

Dear M/s Tozer,

I am aware that you have had very few working days to explore this application, and that only another five will pass before the close of consultation. Given the very challenging nature of the site and application, in the words of the WHSAP Examination, I have compiled the following to hopefully aid your work. The site has gone through Examination, Committee, and Public Inquiry, with each stage layering commitments onto the applicants (whether that be Waddeton Park, Savills or now Wain Homes). I hope that a summary herein will help to “short-circuit” the past nine years of stress-testing and conditioning which have formed the framework of a compliant and sustainable application. When these conditions are taken into consideration, it is clear that this application as submitted is neither compliant nor acceptable.

There are many important reasons why this application should be rejected and returned to the applicant. Accordingly, I have written this note with a “broad brush”.

The application, as submitted, fails to comply with conditions laid down either by Wiltshire Council **or** by Public Examination **or** Public Inquiry. In the case of the latter two authorities, the conditions have a weight in Law. These conditions are not in the gift of either Officers or Elected members to amend or dismiss without them being further considered by Public Inquiry.

The application is riddled with contradictions and errors (for example, Southwick Court Farm is identified as the Grade 2 listed asset, where the assets are the grade 2* listed manor Southwick Court and the associated bridge and moat, (Southwick Court farm does not exist, the residence of the landowner and principal applicant being Southwick Court Chapel). Equally, page 16 of the “Statement of Compliance” being clear that no building height will exceed 2.5 storeys, and yet page 17 seeks to place a three-storey block of flats opposite existing bungalows. These errors are sufficient to have the application returned for correction; however, four major areas of the application are in serious breach.

Flooding and drainage

1. As has been described in Outline and written comment from the Environment Agency, all attenuation features are uphill of the proposed development. The new plan is to pump all surface water uphill to be fed into the designated main river, the current cause of the level 1, 2, 3a and 3b flood zones, through which the sole access road must pass. According to topographic surveys submitted at outline there is a minimum 1.8m drop off between the Southern extremity of the application area and the stream at the Northern margin. The current application erroneously describes the site as being flat. The current built form suffers from periodic flooding of a fluvial nature. This fluvial flooding is not considered within

the scope of the application, and the floodplain itself is proposed to be developed, against planning law.

2. The site has been identified as the source of flooding across a significant area downstream and across two other allocation sites. At paragraph 69 of the WHSAP Examination, the following determination was made:

- i. “Site H2.4 (Church Lane), H2.5 (Upper Studley) and H2.6 (Southwick Court) are closely related to each other and the Southwick Country Park..... **Furthermore, both individual and cumulative effects on the Country Park must be taken into account.** (Emphasis added)

Para. 70 further requires:

“The recommended modifications make it clear that **mitigation measures must be considered on a comprehensive and consistent basis.**” (emphasis added)

And Para.88 determines:

“Main modifications MM56–MM61 are necessary to ensure a clear and effective policy framework is established, considering both the site’s individual characteristics, but also **the need to be mindful of the cumulative impacts of development occurring elsewhere nearby.**” (emphasis added)

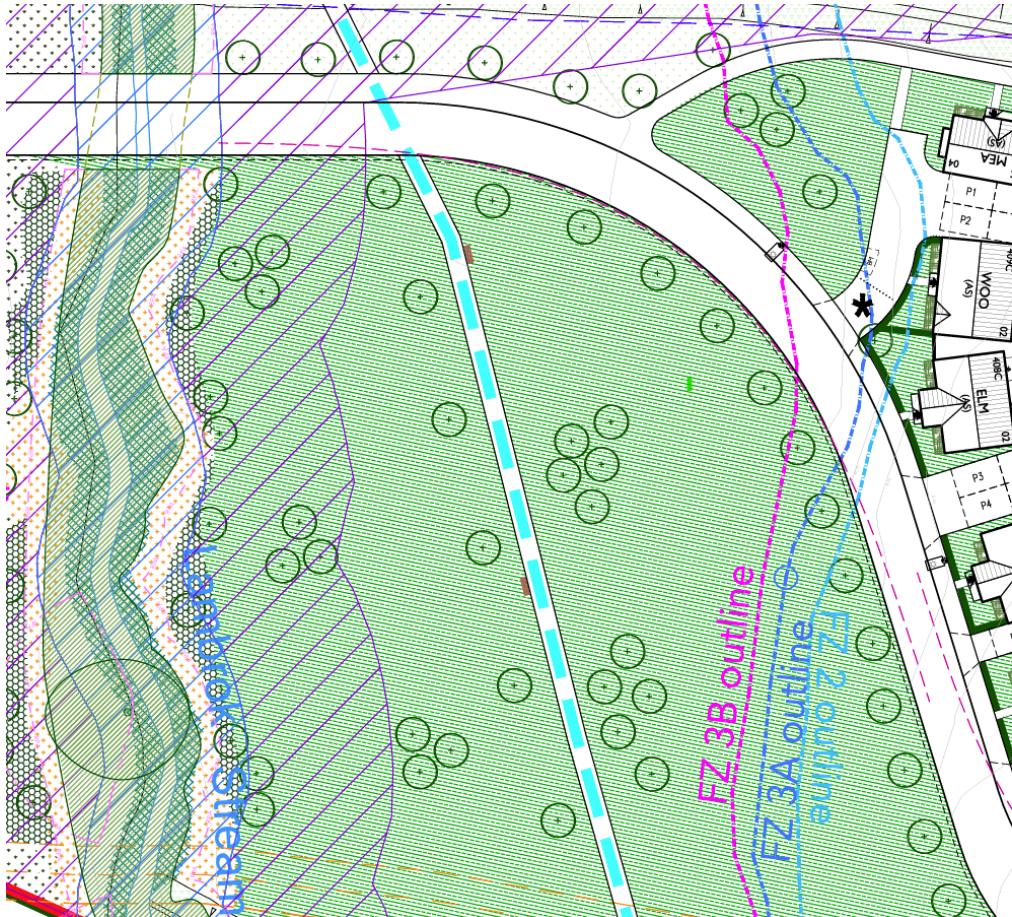
As this application is derelict in all of the above requirements it must be returned for correction and amendment. A closer examination of the plans illustrate clearly that ALL surface water runoff shall be directed into the existing watercourse with no attenuation, thereby guaranteeing an exacerbation and extension of existing flooding initially in Southwick, as fluvial flood waters “back up” and then the Country Park and Nature Reserve, then into Trowbridge and on, through the Biss to Bradford-on-Avon. The application is, in this respect, unsound and unsustainable.

3. Access to the site, and the only element of the Outline application agreed, is from the Frome Road (AKA Firs Hill Road). This access is by means of a feeder road and junction approximating .75km. The access road terminates at a designated flood zone encompassing levels 1, 2, 3a and 3b, level three flood designations being the most severe which can be applied at any point in the country under current legislation. The original argument for the access was the construction of a bridge and culvert across the notified flood zones. At the time of Public Inquiry the requirements for this bridge were a length of 100m and

height above current flood levels of approx. .8m. Within the Conditions annex of the Public Inquiry the condition was set:

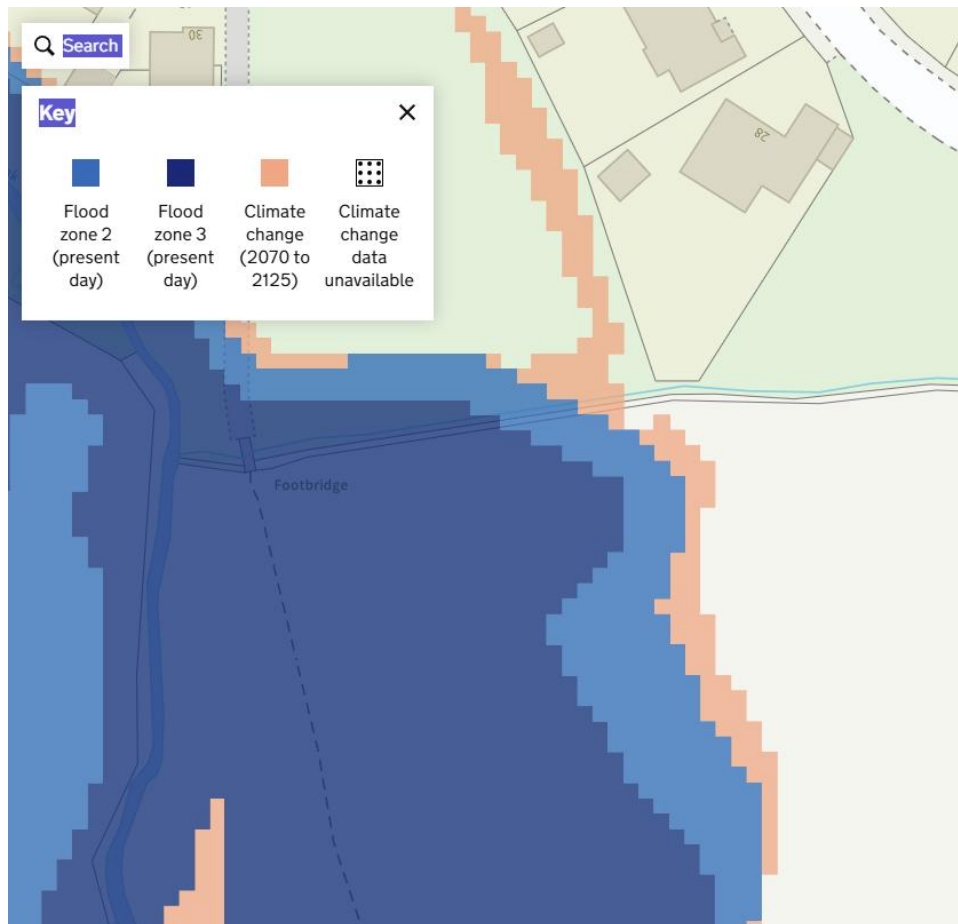
“In accordance with page 5 of the FRA the bridge soffit shall be set 600mm above the design flood with a 39% allowance for climate change.”

In the current application, the bridge length has been reduced, leading to the termination of the bridge and the ONLY access point being within Flood zones 1,2, and 3. As illustrated here from Planning layout sheet 2.



It should be noted that Flood Zone one has been omitted from this illustration, and also that curtilage and access for a number of units also falls within this designation, itself a further breach. Furthermore, the data on which this application is submitted is out-of-date and underestimates the situation. By focussing in on the area using the latest iteration of the Environment Agency Flood Map for Planning, and using the Lambrok and footpath as reference points, the extent of the Flood Zones have been significantly understated. This extends the inviolable FZ3 well into the new build.

Again, this disregards the additional surface water being added to the fluvial flow by the current proposal, making this data point doubly unreliable.



This renders the application in breach of National requirements regarding development on a flood plain, and unsustainable in its current form. The sole answer is to require the bridge and culvert to span the entirety of the flood zones, and in a greater length than the 100m first proposed and agreed to allow for the climate change modelling. To be clear, the entire proposed layout is untenable and must be sent back for compliant revision.

Archaeological examination

A binding precondition laid down by Examination required a pre-consent archaeological investigation of the site. Whilst the previous Officer recommended a “consent first, dig later” approach, Committee examined the preconditions and required that they be applied, thereby rejecting the application. This was supported by LIDAR, parch-mark photography, magnetometry surveys and associated finds such as a votive figuring in the adjacent field and Roman roof tile in the car-park of the Country Park. Both sets of finds now held at the Wiltshire museum. The scientific indications suggested 2/3 high status Roman dwellings, an associated spread of secondary constructions and connections to a hitherto unmapped Roman road leading from Bradford-on-Avon, of which only approximately 200m survives. A strong objection from Historic England was also received citing the potential for the site

being potentially “of National Importance”, as were objections from the assistant County Archaeologist. These have not been withdrawn.

Applicants then complied prior to Public Inquiry. The 100-page report was submitted to the Inquiry and thereby made public. A brief summary of the finds include:

- Over 1000 pieces of Roman pottery ranging from peasant ware to high-status Samian ware.
- Coins and lead weights, indicating a trading centre.
- Wall and fence lines from the buildings associated with the indicated high status buildings.
- Fragments of wall plaster indicative of high-status buildings.
- Ceramic and stone roof tile fragments confirming the presence at some stage of two different high-status buildings, likely to have existed at the same time.
- A cremation burial ground, indicative of the perimeter of a settlement.

In response to this report the Public Inquiry demands in condition 16 that:

- i. “No development shall commence on site until a Written Scheme of Investigation for the further archaeological investigations recommended in the Archaeological Evaluation Report (July 2023) has been submitted to and approved in writing by Wiltshire Council. The Written Scheme of Investigation will include a plan showing the relevant area to be investigated. The plan should cover the land which is bordered by Trench 36 to the north west and a line formed by Trenches 6, 7 and 11 to the south-east, and by Trenches 11, 13 and 16 to the south-west and Trenches 7, 20, 23 and 29 to the north-east (as shown on the plan attached to the Archaeological Evaluation Report (July 2023)), where there is proposed to be ground disturbance through building and/or strategic landscaping. The works specified in the Written Scheme of Investigation must be undertaken prior to any development (including strategic landscaping) taking place on the relevant area to which the Written Scheme of Investigation applies.”

It would appear to be only prudent for this work to be completed in advance of consent to avoid sequential revisions and variation of conditions and plans taking up Officer and Committee time. This would appear to be the pragmatic response to works which are now mandated conditions with a weight in Law.

In this aspect the current application should be rejected.

The Trowbridge Bat Mitigation Strategy (TBMS)

The application site is within the yellow zone of the area covered by this secondary Planning document, adopted by Wiltshire Council in the same session as the adoption of the Wiltshire Housing Sites Allocation Plan. This document and Policy was mandated at Examination and gives specific details regarding onsite mitigation and offsite enhancement of habitat and pressures on recreational spaces brought about by development.

It should be noted here that proposals put forward in the developing iteration of the Local Plan seek to retrospectively modify this Policy and delivery requirement. However:

- Planning law requires that plans submitted are subject to controls and policies in place on the date of their application and consent. This application was considered in 2022 and therefore must conform to the requirements in place at that time.
- Inspection is unequivocal that the **TBMS** must be applied, that is, the extant Policy on the day in which the condition was laid.
- Any retrospective application of requirements cannot be considered without recourse to Law.
- Proposals to amend the Policy/planning document have been rejected by Inspectors. Should they be subsequently accepted and amended they will post-date this application by some significant time and therefore will not be admissible.
- In the unlikely event that recourse to law rules that the TBMS can lawfully be substituted by the retrospective TWBMS, observations regarding the failure of onsite mitigations to comply with the updated Policy hold true.

The TBMS sets out very clear requirements for both onsite mitigation and offsite enhancement.

Onsite

Revision 03, adopted in 2024 sets out the following for yellow zone development:

“Yellow zone - site design requirements

Developments in the yellow zone must satisfy the criteria below to be compliant with the TBMS. The development must be designed to ensure no net loss of habitat onsite. Applications must use the DEFRA Biodiversity Metric 3.0, or any subsequent revisions thereof, to demonstrate no net loss onsite. This

must align with the Ecological Mitigation Plan submitted with full applications or the parameters plan submitted with outline applications. **All applications in the TBMS yellow zone must identify and retain core bat habitat (as identified through bat surveys) and provide dark buffers.** Specific lighting conditions and lighting design solutions are provided in the TBMS section 8.3.0 – 8.3.4. The following zones must be established:

(emphasis added)

- Zone A: Core Bat Habitat and New Core Bat Habitat

- o All applications to identify and retain core bat habitats (hedgerows, streams, ponds, scrub etc.).
- o The core bat habitat must remain connected to the wider habitat network and remain relatively undisturbed by the effects of urbanisation.
- o **The core bat habitat must be expanded with new core bat habitat so that it is of minimum width 15m. If development is planned on multiple sides of the core bat habitat it should be expanded by 7.5m on each side.**

(emphasis added)

- o It is critical that the bat habitat zone (Zone A) is maintained in ‘completely dark’ conditions, defined as >0.2 lux on the horizontal plane and below >0.4 lux on the vertical plane (measured at 1.5m and 4m) (Bat Conservation Trust and Institution of Lighting Professionals, 2018). There must be no glare impact from the development within Zone A. Where baseline levels are above the lux levels stated here, the development design should ensure there is no increase above existing background light levels and ideally, where possible, reduce these towards completely dark conditions.

There must be no glare impact from the development within Zone A. Where baseline levels are above the lux levels stated here, the development design should ensure there is no increase above existing background light levels and ideally, where possible, reduce these towards completely dark conditions.

- Zone B: Dark Buffer Zone

- o A ‘dark buffer zone’ of minimum 15m must be provided between development and Zone A.

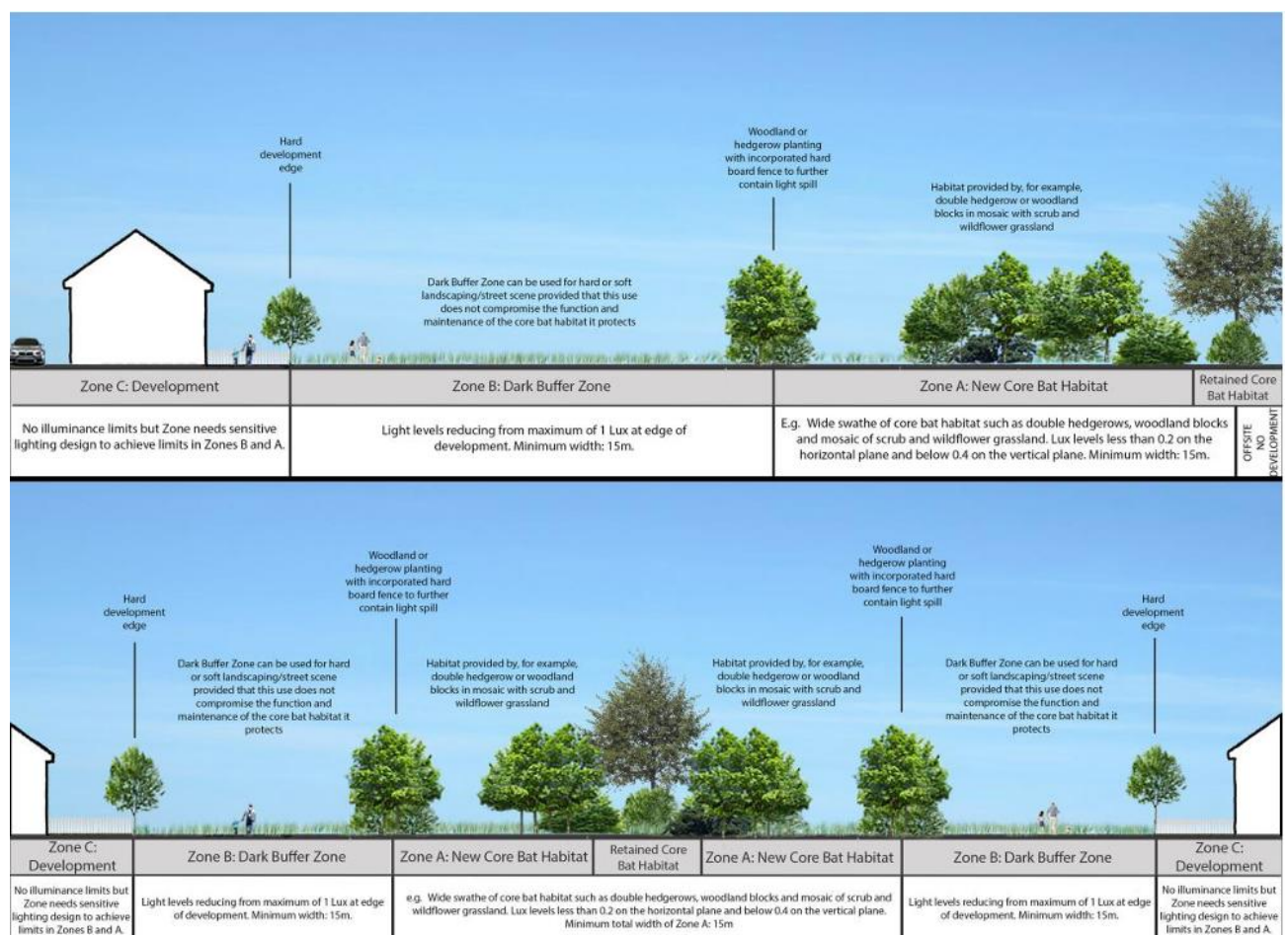
o It is critical that the buffer zone is unlit, with strict illuminance targets to be met (within the range of > 1 lux on the horizontal plane measured at the development edge of the buffer zone reducing to > 0.2 lux on the horizontal plane at the boundary with the bat habitat zone).

- Zone C: Development

o The development zone (Zone C) is characterised by a dominance of hardstanding and built structures. While lighting is required in this zone, sensitive lighting design will be required in order to:

- achieve illuminance targets within the buffer zone and the bat habitat zone
- avoid upward spread of light and thereby minimise environmental impacts more generally. Figure 1 below, extracted from the TBMS Figure 6, demonstrates how these zones should look in practice.

Figure 1. Core bat habitat feature, and associated buffer zones indicated for both development boundary features (above) and within development features



The above is a “cut and paste” from the V3 revision.

A cursory glance at the above, alongside comparison with the application shows:

- No planted boundary at the perimeter of Zone A.
- No hard-boarded fence at the perimeter of Zone A associated with the planting.
- No “mosaic of scrub and wildflower grassland”.

The detail in the application fails to deliver any of the above, suggesting wildflower alone will meet the requirements of the Policy/planning document. In parts of the application area not even this rudimentary condition is met. In the area running along the Lambrok, which must be in accordance with the lower illustration, this condition is breached twice with the multiple disregard of the hard-boarded fencing at the perimeter of both Zone A perimeters.

This application therefore fails the requirements of mitigation laid down in the Policy/planning document.

- b. This assumes greater relevance when Para 90 within the Public Inquiry requires:

Policy H.2.6 requires that the development is in compliance with the TBMS, in terms of its on and off site measures. Core Policy 50 seeks the protection and enhancement of protected species. The explanatory text makes reference to the SAC and also requires major development to restore, enhance and create habitat leading to a net gain in biodiversity. The Southwick Neighbourhood Development Plan Policy 2 promotes bat conservation and Policy 3 supports the continuing recreational and biodiversity promotion of Southwick Country Park. The adjacent North Bradley Neighbourhood Plan Policy 5 similarly seeks the protection of bats.

(emphasis added)

The application not only fails to meet the requirements of the TBMS in respect of Wiltshire Council, but also breaches a condition applied at Inquiry with its attendant weight in law. It must therefore be returned for amendment until such time as it is compliant.

Once more, in regard to the potential application of the TWBMS after any legal consideration, the ONLY alteration to the above is the removal of the firm requirement for a hard-boarded fence at the margin of Zone A in the upper example ONLY. The standing requirement for both hedging and hard-boarded fencing along the North-south arm of the Lambrok remains and therefore MUST

be included to meet the binding condition. The application is therefore negligent and must be rejected in its current form.

Offsite Enhancement

As noted in third party submission made my Lightwoods and presented by Christopher Boyle KC to the Public Inquiry (making it a public document). The additional requirement of the TBMS is for offsite enhancement. This takes the form of a SANG (special area of natural Greenland). The functions of the SANG are to offset recreational pressure from new development by the creation of new and unique areas for public recreation and to create ecological improvements by the creation of new habitats.

The requirements for a SANG are laid down in statute, but a brief summary would include:

1. A variety of walks ranging from 1km accessible paths to 4km longer routes.
2. Parking facilities to encourage use.
3. A safe area for the walking and release of dogs (i.e. self-contained and away from any roadway).
4. Mature habitat present prior to occupation of unit one of any associated development.

It is clear that, despite these unambiguous requirements, NO SANG has been provided in respect of this or any other ongoing development within the yellow zone. This is pertinent when considered alongside Mr. Boyle's Legal Opinion, in which he leans towards a Grampian Condition being required at Judicial Review, which his principals state that they will trigger. The Grampian Condition would see the requirements for the dwelling units construction carried out, but that occupation must not take place until the maturity of the SANG. It is to be noted that this would impact not only this application, but around 800 units either consented, or currently under construction.

Once more, the requirement in the above condition, laid down at Inquiry that:

Policy H.2.6 requires that the development is in compliance with the TBMS, in terms of its on and off site measures.

Is a breach within a breach, and one which must be taken extremely seriously by elected members.

4, The Wildlife and Countryside Act 2022 revision

During the Public Inquiry relating to the Planning appeal on rejection of Outline consent, in addition to mandating the above conditions relating to the TBMS and archaeology, the Inspection report additionally laid the following condition:

- Mitigation schemes for each endangered species should be planned and assessed in accordance with the spring 2022 revision of the Wildlife and Countryside Act.”

This appears within the conditions annex and requires the following:

- Separate schemes of mitigation for each of the notified endangered species found on the site. This includes Bats, Slow worm, water vole and Otter.
- Each scheme of mitigation must be approved to National Standards by the LPA.
- The schemes must then be passed to Natural England to certify. Without this certification the application is in breach of the Act and subject to potential prosecution.

The application makes no reference to the Act, provides no process by which the requirements of the Act could be met and provides only loose speculation in respect of the species evidenced to be present.

Given that the approved mitigations are unknown, and their impact on layout, services and infrastructure is equally unknown, it would not be reasonable to grant consent at this stage. Operating with pragmatism and prudence, there needs to be a degree of certainty surrounding the permissible development once the mitigations have been agreed and certified.

Conclusion

It would therefore be prudent and pragmatic to ensure that this application is compliant prior to submission to Committee. Failing that, for the protection of the residents of Southwick, Trowbridge and Bradford-on-Avon the application must be called in to allow it to be returned and amended until such time as it is compliant with the above.

Should this development be granted consent when modified, and in the fullness of time, it would seem reasonable to seek further acknowledgement of binding conditions. At Examination, the Inspection report reads as follows:

Para 93. The proposed main modification as published for consultation includes reference to an emergency access from the north of the site. Concerns have been raised over this.

“The intent was to make it clear that no vehicular access other than an emergency access would be permitted from the north.”

The wording of the MM reflects this by stating that the only access from the north would be an emergency access. This excludes other forms of vehicular access. The wording of the modified policy could be interpreted to imply that the emergency access can only be taken from the north. This might be compounded by the modified supporting text relating to trees and hedgerows, which again implies that the emergency access would be from the north. There is a potential lack of clarity.

Para 94. As a result, I have amended the wording of the proposed main modifications. This removes a specific reference to the ‘north’ in policy and supporting text. While an emergency access would be necessary, it does not have to be from the north. The amendments would not change the intent of the policy to any significant degree, as there would still be a requirement for an emergency access. My amendment simply makes it clear that an emergency access would be required. ***It would not preclude a proposal including an emergency access from the north but would also not stop alternatives being considered.***

(Emphasis added)

The relevance of this condition is that the matter of emergency access clearly ***precludes*** that point of access being used for any access other than emergency vehicles. The ongoing relevance is that site access during construction cannot be permitted at this point. A solution would be to ensure that the opening up of the access could not be made until the completion of the first habitable unit.

An alternative solution, and one which appears to make far more sense, is to make the emergency access point Axe and Cleaver Lane. This is a bridleway at the far East of the site and would only require 2-3 metres of further roadway to be laid. It is a fact that the bridleway is in third party control, but for the 1:10 minimum requirement to access, is less damaging than the permanent loss of amenity suffered by many residents to allow the chosen emergency access. The current proposal would require any fire appliance to mount pavements and apply a “no parking at any time” restriction on residents who currently enjoy the ability to leave their vehicles on the roadway. This detail does not appear on any submitted swept path analysis, but on page 27 of the statement of compliance.

None of the above would render the site undevelopable but ***must*** be applied to meet the requirements laid down with legal weight.

I would therefore ask you to consider these conditions carefully during your deliberations and to ensure that developers meet these requirements fully in the interests of current and future residents and the best interests of Wiltshire Council.

Graham Hill 13/1/26