

FOA: Steve Simms
Wiltshire Council Planning Department

Date: 4 August 2026

Our ref: 212182.00002

By email to: developmentmanagement@wiltshire.gov.uk

Dear Steve,

PLANNING RESPONSE TO OBJECTION

Application: Reserved Matters Application (appearance, layout, scale and landscaping) for 229 dwellings and associated infrastructure (Phase 1) reference: PL/ 2026/01555 pursuant to Outline Planning Permission PL/2023/11188

Related Application: Discharge of Condition Application reference PL/2026/03821 relating to Condition 16 (Sewerage Disposal)

Site: Blackmore Farm, Sandridge Common, Melksham, SN12 7QS

We write on behalf of Barratt David Wilson Homes (the **Applicant**) in response to the objection submitted by Thrings concerning the proposed off-site drainage infrastructure associated with the above development.

For the avoidance of doubt, the comments set out in this response are intended to apply both to the reserved matters application (PL/2026/01555) and to the Applicant's discharge of condition application (PL/2026/03821) relating to Condition 16 (Sewerage Disposal).

Having reviewed the matters raised, the Applicant respectfully disagrees with the suggestion that the proposed drainage strategy is incapable of implementation or that approval of the drainage details should be withheld pending the resolution of private land ownership issues. As set out below, the objection proceeds on an incorrect understanding of both the statutory framework governing sewer provision and the role of the planning system in determining planning applications.

Statutory mechanism for the provision of sewerage infrastructure

The objection appears to proceed on the basis that the proposed drainage strategy is incapable of implementation because the Applicant has not secured the adjoining landowner's agreement to the installation of the proposed rising main. That proposition is not accepted.

The Water Industry Act 1991 establishes a comprehensive statutory framework through which sewerage infrastructure required to serve development may be secured. In particular, section 98 imposes a duty upon a sewerage undertaker to provide a public sewer where the statutory

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requirements are met. Importantly, that duty applies not only to existing buildings but also to premises upon which buildings are proposed to be constructed in the future. The legislation therefore expressly contemplates the provision of sewerage infrastructure required to facilitate new development. Further, section 98 identifies those entitled to invoke the statutory process, including the owner or occupier of premises within the relevant locality.

Accordingly, the legislative scheme recognises that development may require new sewerage infrastructure and provides a statutory mechanism through which such infrastructure may be secured. Contrary to the suggestion made in the objection letter, the availability of that statutory mechanism is not dependent upon a developer first securing the voluntary agreement of every adjoining landowner whose land may ultimately be affected by the infrastructure.

The position is reinforced by section 159 of the 1991 Act. Section 159 confers powers on a relevant undertaker, for the purpose of carrying out its statutory functions, to lay pipes in land, retain those pipes in situ, inspect, maintain, repair and alter them, and undertake works incidental to those activities. The section therefore expressly contemplates circumstances in which sewerage infrastructure is required to cross land outside the control of the developer.

Whilst the exercise of those powers remains subject to the statutory requirements and safeguards contained within the Act, Parliament has nevertheless provided a framework through which necessary sewerage infrastructure may be delivered where required. Significantly, section 159(6)(b) expressly links those powers with the duty imposed under section 98, demonstrating that the provisions are intended to operate together as part of a coherent statutory scheme for the delivery of sewerage infrastructure.

In those circumstances, the objection materially overstates the significance of the absence of a private agreement between the Applicant and the adjoining landowner. The fact that such an agreement has not presently been concluded does not mean that the proposed drainage strategy is incapable of implementation. Rather, Parliament has provided a statutory mechanism through which the necessary infrastructure may be secured and delivered. The objection therefore does not demonstrate that the proposed drainage solution is undeliverable, nor does it provide a sound basis for withholding approval of the drainage details currently before the Council.

Private rights and planning considerations

Whilst the objection focuses on the absence of an agreement with the adjoining landowner, that issue must be considered in the context of the established distinction between private rights and planning control.

In *British Railways Board v Secretary of State for the Environment and Others* [1993] 3 PLR 125, the House of Lords considered a development proposal which required access over land outside the applicant's ownership. Lord Keith emphasised that the planning legislation expressly contemplates applications relating to land which is not owned by the applicant and that the mere fact that a landowner objects, or is unwilling to allow development to proceed, does not necessarily require planning permission to be refused. Rather, the function of the planning authority is to determine whether the development is acceptable in planning terms and in the public interest.

Lord Keith further held that there is no absolute rule that difficulties in implementation, even where they appear serious or potentially insuperable, must result in refusal. Developers frequently face obstacles relating to site assembly, restrictive covenants and other private rights. The existence of those difficulties does not, without more, justify refusal of planning permission.

That principle was recently reaffirmed in *R (Save Wimbledon Park Ltd) v Mayor of London* [2025] EWHC 1856 (Admin). The Planning Court confirmed that obstacles arising from restrictive covenants, statutory trusts or other private law constraints will not ordinarily be material to the determination of a planning application and that there is no rule requiring planning permission to be refused simply because implementation may be subject to legal obstacles. Whether such matters are material is a matter of planning judgment in the circumstances of the particular case.

In the present case, the objection does not identify any deficiency in the technical merits of the proposed drainage strategy. Rather, it is founded solely upon the absence of an agreement with the

adjoining landowner and the contention that approval is therefore premature. However, for the reasons set out above, the Water Industry Act 1991 provides a statutory framework through which the necessary sewerage infrastructure may be secured. In those circumstances, the absence of a private agreement does not demonstrate that the proposed drainage strategy is incapable of implementation, nor does it provide a basis for concluding that approval of the drainage details should be withheld.

Conclusion

For the reasons set out above, the Applicant respectfully submits that the objection does not establish that the proposed drainage strategy is incapable of implementation, nor does it identify any failure to comply with the requirements of the relevant planning condition.

The objection is principally concerned with private rights and landownership matters. Those matters do not negate the existence of the statutory mechanisms available under the Water Industry Act 1991 and do not provide a proper basis for concluding that the submitted drainage details are unacceptable in planning terms.

Accordingly, the Applicant respectfully requests that the Council determines the submitted drainage details on their planning merits and proceeds to approve the reserved matters application.

Yours sincerely,

Gateley Legal