

Western Area Planning Committee

4 December 2024

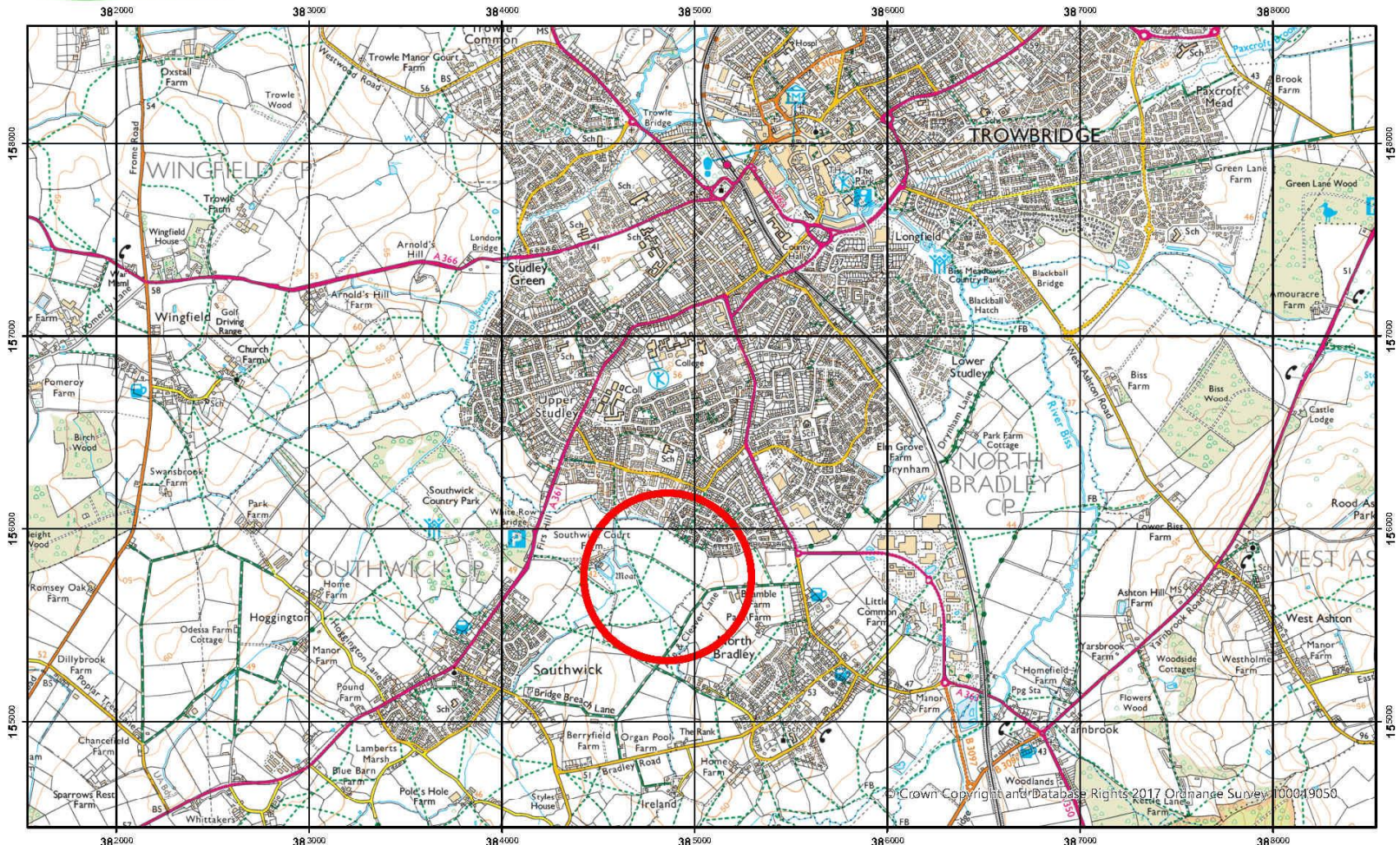
**COMMONS ACT 2006 – SECTIONS
15(1) & (2) – APPLICATION TO
REGISTER LAND AS A TOWN OR
VILLAGE GREEN – SOUTHWICK
COURT FIELDS, SOUTHWICK &
NORTH BRADLEY**

**AGENDA ITEM NO.7
WESTERN AREA PLANNING COMMITTEE:
4 DECEMBER 2024**

Location Plan

Wiltshire Council

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

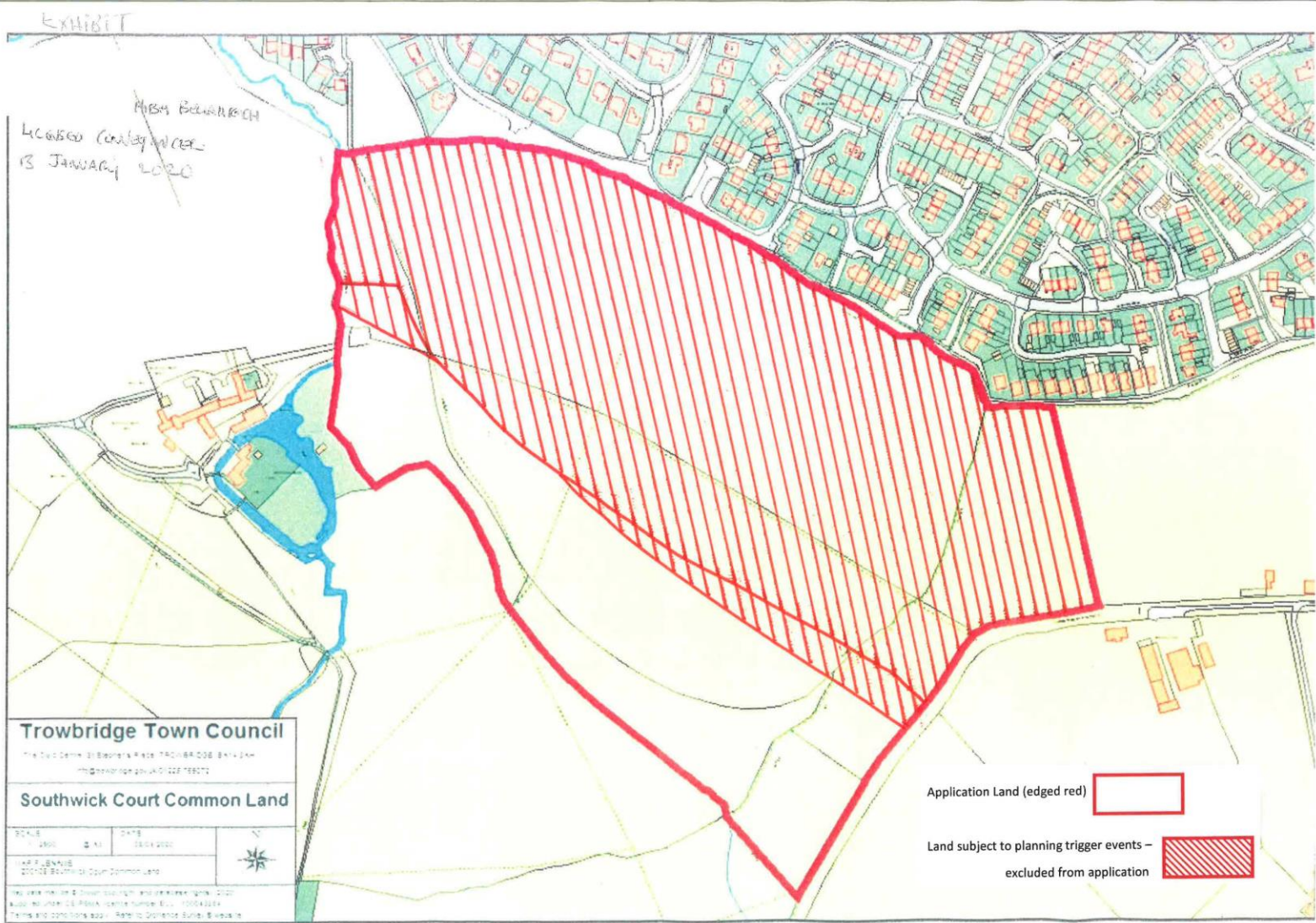


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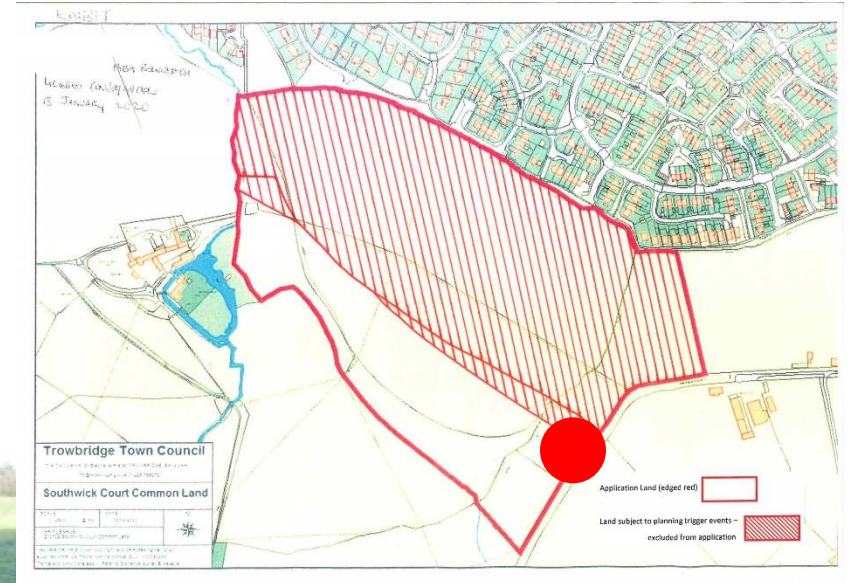
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Accepted Application Plan – Southwick Court Fields, Southwick & North Bradley (Application no.2020/02TVG – 30 November 2020)



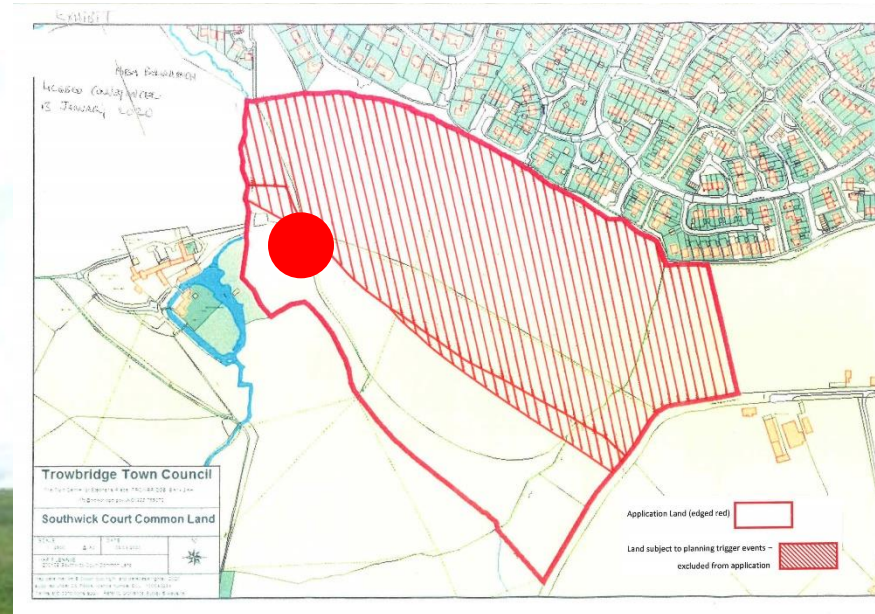
Application land looking generally north-west



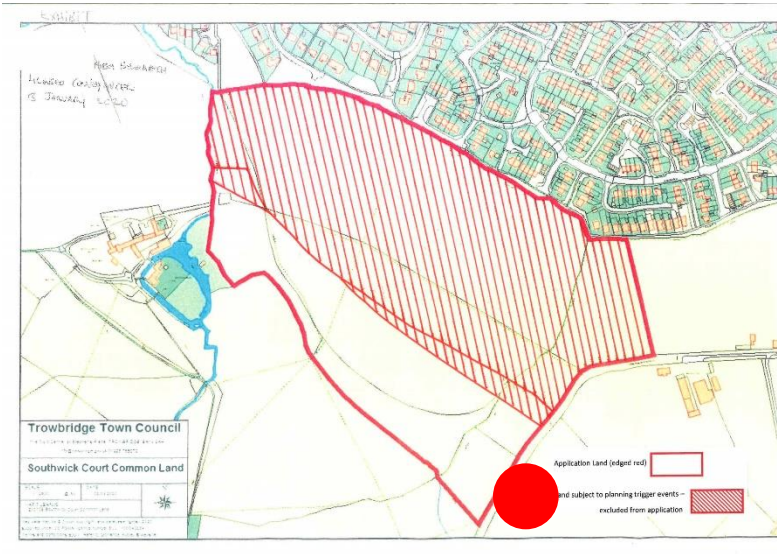
Application land looking south-west – existing stile in southern boundary (Footpath no.3 Southwick)



The application land looking generally east



The application land looking generally north-west from Axe and Cleaver Lane (Bridleway no. 4 North Bradley)



The Legislation

- **Application to register land as a Town or Village Green (TVG), at Southwick Court Fields, in the parishes of Southwick and North Bradley, is made under subsections 15(1) and (2) of the Commons Act 2006:**
- **Sub-section 15(1) states:**

15 Registration of greens

- (1) Any person may apply to the commons registration authority to register land to which this Part applies as a town or village green in a case where subsection (2), (3) or (4) applies.***

The Legislation

- **Sub-section 15(2) states:**

(2) This subsection applies where –

(a) a significant number of inhabitants of any locality, or of any neighbourhood within a locality, have indulged as of right in lawful sports and pastimes on the land for a period of at least 20 years; and

(b) they continue to do so at the time of the application.

- **Each part of this legal test must be satisfied for an application to be successful, where it is no trivial matter for a landowner to have land registered as a TVG (*R v Suffolk County Council ex parte Steed [1996] 75 P & CR 102*).**
- **The burden of proof is on the balance of probabilities.**

Planning Trigger and Terminating Events

Growth and Infrastructure Act 2013 s.16 – insertion of s.15C into the Commons Act 2006 – the removal of the right to apply to register land as a TVG where a specific planning “trigger” event has occurred, e.g:

- An application for Planning Permission in relation to the land is first publicised.
- A Draft Development Plan which identifies the land for potential development is published for consultation.
- A Development Plan which identifies the land for potential development is adopted.

The right to apply to register land as a TVG is revived where a corresponding planning terminating event has occurred, e.g:

- Planning Permission is refused and all means of challenge by legal proceedings in the UK are exhausted and the decision upheld.
- A Draft Development Plan is withdrawn, adopted or the period of 2 years beginning with the day on which the document is published for consultation expires.
- A Development Plan is revoked or a policy contained in the document which relates to the development of the land in question is superseded.

List is not exhaustive and a full list of planning trigger and terminating events is included at Schedule 1A of the Commons Act 2006 (as amended).

History of the applications

- **The applicant first submitted an application to Wiltshire Council on 13th January 2020. Statutory consultation with the Planning Inspectorate and the local planning authority revealed that a ‘trigger event’, the WHSAP, had occurred over the land. The application was not accepted and was returned. No challenge was made in respect of this decision.**
- **The applicant again submitted an application to Wiltshire Council on 11th June 2020. The statutory consultation with planning authorities revealed two trigger events had occurred over the land (the adopted WHSAP and a planning application). The application was not accepted and was returned. No challenge was made in respect of this decision.**
- **The applicant again submitted an application to Wiltshire Council on 30th November 2020. The statutory consultation with planning authorities revealed two trigger events had occurred over the land but CRA officers noticed that part of the land was not affected by these and the application was accepted and stamped. This is the application that is before the committee for determination.**

The 30 November 2020 Application

- The application was made by Mr N Swanney as a local resident. The Parish Councils of Southwick and North Bradley and Trowbridge Town Council supported the application.
- The application land is located at Southwick Court Fields, to the south-west of Trowbridge, in the parishes of Southwick and North Bradley. The land is owned by the Right Honourable Mrs S Rhys and Mr and Mrs Marshall.
- Where the application was made in 2020, the 20-year user period in question is 2000 – 2020, with use continuing at the time of application.
- The identified “locality” for this application is Trowbridge Grove Ward.
- 49 parties provided evidence in support of the application: 21 witnesses statements and 2 petitions.
- There was 1 objection to the application, made on behalf of the landowner.
- Where there was substantial dispute of evidence Wiltshire Council as the Commons Registration Authority (CRA) appointed an independent Inspector to preside over a non-statutory public inquiry to consider the evidence and produce an advisory report to assist the CRA in its determination of the application - (Public Inquiry held 21-22 November 2023 – Mr William Webster, 3 Paper Buildings presiding).
- Inspector’s Advisory Report received 9th February 2024 – recommending rejection of the application 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 Advisory Report.

Western Area Planning Committee – 10 April 2024

The Inspector's Advisory Report and recommendation were considered at the Western Area Planning Committee meeting dated 10 April 2024. Members of the Committee 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 Counsel's Opinion on the question of whether the Draft Wiltshire Housing Sites Allocation Plan [WHSAP] forms a valid trigger event at the time of application, which would extinguish the right to apply to register part of the land as a Town or Village Green.

Counsel's Advice

Counsel's Advice prepared by Douglas Edwards KC of Francis Taylor Building and received 16 October 2024, sets out (in summary):

- The draft WHSAP was not a trigger event on 13 January 2020 where it was published for consultation on 14 July 2017, a terminating event had occurred by 14 July 2019 and the right to apply was not excluded by the date of application on 13 January 2020.
- The CRA was therefore wrong to determine that the application dated 13 January was invalid.
- The Applicant made no claim for judicial review of the decision to return the application dated 13 January 2020 and the decision now cannot be reversed.
- The CRA was wrong to have rejected the application dated 11 June 2020 in full, the trigger events at that time affected only part of the application land.
- The Applicant made no claim for judicial review of the decision to return the application in full and this decision cannot now be set aside.
- It was not open to the Inspector to consider the application dated 13 January 2020, the application before him was that received on 30 November 2020 and this is the "time" of the application relevant to whether the right to make an application ceases to apply.
- In terms of the Inspector's findings on the evidence, the Inspector's recommendation can be relied upon by the CRA in determining the application received on 30 November 2020.

Western Area Planning Committee – 06 November 2024

- **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.**
- **At Paragraph F 1 to 14 of the Officers' report to Committee Frank Cain, Barrister, employed, Wiltshire Council gives consideration to this question and is present today to address the Committee.**
- **It is further noted that to aid clarity, Douglas Edwards KC briefed the Committee Chair and Vice-Chair on these matters at a briefing held on 27 November 2024.**

Officers' Recommendation

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.

Decision

- **The Committee is acting in its Regulatory function which requires the Committee to act in a quasi-judicial capacity.**
- **When a Committee acts in its quasi-judicial capacity, it must follow a proper procedure which accords with the requirements of natural justice and the right to a fair hearing.**
- **Although it is 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. If the Inspector's recommendation is rejected, the CRA must give legally valid reasons, supported by evidence, of the error of fact or law, where the CRA's decision is open to legal challenge.**

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

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 Subject to Conditions



Site Location Plan



Aerial Photography



Planning Layout









As
Opp
Front Elevation



Garage window removed on plot 236



As
As Mid
Front Elevation



Front Elevation



As
Opp



Front Elevation



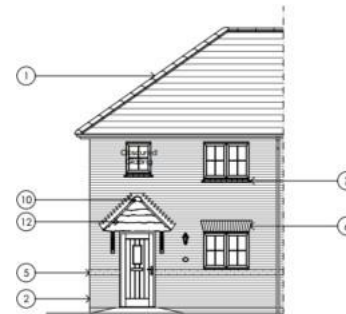
Front Elevation



Front Elevation



Left Elevation



Front Elevation - End



Front Elevation - Mid

Proposed Materials

PRIMARY FACING MATERIALS



Dark Red Multi Brick: 'Brunswick Antique'
(or similar, to be approved)



Light Red Multi Brick: 'Brunswick Farmhouse'
(or similar, to be approved)



Buff Multi Brick: 'Brunswick Wilton Yellow'
(or similar, to be approved)



Reconstituted Natural Buff Stone: 'Shearstone Costwold Village (Cottage)' (or similar, to be approved)



Roughcast Chalk Coloured Render

All roof tiles and associated garage roof tiles to be **Forticrete SL8 Slate Grey Roof Tiles** (or similar to be approved), unless specified on the adjacent plan.



Forticrete Gemini Sunrise Red Roof tiles
(or similar to be approved)

Dark Grey slate-effect tiles

DOOR AND WINDOW SPECIFICATION

Window/secondary doors/patio door frames: uPVC with white finish, arrangement as per House Type elevations.

Front doors: uPVC paneled traditional style in a variety of colours. All frames to be white.

Garage doors: Up and over mechanism in craftsman style, to match front door colours.

RAINWATER GOODS SPECIFICATION

All Rainwater goods to be black.
Soffits and fascias to be white to match window frames.



Buff Brick & Render



Building Heights Plan



Blue= 2 storey, Purple = single storey, Orange = 3 storey, Green = 2.5 storey



Blue= 2 storey, Purple = single storey, Orange = 3 storey, Green = 2.5 storey



Landscape Proposals



Dry

MP 1



Footbridges to public open space

JRC **CDM Significant Hazards**
 Health and Safety hazards are identified by the Designer as dominant in accordance of the current Construction Design and Management regulations. It is assumed that all works will be carried out by competent & adequately trained/competent personnel working to best systems of work.

General Notes

1. All NOT SPECIFIED (or Omitted) Scaling on this drawing or missing dimensions do not provide accurate information and should be avoided. Therefore work only from fixed dimensions and contact JRC Consulting Engineers.
2. The drawings to be made in compliance with all other relevant standards, Engineers & Statutory drawings, details, Specifications and the relevant Health and Safety Plan (as appropriate) for the project. All discrepancies to be reported to the Engineer immediately for verification.

Proposed Footbridge and Footpaths

Footbridge Notes

1. Proposed Timber Footbridge construction to ensure that all loads and unloads of the bridge & all above the existing bed of 0.80m maximum levels to maintain existing flow and capacity.
2. The final construction arrangement, span length and alignment of bridge to be agreed with relevant authorities.

Streetscenes



Streetscene A-A
Southern Gateway:
Spine Road
Southern Entrance



Streetscene B-B
Spine Road



Streetscene C-C
Existing Drynham Lane





Streetscene D-D
Spine Road
Northern Access



Plot 134

Plot 201

Plot 202

Plot 203

Plot 204

Plot 199

Plot 198

Plot 197

Plot 196

Streetscene E-E
Northern Green Edge
facing the Linear
Parkland & POS



Plot 195

Plot 194

Plot 193

Plot 192

Plot 191

Plot 190

Plot 189

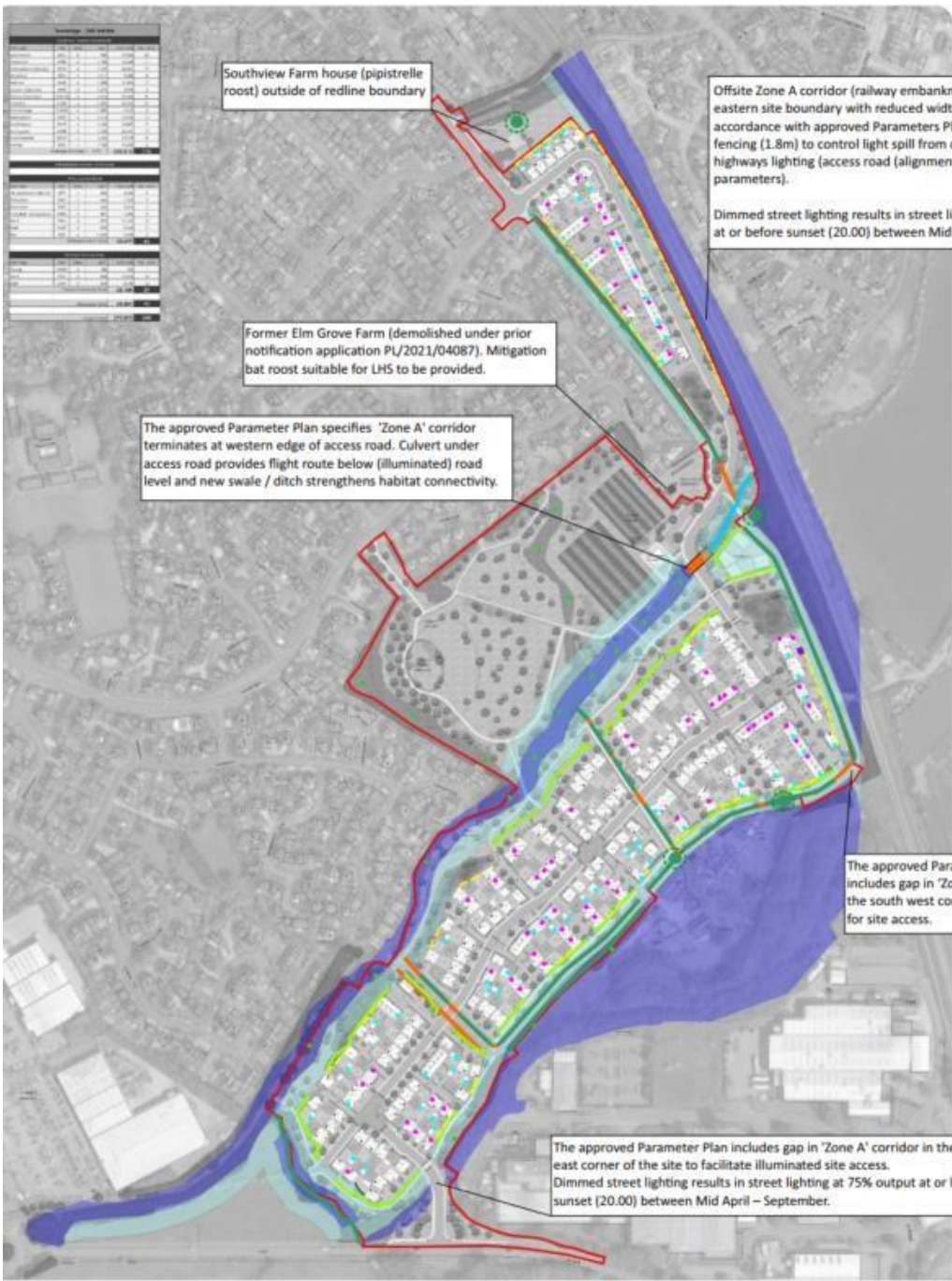


Streetscene F-F
Northern Gateway:
Southview Field

Grade II Listed Building and associated listed outbuildings



Southview Farmhouse



Ecologic Enhancement Plan

Proposed Hammerhead on Drynham Lane



Proposed underground treatment tanks for foul waste and substation





Planning Layout

Western Area Planning Committee

4 December 2024