

Dear M/s Foster,

With reference to the above planning application, there are a number of omissions and failures relating to the submissions as presented for consultation. Some of these matters were left by your predecessor to be addressed at reserved matters stage, but do not appear to have been shared between one applicant and the next, this being the first point at which Wain Homes have been involved. It would appear that many important points and nuances have not been shared with them, and that restrictions/obligations upon them have been lost in the nine years since the WHSAP Examination. I am heartened by your repeated assurances to me that conditions cannot be added, modified or removed at this stage of the process.

I have summarised many of these in a document which has been shared widely with senior Cabinet members via WALPA (Wiltshire Area Localism and Planning Alliance) meetings and which I added to your discharge site ref: PL/2026/01153. However, aside from it being unfair to expect you to have equal regard to every comment made, I have attached the same document at the foot of this email to ensure that you are aware of all of the historical aspects of this allocation. As you have inherited the application from a colleague, I feel that it is important that you are aware of these matters.

With regard to the Application as submitted there are significant issues as follows:

- The TBMS is referenced as being the overarching policy for bat mitigation on page 4 of the LEMP, however, the plan clearly shows that no hard-boarded fence is within the plan within their appendix a (further detail below). Therefore, the application is in breach of conditions laid down at Inspection where the requirement to fully implement the TBMS on **and** offsite was made. The application is therefore derelict in this detail and must be rejected.
- The applicant states within the LEMP that the applicant is choosing to abide by the TBMS rather than TWBMS. This is not their choice as the TBMS was laid down at inspection as the overriding criteria. Additionally, the TWBMS clearly states allocation sites are to be dealt with under the TBMS as the overriding policy when they were selected. Page six of the TWBMS confirms that:

“The only exceptions, as aforementioned, 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; and the Ashton Park Urban Extension outline planning application (application number 15/04736/OUT).”

- A requirement was made at Inspection (referenced below) that The TBMS was to be FULLY applied both on and off site. The application neglects to identify the

associated SANG which must be designated, purchased, planted and mature prior to the occupation of the first unit. The SANG must be an enhancement of current provision to offset the recreational pressure brought on by the development. SANG requirements are clearly described within National Legislation. A re-designation of existing open space is not acceptable in this scheme.

As this site falls under the TBMS and not the subsequent revision, the responsibility for the procurement and preparation of an appropriate SANG falls to Wiltshire Council. This fresh site must be mature in advance of the occupation of the first unit and is expected to take a minimum of five years from planting to maturity. Furthermore, an appropriate SANG must have parking and toilet facilities and a series of footpaths of varying lengths, some accessible to the less physically able and be away from any roadway to enable dogs to be let of the leash safely. I am unable to find any reference to this unique site within any documentation. Without this detail the application must be rejected as it would be in breach of the TBMS, the TWBMS and requirements laid down at Inspection with their accompanying legal weight.

For the avoidance of Doubt

The Applicant states in one document (the LEMP) that they intend to adhere to the TBMS, and yet in their document submission “Actions taken from consultation responses”, they reference the TWBMS. This is neither the appropriate Policy (see above) nor consistent with their own documented submission. The LEMP referencing one Policy and the “actions” document referencing another. This error ceases to hold any importance as the requirement laid down at Inspection was that the reasonable expectation was that the **TBMS** be fully applied on and off site. If the TWBMS is to be applied, the responsibility for the purchasing, planting, preparation and maturity of the required SANG would be the responsibility of the Applicant and must be mature prior to occupation of the first unit (approximately a five-year period). It would appear that the applicant is confused as to their own submissions and best interest. The application is therefore internally inconsistent and unsound and must be rejected.

- The plan also neglects to address the location of the high-pressure water main the easement of which falls within the TBMS buffer zone. As above, the TBMS requires the presence of a hard boarded fence at the 15m mark dividing Zones A and B. Either the buffer must be extended to accommodate the HPWM easement, or the pipe needs to be relocated. This plan is therefore not compliant with regulation or policy.

- Easement for services such as water, sewage and gas now run through the curtilage of some of the properties and not beneath infrastructure as roads. This appears to be unacceptable in developmental terms.
- The applicant helpfully publishes the essential requirements for the TBMS to be compliant onsite in page seven of their document. This diagram, drawn from the most recent iteration of the TBMS, and therefore the document on which the Inspection requirement is based, clearly shows the following at the boundary of Zone A and Zone B:

“Woodland or hedgerow planting ***with incorporated hard board fence*** to further contain light spill” (emphasis added)

This requirement does not appear on the drawings supplied and has no attached key relating to that requirement.

For the avoidance of doubt

It was on the above issues that Trowbridge Town Council raised their objection. The Applicant makes assumptions within their submission “Actions taken from consultation responses” which could have been clarified by either:

- Contacting the Town Council for clarification.

OR

- Viewing the recording of the meeting which is available to the public.

The choice made by the Applicant to make this assumption does them a disservice. The assumption, taken solely to favour their own interest, does not bear out the facts behind the objection and does not excuse their inaction in meeting the condition as laid down at Inspection. The above breaches of legally applied conditions relating to the hard-boarded fence and provision of a compliant SANG were the reasons for objection which still stands. The confusion shown by the Applicant, and attendant responsibility must be clarified. It is my understanding (as referenced below) that the time to challenge the determination made at Inspection has long passed and that that condition is therefore binding on both the Applicant and the LPA.

Their document is therefore in error and must be updated accordingly.

- As denoted on sections of the submitted LEMP (for example pages 40 and 41) the applicant includes the following within their key:

“New landscape creation to be delivered prior to, or in conjunction with,
vegetation removal” (emphasis added)

This must be entirely proscribed in any consent, as the definition within the TBMS as required by Inspection, is that the existing bat habitat must be retained. The existing habitat may only be *enhanced* within Zone A. By allowing this form of words, weakening or removing the protections for the bat habitat as determined by Inspection, the LPA places itself at risk of breaching lawful conditions.

- Page 40 of the LEMP shows the TBMS buffer zones, but, despite the key professing to show them on Page 41, they are absent. Only a single swathe is marked, with no detail regarding the discrete zones, with their attendant requirements and omitting the hard-boarded fence. Additionally, there is no buffering to the South of the site within the plans, and this area also requires full buffering *and* the associated hard boarded fence.

In the matter of the TBMS the application is seriously flawed and must be returned for completion and correction and can certainly not be deemed acceptable in its current form.

- Detail of the bridge and its relationship with the extended flood zones 3a and 3b is still absent. With regard to the Applicant’s submissions:
 - Whilst the applicant submits a document (*addendum to level 2 flood assessment (revised)*), this does not tally with the document entitled “culvert sections” insofar as the first shows the main bridge span flanked by culverts on page 25, whilst the latter indicates culverts situated together to one side of the span. Clarification and amendment are required.
 - Prior to the update of the Environment Agency Flood map for Planning the width of this zone requiring spanning was in the region of 100m. The 2025 update, with its projections relating to climate change, now requires a bridge of approximately 130m. No detail of height or construction methodology to allow a structure to be built on FZ3. My understanding is that such a structure must be as deep as it is high, therefore the application is incomplete in this regard.

- The “landing point” of the bridge is still within FZ3. If the climate change models are overlaid with the supplied plan, the “take-off point” is also within the prediction for flooding when allowing for climate change.

Requirements for this detail was a major point within the Inspection report following the Public Inquiry. The submission must therefore be rejected.

- The overall height of the bridge/culvert as added to the consultation portal on 10/6/26 for the first time, is now greater than the height of the bungalows some 30m from the proposed structure.
 - “Plans” for the bridge/culvert submitted as “*culvert details x6 drawings*” include many elements which are either the responsibility of the lead contractor or simply “tbc”. This is not the appropriate level of detail for the granting of consent.
- Updates to the Teignconsult (*addendum to level 2 flood assessment (revised)*) document on page 25 gives an indication of the required span of the bridge, but do not provide any detail of height, width, construction materials, position within the site plan or acceptability of location or function in relation to the notified flood zones 3a and 3b. The documents submitted on the 10th of June, a week into the consultation period now **do** give an indication of length and height of the bridge. From ground level to fence peak this is now confirmed as being taller than the bungalows some 30m away. They also show foundations for such a substantial structure as being a shade over 30cm deep. The accepted detail for any structure on FZ3 is that the foundations should be as deep as the structure is high. The 30+cm foundations have to support a structure of around 5m in height this is neither compliant nor reasonable.
 - A comparison with the Environment Agency Flood map for Planning also raises a number of questions relating to the advice pertaining to climate change, and whether that has been a consideration. Additionally, the conceptual drawing on P23 clearly shows the “landing point” of the proposed bridge within the new build **within** FZ3. The document is incomplete, therefore the application as it stands must be rejected. As noted above, the “culvert sections” document does provide an indicative width but disagrees with the principal document in other key regards, and so must be treated with scepticism when considering legal consents.
 - The Archaeology overlay document is presented without key or supporting rationale and is therefore meaningless. The requirement at Public Inquiry was

that a significant area of the site be fully stripped by qualified archaeologists whose report would inform the scale and scope of the development. This was a requirement laid down as being required **prior to** the granting of any further consents. This condition is referred to in the comment by the ACA in relation to the site (PL/2026/01153) opened by yourself for a separate discharge of conditions area of the Portal. Therefore, the application, as submitted, must be rejected as this condition has not yet been discharged or scheduled in relation to the calculated decision date. The Investigation must be completed **before** consideration of the site plan can be approved or rejected in order for any consent to be legally compliant.

- Previously submitted documents to the planning portal regarding discharge of conditions which you opened (ref: PL/2026/01153) illustrate the ongoing failures to comply with conditions and directives laid down at Examination and Inspection. These are attached as a footnote to this objection with references and links, but can be summarised as:
 - No masterplan for the conjoined sites of H2.4, H2.5 and H2.6 has been prepared and/or consented.
 - No individual or cumulative (across the identified conjoined developments) impact on the Country Park has been submitted.
 - Mitigation across the three sites has not been considered in a comprehensive or consistent basis.
 - No consideration has been given to the cumulative impacts on the nearby sites. In point of fact, none of the applications sees fit to mention the existence of the others, let alone assess cumulative impacts. Given that Examination decreed that the applications must “have regard” for one another, this is a very significant matter. The fact that a conjoined development, also covered by this direction is now close to completion is a failure on the part of the Authority. This is an ongoing matter for the LPA to address separately, but must be prioritised in respect of the current reserved matters application to avoid further compounding this oversight.
 - As above, the TBMS conditions as required at Examination and Inspection have not been fully discharged either on or off site.

- Submissions made by the applicant make no reference to the 2022 revision of the Wildlife and Countryside Act as required by Inspection. Applicants give no indication as to how those requirements might be addressed to enable the application to be both compliant and lawful. The completed mitigations must be signed off by both the LPA and Natural England to discharge the condition.

A reasonable expectation would be that all of these legally binding conditions would be met as a direct result of Officer direction to the applicant before the reserved matters application is considered for approval. Without these conditions being met the application must be rejected.

Additionally, at Public Inspection 2020/02 TVG, it was demonstrated by the Inspector himself that the area represented by the outline application exceeded the allocated area. As this was confirmed by Wiltshire Council's own Legal department and by external legal advice brought in by the LPA, the application can no longer be wholly treated as a WHSAP allocation site. Accordingly, the current Outline consent was granted under false pretences, and the Outline application must be returned for proper consideration. Unfortunately, this is a circumstance brought upon the LPA by a lack of attention to detail by the then Lead Officer, but which has now been noted within a Public Inquiry.

I hope that the above will assist you in ensuring that the Applicant is made aware of these restrictions and requirements.

As always, I would be more than happy to expand upon/discuss/meet with you to ensure that we are "on the same page".

Regards

Graham Hill

Chief Flood Warden

Attachment: WALPA Talking Points

c.i: Example - Application of Conditions not being applied WHSAP Allocation sites H2.4, H2.5 & H2.6

Conditions laid down at examination and/or Inquiry are intended to make new development sustainable, legal and to ensure that the current built form is not put in peril. They are also a requirement to protect the occupants of new development.

Officers are regularly failing to either apply these conditions, or report them to Enforcement for action, when conditions are breached. These conditions form a key part of any lawful development application and consent.

Conditions laid down at examination or Inspection (including appeals) have a weight in Law. Advice received says:

“Planning conditions imposed at an examination (such as planning inquiry or appeal) have full weight in law. They are legally binding requirements that, once attached to a planning permission, must be complied with.”

And:

“Planning conditions are given force by the Town and Country Planning Act 1990 (as amended).”

And:

“Pre-commencement conditions – If a condition requires action before development starts (a “condition precedent”), failure to comply makes the entire development unlawful”

And:

“In summary, planning conditions set at examination are not mere suggestions, they are legally binding, enforceable obligations.”

Caveating only that:

“Challenging conditions: Once granted, a condition can only be challenged in the courts on a point of law (judicial review) within 6 weeks or appealed to the secretary of state (if imposed on a refusal).”

In the instances below these conditions were laid down nine and two years ago respectively.

Example of lawful conditions not being applied

WHSAP Allocation sites H2.4, H2.5 & H2.6

There is a requirement to ‘masterplan’ for the sites of H2.5 and H2.6, with a strong argument for H2.4 as well as what is said specifically on those sites, this is laid down in the final report in para 79 which relates to H2.2 and states:

“The site is in multiple ownerships. Considering the nature of the site, and the features it contains, it is reasonable for the policy to seek to ensure a comprehensive approach to development through some form of masterplan..... ***This also applies to other sites where similar requirements are in place.***” (Emphasis added)

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)

At Outline application for H2.4 and H2.6 and FULL application for H2.5:

- NO masterplan was produced.
- No reference was made within any application to Southwick Country Park (other than to extol the proximity as being advantageous to the potential residents).
- No individual or cumulative assessment was made regarding the Country Park.
- No reference was made to any other development.
- Mitigation measures were largely non-existent or muddled. In the case of H2.5 the TBMS buffering requirement was described by the applicant as “up to a minimum of 15m”.

On construction of H2.5 additional breaches occurred:

- Underbrush was cleared to ground level in breach of LEMP condition and the 2022 revision of the Wildlife and Countryside Act.
- No ECW record was made of visits to assess and safely remove the population of slowworm on the site.

- The 20m deep planting of trees on the adjacent site of H2.6, required by Ecology condition to comply with the TBMS Policy did not happen. This condition was laid down to allow the original allocation of 40 units to expand to 50 whilst still remaining compliant with policy.

These breaches were reported to the Officer who took no action. They were also reported to the Police rural crimes unit and Wiltshire Council Enforcement. Both responded to inform that they would only act on reports made by the Lead Officer. The Lead Officer did not act.

In reference to the above definition, H2.5 is not a legal development.

Should these conditions not be applied at reserved matters H2.4 and H2.6 will not be legal developments.

At Inquiry regarding H2.6 the PINS Inspector also laid down the following additional conditions for H2.6:

At Para 90 the final report requires that:

- **“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 reserved matters application does not comply with **either** on-site measures or off-site measures, the latter escaping any reference whatsoever in the application. Sadly, there is not a single site that is recorded which complies with either on or off site compliance, but in this instance full compliance with the Policy is now a legal requirement.

And the conditions annex also requires that:

- 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 requires an individual mitigation scheme to be completed, approved by LPA Officers and signed off by Natural England prior to consent being granted. This was not enforced at H2.5 and neither of the above conditions have been met within reserved matters application for H2.6.

At Inquiry, Counsel and Officers were formally given notice by another developer that, should this application be granted without all conditions being met, a Judicial Review would be sought. To then proceed without applying conditions is risky behaviour by Officers. This is further compounded by the declared intent to seek a Grampian condition covering **all** sites, completed or under construction, which have breached these conditions.