applicant's remedy, if he disagreed with those determinations was to seek Judicial Review of the decisions. This would have allowed a Court of Competent jurisdiction to rule on any such argument. The Applicant (who was the same for both applications) did not exercise these rights and in fact appeared to accept those determinations as, in each case, he has filed a new application (which was his right to do).
5. As has already been identified in earlier KC advice there is a long-standing legal principle in public law that however wrong they may be, however lacking in jurisdiction they may be, decisions by public bodies subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction (R v Panel on Takeovers and mergers,

Ex parte Datafin Plc [1987] Q.B. 815 and endorsed in *Cerelia Group Holdings SAS v Competition and Markets Authority* [2023] CAT 54).

6. I note that the learned authors in De Smith's Judicial Review (9th Ed. 2023) at paragraph [4-066] explains why this legal principle is in the public interest when they said *The public must be able to rely upon their validity so a decision that is not challenged within the relevant (limited) time period for judicial review retains legal effect, regardless of whether it would have been declared unlawful had it been challenged.* The need for legal certainty in public affairs and administrative decisions made by public bodies has been recognised regularly by the Courts in many different areas of the law.
7. Therefore, in respect of the applications lodged with the Council on 13 January 2020 and 11 June 2020 those applications had come to an end and can't be resurrected. The Council, as CRA on each of those applications has become in the position of *Functus Officio* (i.e. a person who has discharged its duty and whose office or authority (in respect of those applications) is at an end.
8. On 30 November 2020 the third application was lodged and accepted by the Council as CRA. It related to an application for village green status for the lower field only. This was the land in which the Requirements of Regulation 5(1) were notified and published for consultation purposes. The non-Statutory public Inquiry was charged with considering this land and this land only. The valid evidence that was presented by the Applicant and the objector could only relate to this land and this is the land in which the Inspector could only make his findings and recommendations on. It is on these facts and these facts alone on which the Committee must make a determination.
9. The legal certainty for all parties has been based on the validity of the two earlier decisions and the WAPC can not go behind that validity. The Committee has no power to do so. If the Committee were considering overturning the decisions in the earlier applications, then any decision taken would be liable to successful challenge due to: -
 - The earlier applications have been determined based on the facts as the Council believed them to be and the Council as CRA decision maker is now *Functus Officio* (refer paragraph 7 above),
 - Being outside the power of the committee (see paragraph 8 above),
 - The passage of time (over four years),
 - Any such decision is likely to adversely affect other interested parties who have relied upon those decisions and the general public interest in legal certainty.

10. Mr Morland in his representations has suggested that use of the second leg of Regulation 5(4) of the 2007 Regulations to amend the 30 November application and refers to the case of R (Church Commissioners of England) v Hampshire County Council [2014] 1 WLR 4555. With all due respect this is a misunderstanding of the law. Regulation 5(4) of the 2007 Regulations relates to the time of receipt of the application. It is designed to allow a CRA to allow correction of minor errors, which are capable of remedy, to be remedied to allow the application to be progressed without a strict adherence to rejection criteria.
11. I note that in the Church Commissioners case The Court of Appeal determined that when an application is received a Council could seek corrections of minor aspects of the application but having regard to the facts the time afforded (13 months) was unreasonable.
12. In this case, the 30 November application was received and accepted by the Council as CRA as sufficient in its current form. It is this application which the submitters and landowner commented on, what the Inspector was charged with when carrying out the non-statutory public Inquiry and what the WAPC has to determine. Regulation 5(4) is not worded in such a way that it would allow a Committee charged with making a determination on the Application, as accepted, to resurrect an earlier application which has come to an end. Further the Church Commissioners decision can't be read as extending the requirements of Regulation 5(4) to remedying a defect in an earlier separate application which has been determined to have come to an end and has in law been concluded. Any Committee's attempt to extend Regulation 5 (4) would be stepping outside the powers that it has been given to determine the application before it.
13. I note that subsequent to the Committee meeting Mr Morland has referred to three cases in which a decision maker has revisited an earlier decision. Whilst I accept that in certain very limited circumstances, which do not apply in this case, a decision maker may be able correct errors in their decision making, however there needs to be:
 - A. A Temporal and causal connection between the original decision and the subsequent correcting decision
 - B. No adverse effect on a specific interested party (e.g the landowner)
 - C. No adverse effect on the principle of legal certainty for any person who may be affected by an administrative decision.
14. I am of the opinion that there is no causal connection (separate applications of 13 January 2020 of 30 November 2020), no temporal

connection (a period of four years and intervening events of adoption of WHSAP and application for and grant (on appeal) of planning permission 20/00379/OUT). Further there is an adverse effect on an interested party (the Landowner) and it would undermine the public interest principle of legal certainty for administrative decisions.

Safeguarding Implications

- G. Considerations relating to the safeguarding implications of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Public Health Implications

- H. Considerations relating to the public health implications of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Environmental and Climate Change Considerations

- I. Considerations relating to the environmental and climate change impact of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Equalities Impact of the Recommendation

- J. Considerations relating to the equalities impact of the recommendation are not permitted under s.15 of the Commons Act 2006. Determination of the application must be based only upon the relevant evidence before the CRA.

Risk Assessment

- K. The holding of a non-statutory public inquiry; the Advisory Report and recommendation to the CRA by an independent Inspector dated 9 February 2024; the Advice of Counsel dated 16 October 2024 and internal review by Wiltshire Council Legal Team, have reduced the risk to the Council of a potential legal challenge.

Financial Implications

- L. There is no mechanism by which the CRA may charge the Applicant for processing an application to register land as a TVG and all costs are borne by the Council.

- M. Where the Council makes a decision to register / not register the land as a TVG, it must give clear evidential reasons for its determination as this decision is potentially subject to legal challenge where any decision of the Council is open to judicial review (within 3 months of the date of decision). The legal costs of a successful challenge against the Council could be in the region of £40,000 - £100,000.

Legal Implications

- N. If the CRA determines not to register the land as a TVG, the only appeal open to the Applicant is through judicial review proceedings and challenging the lawfulness of the decision in the High Court. The Court's permission to bring proceedings is required and the application must be made within 3 months of the date of the determination.
- O. Landowners can also use judicial review proceedings to challenge the Council's decision if the land is registered as a TVG. Additionally it is open to landowners to challenge the CRA decision to register land by appeal to the High Court under s.14(1)(b) of the Commons Registration Act 1965, which allows the High Court to amend the register only if it can be shown that the registration ought not to have been made and that it is just to rectify the register. There is no time limit on application.
- P. There is a cost to the Council as the CRA in judicial review proceedings not successfully defended. The Aarhus Convention does limit the costs liability of the Council to £35,000 if the case is lost, however, the CRA would also be required to meet its own legal costs to defend the case, (a broadly similar sum), in addition to the Applicant's costs. The Applicant's potential maximum cost liability, if their case is unsuccessful, is £5,000.

Options Considered

- Q. The options available to the Committee in the determination of the application, are as follows:
- (i) Accept the Inspector's recommendation that the application made to register land at Southwick Court Fields as a TVG, under s.15(1) and (2) of the Commons Act 2006, be rejected following detailed consideration of the evidence, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024 and as recommended in Counsel's Advice provided by Douglas Edwards KC dated 16 October 2024 .
 - (ii) Not accept the Inspector's recommendation that the application made to register land at Southwick Court Fields as a TVG under s.15(1) and (2) of the Commons Act 2006, be rejected and resolve to register all or part

of the land subject to application and capable of registration as a TVG, if the Committee considers that there are sound evidential reasons for departing from the Inspector's recommendation and Counsel's Advice provided by Douglas Edwards KC dated 16 October 2024.

- R. Where Members of the Committee do not resolve to accept the Inspector's recommendation; Counsel's Advice and Wiltshire Council Legal Advice and make an alternative determination, clear evidential reasons for this decision must be given where the decision of the CRA regarding registration is open to legal challenge by both the Applicant and the Landowner.

Reasons for Recommendation

- S. In the Southwick Court Fields case, the date of the application is significant as the trigger and terminating events in place at that time determine whether the right to apply to register the land is extinguished over all; part or none of the application land. Whilst the Inspector in his Advisory Report considered the "time" of the application to be 13 January 2020, Counsel's Advice states that it was not open to him to consider that application, the application before him was that received on 30 November 2020 and the trigger and terminating events in place at that time, i.e. both the adopted WHSAP and the planning application no.20/00379/OUT (residential development of up to 180 dwellings). Counsel's Advice at para 44 states that it is not open to Wiltshire Council as the CRA to reverse its decision to reject the application dated 13 January 2020 and this is supported by the Wiltshire Council Legal Advice requested by the Committee at its meeting dated 6 November 2024.
- T. Counsel's Advice sets out that whilst it was not open to the Inspector to consider the application dated 13 January 2020, it follows from his conclusions as to the merits of the application during the period ending on 13 January 2020, that the outcome must be the same if the 20 year period ending on 30 November 2020 is considered. Therefore the Inspector's recommendation can be relied upon by the CRA in determining the application received on 30 November 2020.

Recommendation

- U. That Wiltshire Council as the CRA, accepts Counsel's Advice supported by Wiltshire Council Legal Advice, that it was not open to the Inspector to consider the application dated 13 January 2020 and that the decision of the CRA to reject the application dated 13 January 2020 cannot be reversed. The Inspector's recommendation can be relied upon by the CRA in determining the application received on 30 November 2020 and the application to register land at Southwick Court Fields, in the parishes of Southwick and North Bradley, (proceeding under Application number 2020/02TVG) should be rejected on the ground that all the criteria for registration laid down in s.15(2)

of the Commons Act 2006 have not been satisfied, for the reasons set out in the Inspector's Advisory Report dated 9 February 2024.

Samantha Howell

Director of Highways and Transport

Report Author:

Janice Green

Senior Definitive Map Officer

The following unpublished documents have been relied on in the preparation of this Report:

None.

Please see Wiltshire Council Western Area Planning Committee Report (with Appendices) - 6 November 2024

Appendix 1 – Location Plan

Appendix 2 – Application Plans

Appendix 3 – Application Plan (Accepted Land) Application 30 November 2020

Appendix 4 – Inspector's Advisory Report 9 February 2024

Appendix 5 – Counsel's Advice 16 October 2024

Appendix 6 – Form 6 (6 May 2021) – Acceptance of Application 30 November 2020 in Part, as referred to at para 20 of Counsel's Advice

Report may be viewed using the following link:

[Agenda - Democratic Services - Wiltshire Council](#)

APPENDICES:

APPENDIX A - Representations and Questions received further to the Committee meeting dated 6 November 2024:

- i) Cllr D Vigar – Address to Committee 6 November 2024 (*p.1*)
- ii) Cllr D Vigar – Questions 12 November 2024 (*p.10*)
- iii) Mr F Morland – Representations 18 November 2024 (*p.13*)

APPENDIX B - Legal Opinion from Lord Banner KC dated 20 November 2024, submitted by Mr D Richardson (Ashfords LLP) on behalf of Waddeton Park Ltd, with covering e-mail dated 22 November 2024

TVG remarks – 6 November 2024

Thank you Chair for allowing me to speak as the local member for Trowbridge Grove. Trowbridge Grove is identified as the locality in this application.

I want to recap the facts of the case as the people of Trowbridge Grove would see them and I am open to correction by officers if I get any of those facts wrong.

The decision you are about to make has huge consequences for those residents. Since 2017 they have lived with one big question. Will the land that they know as Southwick Court Fields remain the open green space that many have enjoyed since childhood or will it be built on?

This is a big decision for these people and it needs to be based on firm foundations.

The salient facts are these.

In 2017 the land was allocated for housing in a draft of the Wiltshire Housing Site Allocation Plan or WHSAP.

On 13 January 2020, a resident of Trowbridge Grove, Mr Norman Swanney, applied to this Council as the Commons Registration Authority or CRA to have Southwick Court Fields registered as a village green.

On 15 January 2020, a planning application was lodged with Wiltshire Council by Waddeton Park for 180 dwellings and an access road covering the upper part of that land.

On February 24 2020, Mr Swanney's application was returned to him, saying the land was subject to a so-called trigger event, namely its inclusion in the WHSAP and therefore could not be considered for registration as a village green.

On 25 February 2020, the WHSAP was approved and adopted by Wiltshire Council.

As you can tell by this sequence of events, the WHSAP could not have been a trigger event as was approved over one month after the village green application was made. The mistake that identified it as a trigger and deemed the application invalid is at the centre of this case.

On 30 November 2020, Mr Swanney submitted a repeated application and this one was accepted because it covered the lower part of the land that was not subject to the allocation.

On 22 February 2023, the application for 180 dwellings was rejected by the Strategic Planning Committee.

On 7 June 2023, this committee voted to refer the village green application to a non-statutory inquiry.

In October 2023, an appeal inquiry was held into the planning application under Inspector John Longmuir.

And in November 2023, the non-statutory inquiry into the village green application took place under Inspector William Webster.

In February 2024 William Webster submitted his report recommending the village green application be rejected as there was insufficient evidence of lawful sports and pastimes occurring on the lower field for the 20 years preceding the application.

However he did also say that the effective date of the application should have been 13 January 2020, citing the judgement in a 2014 case of Church Commissioners for England v Hampshire County Council which held that that where deficiencies in an application can be remedied such that, if it was duly made in the view of the CRA, the application would be treated as having been duly made on the date on which the original defective application had been lodged.

On 20 March 2024, the Inspector for the planning application allowed the appeal and granted outline planning permission for the 180 dwellings and access road – although all matters were reserved other than the access.

On April 2024, William Webster's report was presented to this committee and I argued that while I accepted his finding that the lower part of the land did not qualify as a village green, I did not think that the Council should have found the application for the upper part invalid in January 2020 as I did not believe the WHSAP constituted a trigger event – as it wasn't approved until the month after the application.

My argument was that the land was first identified for housing in the draft WHSAP in June 2017. And that type of trigger event expires after two years – ie in June 2019. I questioned whether subsequent drafts had the same force.

At that meeting, as the minutes record, the Committee deferred determination of the application to register the land ... to seek Counsel's Opinion on the question of whether the Draft WHSAP forms a valid trigger event.

I was very grateful to you for voting for that deferral. You had listened and decided that the case had to be properly examined.

I can understand why today you may be thinking that now we have the counsel's opinion, it should be followed and a line drawn under this long running saga. I totally get that and I feel a little of it myself. But that feeling has to be trumped by the imperative of any public servant to make the right decision, even if it is difficult and tedious to reach.

But now we have the advice of Douglas Edwards KC before us and you have to consider whether it is so unequivocal that it must be followed and the application rejected without being heard.

Let's recall that our main question to counsel was whether the 2017 draft of the WHSAP was a valid trigger event.

And the report from Douglas Edwards KC is clear on that. He agrees with what I said. The trigger expired in 2019. There was no trigger as of 13 January 2020. The red hatching we saw earlier should not have been there.

And he is clear that the Council should not have found the application invalid. He says the Council was wrong not to allot a number to the application and, much more importantly, wrong to have found the application to be invalid – because the trigger event had expired.

I do not blame the Council for this error. We all make mistakes. In early 2020 emails were sent and replied to and it was understandable that precise dates were overlooked. So I blame no-one. It was a mistake made in good faith.

But the mistake has had massive consequences for the residents of Trowbridge Grove. They were denied the chance to support an application to register the land as a village green by attesting to their use of it over 20 years for lawful sports and pastimes.

William Webster acknowledged that an application for the upper field might have had more chance of success when he said that those intending to use the Southwick Court Fields for kite flying, ball games and the like were more likely to use the upper part of the field.

And had Douglas Edwards KC confined himself to the question you asked him to answer in April, the answer would be clear. The application should stand and be considered.

But Mr Edwards has not confined himself to that question. He has posed and answered two other questions which could effectively enable the council's decisions to stand, wrong though they were.

First, he explores the question of the date on which the village green application was duly made.

He argues that Inspector William Webster was wrong to say the application was made on 13 January 2020 because the Council rejected the application. Webster relied upon Church Commissioners case and Edwards says that only applies where a council gives an applicant the chance to remedy a defective application, not where it rejects it. So, says Douglas Edwards KC, the effective date was 30 November when the revised application was made.

I am not sure that a court would agree that the 13 January application was rejected. The Council did not use that word. It said it was returning the application and even stated that “until this trigger event is terminated”, it would not be possible to apply to register the land as a village green, holding out the possibility of an application going ahead. Is that a rejection?

But if you accept that the application was rejected, then you have to consider the second question that the KC answered without being asked – namely whether a wrong decision made four years ago can be challenged.

Douglas Edwards KC invites you to agree that while Wiltshire Council made a mistake in 2020, it cannot be challenged.

He says that: “...it is well established in law that ‘however wrong public law decisions may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction’”.

So how is this well-established? Mr Edwards relies on *R v Panel on Takeovers and Mergers ex parte Datafin plc (1987)*. And to my mind this goes beyond bizarre. It’s a 26 year old case where a company challenged a decision made by the national panel on takeovers and mergers. You’d be hard pressed to find something further removed from a planning decision by a local authority about a village green in 2020.

But I have read it just to see if there is a clear precedent. And what I see is that the key factor in that case was not whether a wrong decision should stand, but the wider one of whether the Panel could be subject to judicial review. And Lord Donaldson, then Master of the Rolls, found that it could be challenged.

And then almost as an aside, he noted that the decisions of the panel should stand until set aside by a higher court. The full quote from Lord Donaldson is: this “I think that it is important that all who are concerned with take-over bids should have well in mind a very special feature of public law decisions, such as those of the Panel, namely that however wrong they may be, however lacking in jurisdiction they may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction.”

Douglas Edwards quotes selectively from this judgement in para 44 on page 106 and does not provide the context which shows the matter related specifically to takeover bids.

I have asked if that Takeover Panel / Datafin case has ever been relied upon in a matter concerning a local council and in answers provided by Mr Edwards he says the observations are frequently cited in subsequent judgements.

We are also asked in this report to accept that a judicial review is impossible because it has to be applied for within three months of a decision. My reading of the Civil Procedure Rules is that at 54.5(5) they do say that an application for judicial review relating to a decision of a planning authority must be made no later than six weeks after the grounds to make the claim first arose. But at 3.1(2)(a) they say the court has power to extend or shorten the time for compliance with any rule, practice direction or court order (even if an application is made after the time for compliance has expired).

And in practice, there have been exceptions to this rule.¹ There was a 2021 case where the Croyde Area Residents Association in Devon successfully sought a judicial review of the decision of North Devon District Council in 2014 to grant permission to Parkdean Holiday Parks Limited for the use of lodges, static caravans and touring caravans at Ruda Holiday Park.²

And in 2019, the Court of Appeal upheld the quashing of a permission given in 2011 for the erection of 3 marquees to be used for events on the Wirral - when the challenge had been lodged in 2017 and permission to appeal granted in 2018. In that case the judges said that “..the council’s mistake in issuing a decision notice that did not reflect its own lawful decision was and remains – as it concedes – an indisputable error. If the planning permission were not quashed, this manifest unlawfulness would persist.”³

Manifest unlawfulness – strong language. And there the error was sending out a decision notice without the conditions attached. So perhaps an error of similar

¹ <https://www.planoraks.com/posts-1/judicial-reviews-after-6-years>

² <https://www.bailii.org/ew/cases/EWHC/Admin/2021/646.html>

³ <https://www.bailii.org/ew/cases/EWCA/Civ/2019/737.html>

proportions to the one made by this Council in January 2020. So I contend that there is no clear precedent that says the mistake of 2020 must be accepted.

This is a complex legal matter. And you have had little time to consider it. Douglas Edwards KC was appointed to look at this in May. He has had six months to provide advice. You have had six working days in which to consider these issues. And we were given four working days in which to submit questions on it. I submitted 23 questions covering the issues I have just raised on Monday morning and have only had a few hours / minutes to digest the answers. This is no way to make a decision that will affect this land way beyond any of our lifetimes.

And that is particularly true when you are being asked to choose between two outcomes, neither of which address the injustice to residents and both of which in my view carry significant legal risk.

The first choice is to accept the counsel's advice – on issues he was not asked to consider – and to reject the application. This might prompt a judicial review. First, based on the precedents I have cited, it could be a review of the mistaken January 2020 decision. Or it could be a review of today's decision.

So that decision could be challenged in the courts. Or it could go to the Local Government Ombudsman which can investigate planning cases where the issue is, and I quote: "whether the council has done something wrong in the way it went about dealing with certain aspects of the situation" and that includes: "inaccurate information about procedures or planning law."

The second option you are presented with in the report is to go all the way across the spectrum of options and register the land as a village green right here and now without taking evidence from residents or the likely Objector. That would of course invite a judicial challenge by the applicant who has been granted planning permission or the landowner.

And you are warned that if you take that course you need to adduce "clear evidential reasons". Of course you can't summon those up on the fly.

So the pressure is on to go with option 1.

You're being asked to rubber stamp an understandable but far reaching mistake that has consequences for hundreds of people in perpetuity and the only alternative is to invite a legal nightmare.

I submit that you are being faced with what is known as a false binary – a fallacy that presents two options as if they are the only possibilities, when in fact there are others.

In this case if you follow logic and natural justice, the fair outcome would be to recognise that the original application for a village green was valid, to agree with counsel that the CRA was wrong to deem it invalid, and to process it as should have been processed four years ago.

If the same approach were taken as with the lower field, the process would be to hold a non-statutory inquiry into the application as originally submitted. Probably the application would be denied in respect of the lower part of the field as that part has been thoroughly investigated in the November 2023 Inquiry. But the upper part is different. That is where children play, joggers jog, families play ball games and so on – as they have done for decades. That case has never been heard and the reason it has never been heard is because, as the KC says here, the Council got it wrong. That that's simply unfair.

I also believe the recommendation is misleading when it says that "...whilst it was not open to the Inspector to consider the application dated 13 January 2020 in his Advisory Report, the Inspector's conclusions as to the merits of the application would be the same for the period ending 30 November 2020 and the Inspector's recommendation can therefore be relied upon by the CRA." This is because had the application of 13 January been considered as it should have been, with no trigger in force, then it would have covered a different area, namely the upper field as well as the lower one.

So although it pains me to ask, I ask you to defer a decision once again. My request is that someone propose to defer this to January and to ask for a further report that examines the option of processing the application as it should have been processed originally. And I also suggest that this consideration should be in-house rather than handed to an external lawyer.

Deferral will also guard against the risk of a judicial review and provide a space for the parties to discuss matters informally. In simple terms it offers some thinking space to resolve a very tricky conundrum.

I hope you agree and ask that you consider this course of action.

**QUESTIONS ON APPLICATION TO REGISTER LAND AS A VILLAGE GREEN AT:
Southwick Court Fields: Southwick and North Bradley
Application No. 2020/02TVG
Councillor David Vigar, November 2024**

Questions marked in bold

Douglas Edwards KC said that although he found the CRA was wrong not to have accepted the village green application dated 13 January 2020, it could not reverse that decision. He bases this statement on Lord Donaldson's remarks in R. v Panel on Takeovers and Mergers Ex p. Datafin Plc [1987] Q.B. 815 (05 December 1986)¹. Lord Donaldson: "36. I think that it is important that all who are concerned with take-over bids should have well in mind a very special feature of public law decisions, such as those of the Panel, namely that however wrong they may be, however lacking in jurisdiction they may be, they subsist and remain fully effective unless and until they are set aside by a court of competent jurisdiction."

He has subsequently also cited other cases including Noble v Thanet DC [2006] 1 P&CR 13, [42]-[44], [61] (Auld LJ)², in which Auld LJ said "42 ... the domestic law principle is clear, and was correctly applied by the Judge, namely that administrative acts are valid unless and until quashed by a court."

Can the CRA now accept and consider the 13 January 2020 application on the basis that it would be a separate action to reversing the decision to reject it.

Do these precedents make it unlawful for the CRA to consider the 13 January 2020 application?

Do the precedents mean that the rejection of the application had legal force but could have been overturned by a court, had an application for judicial review been made?

¹ <https://www.nadr.co.uk/articles/published/ArbitrationOlderReports/Data%20Fin%201986.pdf>

² <https://www.bailii.org/cgi-bin/markup.cgi?doc=%2Few%2Fcases%2FEWCA%2FCiv%2F2005%2F782.html&query=thanet%202005&method=all>

On the possibility of the case being subject to legal challenge, Douglas Edwards said that any claim for judicial review would be well out of time.

Civil court procedure rules state at 54.5(5) that “Where the application for judicial review relates to a decision made by the Secretary of State or local planning authority under the planning acts, the claim form must be filed not later than six weeks after the grounds to make the claim first arose.”³

However, they also state at 3.1(2) “(2) Except where these Rules provide otherwise, the court may – (a) extend or shorten the time for compliance with any rule, practice direction or court order (even if an application for extension is made after the time for compliance has expired)”.⁴

There are cases where the Court has accepted and heard a judicial review in respect of a planning matter several years after the decision being challenged. Examples are: R. (Croyde Area Residents Association) v North Devon District Council and Parkdean Holiday Parks Ltd [2021]⁵ and R (Thornton Hall Hotel Ltd) v Wirral MBC and Thornton Holdings Ltd [2019].⁶

In the former, Mrs Justice Lieven said: 86 “It would be very hard to explain to a member of the public why a permission which was granted in complete error ... should not be quashed.”

Might an application for judicial review be granted in this case despite the passage of time – taking these precedents into account?

The Local Government Ombudsman will investigate some planning cases. Its website says:

“...sometimes something happens which cannot be remedied by an appeal to the Planning Inspectorate and it would not be reasonable for you to be expected to pursue an appeal. In such cases we have discretion to consider whether to investigate your complaint.

³ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part54#54.5>

⁴ <https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part03>

⁵ <https://www.bailii.org/ew/cases/EWHC/Admin/2021/646.html>

⁶ <https://www.bailii.org/ew/cases/EWCA/Civ/2019/737.html>

“In those complaints by people who have made planning applications which we can investigate we would consider whether the council has done something wrong in the way it went about dealing with certain aspects of the situation which have caused you problems. Some of the issues we can look at might include whether you have been given:

- inaccurate information about procedures or planning law
- misleading advice in advance of making an application, or
- no or an inadequate response to correspondence about your development proposals before an application is made or determined.”⁷

Could this case be the subject of a complaint to the Ombudsman?

⁷ <https://www.lgo.org.uk/make-a-complaint/fact-sheets/planning-and-building-control/how-your-application-for-planning-permission-is-dealt-with>

iii) Mr F Morland - Representations 18 November 2024

From:

To:

Cc:

Subject:

Application to Register Land as Town or Village Green - Southwick Court Fields

Sent:

18/11/2024 15:16:13

Dear Senior Definitive Map Officer,

Thank you for the list of cases, all of which appear to me to be further examples of the general caselaw on the so-called Presumption of Regularity, as is the passage per Lord Donaldson MR in *R v Panel on Takeovers and Mergers ex parte Datafin plc* [1987] QB 815 at p. 840 cited in [44] of the Counsel's Advice. However, they all relate to challenges by other parties to the decisions in question and are not authority for Counsel's extension of that presumption to bind the decision taker too (viz., "The CRA cannot now unilaterally reverse the decision that it took on 24 February 2020". See also [50] :- "Although the CRA's determinations in respect of the 13 January 2020 and 11 June 2020 applications were wrong, substantively and procedurally, for the reasons I have given, neither determination can now be reversed by the CRA.").

In fact, the relevant caselaw demonstrates that that presumption does not prevent the decision taker from reviewing/changing/reversing "wrong" decisions, if it sees fit to do so and uses fair procedures for that purpose.

The earliest case addressing this issue was that of the Privy Council in *De Verteuil v Knaggs* [1918] UKPC 29, when Lord Parmoor said "there is no reason why the acting Governor may not at any time review or alter a decision previously given, and it may be his duty to do so, in the prudent exercise of his discretion, on a further consideration of all the relevant factors after full enquiry".

Lord Reid cited that precedent in *Ridge v Baldwin (No 1)* [1963] UKHL 2, when he said "I do not doubt that if an officer or body realises that it has acted hastily and reconsiders the whole matter afresh after affording to the person affected a proper opportunity to present his case then its later decision will be valid".

That passage was cited by Lord Carswell in *Grant v The Teacher's Appeals Tribunal* [2006] UKPC 59, when he said "their Lordships do not consider that a hearing will necessarily be unfair if a committee or other body has heard a complaint before and proceeds to rehear it before reaching a final decision. The rehearing may still be fair and valid even if the committee has earlier reached a conclusion on the subject matter, provided it gives genuine and fair consideration to the case and any further facts or arguments put before it on the second occasion".

Unfortunately, judicial comment on the Presumption of Regularity (including that in the *Datafin* case) is usually articulated in contexts in which the relevant decision-maker has not agreed to reconsider his own initial decision. However, a review of the

authorities cited above makes it readily apparent that although in practice administrative decisions are ordinarily only set aside by way of court order, the true legal position is that administrative bodies can generally reconsider their decisions should they wish to do so.

In the light of Regulation 5(4) of The Commons (Registration of Town or Village Greens)(Interim Arrangements)(England) Regulations 2007 (SI No. 457) and [44] of the judgment of Arden LJ in *R (Church Commissioners for England) v Hampshire County Council* [2014] EWCA Civ 634, it also seems to me that the finding in the Inspector's Advisory Report of 9 February 2024 that Mr Swanney in substance made only a single TVG application (dated 13 January 2020 and given the reference number 2020/02TVG by the CRA), which has not yet been determined, is much to be preferred to that in the Counsel's Advice of 16 October 2024 that the position should be construed as him having made a series of such applications (all bearing the same date of 13 January 2020!), the first and second of which were determined, wrongly rejected as invalid and returned to Mr Swanney by the decisions of officers on 24 February 2020 and 7 October 2020 respectively, and only the third of which remains undetermined.

Counsel's Advice is that the decisions on 24 February 2020 and 7 October 2020 are now long out-of-time for challenge by Judicial Review. However, I am doubtful that that would be the position if the Inspector's approach/finding of there having been only a single application not yet determined is the correct one.

The House of Lords considered the issue in *R v London Borough of Hammersmith and Fulham ex parte Burkett* [2002] UKHL 23 and held that in cases involving planning law, the time limit for Judicial Review challenges did not start to run until the date on which the planning permission was actually granted (being the date on which the decision notice was issued).

In the leading judgment, Lord Steyn said:-

[37] ... "These provisions [RSC Ord 53, r 4(1) and CPR r 54.5(1)] apply across the spectrum of judicial review applications. Making due allowance for the special features of town planning applications, an interpretation is to be preferred which is capable of applying to the generality of cases. ... [43] ... "the rule of court applies across the board to judicial review applications. ... In my view the time limit under the rules of court would not run from the date of such preliminary decisions in respect of a challenge of the actual decision. If that is so, one is entitled to ask: what is the qualitative difference in town planning? There is, after all, nothing to indicate that, in regard to RSC Ord 53, r 4(1), town planning is an island on its own. ... [45]. First, the context is a rule of court which by operation of a time limit may deprive a citizen of the right to challenge an undoubted abuse of power. And such a challenge may involve not only individual rights but also community interests, as in environmental cases. This is a contextual matter relevant to the interpretation of the rule of court. It weighs in favour of a clear and straightforward interpretation which will yield a readily ascertainable starting date. ... [46]. Secondly, legal policy favours simplicity and certainty rather than complexity and uncertainty. ... In procedural legislation, primary or subordinate, it must be a primary factor in the interpretative process, notably where the application of the procedural regime may result in the loss of

fundamental rights to challenge an unlawful exercise of power. The citizen must know where he stands. And so must the local authority and the developer. ... [50]. Thirdly, the preparation of a judicial review application, particularly in a town planning matter, is a burdensome task. ... An applicant is at risk of having to pay substantial costs which may, for example, result in the loss of his home. ... They further reinforce the view that it is unfair to subject a judicial review applicant to the uncertainty of a retrospective decision by a judge as to the date of the triggering of the time limit under the rules of court".

Under the heading "Challenging Multi-step Administrative Action", the Supreme Court considered the position further in *R(Fylde Coast Farms) v Fylde Borough Council* [2021] UKSC 18 as it affected challenges to neighbourhood plans (Section 61N of the Town and Country Planning Act 1990); (viz. "where a public law measure is taken at the end of and on the basis of a series of steps and its lawfulness is contingent on the lawfulness of each of the steps leading up to it" [36]); and said (at [38]) "requiring a claimant to take action in relation to the step along the way could be perceived to be premature and potentially wasteful (in that, if one waited, it could transpire that for various reasons the final decision might not be taken, so that there would in fact have been no need for any challenge); it could also be perceived as placing the claimant under a heavy burden of trying to assess the future impact of an administrative process on him and then taking prompt action at a stage when the outcome of that process is not clear. ... Particularly where the applicable law is complex, it may be relatively easy to find that a public authority has innocently slipped into some unlawfulness along the way to taking a final decision". It noted (at [40]) that in the *Burkett* case the House of Lords had held "that it was open to the claimant to wait until the end of the decision-making process to see if they needed to take any action" and concluded (at [41]) that "There is no clear presumption how the balance should be struck in the context of the statutory regime under consideration here which could offer any guidance regarding the interpretation of Section 61N. Parliament was entitled to strike the balance in this particular context as it thought fit and the words of the provision itself provide a clear answer as to how it intended that should be achieved".

For these reasons, I do not agree that a Judicial Review of the final decision on the Southwick Court Fields application 2020//02TVG could not remedy the "wrong" decisions of officers on 24 February 2020 and 07 October 2020; so there are compelling reasons why Wiltshire Council (either by its Western Area Planning Committee or otherwise) should now re-take and correct those decisions (and in consequence instruct the Inspector, or another experienced barrister, to conduct another non-statutory public inquiry and submit another Advisory Report on Mr Swanney's TVG application for the whole of the application area on 13 January 2020, there having been no trigger events in force on that date).

Yours sincerely,

Francis Morland



E&OE: Disclaimer

From: Green, Janice <janice.green@wiltshire.gov.uk>

Sent: 11 November 2024 09:33

To:

Cc:

Subject: Application to Register Land as Town or Village Green - Southwick Court Fields

Dear Mr Morland,

Commons Act 2006 – Sections 15(1) and (2)

Application to Register Land as Town or Village Green – Southwick Court Fields

Application no: 2020/02TVG

-

Following the meeting of the Western Area Planning Committee dated 6th November, please find attached below list of cases referred to in the discussion:

Smith v East Elloe RDC [1956] AC 736, 769-70 (Lord Radcliffe)

Noble v Thanet DC [2006] 1 P&CR 13, [42]-[44], [61] (Auld LJ);

R(oao Wingfield) v Canterbury CC [2019] EWHC 1974 (Admin), [63] (Lang J)

Kind regards,

Janice Green

Senior Definitive Map Officer Rights of Way and Countryside

Wiltshire Council County Hall Trowbridge BA14 8JN

Telephone: Internal 13345 External: +44 (0)1225 713345 Email: janice.green@wiltshire.gov.uk

Information relating to the way Wiltshire Council will manage your data can be found at:

<http://www.wiltshire.gov.uk/recreation-rights-of-way>

Report a problem: <https://my.wiltshire.gov.uk/> Web: www.wiltshire.gov.uk

APPENDIX B - Legal Opinion from Lord Banner KC dated 20 November 2024, submitted by Mr D Richardson (Ashfords LLP) on behalf of Waddeton Park Ltd, with covering e-mail dated 22 November 2024

From: [David Richardson](#)
To: [Green, Janice](#)
Cc: [Slack, Trevor](#); [Newbury, Christopher](#); [Ghey, Ellen](#);
Subject: Application to Register Land as Town/Village Green, Southwick Court Fields - 2020/02TVG [ASHFORDSLLP-ACTIVE.FID8557870]
Attachments: [TROWBRIDGE SOUTHWICK 20Nov24\(42405586.1\).pdf](#)
Sent: 22/11/2024 11:30:52

Dear Ms Green,

Application to Register Land as Town or Village Green – Southwick Court Fields, Southwick and North Bradley

Application no.2020/02TVG

I am instructed by Waddeton Park Limited, and I am writing to you in your capacity as case officer for the above application to register land as a Town and Village Green ('TVG').

Our client is very concerned by the continuing, and unnecessary, delays in the Council making a final decision on this matter notwithstanding receiving an Inspector's recommendation and an opinion from the pre eminent KC in TVG matters, Mr Douglas Edwards. Our client has itself sought a legal opinion, from Lord Banner KC, as to the questions raised by Councillors in relation to Mr Edwards' advice, and I now attach that opinion for your attention. You will read that it is clear in its conclusions (as was Mr Edwards) and wholly supports the findings of Mr Edwards.

I have copied this to Mr Slack in your legal team and to Mr Newbury as Chair of the Western Area Planning Committee, and request that the attached opinion is made available to members of the committee in advance of the meeting now scheduled for 4 December 2024.

Kind regards

David Richardson
Partner and Head of Planning

d.richardson@ashfords.co.uk

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IN THE MATTER OF:

LAND AT SOUTHWICK, TROWBRIDGE, BA14 0AG

OPINION

I. INTRODUCTION

1. I am instructed by Ashfords LLP on behalf of Waddeton Park Ltd (“WPL”) in relation to Land at Southwick, Trowbridge, BA14 0AG (“the Site”). The Site is allocated for residential development in the Wiltshire Sites Allocation Plan (“WHASAP”). It is the subject of an outline planning permission for up to 180 dwellings granted by Inspector John Longmuir on appeal on 20th March 2024.
2. Separately to the planning appeal, in 2020 part of the Site was the subject of multiple applications, by local residents, for registration as a town/village green under s.15(2) of the Commons Act 2006 (“the 2006 Act”). These applications were made to Wiltshire Council (“the Council”) in its capacity as Commons Registration Authority under the 2006 Act.
3. The first two applications, dated 13th January 2020 and 11th June 2020, were held by the Council to be invalid.
4. An Inspector, Mr William Webster, was appointed by the Council to hold a non-statutory public inquiry into the third application, dated 30th November 2020. That inquiry took place in November 2023. Mr Webster reported on 9th February 2024. The Council sought legal advice from Douglas Edwards KC, the pre-eminent silk on town/village green matters, who issued his written Opinion on 16th October 2024. I have read that Opinion. I assume the reader of my Opinion will be familiar with its contents, which I do not repeat here.
5. Mr Edwards concluded that the Council’s rejection of the 13th January

2020 and 11th June 2020 applications was wrong, but that: (i) they were out of time for challenge and could not now be called into question; (ii) although the Inspector was wrong to treat the third application as having been made on 13th January rather than 30th November 2020, this did not affect his conclusions that this application should fail because the factual findings leading him to find that village green status had not been acquired over the 20 year period up to 13th January 2020 would equally have precluded village green status having been acquired over the 20 year period to 30th November 2020.

6. The Council's Western Area Planning Committee met on 6th November 2024 to determine the third application. An officer's report recommended that the application be rejected in the light of Mr Webster's report and Mr Edwards' opinion.
7. Contrary to that advice, the Committee instead decided to defer the matter, and it was requested by Councillor Vigar at the meeting that such deferral should be for two months (I understand that in fact this matter is now to be considered again at the meeting scheduled for 4 December 2024). I have watched the video recording of that meeting on YouTube. The principal concern of members appears to be whether the principle relied upon by Mr Edwards, for his conclusion that the Council's rejection of the 13th January 2020 and 11th June 2020 applications cannot now be called into question, is applicable in this context.
8. I am asked to advise WPL on the legal soundness of the Committee's approach.

II. ANALYSIS

9. I am of the firm view that the Committee's decision to defer the determination of the third application was wrong in law.

10. The principle of formal validity of administrative acts, namely that a decision made pursuant to public law functions must be given all the effects in law of a valid decision unless and until it is quashed pursuant to a challenge made under the applicable procedure (usually judicial review) and within the applicable time limit (usually three months), is a general principle of public law. It has been applied in a range of contexts, including planning and associated local-government decision making. See e.g. *R (Noble Organisation Ltd.) v. Thanet District Council* [2006] Env. L.R. 8 , per Auld LJ at para. 42:

“[T]he domestic law principle is clear, and was correctly applied by the Judge, namely that administrative acts are valid unless and until quashed by a court: see *Hoffman-La Roche & Co v Secretary of State for Trade and Industry* [1975] AC 295, HL, per Lord Diplock at 366A-E; and *R v Restormel BC, ex p Corbett* [2001] EWCA Civ 330, [2001] 1 PLR 108, per Schiemann LJ at paras 15 and 16. If the time has passed for them to be challenged by way of judicial review, they stand notwithstanding that the reasoning on which they are based may have been flawed: see *O'Reilly v Mackman* [1983] 2 AC 237, HL, per Lord Diplock at 283F. For an example of the application of that principle in a closely related context to planning, see *Lovelock v Minister of Transport* (1980) P& CR 336, CA, per Lord Denning MR at 345, in which the Court declined to quash a compulsory purchase order, notwithstanding its unlawfulness, because the challenge was too late.”

11. The first instance judgment of Richards J. (as he then was), which was expressly upheld in the above passage, had similarly held:

"35. The starting point must be the validity of the outline planning permissions granted in June 1997 and January 2002 respectively, for the business park and the leisure development respectively. They were not challenged at the time, there has been no application to challenge them out of time, and there would be no realistic prospect of time being extended so as to permit a challenge now. On the basis of well established principles supported by the authorities ... including the dicta of Lord Diplock in *Hoffmann-La Roche* and *O'Reilly v Mackman*, those earlier consents must be given all the effects in law of valid decisions. The same applies to the June 2000

screening decision that the application for the leisure outline planning permission did not need to be accompanied by an EIA.

36. In those circumstances the council was plainly entitled, when considering the application for reserved matters approval, to have regard to the earlier decisions. In particular, the two outline planning permissions were extant, lawful consents in respect of the same site (or, in the case of the business park permission, in respect of a larger area of land of which the site formed part) and were properly taken into account as material considerations. Indeed, the application for reserved matters approval was necessarily premised on the validity of the leisure outline planning permission pursuant to which the application was made.

37. Equally, the claimant is plainly not entitled to use the present claim as a means of mounting an indirect or collateral challenge to the validity of the earlier decisions."

12. It follows from this that Mr Edwards KC, with whose Opinion I am in entire agreement, was right to conclude that the the Council's rejection of the 13th January 2020 and 11th June 2020 applications, which could have been but was not challenged at the time by way of judicial review, cannot now be called into question. They must, as a matter of law, be treated as valid and given all the effects in law of valid decisions. There are very rare instances of the Court allowing judicial review claims to be brought 'out of time'. But the Court has been clear in stating that these do not set a precedent, and there must be exceptional circumstances for such claims to proceed. No such exceptional circumstances exist in this case. There is no realistic prospect of a judicial review claim being allowed to proceed out of time in this case.
13. It also follows that the Committee in deferring its decision - contrary to the advice of its officers and of Mr Edwards KC - acted on a misapprehension of the law and thus unlawfully.
14. I understand that the delay, should it continue, is liable to cause WPL significant commercial prejudice. If the Committee is unable to make its decision at its next meeting in December, it would be worth exploring

potential financial remedies that can be sought against the Council either for negligence or breach of WPL's right under Article 6 ECHR to a determination within a reasonable timescale.

V. CONCLUSION

15. I have nothing to add as currently instructed but would be happy to answer any further questions arising out of the advice above, if and when required.



LORD BANNER K.C.

**Keating Chambers
15 Essex Street
London WC2R 3AA**

20th November 2024

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REPORT FOR THE WESTERN AREA PLANNING COMMITTEE

Date of Meeting	4 December 2024
Application Number	PL/2022/09425
Type of application	Approval of reserved matters
Site Address	Elm Grove Farm, Drynham Road, Trowbridge, Wilts, BA14 0PL
Proposal	Demolition of existing buildings and structures and construction of 248 residential homes, playing pitches, allotments, areas of open space, upgrading of existing play area, sustainable drainage infrastructure, internal roads, paths and parking areas, landscaping and associated works, plant and infrastructure (Reserved Matters Application pursuant to 19/11459/OUT - relating to appearance, landscape, layout and scale) (Amended Details)
Recommendation	Approve with Conditions
Applicant	Redrow Homes
Town/Parish Council	Trowbridge CP
Electoral Division	Trowbridge Drynham ED - Councillor Antonio Piazza
Case Officer	Jemma Foster

Reason for the application being considered by Committee

The application is before the Western Area Planning Committee because it was called in by Councillor Antonio Piazza for the following reasons:

- Scale of development
- Visual impact upon the surrounding area
- Relationship to adjoining properties
- Design- bulk, height, general appearance
- Environmental/Highway Impact
- Car parking

Councillor Piazza also raised the following concerns on the application as first submitted:

- Proposed changing facility is not large enough to serve as a community hub and is boring and utilitarian. Also concerned with pitch specification meaning the maintenance of the pitches could be difficult. Concerns that are supported by Sport England and the Councils Urban Designer
- Access is from the A363. There is another development happening opposite Elm Grove where access will also be needed from A363 – why can they not be integrated

- Flooding and drainage are a concern and I would like reassurance from officers potentially through conditions as originally brought up in the outline application and that the mitigation measures are in place and all existing and new dwellings are protected
- Please take into account the comments raised by the residents living in the area. A meeting was set up with Redrow which was positive engagement and they have kindly donated £500 to the Max George fundraiser where two benches will be installed on the QEII field remembering him

Councillor Piazza then made the following comments on the amended plans:

- Very little has changed despite objections
- Concerns primarily relate to the hammer head placement and vehicular access to the cottages – the position raises noise and air quality concerns from larger vehicles such as refuse collection trucks and lorries. It also raises safety concerns with an increase in accidents involving pedestrians and children who like to play near their homes. It is located adjacent to a neighbouring garden which will be detriment to their amenity. I am also concerned about the increased risk in localised flooding and water runoff issues.
- The need to access these cottages is required by emergency vehicles and other essential services including waste collection and deliveries.
- Moving the hammerhead will allow proper vehicle access to cottages, and ensure that those who live in these cottages will not be disproportionately affected by the new development.
- There is a green strip of land in the middle of the development. This inclusion remains completely unnecessary, serving no functional purpose and will result in Trowbridge Town Council being responsible for its maintenance in the future. It should be removed from the scheme.
- I am unable to find the Councils Ecology report on line and no Habitats Regulation Assessment which is an essential part of the analysis of the impact of development upon Ecology – these key documents should be made available to all stakeholders particularly residents to allow for informed feedback and as such the consultation deadline will need to be extended to accommodate this.
- This development will be provided by gas heating which the Government is apparently discouraging. Why are heat pumps/solar panels not being used to comply with CP41

1. Purpose of Report

The purpose of the report is to assess the merits of the proposal against the policies of the development plan and other material considerations and to consider the recommendation that the application be approved.

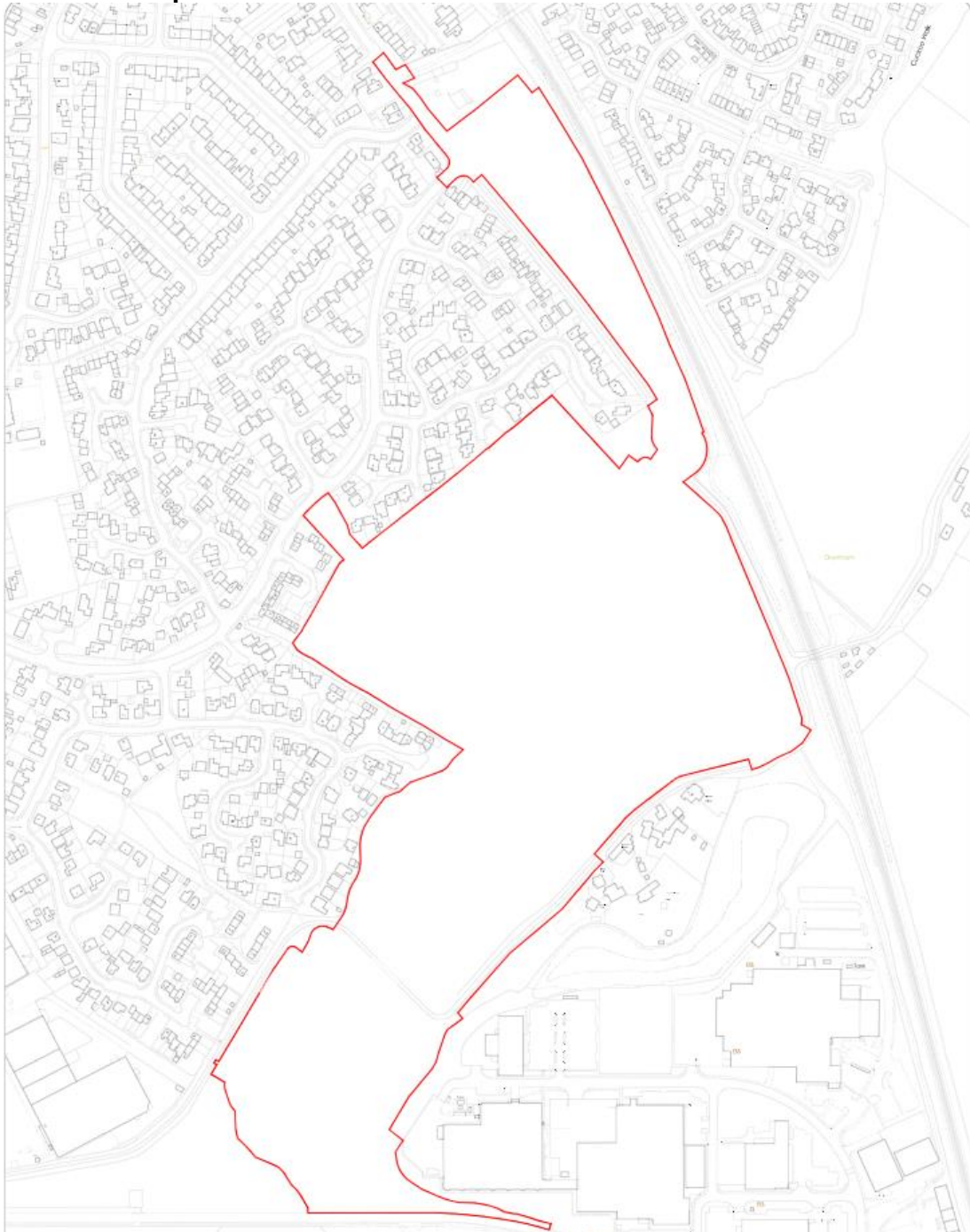
2. Report Summary

The main issues to be considered are:

- The principle of the development
- Scale, Design and Layout
- Landscape and Visual Impact
- Heritage Impact
- Drainage
- Ecological Impact
- Impact on Amenity

- Highways
- Other Material Matters
- CIL
- Section 106 Legal Agreement

3. Site Description



The application site measures 16.9 hectares and adjoins the existing built limits of the south-eastern edge of Trowbridge and the White Horse Business Park to the south. The site is bounded by the railway line to the east and existing residential development to the northwest and the Queen Elizabeth II (QEII) recreation field which measures 2.89 hectares. The site is

currently accessed via Drynham Lane from the north off Wiltshire Drive and to the west via Bradley Road.

There are no public footpaths that cross the site but a recent construction footway/cycle link over the railway line connects the northern boundary of the site to the Byway along Drynham Road. The existing use of the land is agricultural along with 2 dwellings.

The site benefits from outline planning permission for up to 261 dwellings under application 19/11459/OUT.

The proposed changing facility has not been included as part of this application and will be submitted as an additional reserved matters application following discussions with Sport England and Trowbridge Town Council.

4. Planning History

19/11459/OUT – Erection of up to 261 dwellings – Approval endorsed by the Strategic Planning Committee at its meeting on 12 January 2022 subject to a s106 legal agreement which was sealed on 31/10/2022 when outline permission was granted

2021/04087/DEM – Prior Notification of proposed demolition of Elm Grove Farmhouse and associated agricultural buildings – Prior Approval Granted 13/05/21

2021/03276/DEM – Prior Notification of proposed demolition of Elm Grove Farmhouse and associated agricultural buildings – Withdrawn

PL/2022/08859 – Discharge of condition 5 (phasing plan) – Approved 11/01/2023

PL/2024/03327 – Erection of two advertisement signs – Approved 18/06/2024

5. The Proposal

This is a reserved matters application for the demolition of the existing buildings and structures and construction of 248 residential homes, playing pitches, allotments, areas of open space, upgrading of existing play area, sustainable drainage infrastructure, internal roads, paths and parking areas, landscaping and associated works, plant and infrastructure (Reserved Matters Application pursuant to 19/11459/OUT - relating to appearance, landscape, layout and scale)

During the course of the application, amended plans were submitted for the following:

- The number of three-bedroom properties has been increased (67 to 96 properties)
- The spread of affordable housing has been distributed more evenly across the site including the earlier phases
- The number of M4(2) compliant homes has been increased to 9 units
- More active frontages through corner homes
- The cycle route has been re-routed off the main vehicular route and will be lit
- The removal of the footpath to the rear of existing dwellings on Lydiard Way
- Plots 234 – 248 have been pulled back from the grade II listed Southview Farmhouse
- Bus stops have been included
- The turning head approved as part of the outline permission has been re-introduced after residents were unhappy with the proposed limited access onto Drynham Lane
- Design changes throughout the site regarding materials
- Bin and cycle stores have been redesigned to provide a larger capacity

The proposed layout is as follows:



6. Planning Policy

The Wiltshire Core Strategy (adopted Jan 2015):

CP1 – Settlement Strategy, CP2 – Delivery Strategy, CP3 – Infrastructure Requirements, CP29 – Spatial Strategy Trowbridge, CP43 – Providing affordable homes, CP45 – Meeting Wiltshire’s housing needs, CP46 – Meeting the needs of Wiltshire’s vulnerable and older people, CP50 – Biodiversity and Geodiversity, CP51 – Landscape, CP52 – Green Infrastructure, CP55 – Air Quality, CP56 – Contaminated Land, CP57 – Ensuring High Quality Design and Place Shaping, CP58 – Ensuring the Conservation of the Historic Environment, CP60 – Sustainable Transport, CP61 – Transport and New Development, CP62 – Development Impacts upon the transport network, CP63 – Transport Strategic CP64 – Demand Management, CP67 – Flood Risk

Saved Policies for the West Wiltshire District Local Plan (1st Alteration):

U1a Foul Water Disposal and U2 Surface Water Disposal

Other Material Considerations

- National Planning Policy Framework December 2023
- Planning Practice Guidance (PPG)
- North Bradley Neighbourhood Plan (made 19th May 2021)
- The adopted Wiltshire Design Guide
- Trowbridge Bat Mitigation Strategy (TBMS) SPD
- The Wiltshire Waste Core Strategy (adopted 2009)
- Wiltshire Housing Site Allocations Plan (adopted Feb 2020)
- Policy WCS6 - Waste Reduction and Auditing
- The Wiltshire Local Transport Plan (LTP) and Car Parking Strategy
- Circular 06/2005 – Biodiversity and Geological Conservation
- “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3)
- The Council’s present housing land supply shortfall at 3.85 years supply.

7. Consultation responses

Trowbridge Town Council

Objected to the plans first submitted arguing the following:

1. The footpath behind Lydiard Way needs to be removed
2. The attenuation pond to Lydiard Way side needs to be moved
3. Lack of turning area for field access to plot 52
4. Recordings of the Elm Grove farm buildings for historical purposes
5. We would like a reconsideration of the design and size of the new changing rooms

Objected to the second round of consultation for the following reasons

- 1.Planned buffer zones do not meet the requirements of the Trowbridge Bat Mitigation Strategy.
2. Drynham Lane/bottom of Wiltshire Drive currently suffers from a bottleneck and speeding that has resulted in a number of accidents. A “raised centre” is requested for the proposed roundabout to ensure traffic will have to physically drive around the roundabout.
3. Objection to the new planned road in Drynham Lane – Originally a ‘Hammerhead’ junction

had been planned. We request the reinstatement of the Hammerhead but wish it to be situated further along the lane towards North Bradley in order to retain the integrity of the village lane setting.

4. Lydiard Way - Erosion of bank – Ensure an extra relief canal will be incorporated.
5. We are aware of substantial and regular sewage issues relating to the existing estate, especially on Lydiard Way, and request that no new sewage is fed into existing sewers pipes.
6. Position of Substation – We seek assurances that the station will be sited 30 metres from the nearest property and that the hedge will be replaced.
7. A363 entrance/exit point. To ensure that all work vehicles and related plant, including contractors' personal vehicles, access the construction site solely via the A363.
8. Queen Elizabeth Field – Given the frequent flooding of the Queen Elizabeth field, and the intention to add two playing pitches adjacent to the playing field, there is an urgent requirement to install drainage for the existing playing field. Any further development will exacerbate the existing flooding and continue to restrict the current amenity of the field and children's play equipment.
9. Review the 'No Right Turn' on Dursley Road

Objected to the final amended plans for the following reasons:

In order to normalise the arrangements for grass cutting and the split of responsibility between the management company to be established and the Highway Authority or agents, the small pockets of grass along the highway should be removed from the proposals and either transferred to the management company or surfaced with alternative treatment.

Wiltshire Council Highways No objection

Wiltshire Council Public Rights of Way Officer No objection

Wiltshire Council Drainage Supportive subject to conditions

Wessex Water – No objection –and noted that the existing foul sewers cannot be removed

Environment Agency – No comments as the proposal falls outside the EA consultation remit.

Wiltshire Council Arboricultural Officer No objection subject to a condition

Wiltshire Council Public Open Space Officer Supportive with regard to the on-site play area

Wiltshire Council Public Protection Officer No objection subject to condition

Wiltshire Council Air Quality Officer - No objection

Wiltshire Council Affordable Homes Officer No objection to amended plans

Wiltshire Council Urban Designer No objection

Wiltshire Council Waste Officer - Supportive

Wiltshire Council Conservation Officer – I note that plots 243-248 have been pushed back from the grade II listed South View Farmhouse – which is welcomed but the comments dated 02/05/2023 remain relevant:

It has been accepted that the granted outline housing proposal would result in less than substantial harm to the heritage asset by virtue of developing land within the setting of the aforesaid listed building.

The revised layout currently under consideration would not change that assessment for the purposes of interpretation of the NPPF, and would result in an incremental erosion of the

setting of the farmhouse and therefore slightly increase the level of harm which is required to be offset by public benefits. Ideally the proposed additional houses would be omitted from the scheme. However, in recognition that the principle of developing this site for up to 261 dwellings has already been granted, it falls to the decision maker to assess the benefits which would accrue from this scheme and to weigh these against the slightly increased heritage harm which would be caused and any other planning constraints and to reach a view on the final planning balance.

Wiltshire Council Police Liaison Officer – Only commented on the first submission and found the enclosures plan to be unclear as to what the sub-divisional fencing would be. The key shows a broken line in blue representing 1.8m close-board fence, and a green line and box representing mesh fence whereas the plan shows a green broken line for subdivisional fencing. The sub-divisional fencing should be 1.8m close board fencing to provide the appropriate level of safety and security for the residents, homes and property.

Sport England – No objection and argued that the changing pavilion is not needed to support the mini/junior football pitches. It would be better that an activity hub is created, and any cost savings be reinvested into delivering one of the items identified in the playing pitch strategy action plan. An agronomist should be involved in the creation of the proposed pitches.

Network Rail – Holding objection subject to securing S106 contributions to provide an alternative means of access due to the proposed development causing additional risk to safety at both the White Horse Level Crossing and the Yarnbook Level Crossing.

Wiltshire Council Landscape Officer No objection but highlighted a few areas of concern

Wiltshire Council Ecology Officer – No Objection subject to conditions

Natural England – Following discussions, no objections to the proposal but advised that the proposals adhere to the Trowbridge Bat Mitigation Strategy throughout the site, notably in

8. Publicity

The application was advertised by way of a site notice and neighbour notification letters. An advert was also placed in the press. The following is a summary of the issues raised by approximately 67 members of the public / third parties.

Objections –

Principle

Size and scale totally inappropriate and in the wrong area
Should be converting empty buildings before granting new ones
Why are we building on the green belt - There is no need for more housing
Why is the affordable housing in clusters and not split over the whole site

Impact on Area

Impact on wildlife with habitats being destroyed – removal of wildlife corridors
Area floods – it is on the flood plain of the River Biss and tributaries
Existing drainage is terrible – this will only exacerbate it
The buffer space needs to be wider
The TBMS is not being adhered to and should fail the HRA
How can the QE II Fields be included within the 53% buffer zone for the TBMS
There is a footpath/cycleway within Zone B of the TBMS directly behind people's homes and therefore the 15m/30m/45m buffer zone required is not being adhered to

Insufficient space being provided for the bat corridor
Will the brook actually be cleared
Scale and density are out of keeping
The access on the A363 will remove a drainage pond to the Industrial Estate
No solar panels, no EV Charging points, no disabled parking spaces, no coach parking at the fields
Loss of dog walking facilities

Impact on Amenity

The attenuation ponds have been moved closer to our properties
Will the landscaping actually be implemented
Processing of foul waste so close to my property will cause odour and noise
What will happen if the developers come across Anthrax
Increase in noise along Wiltshire Drive from the extra traffic and HGV's
What will the working hours be
Light pollution from the floodlights at the football pitches
The security and privacy of existing residents has not been taken into consideration
The hammer head by our properties will cause noise and disturbance and an increase in air quality concerns – it needs to be moved further away
There is a power substation to be put next to Drynham Lane next to Lydiard Way – these create a vibrative noise which is very irritating and needs to be moved.

Impact on Highways

High volume of traffic already on Wiltshire Drive and will worsen with this development
Wiltshire Drive is a rat run and becoming a hazard with all the parked cars
Remove the footpath behind Lydiard Way
Traffic calming measures need to be incorporated
Impact on nearby roads and junctions
The plans block access to the farm on Drynham Lane
Has the awful hammerhead proposed outside of our house on Drynham Lane been removed
Where will construction traffic access and park
Insufficient parking spaces for the sports field
Object to the roundabout at Wiltshire Drive/Drynham Road

Other Matters

Why is the QEII land being included within the proposed scheme
Where is the infrastructure to support this development – doctors surgeries, school, dentist
Trowbridge Town Centre is run down – it is a disgrace of a County Town
Railways are over capacity
Additional flooding will push up insurance costs
Why cant we have a full sized football pitch comprised of astro
The public have not been given transparent access to the democratic process to have their voice heard
Who has secured a healthcare contribution and what is it for
Why cant we have some shops and local CCTV

Salisbury and Wilton Swifts – The submitted ecology information is not consistent, the proposed provision of swift boxes falls short of the required ratio. No consultation response was received on the additional information.

9. Planning Considerations

9.1 Principle of Development

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications

must be made in accordance with the Development Plan, unless material considerations indicate otherwise.

The site subject of this application is an allocated site known as H2.1 in the Wiltshire Housing Site Allocations Policy (WHSAP) document and benefits from outline planning approval for up to 261 dwellings having been granted under application 19/11459/OUT. Therefore, the principle of development has already been approved.

This application is to determine whether the detailed reserved matters comply with this policy alongside the relevant policies in the Core Strategy and NPPF.

Policy H2.1 states that the site has been allocated for a mixed-use development comprising of the following elements which the outline application has already secured:

- *Approximately 250 dwellings;*
- *A multi-purpose community facility co-located with existing or improved open space;*
- *A significantly improved and consolidated public open space area incorporating the existing Queen Elizabeth II field to provide a play area, a junior level sports pitches and changing facilities for local community teams to utilise;*
- *A road from the A363 through to an improved junction of Drynham Lane and Wiltshire Drive; and*
- *Improvements to cycling, walking routes through the site to link into the existing network and the proposed Ashton Park Strategic Allocation site and the White Horse Business Park.*

The WHSAP allocation policy document also states that the development should be subject to the following which will be assessed later in the report:

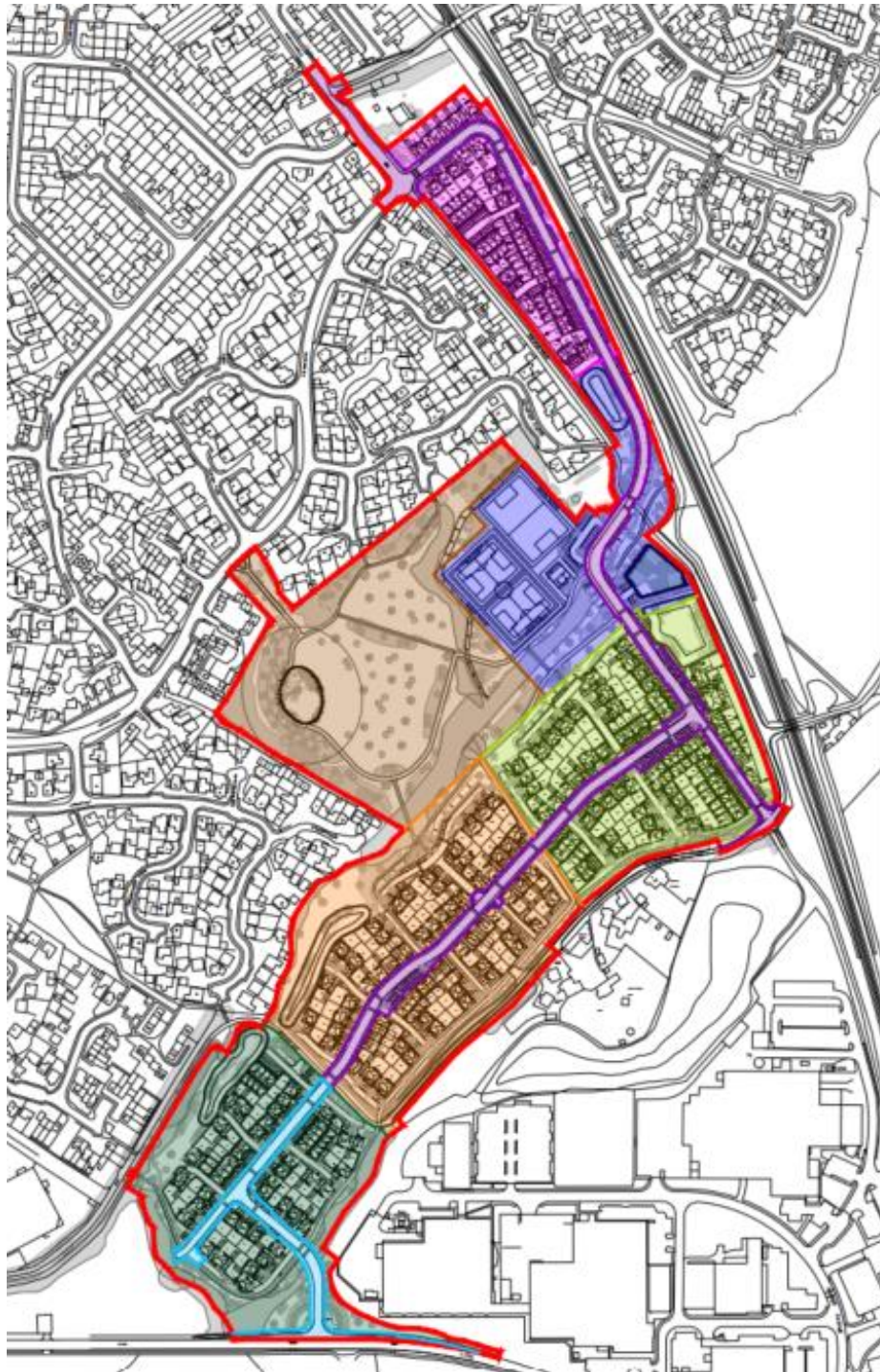
- *Sensitive design and layout, which ensures the significance of heritage assets and their settings are not subject to unacceptable harm. This shall be informed by appropriate heritage and archaeological assessments;*
- *Retention and enhancement of existing hedgerows and trees as part of wider landscaping and green infrastructure requirements;*
- *Core bat habitat will be protected and enhanced. Design and layout will be informed by appropriate surveys, impact assessments and the Trowbridge Bat Mitigation Strategy (TBMS);*
- *Appropriate mitigation to protect bats, including financial contributions towards management, monitoring and any off-site measures as necessary, as informed by the TBMS; and*
- *A flood Risk Assessment (incorporating an assessment of the predicted effects of climate change) and comprehensive drainage strategy to inform site layout and design so that surface water is controlled and does not exacerbate flooding off-site.*

The application has outline planning approval and therefore this reserved matters application can only assess the detail and not the principle of development.

Concerns have been raised by third parties as to why the QEII (Queen Elizabeth II) land that is already safeguarded for open space has been included in the site acreage. When the Planning Inspector for the sites allocation policy document assessed the site, he concluded that the site was suitable for a development of approximately 250 houses, but that the fields should be included within it to ensure the necessary improvements were included.

The proposed phasing has been another concern but that has already been approved under the previous consented applications whereby the Council has accepted that the development

would be built from the A363 towards Wiltshire Drive which would alleviate the concerns raised:



PHASE 1

- Residential - Plots 1-50
- Infrastructure - access road from site entrance to Drynham Lane
- POS - Public Open Space and Existing NEAP upgrades (to be completed by 100th occupation)

PHASE 2

- Residential - Plots 51-116
- Infrastructure - Access road from Drynham Lane to Northern site access point by Southview Farm
- POS - Allotments, Pitches, Changing Rooms and remaining Public Open Space (to be completed by 180th occupation)

PHASE 3

- Residential - Plots 117-203

PHASE 4

- Residential - Plots 204-248

9.2 Scale, Design and Layout

Core Policy 57 'Ensuring High Quality Design and Place Shaping' of the WCS lays down the requirement for good design. The site does not have any national or local designation and is incorrectly referred to as Green Belt land by local residents.

It is accepted that the development of this site would change the character and appearance of the area as it is currently greenfield land which would be lost and replaced with dwellings and associated landscaping. However, the site is allocated for future housing in the Wilshire Housing Sites Allocation Plan Document and as such the Council has previously concluded that the character of the area can be changed by a residential development as part of the policy framework to deliver new sustainable plan-led housing development.

Under this application, Redrow Homes proposes to construct and deliver a mix of properties comprising 11 x 1-bed properties, 38 x 2-bed properties, 96 x 3-bed properties and 103 x 4-bed properties. With 72 of the 248 dwellings proposed to be affordable dwellings with 43 dwellings being for affordable rent (60%), and 29 dwellings being for shared ownership (40%) being distributed across the site in clusters of no more than 15 in accordance with the Councils policy.

9x M4(2) adaptable homes are also proposed, and the Councils Affordable Housing Officer has supported the proposal.

The site overall promotes a net density of 34 dwellings per hectare which is considered appropriate to this area.

With regard to materials, along the main spine road through the site, the majority of the properties would be built with red brick and rendered gables with some being constructed of stone under grey roof tiles. The Southview Field area would have the majority of new properties built with buff multi brick and render under grey roof tiles; and the Green Edge area would see mainly red multi brick, render and stone under red roof tiles.

All of these materials are considered to be acceptable and can be found within the immediate area and a materials condition can be attached to ensure that the details are appropriate.

The Councils Urban Design Officer has supported the proposed scheme and asserts it satisfies CP57 including meeting the key principles of through vehicle routes, corner houses, open space and active streets.

Third party concerns have been raised regarding there being no solar panels, no EV charging points and the use of gas to serve the proposed properties. The applicant has however confirmed that the homes would be built to exceed Level L of Building Regulations where EV charging points are now a requirement of Building Control and have to be made available where dwellings have associated parking spaces.

To reach and exceed this level, the applicant has confirmed that the dwellings would include air source heat pumps which are low carbon alongside underfloor heating and improved insulation to ensure the dwellings exceed the targets without the need for solar panels. This demonstrates that the proposed development would comply with the climate change policy CP41 of the WCS.

Solar panel installation would be a future option for individual homeowners should they so wish to retrofit their homes, but under this application, they are not necessary to satisfy either planning policy or Building Regulations.

9.3 Landscape and Visual Impact

There are no national or local landscape designations affecting this site and despite third party references to landscape designations, this site has never been designated as Green Belt.

6.8 hectares of informal and formal public open space (including improvements to existing open space) would be provided across the scheme which represents approximately 41% of the application site; and this does not include the proposed allotments and playing fields.

The Public Open Space areas would be landscaped to integrate with existing landscaping/ boundary treatments. New Orchard planting is proposed to be located around the play area and new grass playing pitches would be installed. Other public open space features include native hedgerow planting, ornamental shrub planting, wildflower meadows, meadow grassland and new trees including street trees.

Whilst the development would require some vegetation to be removed, the majority would be retained and there is an overall landscape planting net gain.

The enhancements to the Queen Elizabeth II Playing fields have been included as part of this application with the proposed enhanced playing fields including a neighbourhood equipped area of play (NEAP) and the existing play area would be upgraded with new equipment through a financial contribution that was secured through the S106 Legal agreement at the outline stage. This area would also include a new wildflower meadow, orchard tree planting and an enhanced network of footways and cycleways.

The Councils Landscape officer has raised no objections to the proposals subject to conditions regarding on plot tree planting plans, soil volumes, a Landscape and Ecology Management Plan which have already been conditioned and imposed on the outline application, which continues to apply. As such, the requests made by the Landscape officer will be fulfilled through the formal discharge of condition application process.

Officers appreciate that there was also a request for the streets to have more trees planted, however this would impact upon highway owned land and highway safety and have not been proposed.

The Councils arboriculturalist supports the application subject to an arboricultural report being added as an approved document and a pre-commencement planning condition for an Arboricultural Method Statement to be submitted which are both considered to be appropriate.

9.4 Heritage Impacts

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires 'special regard' to be given to the desirability of preserving a listed building or its setting.

Paragraph 205 of the NPPF states that "*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. ... This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*"

Paragraph 206 of the NPPF states that "*Any harm to, or loss of, the significance of a designated heritage asset (... from development within its setting), should require clear and convincing justification.*"

Paragraph 208 of the NPPF states that *“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal...”*

Core Policy 57 of the Wiltshire Core Strategy states: *“A high standard of design is required in all new developments, including extensions... Development is expected to create a strong sense of place through drawing on the local context and being complementary to the locality. Applications for new development must be accompanied by appropriate information to demonstrate how the proposal will make a positive contribution to the character of Wiltshire through... being sympathetic to and conserving historic buildings”.*

Core Policy 58 of the Wiltshire Core Strategy echoes the above national policy in seeking the protection, conservation and, where possible, enhancement of heritage assets.

The following points are taken from the Historic England document “The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning 3” (HE GPA3) that are considered to be particularly relevant:

HE GPA3 Part 1:

“The NPPF makes it clear that the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset.”

“The extent and importance of setting is often expressed by reference to visual considerations. ...views of or from an asset will play an important part...”

“While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time.”

“The importance lies in what the setting contributes to the significance of the heritage asset or to the ability to appreciate that significance.”

The sites allocation plan states: *In addition, development will need to minimise the potential to harm the significance of the Grade II Listed Drynham Lane Farmhouse along with Grade II listed Southview Farmhouse and, where appropriate, their settings.*

Southview Farmhouse is Grade II listed and sits within the northern end of the application site. The significance of this listed building lies in its architectural and historic design and materials and its historic setting now relies on the open aspect to the east and south. Through the outline application it was demonstrated that the proposed new houses to be provided within this scheme and near to the Southview Farmhouse would be set back from the listed building to allow it to be read as a prominent building, positioned physically detached from the new housing to safeguard its setting and significance and to create a well-defined entrance to the new development.

New tree planting is also proposed in the front corner to give a defined curtilage which officers maintain would be a positive addition and further safeguard the listed farmhouse setting.

The negotiated amendments made to this reserved matters application respect the principles noted above and the initially proposed new homes on plots 243-248 were moved further away from the frontage of the listed building to respect its setting and to address some of the Conservation officer’s concern.

The Council's Conservation Officer has confirmed that the proposed development at this site would still result in harming the setting of the farmhouse through the removal of the field and construction of modern suburban development. However, given that this Council has already granted outline permission for up to 261 houses maintaining the loss of the open agricultural field setting to the farmhouse is no longer a sustainable argument.

In reaching its decision to grant outline planning permission, this Council accepted the housing development proposal would result in less than substantial harm to the heritage asset by virtue of development within its setting.

The negotiated revised scheme would allow for the experience of Southview Farmhouse to be read as a separate entity within its plot and maintaining its historic character and would be seen as a building in view when travelling in either direction along Drynham Lane.

Whilst the existing overgrown hedging currently masks some views, once the scheme is implemented this would be largely removed along the lane-side to the north of the access and the site would become much more open and visible to the public.

When tested against the NPPF, officers maintain that there are significant public benefits to approving this REM application through the provision of 248 new homes and provide a range of dwellings to address the housing shortfall and affordable housing needs, alongside delivering improved public open space, provision of allotments and play pitches that would satisfactorily outweigh this less than substantial harm and as such the proposal is considered to comply with the relevant policies and as such is acceptable in historic terms.

9.6 Drainage Issues

Core Policy 67 seeks to ensure all new development includes measures to reduce the rate of rainwater run-off and improve rainwater infiltration to soil and ground unless site or environmental factors make these measures unsuitable. The NPPF at paragraph 167 requires all major development to incorporate SUDS unless there is clear evidence this would be inappropriate.

The site lies within 'flood zone 1' (least likely to flood) and is at no risk of groundwater flooding. However, part of the site lies within the surface water flood risk levels 2 and 3 where a watercourse crosses the site running from west to east and separates the southern and northern areas of the site.

Work undertaken on the site demonstrated that ponding occurs on the low-lying land west of Drynham Road within the site, where the capacity of the culvert beneath Drynham Road and the railway embankment are exceeded. This causes the flow to back up and inundate the low-lying land within this area. The ponding is also likely to be exacerbated by the poor management regime of the watercourse which should include vegetation and debris removal.

In response to this, the outline application confirmed that the site developer would de-culvert 77 metres of existing culvert to create an open channel, make improvements to the culvert under the railway line to the east of the site and install other channel improvement works such as a two-stage flood management channel.

It was also agreed at the outline stage, that the levels on the developable site area in part would need to be raised outside the 1 in 1000 year flood event and therefore the site has been re-profiled and the finished flood levels have been set at a minimum of 300mm above the 1 in 100 year flood event.

In addition, there are a number of foul sewers running through or adjacent to the site and the foul drainage from this site would connect directly into these sewers. Wessex Water are fully aware of there being limited capacity in the foul network and it will be for Wessex Water to review this and put in place sufficient capacity following the grant of REM approval and it has been confirmed that they will introduce any necessary network improvements to provide foul sewer capacity for the development under their own regulations.

The existing drainage ditches would be retained and their ongoing maintenance and management is already enshrined within the S106 legal agreement agreed at the outline stage through the introduction of a management company as these have not been maintained very well in the past, and it is understood that the applicant may be agreeable to transferring the responsibilities to the Town Council to manage in the future, should the Town Council wish to enter into such discussions with the developer following the grant of this REM application.

The surface water management scheme across the site follows on from what was approved at outline stage with a network of attenuation basins linked by swales and a wetland area. The drainage strategy has been designed to incorporate the climate change allowances published in May 2022 which is a betterment to the solution approved at the outline stage. As such the Councils Drainage Team have raised no objections, and the proposals are considered to comply with CP67 and the NPPF.

9.7 Ecological Impacts

Adopted WCS policy CP50 states that: *Development proposals must demonstrate how they protect features of nature conservation and geological value as part of the design rationale. There is an expectation that such features shall be retained, buffered, and managed favourably in order to maintain their ecological value, connectivity and functionality in the long-term. Where it has been demonstrated that such features cannot be retained, removal or damage shall only be acceptable in circumstances where the anticipated ecological impacts have been mitigated as far as possible and appropriate compensatory measures can be secured to ensure no net loss of the local biodiversity resource, and secure the integrity of local ecological networks and provision of ecosystem services.*

All development proposals shall incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development.

Any development potentially affecting a Natura 2000 site must provide avoidance measures in accordance with the strategic plans or guidance set out in paragraphs 6.75-6.77 of Wilshire Core Strategy where possible, otherwise bespoke measures must be provided to demonstrate that the proposals would have no adverse effect upon the Natura 2000 network. Any development that would have an adverse effect on the integrity of a European nature conservation site will not be in accordance with the Core Strategy.

The WHSAP also states that: *The site is in an area likely to be used by Bechstein's bats associated with the Bath and Bradford on Avon Bats SAC. Sensitive habitat features on and adjacent to the site will be identified through survey and assessments guided by the requirements of the TBMS and include: Drynham Lane/Road, the railway line, woodland belts associated with the White Horse Business Park and the small tributary to the River Biss. These features should be retained and/or buffered from development (including residential gardens) by wide, dark, continuous corridors of native landscaping which will allow for their long-term protection and favourable management in order to secure continued or future use by Bechstein's bats. The design and layout of development, including the size and location of*

landscape corridors, lighting, other physical mitigation measures and management protocols, will be informed by the guidance set out in the TBMS and from appropriate surveys and assessments. Development may also be subject to requirements relating to off-site mitigation, management and monitoring measures as necessary

The application has been submitted with an Ecological Compliance Statement, Biodiversity Net Gain Statement, Biodiversity Metric, Lighting Impact Assessment, updated Extended Phase 1 Habitat Survey, detailed landscaping plans alongside a Great Crested Newt District Level licensing Payment Certificate. All of which have been carefully appraised by the Council's ecologist and Natural England.

The application site is located approximately 1.2 km west of Biss Wood, which is one of three publicly accessible woods south of Trowbridge each supporting a colony of Bechstein's bats which together are believed to form a meta population of national importance.

This development has been screened into an Appropriate Assessment (AA) in relation to the Bath and Bradford on Avon Bats Special Area of Conservation (SAC). The application site lies within the yellow zone identified by Wiltshire Council in the Trowbridge Bat Mitigation Strategy (TBMS) wherein new development has potential to pose a medium risk to bats through increased recreational pressure at woodlands in south Trowbridge and/or through impacts on bat habitat outside of the woodlands, in terms of loss of / damage to bat habitat.

The TBMS was developed and adopted to address development in the Trowbridge area and in particular new housing to be delivered under the WHSAP. The TBMS must however be read in conjunction with the Wiltshire Council Bat SAC Planning Guidance to ensure adequate surveys, on-site mitigation and compensation are provided for the qualifying features (Bechstein's, lesser and greater horseshoe bats) associated with the Bath and Bradford-on-Avon Bat SAC. The overall premise of the TBMS is to ensure swathes of functional habitat are provided (created/retained/buffered) to allow the three qualifying bat species to move through the landscape.

Over the years, the Council's ecologist have built up a very good understanding of the movement of SAC bats in the Trowbridge area and with more and more survey data being submitted through planning applications, this understanding is increasing all the time.

Whilst parts of the proposed housing scheme do not meet the exact requirements as detailed in the TBMS, the separation distances provided in the TBMS for Zones A & B are provided as a guidance and when new applications are submitted alongside UpToDate surveys, professional ecological judgement must be applied. During the course of the application process, revised plans have been amended several times to take into consideration ecology consultee comments pursuant to the housing mix and layout, revised pedestrian and cycle arrangements and landscape strategy.

The revised plans have been informed by specialist lighting engineers to reduce light spill onto the core bat habitats (Zone A) as well as the buffers (Zone B) whilst also providing a safe well designed environment for pedestrians and cyclists. This has all been undertaken based on a worst case scenario modelling and a post construction lighting compliance assessment was secured via planning condition at the outline stage. This will ensure that external lighting in the public domain would be in accordance with the approved details.

Where post construction lighting levels are greater than predicted, remedial measures must be put in place to reduce illuminance as per the previously consented outline condition on lighting to ensure that Zone A parameters are satisfied across the site in line with the Ecological Parameters Plan which was approved during the outline phase.

This would result in the identified core bat habitat remaining functional through the landscape for the Bath and Bradford on Avon Bats SAC. The lighting in Zone B has been agreed with officers to balance the ecological mitigation with the requirements to deliver a pedestrian/cycle path to adoptable standards. Measures to achieve this include a lighting dimming regime for street lighting and close-board fencing, native hedgerow and scrub planting

Other surveys included as part of the application submission included Badger, Dormice, Otter and Vole, Great Crested Newts, Reptiles, Nesting Birds and Hedgehogs. The proposed new habitat creation would generate new habitats for these animals including the drainage betterment works being designed to ensure otters and water voles can move freely along the corridor and hedgehog passes being created within residential fences.

With regard to Biodiversity Net Gain, the proposal demonstrates that 100% mitigation has been provided for all habitats lost where the yellow zone and the application boundary overlap as required under the TBMS. It is also important to note that this application was submitted prior to the national requirement of 10% BNG, and as such, the application therefore only needs to demonstrate compliance with adopted Council policies.

Concerns have been raised by third parties regarding the site not complying with the TBMS. However, the proposal demonstrate that core bat habitat would be retained/created/buffered in accordance with the overall principles of the TBMS to ensure the landscape remains permeable and functions for the bat species recorded. Ultimately the proposed scheme has been assessed under the Habitat Regulations with a favourable conclusion of no adverse effects on the Bath and Bradford-on-Avon Bat SAC and Natural England have agreed with the assessment subject to the detailed mitigation measures being secured under planning condition/S106.

Concerns have been raised regarding the Councils Habitats Regulations Assessment not being able to be viewed online. This document was only made accessible following the agreement of Natural England to avoid any misunderstanding over its status.

9.8 Impact on Neighbouring / Third Party Amenity

Adopted WCS policy CP57 requires proposals to have regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants, and ensuring appropriate levels of amenity are achievable within the development itself, including the consideration of privacy, overshadowing, etc.

As illustrated on the early plan inserts, there are numerous existing dwellings that border the site allocation and these are mainly located to the North West (Lydiard Way & Everleigh Close) although there are a group of existing dwellings that utilise Drynham Lane to access their properties.

The outline application saw the approval of a hammer head adjacent to the property of Bechstein House in Drynham Lane. The applicant was made aware that the owner of that property was unhappy with the hammerhead and therefore the original submission saw Drynham Lane being left open with an access being made into the site to allow refuse vehicles to access the existing and the proposed properties.

This was considered to be a betterment as vehicle users were more than likely to use the new arterial route rather than the narrow Drynham Lane. However, the residents along Drynham Lane were subsequently not happy with this proposal and therefore the applicant reverted back to the approved layout which included the hammerhead.



It is noted that the unitary ward Councillor and residents of Drynham Lane remain unhappy with this approach, however, it is important to note that this hammerhead already has consent secured at the outline application stage, and it would be unreasonable for the Council to now raise concerns to this element of the scheme at this REM stage. It would also expose the Council to a costs application should the matter be a reason to delay to approval or refuse the application.

This issue was discussed in the case officers report at outline stage which stated:

“Drynham Lane is to be closed to vehicular traffic and as such a turning head to the front of the most southern property in this small group is to be provided. This is to allow vehicles to turn. Concerns have been raised regarding the impact this will have on the amenities of the existing occupiers, particularly in terms of noise. However, this has to be balanced against the reduction in noise the property will experience by the lane becoming principally a public right of way and not generally open to through traffic. It is considered that the benefits outweigh the impacts, and on balance the location of the turning head is therefore acceptable”

There are other residential properties that bound the site found along Alderton Way, Lydiard Way and Everleigh Close where there is a significant green boundary buffer between the proposed and the existing properties and as such it is considered that there would be no adverse amenity impact upon them through overlooking, overshadowing or overbearing:



A previously proposed footpath has been removed behind the properties of Lydiard Way at the request of the neighbours and the unitary ward Councillor. A request to move the attenuation ponds further away from these properties was not however possible due to the location of the existing sewer pipes.

Existing properties along Campion Drive, Comfrey Close, Sorrel Close, Buckleaze Close, Cheverell Close, Collingbourne Court and Everleigh Close are located close to the Queen Elizabeth II Field, and it has been concluded that there would be no increase in noise associated with this area of land than would currently exist as the land can already be used for recreational purposes. It is accepted that the land may be used more intensively but this would not justify a reason to refuse the application.



The existing properties along Comfrey Close, Speedwell Close, Wiltshire Drive and Drynham Road have Drynham Road between them and the proposed site with the majority of the proposed houses having their side elevations facing onto Drynham Road, and as such the impacts upon them in amenity terms would be minimal.



With regard to the amenity of future occupiers, the submitted plans indicate that the proposed gardens would be at least equal to, if not greater than the floorspace of the proposed dwellings they serve and therefore it is considered that the proposed amenity spaces are of satisfactory size; and the dwellings have also been designed with minimum space standards in mind.

The proposed dwellings located close to main roads, the railway line (Wessex Main Line) and the White Horse Business Park have been subject to an Environmental Noise Assessment which assesses the railway and the A363 which are the two principal sources of external noise. Measures to ensure the amenities of future occupiers are not adversely impacted include a 2.2metre high barrier to the northeast perimeter of the site along the edge of the gardens; and a number of dwellings would require 1.8 metre high barriers around the perimeters of the gardens.

The dwellings located near to the road and railway would require acoustic trickle vents/wall vents and enhanced openable windows to control internal noise levels all of which has been controlled via planning conditions. The proposed buildings would also have sound insulation performances built into the building façade and roof construction.

The Council's Public Protection team were consulted on all of the above and confirmed the assessment and proposed mitigation to be acceptable.

The proposed development would therefore comply with the relevant criteria of CP57 relating to residential amenity.

Third party concerns received during the consultation period include lighting from the proposed pitches. However no external lighting has been proposed in these areas.

Additional third-party concerns have also been raised regarding the proposed location of the substation and the treatment of foul waste with regard to odour and noise. The treatment tanks for foul waste would be located under the ground and as such there should be no odour or noise that would affect nearby residents. The substation has to be a minimum of 10 metres away from any dwelling (not 30 metres as suggested) and the applicant/developer would satisfy Wessex Water requirements.



9.9 Highways Matters

The objectives of Core Strategy enshrined within policies 60 and 61 seek to reduce the need to travel particularly by private car, and support and encourage the sustainable, safe and efficient movement of people and goods within and through Wiltshire and identify that new development should be located and designed to reduce the need to travel particularly by private car, and to encourage the use of sustainable transport alternatives.

Paragraph 115 of the NPPF states that:

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

At the examination stage of the WHSAP, the planning Inspector confirmed that with appropriate mitigation, there was no clear evidence to suggest that the cumulative impact of these allocations along with other growth planned for the areas, would be severe in relation to highways, local services, facilities or biodiversity.

This opinion was echoed by the Council's Highways Officer when assessing this application.

The adopted WHSAP states:

Access to the site would need to be holistically planned with upgrades required to Drynham Lane, along with the construction of a connection to the A363 designed as a through-route anticipating future traffic growth. New and improved walking and cycling routes to existing and planned local services would encourage future residents to use sustainable forms of transport.

The development site is approximately 1.7km to the south of Trowbridge town centre with the railway station being about 1.9km, local primary and secondary schooling being 900m and 1.8km distant respectively and local convenient shopping being within approximately 700m. The employment facilities of White Horse Business Park are close to the development, and the development site would be close to the planned Ashton Park development with pedestrian links between these areas. Existing cycling and rail accessibility for this scheme are considered to be reasonably good. There are also considered to be a good range of facilities within walking distance of the site.

The site is served by a reasonably frequent bus services to several destinations. The distances from parts of the development site to existing bus stops are greater than ideal and as such the developer has agreed to deliver two bus stops into the site so that some buses can be routed through the development scheme when a through route is achieved.

The vehicular access points to the site were agreed at the outline planning stage and include access from the A363 to the South and from Wiltshire Drive/Drynham Road to the North. Within the site there is a spine road which links these two access points which will form the primary vehicular route through the site and includes traffic calming measures and footways on both sides for the majority of its length and will be offered for a adoption. From the spine road are a series of secondary shared streets and tertiary private lanes are provided.

Drynham Lane (TROW 32 byway open to all traffic but also recorded as public highway) would be downgraded to a restricted byway (vehicle rights will be stopped up) which will form an attractive pedestrian and cycle link through the site. Also proposed is a new 3 metre cycleway along the southeastern edge of the site that leads through the site and up towards Wiltshire Drive.

Car parking has been provided in accordance with the Councils car parking strategy with 1 bedroom dwellings having 1 parking space, 2-3 bedroom dwellings having 2 parking spaces and 4+ bedroom dwellings having 3 parking spaces. Visitor parking has also been provided at 0.2 spaces per dwelling totalling 50. These standards include appropriately sized garages.

Each dwelling has been provided with space for cycle parking and a condition restricting the garages not to be converted into habitable rooms is considered appropriate.

Third-party concern has been raised regarding there being two accesses proposed on the A363 to serve two separate housing allocations and the Council has been asked why they cannot be linked and joined. The access serving the development subject of this application has already been approved and given that this proposal falls under the REM application regime, where access is not a detailed matter open for the Council to re-assess, it would be inappropriate of the Local Planning Authority to raise this as a concern at this stage.

A further third-party concern relates to construction traffic. The Town Council want to ensure that construction traffic does not use Wiltshire Drive. This has already been conditioned on the outline under conditions 14 and 44 which require the construction access to be from the A361.

9.10 Other Matters

Network Rail have objected to the amended plans due to the increase in pedestrians crossing the White Horse Level Crossing and Yarnbrook Level Crossing subject to an agreement with the applicant that they provide an alternative means of access such as a footbridge or suitable diversion that should be funded by the applicant as a result of the increase in use.

However, it must be again noted that this proposal has reached REM stage and Network Rail initially raised no objection to the first consultation on the reserved matters scheme subject to further information being provided pursuant to the culvert upgrade and more importantly supported the outline application.

The Network Rail request is unacceptable, and it is no longer open to the Council to re-open the contributions the developer should be exposed to, which was a matter fully considered at the outline stage.

The Town Council have raised concerns regarding small areas of grass that serve no useful purpose being dotted around the site and have questioned the future ownership of these areas. This concern came from the differences shown in the Land Ownership Plan and the Section 38 Agreement Drawings.

The Town Council are concerned that if these areas lie within the adoptable highway land that they would then be responsible in the future for maintaining these areas with other grassy areas possibly being maintained by a separate Management Company.

In response to the above, some of the areas of grass are required for visibility splays and as such would be part of the adoptable highway although some areas would be maintained by the Management Company.

The separate s38 legal agreement (led by the highways authority) would need to identify which areas would fall under which and is not a matter for the Local Planning Authority to decide upon.

It is important to note that a lot of the proposed green infrastructure – especially close to the main spine road were requested by the Councils Urban Design and Landscape Officers to

soften the development and have been considered to be beneficial to the immediate area. To avoid any confusion, the land ownership plan has been removed from the planning file.

9.11 Community Infrastructure Levy (CIL)

Interested party comments made relating to the provision of facilities, such as school places, transport provisions etc, within the area are fully acknowledged. Infrastructure made necessary by the development would be addressed through CIL payments or through the separate sealed legal agreement (S106) which binds the outline and this REM application, or a mixture of both.

The new dwellings would be liable for CIL, and given that the site falls under charging 'Zone 1, Category 3', the qualifying sum equates to £85 per square metre of residential floor space created, plus indexation.

In addition to CIL payments, further financial obligations towards infrastructure specific to a development proposal have been secured through section 106 contributions.

10. S106 contributions

Core Policy 3 states that all new development would be required to provide for the necessary on-site and, where appropriate, off-site infrastructure requirements arising from the proposal. Infrastructure requirements will be delivered directly by the developer and/or through an appropriate financial contribution prior to, or in conjunction with, new development. This Policy is in line with the tests set under Regulation 122 of the Community Infrastructure Levy Regulations 2010, and Paragraph 55 of the National Planning Policy Framework. These are that contributions must be:

- Necessary to make the development acceptable in planning terms;
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

The infrastructure items listed below are those that have been required in order to mitigate the impact of the proposal and are subject to a sealed S106 Legal Agreement on the approved outline application (figures being based on a maximum of 261 dwellings):

- 76 affordable housing units (29% due to vacant building credit being applied)
- 71 primary school places
- 50 secondary school places
- 30 early years spaces
- £91 per dwelling to provide each unit with waste facilities
- £1,471.60 towards air quality strategy in Wiltshire
- Art contribution of £78,000
- Health contribution (£155,915.00) to be given towards Lovemead Surgery and Trowbridge Health Centre Practice
- Highways contribution of £51,000.00 for bus stops, improvements to bus facilities in the area. £200,000.00 for the surfacing and upgrading of shared use cycleway, street lighting of a footpath and also the resurfacing of Drynham Lane/Road
- £20,503.00 to provide 29 street trees within the adopted highway
- On site upgrading of QEII land, NEAP, 2 junior grass unlit sport pitches, multi-use changing room with 20 car parking spaces, communal allotment area with parking
- £777.62 per unit towards off site habitat mitigation in accordance with the Trowbridge Bat Mitigation Strategy
- £356,322.00 towards the provision of measures to offset any loss of habitat units

- Provision of allotments
- Management Company to maintain the open space, SuDS and biodiversity area
- £50,000.00 towards the upgrade of the play area
- Provide two unlit grass junior sports pitches to the specification of Sport England
- Enter into a Section 278 Agreement

11. Conclusion and Recommendation

The proposal complies with the relevant guidance and policies and as such is recommended for Approval subject to the conditions outlined below:

Conditions:

1 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

All drawings and documents contained in the Plan List received by the Local Planning Authority on 12th November 2024 and dated November 2024

Arboricultural Report, prepared by Silverback Consultancy Ltd and dated April 2024

REASON: For the avoidance of doubt and in the interests of proper planning.

2 No demolition, site clearance or development shall commence on Phase 1 identified on drawing number 1955 119 Rev D until an Arboricultural Method Statement (AMS) relevant for that phase prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:

- o A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;
 - o A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;
 - o A schedule of tree works conforming to British Standard 3998: 2010;
 - o Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
 - o Plans and particulars showing the siting of the service and piping infrastructure;
 - o A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
 - o Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
 - o Details of all other activities, which have implications for trees on or adjacent to the site.
- o In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant and the designated site foreman.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990

3 No demolition, site clearance or development shall commence on Phase 2 identified on drawing number 1955 119 Rev D until an Arboricultural Method Statement (AMS) relevant for that phase prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:

- o A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;
 - o A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;
 - o A schedule of tree works conforming to British Standard 3998: 2010;
 - o Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
 - o Plans and particulars showing the siting of the service and piping infrastructure;
 - o A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
 - o Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
 - o Details of all other activities, which have implications for trees on or adjacent to the site.
- o In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant and the designated site foreman.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990

4 No demolition, site clearance or development shall commence on Phase 3 identified on drawing number 1955 119 Rev D until an Arboricultural Method Statement (AMS) relevant for that phase prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:

- o A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;
- o A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;
- o A schedule of tree works conforming to British Standard 3998: 2010;
- o Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;

- o Plans and particulars showing the siting of the service and piping infrastructure;
- o A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
- o Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- o Details of all other activities, which have implications for trees on or adjacent to the site.
- o In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant and the designated site foreman.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990

5 No demolition, site clearance or development shall commence on Phase 4 identified on drawing number 1955 119 Rev D until an Arboricultural Method Statement (AMS) relevant for that phase prepared by an arboricultural consultant providing comprehensive details of construction works in relation to trees has been submitted to, and approved in writing by, the Local Planning Authority. All works shall subsequently be carried out in strict accordance with the approved details. In particular, the method statement must provide the following:

- o A specification for protective fencing to trees during both demolition and construction phases which complies with BS5837:2013 and a plan indicating the alignment of the protective fencing;
- o A specification for scaffolding and ground protection within tree protection zones in accordance with British Standard 5837: 2013;
- o A schedule of tree works conforming to British Standard 3998: 2010;
- o Details of general arboricultural matters such as the area for storage of materials, concrete mixing and use of fires;
- o Plans and particulars showing the siting of the service and piping infrastructure;
- o A full specification for the construction of any arboriculturally sensitive structures and sections through them, including the installation of boundary treatment works, the method of construction of the access driveway including details of the no-dig specification and extent of the areas of the driveway to be constructed using a no-dig specification;
- o Details of the works requiring arboricultural supervision to be carried out by the developer's arboricultural consultant, including details of the frequency of supervisory visits and procedure for notifying the Local Planning Authority of the findings of the supervisory visits; and
- o Details of all other activities, which have implications for trees on or adjacent to the site.
- o In order that trees to be retained on-site are not damaged during the construction works and to ensure that as far as possible the work is carried no demolition, site clearance or development should commence on site until a pre-commencement site meeting has been held, attended by the developer's arboricultural consultant and the designated site foreman.

REASON: In order that the Local Planning Authority may be satisfied that the trees to be retained on and adjacent to the site will not be damaged during the construction works and to ensure that as far as possible the work is carried out in accordance with current best practice and section 197 of the Town & Country Planning Act 1990

6 No development above slab level shall commence on Phase 1 as identified on drawing number 1955 119 Rev D (phasing plan) until the details of the materials (walls, roofs, windows) to be used in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the immediate area

7 No development above slab level shall commence on Phase 2 as identified on drawing number 1955 119 Rev D (phasing plan) until the details of the materials (walls, roofs, windows) to be used in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the immediate area

8 No development above slab level shall commence on Phase 3 as identified on drawing number 1955 119 Rev D (phasing plan) until the details of the materials (walls, roofs, windows) to be used in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the immediate area

9 No development above slab level shall commence on Phase 4 as identified on drawing number 1955 119 Rev D (phasing plan) until the details of the materials (walls, roofs, windows) to be used in that phase have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the immediate area

10 No development above slab level shall commence on Phase 1 as identified on drawing number 1955 119 Rev D (phasing plan) until details of the mechanical ventilation system to be installed to bedrooms on facade of the properties marked in red shown in Figure 17 of the Environmental Noise Assessment Report (Reference 10259/AW) or an updated noise assessment demonstrating that mechanical ventilation is not required has been submitted to and approved in writing by the Local Planning Authority.

The development shall then be carried out in strict accordance with the approved details for the lifetime of the development.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the amenity of future occupiers.

11 No development above slab level shall commence on Phase 3 as identified on drawing number 1955 119 Rev D (phasing plan) until details of the mechanical ventilation system to be installed to bedrooms on facade of the properties marked in red shown in Figure 16 of the Environmental Noise Assessment Report (Reference 10259/AW) or an updated noise assessment demonstrating that mechanical ventilation is not required has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details for the lifetime of the development.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the amenity of future occupiers.

12 No development above slab level shall commence on Phase 4 as identified on drawing number 1955 119 Rev D (phasing plan) until details of the mechanical ventilation system to be installed to bedrooms on facade of the properties marked in red shown in Figure 15 of the Environmental Noise Assessment Report (Reference 10259/AW) or an updated noise assessment demonstrating that mechanical ventilation is not required has been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in strict accordance with the approved details for the lifetime of the development.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of the amenity of future occupiers.

13 No development shall commence on Phase 2 as identified on drawing number 1955 119 Rev D (phasing plan) including vegetation removal until details of the replacement lesser horseshoe bat roost has been submitted to and approved in writing by the Local Planning Authority. The bat roost shall then be installed prior to the occupation of the 200th Dwelling.

REASON: The application contained insufficient information to enable this matter to be considered prior to granting planning permission and the matter is required to be agreed with the Local Planning Authority before development commences in order that the development is undertaken in an acceptable manner, in the interests of providing mitigation and enhancement for biodiversity

14 Plots 4, 6, 7, 12, 13, 14, 15, 22, 30, 130, 131, 163, 164, 168 - 188 and 204, 248, 238 shall not be first occupied until their associated acoustic barriers shown in Figures 4, 5, 6, 7 in the Environmental Noise Assessment (Reference 10259/AW) have been erected in accordance with the details set out in the Noise Assessment Report. The acoustic barriers shall then remain for the lifetime of the development.

REASON: In the interest of amenity of future occupiers.

15 The windows located in the yellow and orange zone identified in Figure 11- 14 of the Environmental Noise Assessment Report (Reference 10259/AW) shall be installed in accordance with the noise insulation requirements set out in specification 7.3.3 and table 5 of the Environmental Noise Assessment Report (Reference 10259/AW). The windows shall thereafter be maintained in accordance with the approved details for the lifetime of the development.

REASON: In the interest of amenity of future occupiers

16 The windows located in the yellow and orange zone identified in Figure 11- 14 of the Environmental Noise Assessment Report (Reference 10259/AW) shall be installed in accordance with the passive ventilation requirements set out in table 6 of the Environmental Noise Assessment Report (Reference 10259/AW). The windows shall thereafter be maintained in accordance with the approved details for the lifetime of the development.

REASON: In the interest of amenity of future occupiers

17 No dwelling hereby approved shall be first occupied until the access, turning area and parking spaces in association with that dwelling have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

18 Plot 180 - 188 shall not be first occupied until the secure covered cycle parking has been erected in accordance with the approved details and shall be retained for use at all times thereafter.

REASON: To ensure that satisfactory facilities for the parking of cycles are provided and to encourage travel by means other than the private car.

19 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), the garage(s) hereby permitted shall not be converted to habitable accommodation.

REASON: To secure the retention of adequate parking provision, in the interests of highway safety.

Informatives:

1 The applicant is advised that the development hereby approved may represent chargeable development under the Community Infrastructure Levy Regulations 2010 (as amended) and Wiltshire Council's CIL Charging Schedule. If the development is determined to be liable for CIL, a Liability Notice will be issued notifying you of the amount of CIL payment due. If an Additional Information Form has not already been submitted, please submit it now so that we can determine the CIL liability. In addition, you may be able to claim exemption or relief, in which case, please submit the relevant form so that we can determine your eligibility. The CIL Commencement Notice and Assumption of Liability must be submitted to Wiltshire Council prior to commencement of development. Should development commence prior to the CIL Liability Notice being issued by the local planning authority, any CIL exemption or relief will not apply and full payment will be required in full and with immediate effect. Should you require further information or to download the CIL forms please refer to the Council's Website <https://www.wiltshire.gov.uk/dmcommunityinfrastructurelevy>.

2 It is important for the applicant to note that the development should also be carried out in accordance with the conditions imposed on the outline planning consent reference 19/11459/OUT

3 It is important for the applicant to note that the approved development will be operating under a District Level Licence (DLL) for Great Crested Newts. Great Crested Newts are protected under Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 which implements the EC Directive 92/43/EEC in the United Kingdom, and the Wildlife and

Countryside Act 1981 (as amended). Planning permission for development does not provide a defence against prosecution under this legislation.

4 The applicant must note the following from Drainage:

We note the applicant has stated Land Drainage Consent is required, the applicant will be required to gain land drainage consent to de-culvert where the swale is proposed. Land

Land Drainage Consent is also required to discharge into the Ordinary Watercourse & River Biss.

It has been noted that the applicant has said the maintenance for SuDS features, such as rain gardens, on individual plots would be the responsibility of the owner of the plot. The applicant must ensure this is included in the property deeds.

It has been further noted that the applicant has stated there could be 300mm flood depths of the access road to the site, and it is recommended that the applicant shares flood evacuation advice as stated in Section 6 of the Flood Risk Assessment Addendum 2 with the owners and site management to ensure the safe ingress for emergency services, and safe egress for those on site.

Wiltshire Council

PL/2022/09425
Elm Grove Farm, Drynham Road,
Trowbridge, Wilts, BA14 0PL



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