

COMMENT BY DAVID VIGAR ON APPLICATION PL/2026/01153

Land at Southwick Court Farm, South of Trowbridge

Proposal: Discharge of conditions 7 (Lighting), 9 (SUDS), 10 (CEMP), 12 (LEMP), 13 (Contamination) and 16 (Archaeology) relating to application 20/00379/OUT following Appeal Ref: 3321957.

I comment on this application as the former Wiltshire Councillor for Trowbridge Grove division until May 2025. Many residents of Trowbridge Grove enjoy walking and exercising on the public rights of way that exist across Southwick Court Fields. I represented them for four years and spoke at both the Strategic Planning Committee meeting that refused the Outline planning application 20/00379/OUT in 2023 and the subsequent appeal in October 2023 that led to the application being approved by Inspector JP Longmuir.

Firstly, I wish to echo the comment of the Assistant County Archaeologist that states that Condition 16 can only be partially discharged by the submission and approval of a Written Scheme of Investigation for an Archaeological Excavation. The Condition says that: "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." Therefore the Condition cannot be fully discharged until the works are completed. As the Assistant County Archaeologist says: "A full discharge of the condition will of course require the completion of all on-site archaeological investigations and the preparation of suitable reports on the results." I will monitor the application to ensure that this condition is not discharged before the works are completed and reported.

Secondly, I note that drainage related documents have been posted on the web-pages for the Discharge of Conditions, consisting of a 'Drainage Technical Note' and various plans. These appear to me to be identical – apart from slightly different file names – to documents posted on the Reserved Matters application for Southwick Court Fields Ref: PL/2025/09486.

The relevant Condition from the Inspector's decision at <https://acp.planninginspectorate.gov.uk/ViewCase.aspx?caseid=3321957> is

Condition 11 which reads: “ 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) ...”

However, the Drainage Technical Note states: “The Drainage Strategy has been based upon Teignconcul FRA Addendum (Report Ref. 447/FRA2/ADDM3 V2-17.05.22).”

In other words, it says it is based on Addendum 3 to the FRA, dated May 2022, not Addendum 4, dated July 2022.

Addendum 3 and Addendum 4 both appear to be efforts to respond to Environment Agency challenges but they are very different documents. For example Addendum 3 begins with greenfield and surface water runoff rates after a brief mention of fluvial flooding whereas Addendum 4 begins with detailed figures on fluvial flooding.

The Drainage Technical Note also explains that significant changes have been made to the drainage strategy since the plans submitted at Outline stage, principally the discharge of floodwater from the estate along swales to the north and directly into the Lambrook Stream, as opposed to the earlier plans to route the water through pipes under the estate which were said to be unacceptable to Wessex Water and Wiltshire Highways.

I cannot see how documents saying they are based on Addendum 3 can discharge a Condition that the development should be based on Addendum 4. And I cannot see how a condition set in March 2024 can be discharged by a plan that involves a subsequent material change in the flood alleviation strategy.

As I have noted in previous correspondence, the drainage strategy cannot be part of the Reserved Matters application as those matters are: access, appearance, landscaping, layout and scale – none of which include drainage.

I therefore conclude that the revised drainage strategy can neither discharge the Outline approval Condition 11, as that required conformance with a different

and now superseded plan, nor can it be part of the Reserved Matters application as those matters do not include drainage.

I believe that the proper way to treat the revised drainage strategy is as a proposal to modify the existing Outline permission rather than one to discharge one of its conditions.

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".

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.

However, 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 the one referenced above, namely Condition 11.

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 only applied after the Local Lead Flood Authority (Wiltshire Drainage), Environment Agency and other consultees had taken nearly three years to sign off the flood plan after multiple challenges. 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. 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 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.” Those examples seem very minor and much less substantial than the replacement of one flood alleviation strategy 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’.

I also believe that the revised drainage documents belong on the Outline application site pages, ie 20/00379/OUT, and should be removed from both the Reserved Matters and Discharge of Conditions applications, as they should not form part of either of those.

I would be grateful to hear from the Local Planning Authority how it views the status of the drainage strategy and how it justifies its inclusion in both the Reserved Matters and Discharge of Conditions applications given the points I have made above that suggest to me that it should instead be treated as a proposal to modify the Outline permission.