

Application No: 25/0835/VOC
Application Type: Variation of Condition
Location: Land To The North Of Sydney Road, Crewe, Cheshire East, CW1
5NF
Proposal: Variation of condition 1 on approval 21/1098N
Applicant: Iain Smith, Watkin Jones Group
Expiry Date: 17 July 2025

Summary

This application is linked to application 25/0836/FUL and proposes a re-plan of one area of the site with more smaller units. Application 25/0836/FUL will be determined separately and then proposes the increase in numbers on the site.

Outstanding matters presented to the Southern Planning Board have now been addressed, and there are no objections from consultees with regards to highway changes, flood risk/drainage, design/layout changes, tree impacts, nature conservation/landscaping, PROW and amenity considerations.

Summary recommendation

Approve subject to conditions and a Section 106 Agreement to link to the original outline Section 106 Agreement.

DEFERRAL

The application was deferred at the Southern Planning Committee on the 30th July 2025 for the following reasons:

1. To obtain a written legal opinion as to whether a breach of planning condition has occurred and whether planning permission has been nullified.
2. Whether it is possible to vary an already varied planning application.
3. Clarification as to why all other conditions have not been included within the recommendation.

Taking each in turn:

1. To obtain a written legal opinion as to whether a breach of planning condition has occurred and whether planning permission has been nullified.

1. In the cases of *FG Whitley & Sons v Secretary of State for Wales* (1992) 64 P & CR 296, *Greyfort Properties Limited v Secretary of State for Communities and Local Government* [2011] EWCA Civ 908 and *Hammerton v London Underground Ltd* [2002] EWHC 2307 [127] the court decided that the general principle is that development carried out in breach of a pre-commencement condition which is more than merely regulatory and goes to the heart of the permission will not validly implement the permission. However, in circumstances in which

- An application for approval for the discharge of conditions had been made within the lifetime of the permission, that approval had eventually been given, and approval had been obtained prior to any enforcement action OR
- It would be irrational or otherwise in breach of public law principles to commence enforcement action in relation to the implementation.

Then, by way of exception to the general principle, the development will be sufficient to lawfully implement the consent.

2. There are three pre-commencement conditions attached to the permission given on 13th September 2019 (reference 19/2859N), which in his opinion went to the heart of the consent and for which, in order to ensure proper lawful development, completion was necessary before any development of the site could commence. These conditions can be summarised as follows.

Condition 9 which required the developer to obtain the Council's written approval of their detailed proposals, including the phasing of works, for the disposal of surface water and foul drainage.

Condition 10 which required the developer to obtain the Council's written approval of a Phase II investigation and, if required as a result of that investigation, their (the developer's) remediation strategy and

Condition 11, which required the developer to obtain the Council's written approval of their Environmental Management Plan.

3. An application (reference 21/2431D)) was made on 30 April 2021 for the Council to confirm compliance with these pre-commencement conditions and to discharge them accordingly. The Council duly confirmed in a determination notice dated 5th November 2021, that the conditions had been fulfilled and were discharged.

4. Unfortunately, the developer has provided the Council with different dates for the commencement of development on this site. In its reserved matters application reference 24/2532N, the developer has declared that development commenced on 1st October 2021. In its Commencement Notice for the purposes of the calculation of the Community Infrastructure Levy (CIL), however, the developer has declared that development commenced on 8th November 2021:

5. If development commenced on the earlier date, namely 1st October 2021, then development commenced before the pre-commencement conditions were discharged. This raises concern as to whether it had lawfully implemented the permission. Having regard to the case law, Legal Services consider that the first exception to the general principle discussed above applies. The application for the discharge of conditions had previously been made on 30 April 2021, five months before the work commenced, and within the lifetime of the permission. Further the approval had then been obtained prior to any enforcement action being taken by the Council during the intervening period between the commencement of work and the discharge of the conditions. Consequently, the advice from Legal Services is that, even if development had commenced on the earlier date of 1st October 2021, the committee can nevertheless be satisfied that the development of this site has been lawfully commenced.

6. If development commenced on 8th November 2021, then it was clearly after the pre-commencement conditions had been discharged, (three days earlier). Legal Services consider, in these circumstances that there can be no question that there had been any failure to comply with the pre-commencement conditions. The committee can be satisfied, therefore, that the development of this site has been lawfully commenced.

2. Whether it is possible to vary an already varied planning application.

7. Section 73 of the Town and Country Planning Act 1990 allows a developer to apply for a planning permission to carry out a previously approved development without complying with one or more of the conditions attached to the original permission. The Council can either approve the new application with new or amended conditions or refuse it.

8. A planning permission granted under Section 73 of the Town and Country Planning Act 1990 (TCPA) can itself be the subject of a further Section 73 application and each Section 73 permission is a standalone planning permission that sits alongside the original.

9. The High Court in *Armstrong v SoS* [2023] EWHC 176 (Admin) and updated Planning Practice Guidance clarified that Section 73 is not limited to minor material amendments. Rather, Section 73 can be used to make material amendments to conditions, and there is no statutory limit on the degree of change permissible to conditions under it

10. However, the High Court decided in *R (Fiske) v Test Valley Borough Council* [2023] EWHC 2221 (Admin) that section 73 TCPA 1990 cannot be used to amend conditions in a way which would give rise to any conflict or inconsistency with the description of development in the original grant of permission.

11. It was initially feared by Legal Services that this S.73 variation of condition application reference 25/0835/VOC (deferred to this committee meeting) would have the effect of removing an area to the southern boundary of the original permission (now the subject of a further planning permission) resulting in a substantially different development from that originally approved and ultra vires (beyond the scope) of this Section 73 application. However, having met with the Planning Officer, Legal Services have been satisfied that this would not be the effect of the grant of this Section 73 application, and the southern boundary will remain as a part of the wider site

12. Legal Services is satisfied, therefore, that application reference 25/0835/VOC falls within the scope of section 73 TCPA 1990 and can confirm that it is possible to vary an already varied planning permission.

Concluding legal advice

13. In conclusion, the advice from Legal Services, is that there is no legal restriction which would prevent the committee from approving this application should it otherwise decide to do so.

3. Clarification as to why all other conditions have not been included within the recommendation.

Planning approval 21/1098N (the application proposed to be varied here) was subject to the following conditions:

1. Approved plans

2. The development shall be carried out in complete accordance with the Arboricultural Impact Assessment and Method Statement
3. Foul and surface water shall be drained on separate systems.
4. Prior to occupation of the development a sustainable drainage management and maintenance plan for the lifetime of the development shall be submitted to the local planning authority.
5. Noise mitigation
6. Development is to be entered into Natural England's District Licensing Scheme for Great Crested Newts.
7. No removal of any vegetation or the demolition or conversion of buildings shall take place between 1st March and 31st August in any year,
8. Features to enhance the biodiversity value of the site are to be incorporated on site.
9. Notwithstanding the approved landscaping plans, in conjunction with Condition 8 attached to the Outline Approval regarding surface water drainage, prior to implementation, landscaping plans shall be submitted and approved in writing, showing details of levels and planting to enhance these features at the site entrance from Maw Green Road.
10. Detailed specifications and manufacturers warranties of the proposed play equipment to be provided

Conditions 1, 2, 3, 4, 8 are proposed to be repeated here, and as set out in the update report an additional condition regarding drainage is proposed. With regards to the other conditions:

5. Noise mitigation – Environmental Protection have not recommended the application be subject to this condition, presumably because the noise sources – the West Coat Railway Line and Maw Green Road are some distance from the properties subject to this application, and screened by the residential properties already built.
6. District Licensing Scheme for Great Crested Newts – The development, as Members will be aware commenced some time back, and was entered into the Scheme.
7. Vegetation removal – Again as the development is well advanced, all required vegetation removal was carried out some time ago.
9. Enhancement of features at the site entrance – these matters have been addressed.
10. Play area specifications/warranties – This matter has been approved, but is now subject to a current Non Material Amendment application (Reference - 24/1123N) to change the play equipment layout on the main site near Maw Green Road and will be picked up with this application. This application is undetermined awaiting the approval of level changes in the vicinity of this site, which has now been resolved.

Below is the original report presented to the Southern Planning Committee on the 30th July, 2025 – with the inclusion of the matters reported in the Update Report.

1. DESCRIPTION OF SITE AND CONTEXT

- 1.1. This application relates to a development site to the north of Sydney Road, and close to Maw Green Road in Crewe. The site borders open countryside to the north. The site subject to this application consists of an area adjacent to the northern boundary, which has the benefit of outline and reserved matters approval for residential development. The area in question has permission for 4 bed 2 storey detached dwellings.
- 1.2. A second closely linked application has been submitted on a nearby part of the site to the east, also part of the original housing development and on this Committee agenda:

2. DESCRIPTION OF PROPSAL

2.1. This application title reads “Variation of condition 1 on approval 21/1098N”. Condition 1 attached to application 21/1098N relates to the approved plans. This application is a re-plan of an area of the site, with an increase in the number of units, with a different mix of house types – giving a development of this area of the site of 32 units consisting of 2 and 3 bed apartments, semi-detached and detached dwellings (originally approved 17 units with this area). As part of this application an area of housing approved to the southern boundary would be omitted from the development (this area is then the subject of application 25/0836/FUL which now has a resolution to approve).

3. RELEVANT PLANNING HISTORY

- 3.1. 24/2532N Variation of condition 1 - approved plans on application 21/1098N Land to the North of Sydney Road, Crewe - Approved
- 3.2. 21/1098N Variation of conditions 1, 8 & 14 on application 19/4337N - Application for approval of reserved matters (appearance, landscaping, layout and scale) for the erection of 245 dwellings together with associated access, landscaping, car parking and public open space reserved following the grant of planning permission 19/2859N. - Land at and to the North of 138 Sydney Road, Crewe - Approved
- 3.3. 19/4337N Application for approval of reserved matters (appearance, landscaping, layout and scale) for the erection of 245 dwellings together with associated access, landscaping, car parking and public open space reserved following the grant of planning permission 19/2859N (as originally granted under permission 15/0184N) The development was not EIA development Land North of Sydney Road, Crewe, CW1 5NF - Approved
- 3.4. 19/2859N Variation of conditions on 15/0184N - Outline planning application for up to 275 dwellings, open space and associated works, with all detailed matters reserved apart from access 138 Sydney Road, Crewe, CW1 5NF - Approved
- 3.5. 15/0184N Outline planning application for up to 275 dwellings open space and associated works, with all detailed matters reserved apart from access. 138 Sydney Road, Crewe - Approved

4. NATIONAL PLANNING POLICY

4.1. The National Planning Policy Framework (NPPF) was first published by the Government in March 2012 and has since been through several revisions. It sets out the planning policies for England and how these should be applied in the determination of planning applications and the preparation of development plans. At the heart of the NPPF is a presumption in favour of sustainable development. The NPPF is a material consideration which should be taken into account for the purposes of decision making.

5. DEVELOPMENT PLAN POLICY

5.1. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions on planning applications to be made in accordance with the Development Plan unless material considerations indicate otherwise. The Cheshire East Local Plan Strategy (2010 – 2030) was

adopted in July 2017. The Site Allocations and Development Policies Documents was adopted in December 2022. The policies of the Development Plan relevant to this application are set out below, including relevant Neighbourhood Plan policies where applicable to the application site.

5.2. Relevant policies of the Cheshire East Local Plan Strategy (CELPS) and Cheshire East Site Allocations and Development Plan Policies Document (SADPD)

- 1.CELPS Policy MP 1: Presumption in favour of sustainable development
- 2.CELPS Policy PG 1: Overall development strategy
- 3.CELPS Policy PG 2: Settlement hierarchy
- 4.CELPS Policy PG 7: Spatial distribution of development
- 5.CELPS Policy SD 1: Sustainable development in Cheshire East
- 6.CELPS Policy SD 2: Sustainable development principles
- 7.CELPS Policy SE 1: Design
- 8.CELPS Policy SE 13: Flood risk and water management
- 9.CELPS Policy SE 2: Efficient use of land
- 10.CELPS Policy SE 3: Biodiversity and geodiversity
- 11.CELPS Policy SE 4: The landscape
- 12.CELPS Policy SE 5: Trees, hedgerows and woodland
- 13.CELPS Policy CO 1: Sustainable travel and transport
- 14.CELPS Policy CO 4: Travel plans and transport assessments
- 15.CELPS Policy LPS 7: Sydney Road, Crewe
- 16.CELPS Policy IN 1: Infrastructure
- 17.CELPS Policy IN 2: Developer contributions
- 18.CELPS Policy SC 1: Leisure and recreation
- 19.CELPS Policy SC 2: Indoor and outdoor sports facilities
- 20.CELPS Policy SC 3: Health and well-being
- 21.CELPS Policy SC 4: Residential mix
- 22.CELPS Policy SC 5: Affordable homes
- 23.SADPD Policy GEN 1: Design principles
- 24.SADPD Policy ENV 16: Surface water management and flood risk
- 25.SADPD Policy ENV 2: Ecological implementation
- 26.SADPD Policy ENV 5: Landscaping
- 27.SADPD Policy ENV 6: Trees, hedgerows and woodland implementation
- 28.SADPD Policy HOU 1: Housing mix
- 29.SADPD Policy HOU 12: Amenity
- 30.SADPD Policy HOU 13: Residential standards
- 31.SADPD Policy HOU 14: Housing density
- 32.SADPD Policy INF 1: Cycleways, bridleways and footpaths
- 33.SADPD Policy INF 3: Highway safety and access
- 34.SADPD Policy REC 3: Open space implementation

5.3. Neighbourhood Plan

There is no Neighbourhood Plan in Crewe.

6. Relevant supplementary planning documents or guidance

6.1. Supplementary Planning Documents and Guidance do not form part of the Development Plan but may be a material consideration in decision making. The following documents are considered relevant to this application:

6.2. Cheshire East Design Guide.

6.3. Ecology and Biodiversity Net Gain SPD

6.4. Environmental Protection SPD

6.5. Developer Contributions SPD.

6.6. Housing SPD.

6.7. SuDS SPD.

7. CONSULTATIONS (External to Planning)

7.1. **Highways** – No objections.

7.2. **Environmental Protection** – No objections, subject to a number of informatives.

7.3. **LLFA** – No objection to the application subject to the imposition of a condition to require compliance with the submitted drainage scheme..

7.4. **PROW** – Comments were made in relation to the footpath surfacing material referenced in the landscaping plan. This is discussed below.

7.5. **Education** – A financial contribution of some £2m is requested in relation to this application. This is discussed below.

7.6. **Housing** – Whilst raising concerns about the application on the adjacent site (as set out in the report for 25/0836/FUL), no comments were made in relation to this site.

8. REPRESENTATIONS

8.1. **Crewe Town Council** – No comments received

8.2. Representations have been received from 2 residents of Maw Green Road and Cllr Faddes. The comments can be summarised as follows:

- Many comments relate to previous planning consents granted for the development of this site, and concerns about noncompliance with planning conditions, unauthorised raising of land levels, with particular concerns about flooding and overlooking. These matters have been addressed in previous application reports and enforcement investigations.
- In relation to this particular application concerns are of a similar nature with residents highlighting the effects of the development on wildlife – bats and owls in particular, fears of increased flood risk, concerns about the impacts on the pumping station for foul water should it fail, the figures for flow rates on the drainage plans are questioned.
- Cllr Faddes highlights the PROW comments about whether Condition 14 has been adequately addressed as the surfacing is unsuitable.

9. OFFICER APPRAISAL

Principle of the development

9.1. The site is allocated for residential development (the delivery of around 525 new homes) under CELPS Policy LPS 7: Sydney Road, Crewe, and has the benefit of outline and reserved

matters approval for housing. On this basis the principle of the development has been established.

Key Issues

9.2. The key issues here are considered to be site specific and include:

- Highways amendments
- Urban design changes
- Forestry impacts
- Nature conservation/Landscape changes
- Flood risk/drainage changes
- Amenity considerations
- Education/Affordable housing
- Other matters including PROW

Highways

9.3 The Head of Strategic Transport states that this application reduces the size of 32 units which were located across the site and now consolidated on the northern boundary as on the site plan. The highways impact will be negligible, and the internal layout and parking remain acceptable, and no objection is raised.

Urban Design

9.4 Whilst there were some detailed comments on the adjacent application, the Council's Urban Design Officer has no comments to make on this re-plan application. The original design concept has been maintained with this revised proposal with similar external treatment and as such there are no objections on design grounds.

Forestry

9.5 There are several trees on the open space areas around this application site, although only 2 are in close proximity. The Council's Forestry Officer states that an updated AIA has been submitted which makes some accepted improvements in terms of plot position to protected tree T17 (increase in 3 metres). The improvements relating to T11 are not significantly better with an increase in separation of just 1 metre provided.

9.6 It is accepted that the layout has now been slightly improved to address forestry concerns and that the dwellings are largely sited outside the RPAs. The new layout now presents a sustainable relationship with a high-quality A Category tree (T17). The proposed relationship with moderate quality tree T11 still presents concerns but broadly accords with best practice and is considered defensible.

9.7 The updated AIA and AMS can be secured via the imposition of a planning condition.

Nature Conservation/Landscape

9.8 The Council's Nature Conservation Officer has confirmed the revised scheme subject to this application raises no ecological concerns.

9.9 The wider landscaping treatment of the site and open areas remains as approved, and it should be noted that the only changes are to the plot landscaping, and the Council's Principal Landscape Officer has raised no objections to the proposals.

Flood risk/Drainage

- 9.10 The LLFA requested additional information so they could assess the impacts of this revised layout relative to that previously approved.
- 9.11 The applicant has now provided individual plot drainage for the development, and this has been considered by the Councils Flood Risk Officer. The submitted details are acceptable and will be secured via the imposition of a drainage condition.

Amenity

- 9.12 The layout is considered acceptable from a design perspective and Environmental Protection raise no concerns.

Education

- 9.13 Education requested a financial contribution in excess of £2.7m for this Variation of Condition application based on a development of 245 dwellings. This is then reduced to £2,082,917.92 due to the amount already agreed as part of the original application.
- 9.14 It is not considered that the overall terms should be re-visited, especially considering most of the site has already been built out and as such it is considered that would be unreasonable. To be clear the numbers proposed do not change from the original approval and only relates to the replan of 32 units.
- 9.15 The linked application (25/0836/FUL) which increases numbers on the site is treated separately, as set out in that report.

Affordable Housing

- 9.16 As noted above Housing have raised concerns about the level of affordable housing on the adjacent site no comments were made in relation to this site. It must be noted that the number of dwellings has remained the same as approved, so in policy terms no additional affordable housing units can be required. They have not commented on the housing mix now proposed, but introducing a greater mix of housing (and smaller units) into this larger development is generally supported.

Other matters

- 9.17 Although no comments have been received for the Councils Open space Officer, the proposed development does not impact on approved areas of public open space.

PROW

- 9.18 The PROW issues were considered as part of application 21/2431D - "Discharge of conditions 9, 10, 11, 15, 16 and 17 on approved app 19/2859N Variation of conditions on 15/0184N".
- 9.19 Condition 16 references the need to submit details of the PROW – including the surfacing material. The decision notice for application 21/2431D (dated 5 November 2021) states:

“Condition 16 Public Rights of way Scheme – My colleague in the PROW team comment they are broadly happy, but state that there is no detailing of surfacing or the landscaping around the path, which you should confirm with them before the works on the path are commenced.”

9.20 Whilst there was no further information submitted under this application, the subsequent application 21/1098N (which superseded the above) did approve the compacted gravel path.

9.21 The Watkin Jones proposal for all paths with Hoggins self-binding gravel and is understood to be in accordance with the approved S38, and ties with the same material that Anwyl on the adjacent site. The proposed surfacing material is an appropriate all weather surface.

10 PLANNING BALANCE/CONCLUSION

10.1 This application is linked to application 25/0836/FUL and proposes a re-plan of one area of the site with more smaller units. Application 25/0836/FUL will be determined separately and then proposes the increase in numbers on the site.

10.2 Whilst there are outstanding matters to clarify with regards to the plot drainage for the new units, and the PROW surface which Members will need to be updated on, in all other respects there are no objections from consultees with regards to highway changes, design/layout changes, tree impacts, nature conservation/landscaping and amenity considerations.

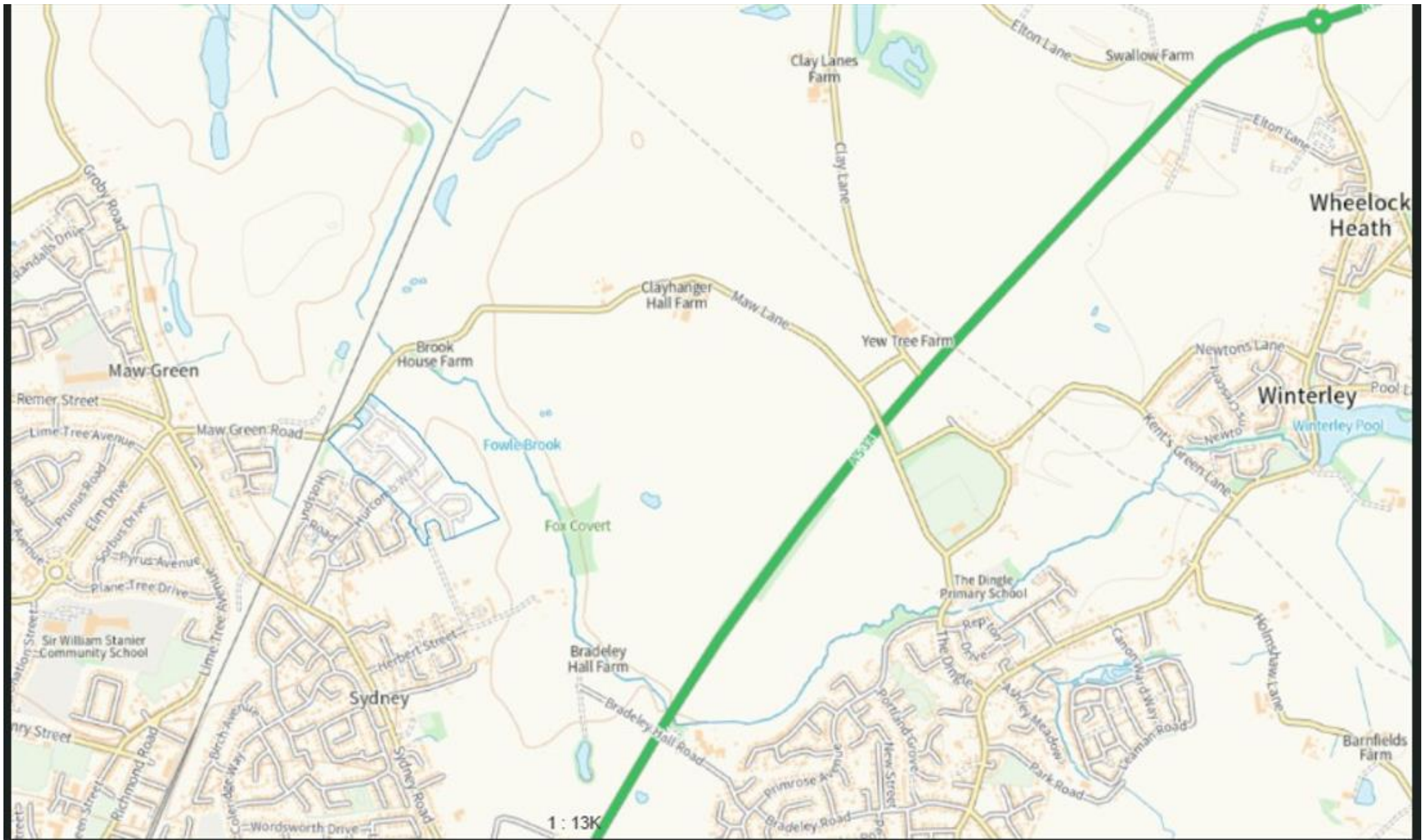
11 RECOMMENDATION

Approve subject to conditions

Conditions:

- 1. Approved plans**
- 2. Accord with the Arboricultural Impact Assessment and Method Statement**
- 3. Foul & surface water on separate systems**
- 4. Sustainable drainage management and maintenance plan**
- 5. Features to enhance the biodiversity value of the site**
- 6. Compliance with the submitted drainage details**

In the event of any changes being needed to the wording of the Committee's decision (such as to delete, vary or add conditions / informatives / planning obligations or reasons for approval/refusal) prior to the decision being issued, the Head of Planning has delegated authority to do so in consultation with the Chair of the Southern Planning Committee, provided that the changes do not exceed the substantive nature of the Committee's decision.



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