

14 July 2026

Jemma Foster
Senior Planning Officer
Wiltshire Council
Via Planning Portal

Dear Jemma,

Town & Country Planning Act 1990 – Application under Section 73 -Variation of Conditions to Planning Permission 19/11459/OUT

Site: Elm Grove Farm, Drynham Road, Trowbridge, BA14 0PL

This letter supports a submission made under Section 73 of the Town and Country Planning Act 1990 (as amended) to vary/remove specific conditions associated with the approved Outline Planning Permission 19/11459/OUT.

The variations to the conditions being sought are set out in the enclosed schedule, which compares the existing conditions with the changes being requested.

The changes are primarily required to facilitate the safe construction of the site, given the conflicts with construction traffic that could not be practically avoided whilst complying with the timing requirements of the conditions as they are set out. Collectively, the changes are focused on ensuring that the development can be delivered safely, practically and in accordance with good construction and highway safety practice, whilst remaining wholly consistent with the development already approved in principle and in detail.

Other changes are required to rectify minor discrepancies between the approved outline planning application drawings and the scheme that was approved through the reserved matters application reference PL/2022/09425. Again, these are explained in the enclosed schedule.

The remaining changes are sought to: a) reference the approved reserved matters scheme and hence avoid a need to revise the reserved matters approval following the grant of the S73 to the outline (as effectively a new permission will be granted) and b) to reference details already approved through the conditions to avoid the need to re-discharge conditions.

Additional plans are not submitted as reference is being made to plans already approved under RM PL/2022/09425 or through discharges of conditions.

Subject to officer support, the S73 approval will also require a variation to the S106 agreement. This is due to several plans that require variation being enshrined within the S106 agreement. Other variations are requested to clarify matters and address discrepancies that have arisen through the approval of the reserved matters.

A separate schedule on the requested S106 revisions is enclosed.

The approach under S73

The following planning history is relevant:

- 19/11459/OUT – Erection of up to 261 dwellings following the demolition of Elm Grove Farmhouse; erection of multi-use community facility (Class F.2); strategic landscaping; access and drainage works; and demolition redundant former agricultural outbuildings – subject to a s106 legal agreement which was sealed on 31/10/2022 when outline permission was granted. (See Attachment A for decision and Attachment B for the S106)
- PL/2022/09425 - Demolition of existing buildings and structures and construction of 248 residential homes, playing pitches, allotments, areas of open space, upgrading of existing play area, sustainable drainage infrastructure, internal roads, paths and parking areas, landscaping and associated works, plant and infrastructure (Reserved Matters Application pursuant to 19/11459/OUT -relating to appearance, landscape, layout and scale) (Amended Details) – approved 4 December 2024.
- PL/2025/08175 - Reserved Matters application seeking approval for the appearance, layout, and scale of the proposed multi-use community facility, in accordance with outline planning permission reference 19/11459/OUT – approved 22/4/26.
- Various discharge of condition notices.

This is a S73 application to vary conditions on permission 19/11459/OUT.

It is acknowledged that a permission granted under section 73 constitutes a new planning permission but only in the limited sense that it can vary or remove conditions attached to an existing permission (in this case 19/11459/OUT). It cannot amend the operative description of development nor displace the identity of the parent outline consent. The original outline planning permission will remain extant and fully operative. In this case, as required by law, the S73 seeks the grant of a planning permission for the same development as previously approved, subject to different conditions. It does not alter the description of development, nor does it extinguish or replace existing reserved matters approvals.

The Reserved matters approvals under reference PL/2022/09425 remain legally anchored to the outline planning permission pursuant to which they were approved (19/11459/OUT). They do not migrate to, or become dependent upon, a subsequent section 73 permission, however they can be referred to in any re-issue of the outline permission.

It is both lawful and commonplace for a section 73 to an outline permission to include conditions requiring compliance with plans previously approved pursuant to reserved matters approvals, provided that those plans remain extant and unchanged (as they do in this case).

Such cross referencing does not amount to the re grant of reserved matters, nor does it constitute a variation of the operative part of the permission. Rather, it simply ensures continuity between the varied conditions and the approved details which already form part of the lawful implementation of the outline consent.

The proposed variation does not create any conflict with the operative description of development in the outline permission. The development that may be carried out under the section 73 permission is identical in substance to that already approved, differing only in respect of the conditions which we are seeking to vary.

Variations to the wording of the conditions being sought refer specifically to the plans already approved under PL/2022/09425.

Accordingly, the application falls squarely within the powers conferred by section 73 and can be determined on its planning merits.

Planning Justification

The proposed amendments do not alter the fundamental nature of the approved development, in line with recent case law on S73 applications. The variations sought do not seek to alter what has been approved or the quantum of the development as set out in the description.

The primary driver for the proposed variations is the safe and practical construction of the development, particularly in relation to highway matters and internal circulation during the build out phase. The key issue that cannot be practically overcome is the full delivery of the spine road linking the A363 and Drynham Road/Wiltshire Drive prior to the completion of the final plots.

The construction of the site can only take place by having construction traffic access from the A363. The linear nature of the site, and the bottle neck that is created where the playing fields and allotments that are to be created means that the northern most parcel (accessed via Drynham Road) must be constructed in a north to south sequence – whilst being served from the south. Potential conflicts between residential movements and construction works and traffic on this northern section make it unsafe to have the spine road open whilst building takes place. In essence, the direction of construction of the northern parcel must retreat along the central spine road in a southerly direction, and the spine road cannot be safely opened to the public whilst that takes place.

As currently drafted, a number of conditions impose triggers that require early opening or finalisation of elements of the internal highway infrastructure in a manner that cannot be reconciled with safe construction sequencing.

In particular:

- The development is linear in form, with a clear functional division between the southern parcel (served from the A363) and the northern parcel (adjacent to Drynham Road / Wiltshire Drive), separated by the central open space, playing pitches and allotments.
- Due to site constraints, logistics and safety requirements, all construction traffic must access the site from the A363, with no safe or acceptable alternative access point for heavy goods vehicles.
- The northern parcel must be constructed in a north to south sequence, retreating along the line of the central spine road, linkages between the central compound and the northern plots have to be made via the central spine road.
- During this process, the spine road necessarily functions as a live construction corridor, accommodating:
 - Frequent HGV movements and deliveries
 - Forklifts and mobile plant crossing and operating within the carriageway
 - Temporary working areas, materials storage, and construction interfaces

Opening this route to public vehicular traffic during these phases would result in unavoidable and unacceptable conflict between construction activity and residents, pedestrians and cyclists.

From a safety perspective, it is not practicable or acceptable to:

- Safely segregate heavy construction vehicles and plant from public traffic on a constrained estate road;
- Maintain compliance with Construction (Design and Management) Regulations obligations;
- Ensure adequate visibility, stopping distances and safe pedestrian movements;
- Manage regular reversing movements, deliveries and abnormal loads alongside general residential usage.

Accordingly, several existing condition triggers relating to the opening of the spine road, related connections, and some pedestrian routes cannot be met without exposing the public to undue risk or imposing wholly unrealistic construction methodologies.

The amendments sought are therefore not a matter of developer convenience, but rather a necessary and proportionate response to unavoidable site realities, with public safety at the forefront.

In respect of the timing of footpaths and connections, certain conditions currently require the delivery of footpaths or highway connections at an early stage, irrespective of whether those routes can be safely used by the public, properly segregated from construction activity, or connected to a completed and safe environment.

Delivering these elements prematurely would either require repeated closure and reopening, or leave ostensibly “completed” routes running through active construction zones.

Neither outcome achieves the intended objective of safe, legible permeability. The proposed amendments ensure that pedestrian and vehicular infrastructure is delivered at the earliest safe and meaningful opportunity, rather than at an arbitrary construction milestone.

Highways Justification

The application is supported by a Transport Technical Note (TN01), prepared by Pegasus Group.

It has been written to provide further information to confirm that changes to the Condition 13 requirements regarding the development access points would not have a material impact on the local highway network. It has included a review of the previously agreed forecast trip generation and an updated forecast trip generation to understand the forecast trip impact on the local highway network.

The revised trip rates demonstrate that the difference in traffic impact for the total site is minimal in the AM peak, and there is a reduction in the PM peak trips.

The revised condition wording subject to the S73 application would lead to an increase in trips using the southern access during the temporary construction period at around an average of up to one trip every one to two minutes on the local highway network, which is not considered significant in material traffic terms. There would be no changes to the northern access point.

It is concluded that the changes to the temporary development traffic impacts during construction are minimal and will not lead to any significant adverse effects on the safety or operation of the local highway network.

Conclusion and Next Steps

The variations required are set out in the enclosed schedule. The variations are considered proportionate and practical, whilst maintaining safety and permeability through the site. We would welcome the opportunity to meet face to face with you and your highways colleagues to set out how the constraints imposed by the need to safely construct each phase of the development (and still respect the preference to service the site only through the southern access point) impact upon the ability to deliver the triggers set out in the original consent.

For the reasons set out above, the application:

- Falls squarely within the scope of Section 73;
- Is supported by clear planning and safety justifications;
- Is supported by a Transport Technical Note that sets out how the revised triggers to the opening of the spine road to all traffic will not have a material or significant impact on highways safety or the operation of the surrounding highways network; and
- Represents a reasonable and proportionate refinement of the existing permission.

We respectfully request that the application be validated and progressed.

Should any additional information be required, please do not hesitate to contact us.

Yours sincerely



Paul Williams
Senior Planning Manager

Enclosures:

1. Site Location Plan
2. Schedule of proposed condition changes and background
3. Review of S106 DOV changes
4. Transport Technical Note (TN01) prepared by Pegasus Group