

## **FORMAL OBJECTION**

**Application:** PL/2026/00195

**Site:** Land West of Westbury Road, Warminster

**Applicant:** Barratt Homes

**Local Planning Authority:** Wiltshire Council

## **OBJECTION GROUNDS – FAILURE TO LAWFULLY DEMONSTRATE NUTRIENT NEUTRALITY**

### **1. Introduction and Legal Context**

1.1 This representation objects to the application on the grounds that it fails to lawfully demonstrate compliance with Regulation 63 of the **Conservation of Habitats and Species Regulations 2017** (“Habitats Regulations”).

1.2 The development lies within the catchment of the **River Avon Special Area of Conservation**, which is in unfavourable condition due to nutrient enrichment (Planning Statement Appendix – Appeal Decision, page 7, paras 45–46).

1.3 The statutory test is strict: the competent authority must be certain beyond reasonable scientific doubt that the proposal will not adversely affect the integrity of the SAC.

#### **Conclusion – Section 1:**

Because the River Avon SAC is already in unfavourable condition, the threshold for lawful approval is exceptionally high. Any evidential gap, uncertainty, or reliance on unproven mitigation legally requires refusal. The precautionary principle is not optional; it is mandatory.

### **2. The Applicant’s Proposed Nutrient Mitigation Strategy**

2.1 The Planning Statement confirms the removal of the previously proposed on-site wastewater recycling centre and tertiary treatment basins (page 10, para 4.3).

2.2 The revised approach relies on the purchase of off-site nutrient credits (page 15, para 5.12; page 34, paras 7.70–7.72).

2.3 Paragraph 7.72 (page 34) asserts compliance with the Habitats Regulations but provides no embedded documentary evidence within the Planning Statement to substantiate that claim.

#### **Conclusion – Section 2:**

The strategy rests on a future commercial transaction rather than secured environmental mitigation. A stated intention to purchase credits is not equivalent to demonstrated nutrient neutrality. Assertions of compliance without legally secured evidence cannot discharge the Council’s statutory duty.

### **3. Failure to Provide a Complete Nutrient Budget Within the Submission**

3.1 The Planning Statement references a “Phosphorus Neutrality Report (Revision 4)” (document list, page 13; para 7.73, page 34).

3.2 The Statement itself does not set out:

- Baseline agricultural phosphate export calculations;
- Post-development loading figures;
- Calculator version used;
- Independent verification of occupancy and discharge assumptions;
- Confirmation of Natural England methodological acceptance for the revised scheme.

3.3 The Council must undertake its own Appropriate Assessment based on complete and robust evidence.

**Conclusion – Section 3:**

Without a fully transparent, verifiable nutrient budget contained within the application material, the Council cannot lawfully conclude that the proposal is neutral. An incomplete evidential record prevents the statutory test from being met. This deficiency alone renders the application incapable of lawful approval.

**4. Absence of Secured and Enforceable Mitigation**

4.1 The Planning Statement (page 15, para 5.12) confirms reliance on purchased credits.

4.2 No evidence is provided of:

- A signed Section 106 agreement;
- A Unilateral Undertaking;
- Credit reservation certificates;
- Legal security for the lifetime of the development;
- Monitoring or enforcement mechanisms.

4.3 Earlier appeal documentation referenced legally binding safeguards (page 34, para 7.69). No equivalent binding mechanism is demonstrated here.

**Conclusion – Section 4:**

Mitigation that is not legally secured at the point of determination cannot be relied upon. The absence of enforceable obligations means nutrient neutrality is speculative. The Council would act unlawfully if it granted permission without legally binding mitigation in place.

**5. Removal of On-Site Mitigation Without Equivalent Safeguards**

5.1 The wastewater recycling centre and tertiary basins have been omitted (page 10, para 4.3).

5.2 The prior Inspector's decision acknowledged operational and flood risk considerations (Appeal extract, page 7, paras 45–46).

5.3 The new credit-based approach removes direct site control and transfers reliance to third-party mitigation providers.

### **Conclusion – Section 5:**

The revised strategy substitutes on-site physical mitigation with off-site commercial credits, yet provides fewer operational safeguards. This increases uncertainty rather than reducing it. Increased uncertainty in a Habitats Regulations context legally weighs in favour of refusal.

## **6. Failure to Demonstrate Additionality and Permanence**

6.1 The Planning Statement provides no evidence that:

- Credits are additional and not already allocated elsewhere;
- Mitigation is secured in perpetuity;
- Double-counting is prevented;
- The mitigation lies within the correct hydrological catchment.

6.2 Additionality and permanence are fundamental principles of nutrient neutrality.

### **Conclusion – Section 6:**

Without documentary proof of additionality and permanence, nutrient credits cannot lawfully be relied upon. Any risk of double-counting or temporal limitation undermines certainty. This failure prevents the Council from ruling out adverse effect on integrity.

## **7. Absence of Demonstrated Appropriate Assessment on the Revised Scheme**

7.1 Page 22, para 6.32 acknowledges the need to comply with the Habitats Regulations.

7.2 There is no evidence within the Planning Statement that:

- The Council has completed an Appropriate Assessment for the revised mitigation strategy;
- Natural England has confirmed agreement with the credit-based approach.

### **Conclusion – Section 7:**

Without a completed Appropriate Assessment on the revised scheme, the statutory decision-making sequence is incomplete. Granting permission prior to that assessment would be procedurally unlawful.

## **8. Cumulative Impact Not Addressed**

8.1 The River Avon SAC is already nutrient-impaired (Appeal extract, page 7).

8.2 No cumulative loading assessment is presented demonstrating that this development, in combination with others in Warminster, will not worsen catchment conditions.

### **Conclusion – Section 8:**

In a failing catchment, even marginal uncertainty is legally significant. The absence of cumulative assessment prevents a lawful conclusion of no adverse effect.

## **OVERALL CONCLUSION**

The Planning Statement repeatedly asserts compliance (e.g., page 34, para 7.72), yet fails to provide:

- Legally secured nutrient mitigation;
- Transparent and verified nutrient calculations;
- Proof of additionality and permanence;
- Evidence of completed Appropriate Assessment;
- Certainty beyond reasonable scientific doubt.

Under Regulation 63 of the Conservation of Habitats and Species Regulations 2017, if doubt remains, permission must be refused.

In this case, doubt does not merely remain — it is structurally embedded in the mitigation strategy.

Wiltshire Council therefore cannot lawfully grant planning permission for PL/2026/00195 in its current form.