

Comment by David Vigar on Wiltshire planning application PL/2025/09486

I am commenting on this application by Wain Homes as the former councillor for the Trowbridge Grove division of Wiltshire Council. As such I represented residents in respect of the Outline planning application 20/00379/OUT. That application was refused by Wiltshire Council's Strategic Planning Committee in February 2023 and approved by Inspector JP Longmuir in March 2024 following an appeal hearing in October 2023. I was a Rule 6 party at the appeal inquiry.

In this comment I am setting out several questions which I believe need to be answered by Wiltshire Council and some of the statutory consultees.

Status of drainage strategy

I see from the Drainage Technical Note that that the approach to flood alleviation proposed at Outline stage proved unworkable as it was unacceptable to Wessex Water, who would not accept flood flows in its system, and Wiltshire Highways, who would not accept a private drainage system in public roads.

The original plan was to discharge flood water under the estate to attenuation ponds at the south. As Wessex Water and Wiltshire Highways would not accept that, the plan is now to convey flood water along the north of the site directly into the Lambrok Stream.

The fact that the original strategy was not contested by Wessex Water and Wiltshire Highways during nearly three years of consultation raises the question of whether they scrutinised it closely and why they did not identify what appear to be fundamental objections, ones that have since resulted in a change of approach. I will address those failures separately later but the imperative looking forward is that the new flood alleviation strategy is recognised to be a significant change to what was agreed at Outline stage and scrutinised fully by all consultees.

The site contains areas designated as flood zones 2 and 3. Local residents see it flooding regularly. As such the alleviation strategy is critical. The number of UK

homes at risk of flooding is increasing sharply,¹ with one in four homes estimated by the government to be at risk of flooding by 2050². The council and statutory consultees need to be able not only to assure residents that they judge the proposal to be acceptable – but as some of those judgements were clearly flawed at Outline stage – to explain in plain English to councillors and residents what the alleviation approach is and why it will work. I also believe that given the previous issues, the flood-related consultees should hold a meeting to check they are all content with each other's responses and views.

It seems that the new flood alleviation strategy cannot be part of the Reserved Matters application as those matters are access, appearance, landscaping, layout and scale – none of which include drainage.

As the new flood alleviation strategy does not fall under the reserved matters, yet represents a substantial change to the previous plans, I believe that it should be considered as a proposal to modify the existing Outline permission – which did cover 'drainage infrastructure'.

Situations in which approved proposals require modification are covered by government planning guidance on 'Flexible options for planning permissions'. <https://www.gov.uk/guidance/flexible-options-for-planning-permissions> The guidance states that: "Where these modifications are fundamental or substantial, a new planning application under section 70 of the Town and Country Planning Act 1990 will need to be submitted. Where less substantial changes are proposed, applicants can seek either to make 'a non-material amendment' or amend the conditions attached to the permission".³

I believe that a change to the flood alleviation strategy for a site that contains areas designated as flood zones 2 and 3 and which took almost three years to agree at Outline stage cannot be seen as other than substantial and therefore requires a separate new application.

¹ <https://www.aviva.com/newsroom/news-releases/2025/10/uks-iconic-landmarks-at-risk-from-climate-change-by-2050-according-to-new-report/>

² <https://www.gov.uk/government/publications/national-assessment-of-flood-and-coastal-erosion-risk-in-england-2024/national-assessment-of-flood-and-coastal-erosion-risk-in-england-2024>

³ <https://www.gov.uk/guidance/flexible-options-for-planning-permissions>

Were the council to consider instead amending a condition under Section 73 of the Town and Country Planning Act 1990, the relevant condition would be Condition 11 in the decision issued by the Inspector which said: “The development shall be carried out in accordance with the submitted Flood Risk Assessment (July 2022 Addendum 4 To Level 2 Flood Risk Assessment Land South of Trowbridge, Ref. 447/Fra2/Addm4, V1 – 21.07.22 and Appendix 2 Modelling Report including drawings FRA10 – FRA14).”

That condition could be amended to say that the development should be carried out in accordance with the new strategy rather than the previous one. But that original condition was applied after the Environment Agency and other consultees took nearly three years to sign off the flood plan. So I think that to provide equivalent assurance of expert approval, Wiltshire Council’s Drainage Department (as Local Lead Flood Authority or LLFA), Wessex Water, the Environment Agency and Wiltshire Council’s Highways Department should all need to sign off this new strategy before it becomes the focus of a condition.

The other alternative to a fresh application would be for the Local Planning Authority to satisfy itself that the amendment sought is “non-material” under section 96A of the Town and Country Planning Act 1990. The Act does not define “non-material” but says: “In deciding whether a change is material, a local planning authority must have regard to the effect of the change, together with any previous changes made under this section, on the planning permission ... as originally granted.”

There is little guidance to indicate the meaning of “non-material”. However the Planning Portal, which has some standing as a joint venture between the Ministry of Housing, Communities & Local Government and TerraQuest Solutions Ltd and is used by many applicants to file applications, says that: “Examples of changes which may be considered non-material” include “minor changes to what was described in the planning permission; changes which do not breach conditions of planning permission; and changes which do not increase the height of the property.”⁴ Those examples seem very minor and much less substantial than the replacement of one flood alleviation strategy

⁴ <https://www.planningportal.co.uk/planning/planning-applications/consent-types/non-material-amendment-of-an-existing-planning-permission>

with another on a site that includes areas designated as flood zones 2 and 3. So I do not believe that such a change can be regarded as 'non-material'.

There has been an increase in the number of developments approved against the advice of the Environment Agency in recent years. One report said that almost 3,000 homes have been built in areas at risk of flooding against the official advice of regulators. This is why I also ask whether you would recommend refusal of the application if the Environment Agency has an outstanding objection at the time of the decision? I want to know if Wiltshire Council would contemplate adding to the number of homes built against expert advice or whether an objection from the Environment Agency would be a "red line".

Questions for Wiltshire Council Planning

Do you agree that the new flood alleviation strategy cannot be part of a Reserved Matters application that covers the separate areas of access, appearance, landscaping, layout and scale?

Do you agree that the new flood alleviation strategy should be the subject of a fresh planning application?

If not, do you propose to deal with the flood alleviation strategy by way of a change of condition under Section 73 of the Town and Country Planning Act 1990 or by deeming it 'non-material' under section 96A of that act?

Will you recommend refusal of the application if the Environment Agency has an outstanding objection at the time of the decision?

Will you require that a meeting be held between all drainage-related consultees to check thoroughly that nothing has been missed and to establish whether they are all confident that the strategy is workable and fit for purpose?

Drainage consultation

I am concerned that the issues that have resulted in a change to the flood alleviation strategy were not picked up during three years of consultation between January 2020 when the Outline plans were submitted and 2023 when they came to committee.

The Drainage Technical Note from CLFA Design says: “Teignconsult Drawing FRA22 showed three flood alleviation (cut off) ditches to the north-east of the site with a total capacity for 348l/s. These discharged to a piped system under the roads and eventually to the attenuation ponds to the south of the site. It is the Client’s intention to offer the drainage network for adoption, however the water incumbent would not accept flood flows into their system, so these flows need to be separated. In addition to this, the Highways Authority would not accept a private drainage system in public roads, so this flood alleviation network needs to be laid in private areas. Total volume of water from these ditches is also unknown (only flows -348l/s- are known), so it is recommended these flows don’t discharge to the proposed basins. It is therefore proposed that these swales run along the site’s northern development edge and discharge directly into the stream. This would mimic the existing situation.... In addition to this cut-off swale, the flood alleviation strategy also includes flood compensation works around the road over the stream.”

This appears to mean that the drainage strategy proposed at Outline stage proved unworkable as it was unacceptable to Wessex Water, who would not accept flood flows in its system, and Wiltshire Highways, who would not accept a private drainage system in public roads.

Wessex Water contributed to the consultation with a letter on 11 November 2021, saying that the plans showed an attenuation pond that appeared to be located within the easement required around a public foul sewer – an objection that was then withdrawn on 29 November. But I can see no reference in the consultation documents to Wessex Water accepting flood flows into its system.

Wiltshire Highways contributed to the consultation at a late stage. A comment was posted on 10 February 2023 with a revised version on 15 February, a week before the application was considered by the Strategic Planning Committee. That comment covered several areas including the capacity of the proposed junctions onto the A361 for this and two other estates, road safety and a

possible contribution of £1.2m from the development towards various highways schemes. However the comment did not address the planned drainage strategy at all.

Questions for Wessex Water

Please can you explain why the fact that you were not prepared to accept flood flows into your system as proposed by the flood alleviation strategy in application 20/00379/OUT was not identified in the consultation that lasted from January 2020 until late 2022?

Did the flood risk assessment not clarify how the plans would affect your infrastructure? Did you not scrutinise the plans clearly enough? Or is there another explanation?

Please can you also explain how and when you noted that the drainage strategy involved discharging flood flows into its system? What prompted the observation? What action did you then take?

Please can you also explain how you will ensure that the new drainage strategy will undergo full and rigorous scrutiny and that issues will not be missed. I would be grateful if that explanation could go further than mere assurance to provide some factual evidence of then how the scrutiny will be undertaken so as to reassure residents that it is fit for purpose.

Questions for Wiltshire Highways

Please can you explain why the fact that you were not prepared to accept a private drainage system in public roads as proposed by the flood alleviation strategy in application 20/00379/OUT was not identified in the consultation that lasted from January 2020 until late 2022?

Did the flood risk assessment not clarify how the plans would affect your infrastructure? Did you not scrutinise the plans clearly enough? Or is there another explanation?

Please can you also explain how and when you noted that the drainage strategy involved discharging flood flows into its system? What prompted the observation? What action did you then take?

Please can you also explain how you will ensure that the new drainage strategy will undergo full and rigorous scrutiny and that issues will not be missed. I would be grateful if that explanation could go further than mere assurance to provide some factual evidence of then how the scrutiny will be undertaken so as to reassure residents that it is fit for purpose.

The Environment Agency is the only consultee on drainage that has a national role and the authority that comes with it. At outline stage the Environment Agency reviewed and challenged the application in great detail, for example with spreadsheets recording objections and progress towards addressing them, while other consultees appear to have missed basic issues that later prevented them approving the plan.

It also appears that at outline stage it was the Agency's removal of objections that led to the Local Lead Flood authority removing theirs and the assessment being accepted. The officer's report to the Strategic Planning Committee said: "The Lead Local Flood Authority (LLFA), having reviewed all the relevant information, including the additional documentation sought by them and the EA during the application, have now removed their objection to the scheme." The Agency therefore appears to have particular influence among the consultees and that is why I ask whether it would adopt a leadership role among the statutory consultees to avoid any failures at the final stage of scrutiny.

It is also relevant that the Flood Risk Map for Planning has been updated since the Outline application shows areas designated as Flood Zones 2 and 3 along and to the east of the Lambrok stream as well as an area along the path of the stream prone to surface water flooding.⁵

I also suggest that the Agency should visit the site as residents may not have confidence in a review that has consisted only of deskwork.

Questions for the Environment Agency

⁵ <https://flood-map-for-planning.service.gov.uk/map?cz=384904.7,155975.9,17>

The flood alleviation strategy proposed in the Outline application 20/00379/OUT has been replaced in the Reserved Matters application PL/2025/09486 because Wessex Water would not accept flood flows in its system and Wiltshire Highways would not accept a private drainage system in public roads. While the question of why these issues were not picked up in nearly three years of consultation at Outline stage are chiefly for Wessex Water and Wiltshire Highways to answer, did the Environment Agency not examine the question of how the drainage strategy relied on use of Wessex Water's infrastructure and involved a private drainage system in public roads managed by Wiltshire Highways?

Did the Environment Agency at any point detect that there might be an issue with flood flows in the Wessex Water system and a private drainage system in public roads managed by Wiltshire Highways?

Or was this not relevant to your considerations, which were simply as to whether the strategy would be fit for purpose in managing drainage and preventing flooding on the assumption that the parties affected would accept its structure?

Please can you explain whether the 2025 update to the UK Flood Risk Maps for river flooding and surface water show that the estimated risks of flooding at this site have increased, decreased or remained the same since the previous map that was in force when the Outline application was made in January 2020?

Given your national authority in this area, the apparent failures in the previous consultation and the importance of the correct outcome in this highly sensitive application, would you be willing not only to review the flood alleviation strategy yourselves but to review other consultees' comments to ensure that the plan is fit for purpose from all angles?

Would the agency request that a meeting be held between all drainage-related consultees to check thoroughly that nothing has been missed and to establish whether you are all confident that the strategy is workable and fit for purpose?

Will a representative from the Environment Agency will visit the site to seek assurance via observation and measurement that the drainage strategy and other relevant documentation is aligned with the actual situation on the ground?

Heritage impact

The 2018 Heritage Impact Assessment on the Wiltshire Housing Site Allocation Plan noted the value of the historic asset of Southwick Court and its associated fields. “Where moated and other manorial sites often lose this relationship to their working landscape through the development of larger houses and parkland in later centuries, Southwick provides a relatively rare and valuable illustration of a 16th and 17th century estate centre in its agricultural context.”

This heritage asset, comprising Southwick Court and the associated fields that have been an integrated entity for centuries, will be severely and permanently harmed by the building of an access road across the Park Field to the west of the housing development and in particular by the creation of a bridge over the Lambrok Stream that will irrevocably change this historic landscape.

The impact of the proposed development on the historic setting of Southwick Court was a major factor in the decision of Wiltshire Council’s Strategic Planning Committee to refuse permission in February 2023.

In the subsequent appeal, the Inspector gave “considerable importance and weight” to the harm that the planned development would cause to the special interest and significance of the Grade II* listed Southwick Court Farmhouse and the associated gatehouse and moat bridge.

The Council’s Conservation Officer, Helen Garside, had objected to the application, saying that “on the basis of the submitted indicative development details”, the harm which would result to the Southwick Court assets should be considered as “less than substantial harm” but within the higher levels of this category.

However, as the Conservation Officer added, the submitted plans lacked detail, in particular regarding the road that would bisect the Park Field between the

A361 and Lambrok Stream and the bridge over the stream. The Conservation Officer said: "...the harm that will result from the road crossing over Lambrok is unclear as I have not spotted that any information has been provided in respect of this element."

I therefore suggest that the judgements that have been made thus far by the Council Conservation Officer, the Inspector and others have been provisional to a large degree as those consultees have not had access to full and detailed facts about the design of the road and bridge. I believe that a meaningful judgement on the degree of harm can only be conclusively made when the dimensions and design of the road and bridge are clearly set out, with architectural plans, numerical measurements and accurate technical drawings.

Question for Wiltshire Council Planning

I cannot find details of the design and dimensions of the access road and bridge among the documents submitted for this Reserved Matters application. If they exist, please could you show where they are and ask the applicants to provide them in a simple, transparent and accessible way in a stand-alone document so that the specialist consultees and public can see a clear and full description of the road and bridge and form a view on the level of harm that will be caused?

Question for Wiltshire Council Conservation

Do you agree that it is necessary to see a full and detailed plan for the access road and bridge before a conclusive judgement can be made on the degree of harm to the heritage asset of Southwick Court Fields and the associated farmland?

Is there anything in the submitted Reserved Matters documents that leads you to any other conclusion to the one drawn at the Outline stage that the development causes "less than substantial harm" but at the upper levels of that category?

ARCHAEOLOGY

Regarding archaeology, the Inspector's decision included the condition that no development should commence until a Written Scheme of Investigation for the further archaeological investigations has been submitted and implemented."

This follows a trial trenching phase which, as the Assistant County Archaeologist has noted, identified "a substantial area of Romano-British activity in the south-eastern end of the site." This included findings of coins, pottery, postholes and evidence of a cremation in the later Roman period. The archaeological consultant's report described the finds as consistent with a small farmstead although adding that the presence of some brick and tile indicated that there may have been a stone-built Roman building within the wider area.

The Council's archeology team clearly wish to see more than a trenching study can provide as they have imposed a condition requiring an open area excavation so any archaeological remains can be identified more readily than they can be through a series of trenches.

The condition requires a written scheme of investigation that includes "the methodology for the analysis of the results, publication to an appropriate level, and deposition of the site archive and finds."

The condition implies a potential scenario whereby remains are found, deposited, for example in a museum, and recorded by publication. However the law requires that were any Roman structure found be listed as a Scheduled Ancient Monument then the applicants would need to gain special permission to continue any development.

Given the chance that a significant Romano-British development might be found here, I believe the condition should be varied to require that the excavation be carried out before approval is given, rather than before development takes place.

If nothing of sufficient importance is found then such an approach would not inhibit permission, and as the investigation has to be carried out anyway, would not add expense. But if there were to be an important find then the council would not be in a position where it had effectively given permission for that structure to be built over.

The law may provide for building over important archaeology but we believe that Wiltshire Council – which acts as a custodian of major historic sites such as Salisbury, Stonehenge and Avebury – should not risk damaging its record by risking a situation in which this estate is built regardless of the archaeological value of what lies beneath it.

Question for Wiltshire Council Archaeology

You have requested an open area excavation. Was this because you wished to see more than a trenching study could show?

If the open area excavation were to reveal something of significant archeological significance is there any way in which development of the relevant area, what options would be open to the council to protect those remains if permission has been given?

If the excavation has to be undertaken at some point, why not require it before the permission is granted so as to keep more options open?

Other matters

Urban design

I see that the Urban Design officer has submitted an objection with 16 points requiring a response including changes to types of houses and heights.

By my calculation at least 40 of the proposed dwellings need to be replaced with different building types and plans need to be redrawn to respond to comments on features such as green spaces, green links and car parking. This requires changes to most or all of the plans showing the whole site, from the planning layouts to FFLs and visibility planning sheets.

I assume this means that new plans will need to be developed and submitted and existing ones marked as “superseded”.

Ecology

My understanding from reading the Trowbridge and Westbury Bat Mitigation Strategy published last July is that unlike most applications, this one will be subject to the former Trowbridge Bat Mitigation Strategy (TBMS). The Newer document says the following which seems to say that sites identified for housing in the WHSAP (Wiltshire Housing Site Allocations Plan) are subject to the original TBMS.

“..the requirements detailed within this strategy will be applicable to all development proposals The only exceptions ... are applications for development at the WHSAP sites that are currently before the council for determination or yet to be submitted as the recreational pressure mitigation requirements for the housing allocated by means of the WHSAP sites are covered by the strategy set out in the TBMS.”

I and others have studied the plan and I question whether they conform to the TBMS. In particular I cannot see core bat habitat marked on the Composite Planning Layout. It refers to Ecology Buffer Zone A when Zone A in the language of the TBMS is the core habitat and not a buffer. The two zones appear to overlap rather than being separate as per Figure 6 of the TBMS.

I will continue to look at this but I know other consultees are examining it in more detail.

Emergency Services

A number of residents of Westmead Crescent have questioned its suitability as an access point for fire, ambulance or police services.

The appeal and decision did not cover this access in any detail and I cannot see that there has been any consultation at Outline or Reserved Matters stages with the relevant services – the Wiltshire and Dorset Fire Service, The South Western Ambulance Service and Wiltshire Police.

The Highway Code says: “Do not stop or park: ... anywhere you would prevent access for Emergency Services.”

If this is to be enforced, I believe it would require yellow lines in Westmead Crescent. The emergency services may also have a view on whether a road such as Westmead Crescent with two right angle turns and no current restrictions on street parking is suitable for such access. I believe that they should be consulted. If the plan is fit-for-purpose they will approve it so there seems to be no reason not to seek this assurance.

Question for Wiltshire Council Planning

Please will you consult the emergency services on the emergency access?

Question for Wiltshire Council Planning

As it seems challenging for the applicants to revise all the plans to meet the Urban Design objection by the existing consultation deadline of 23 January, and other changes may be required in response to other consultees, will you set a new deadline for responses to the updated plans?

Complaint to Parliamentary and Health Service Ombudsman

I should record here that I have lodged a complaint with the Parliamentary and Health Service Ombudsman (PHSO) against the Planning Inspectorate (PINS) because the Planning Inspector who allowed the appeal on the Outline application, JP Longmuir, made an error in his decision which has been acknowledged by the PINS who have recorded a “significant upheld complaint”.

In his decision, at paragraphs 107 and 108, Inspector Longmuir wrote: “The proposal, up to 180 houses, would form part of the housing land supply trajectory, delivering from 2027 onwards, which is particularly significant as the Council is not currently meeting its 5 year housing land supply requirements.” However, as of March 2024, Wiltshire Council was not subject to a five-year housing land supply requirement, but a four-year one. The National Planning Policy Framework (NPPF) had been updated on 19 December 2023 and under Section 226, local planning authorities were required to demonstrate a supply of sites sufficient to provide four years’ worth of housing, rather than the previous five, if, like Wiltshire, they had an emerging local plan that had reached Regulation 19 consultation stage.

In my complaint I noted that as there was no shortfall to make up, the contribution to housing supply should not have counted in the planning balance. This may have been decisive as on the other side of the balance the inspector gave “considerable importance and weight” to the impact of the proposal on the heritage asset of Southwick Court together with the fields that were farmed from the house for centuries – including the appeal site.

On 28 November 2024, I received a letter from Helen Graham of the PINS Customer Team acknowledging a series of failures. She wrote: “On review I have identified that the submissions to this effect from you and Graham Hill were received by the Planning Inspectorate on 18 January, but due to an administrative error by the Case Team the documents were not uploaded to the Inspector’s case files. The case team did email the documents to the Inspector but unfortunately, the emails were not read. As a result, the Inspector did not take the change in requirements into account and, as you have highlighted, the decision letter includes incorrect information on this matter. ... We have clearly fallen short in our handling of this particular aspect of the case. With the above in mind, I can advise you that a significant upheld complaint has been recorded.”

However, little action was offered by way of redress. Helen Graham simply said: “We are keen to learn from our mistakes and consequently my findings in this case have been drawn to the attention of the Case Team, the Inspector, and the relevant managers.” I did not feel that this action was sufficient and also noted that the delay in the response meant that the six-week period within which a judicial review could normally be sought had expired. I therefore took the complaint to a second stage. The PINS responses to my complaints are attached.

I have now submitted a complaint to the PHSO in which I say: “I sympathise with residents who feel that had the inspector not erred as the PINS have admitted, and had the housing supply benefit been disregarded as it should have been, the decision might have gone the other way and a large estate might not have been built on a much-valued open space.” When asked for recommendations, I have suggested that the Inspector and the PINS issue an apology to residents. I have recommended that the PINS should make a public statement about how they are ensuring all inspectors stay up to date with relevant policies and also read their emails. And I have asked the PHSO to consider what further practical

redress the PINS might make to residents as a “significant upheld complaint” seems inadequate for a mistake with such potentially far-reaching consequences.

This complaint may not have a direct bearing on the reserved matters application, but I thought I should record it here as it relates to the application as a whole.