CASE OFFICER'S REPORT

Application Reference:	PL/2023/06340
Application Type:	Removal/variation of conditions
Site Inspection:	
Consultation ends:	08 September 2023
Case officer:	Hilary Baldwin

Site Address:	Oxen Cottage, Nables Farm, Scotland Hill, Upper Seagry, SN15 5HB
Proposal:	Removal of condition 5 of N/05/00384/S73A to allow independent residential use of Barn A without limitations
Recommendation:	Refuse

Site Description and Proposal

Proposal

The application seeks a variation of Condition 5 of planning permission ref: 05/00384/S73A which was granted permission on 12 April 2005.

The application seeks to remove that condition which would allow independent and unrestricted residential use of Barn A without limitations.

For the avoidance of doubt, the condition subject of this application as written on the Decision Notice is as follows:

5. The development hereby permitted shall be used for holiday accommodation only and for no other purpose and no person shall occupy the accommodation for a period of more that 6 weeks in any calendar year.

Reason: To ensure that the development is only occupied as holiday accommodation because the site is within an area where the local planning authority would not normally permit new dwellings.

Site Description

The site is located distant from any defined settlement boundary. Accordingly, for planning purposes, the site is considered to be within the open countryside. The wider holding comprises gently rolling and distinctly verdant agricultural land, enclosed by soft field boundaries and native hedgerows. A long and winding farm track leads northwards and down from the elevated highway to the farm complex which comprises a mix of farm buildings, farmhouse and disparate holiday lodges and cottages. There are original brick built buildings interspersed with modern prefabricated buildings. Notwithstanding the range of buildings on site, the rural setting and distance to other properties provides a cohesive setting with a hard surfaced service road joining the separate units.

Planning History

There is significant planning history across the entire site known as Nables Farm, but the most relevant are those in relation to the barn known as Oxen Cottage. It is noted however that the

2005 application, which this current application seeks to vary, is itself a variation of a condition on a 2000 application and the series of applications, including this current submission are as follows;

PL/2023/06340: Removal of condition 5 of N/05/00384/S73A to allow independent residential use of Barn A without limitations.

N/05/00384/S73A. Variation of Condition 5 (00/00558/FUL) to allow Occupation of Barn A by a Carer
Approved with Conditions

N/00/00558/FUL. Proposed Conversion of 2 No. Barns to Form Self Catering Holiday Accommodation.

It is considered particularly important to note that the original permission in 2000, permitted the use of 2 barns for holiday use are denoted within that application as Barn A and Barn B. From records held by the Local Planning Authority, these are respectively known as Woodman's Cottage and Oxen Cottage. From the information in the 2000 application, and within the subsequent application in 2005, Oxen Cottage is Barn B.

However, notwithstanding this anomaly within the submitted Description of Development, the variation application subject of this current application is unequivocally for the use of Oxen Cottage (Barn B) as an unrestricted residential property. Furthermore, the use of Woodman's Cottage (Barn A), is itself subject to a separate but concurrent application for unrestricted use as residential property.

For reference, the concurrent application for Woodman's Cottage is as follows;

PL/2023/06343 - Removal of Condition 2 of 14/06814/VAR to allow independent residential use without limitations.
Under consideration at the time of writing

Furthermore, there is a third concurrent application within the Nables Farm enclave which also seeks the removal of a restrictive condition for use of a unit knows as The Anchorage

PL/2023/06342 - Removal of conditions 3 and 4 of 18/05603/VAR to allow independent residential use without limitations.
Under consideration at the time of writing

Policy Considerations

National Planning Policy Framework (NPPF) 2023
Paragraph 11 – Presumption in favour of sustainable development
Paragraph 38 - Decision Making
Paragraph 55 - Planning Conditions
Paragraph 60, 77, 82-84 - Delivering a sufficient supply of homes
Paragraph 108, 114-116 – Promoting Sustainable and Safe Inclusive Transport
Paragraph 135 - Function and form of Development
Paragraph 226 - Implementation

Planning Practice Guidance (PPG) – Use of planning conditions
Reference ID: 21a-001-20140306

Wiltshire Core Strategy adopted 2015 (WCS)
Core Policy 1- Settlement Strategy
Core Policy 2- Delivery Strategy
Core Policy 10 - Spatial Strategy: Chippenham Community Area
Core Policy 39 - Tourist Development
Core Policy 48 - Supporting Rural Life
Core Policy 51 - Landscape
Core Policy 57- Ensuring High Quality Design and Place Shaping
Core Policy 60 - Sustainable Transport

Wiltshire Local Transport Plan 2011 - 2026
Car Parking Strategy

Seagry Neighbourhood Plan. Made May 2021

Consultations
Seagry Parish Council – No Objection to the proposal in principle.

Highways - No Objection
Details of vehicle parking and cycle parking required

Letters of Representation
No Letters of Representation were received in relation to the proposed development.

Key Issues
Principle of Development
Impact on the character and appearance of the area
Section 73, Variation of Conditions and Legislative Approach

Assessment
Principle of Development
Under the provisions of section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004, and the provisions of the NPPF, applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

At the current time the statutory development plan in respect of this application consists of the Wiltshire Core Strategy (WCS) (Adopted January 2015), 'saved' policies of the North Wiltshire Local Plan (NWLP)2011 (adopted June 2006), and the Seagry Parish Neighbourhood Plan 2019-2036 (made May 2021).

The development strategy of the plan set out in core policies CP1 & CP2 and the relevant Community Area policy CP10 in this instance, seeks to direct most development to designated settlements as set out in the defined settlement hierarchy.

Core Policy 1 of the WCS sets out the 'Settlement Strategy' for the county, and identifies four tiers of settlement - Principal Settlements, Market Towns, Local Service Centres, and Large and Small Villages.

The site does not lie within or close to a defined settlement boundary and as such in policy terms is considered outside the limits of development, within open countryside.

Core Policy 2 of the WCS sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier. It states that ‘Other than in circumstances as permitted by other policies within this Plan, identified in paragraph 4.25, development will not be permitted outside the limits of development, as defined on the policies map.’

Paragraph 4.25 sets out the ‘exception policies’ in the open countryside which represent additional sources of supply:

• Additional employment land (Core Policy 34)
• Military establishments (Core Policy 37)
• Development related to tourism (Core Policies 39 and 40)
• Rural exception sites for affordable housing (Core Policy 44)
• Specialist accommodation provision (Core Policies 46 and 47)
• Supporting rural life (Core Policy 48)

The most relevant exception policy is therefore Core Policy 48, which allows for the conversion of rural buildings to various uses subject to given criteria. According to this policy there is an initial requirement for buildings to be re-used for employment, tourism, cultural and community uses as a preference to residential development. Such uses are based upon the key objectives of protecting the countryside and maintaining local distinctiveness which in turn relates back to Core Policy 2 and the Framework. These preferential uses are considered how best to enhance or maintain the vitality of rural areas and their communities.

Located within a rural area, the principle of tourist accommodation with related employment and economic benefits has already been established by the extant permissions and the Framework supports the objectives of a strong rural economy. It states that planning decisions should help create the conditions in which businesses can invest, expand and adapt. Weight is placed on the need to support economic growth and productivity, taking into account local business needs, wider opportunities for development and sustainable growth.

CP48 places a number of uses as being preferred to residential development. Residential development will only be considered against the various criteria where the preferred uses are not practicable propositions. It is noted that some evidence has been provided in terms of the unviability of the unit for alternative uses such as employment, cultural and community uses in line with CP48. There is no question as to the structural integrity of the units or that additional conversion works would be required to facilitate the change of use.

In addition to the preferred uses, residential development under Core Policy 48 is limited to that constituting re-use of redundant or disused buildings. Redundant buildings, for the purposes of this policy, are defined in the WCS glossary as “rural buildings that are unused because they are no longer needed or suitable for the use they were originally intended or were last used for and not viable for alternative commercial use.” There is no suggestion that the building is no longer suitable for the established use, nor has any evidence been provided that suggests there is not a need for tourist accommodation in the area. The information provided does not amount to a demonstration that the tourism use is no longer viable, whether through continued operation by the applicants or another operator. Accordingly, the development would not meet this definition of redundancy.

It is also noted that the submitted Planning Statement reports that the overall Nables Farm portfolio has been developed as a diversified income stream and that the unit subject of this report and the other two units, subject themselves to two concurrent applications, (referenced in a preceding section of this report), provide rental income and “much needed” rental accommodation in this rural location. It is also stated that there has been a phased investment to develop the site. However, the statement then continues to opine that the increasing interest rates and “disproportionate” management time have impacted on the servicing costs of managing 3 holiday units and that should permission be granted for unrestricted residential use then they would be kept within the Nables Farm portfolio and not sold on the open market.

National and Local Plan Policies should not be viewed in isolation and must be taken as a whole strategy for the plan area. Notwithstanding the intervening (minor) variations to conditions upon the original permission, all three units were originally permitted as holiday accommodation. Such conditions were imposed in an area where unrestricted housing would have been restricted under the local plan policy in place at that time and would still be viewed in similar terms under the current adopted local plan and the Framework – indeed, Core Policies 39 and 48 continue the policy of lending qualified support to tourism-related development in countryside locations where open market residential use would not be acceptable.

The PPG states that, when used properly, planning conditions can enhance the quality of development and enable development to proceed where it would otherwise have been necessary to refuse planning permission.

In this instance, there are clear and unequivocal reasons why such conditions were imposed and why it is still considered necessary to retain such conditions.

Locational Sustainability

The overarching Framework is not supportive of unrestricted rural housing and the central themes of the settlement, development and delivery strategies are to direct development to the sustainable settlements as identified in the development plan. The overall setting is remote from community services, facilities and transport networks. There would be limited opportunities for the use of public transport from the site and residents would be wholly reliant upon private transport for day-to-day services. At present, it would not be unusual for holidaymakers to arrive by private transport and to use it for day trips, but there would very limited impact upon local services such as schools, social and health services that would arise from permanent residents. Whilst it is noted that the applicant’s intentions are to retain ownership of the unit within their investment portfolio, unrestricted residential occupancy would lead to that uplift in requirements. Whilst being

sensitive to the requirements of the applicant, which may be a less profitable business than preferred, these are personal circumstances which cannot be given much weight, particularly as nothing would prevent the disposal by the applicants of the land as a going concern or indeed in the event of a grant of planning permission. These circumstances therefore would not outweigh the policies within of the Framework and those of the development plan.

Therefore, to lift the condition would be contrary to the overarching principles of national and local policies and guidance. CP48 and CP39 in combination, are generally supportive of holiday and tourist development in rural areas. CP48 is also particularly clear that only when there is clear evidence that other uses are not practical propositions, then residential development "may" be appropriate where it meets the preceding criteria. That policy proceeds to state that "in isolated locations, the re-use of redundant or disused buildings for residential purposes may be permitted where justified by special circumstances, in line with national policy.

In this instance, the personal financial requirements of the applicant are not considered sufficient justification to overcome the harm for unrestricted residential occupancy to allow the relaxation of the relevant occupancy conditions and it is concluded that there is no "clear evidence" as required by Core Policy 48 that continued use of the building as a holiday let is not a practical proposition.

As previously stated, and cognisant of the lack of objection from the Council's Highway Officer, it is nevertheless considered that there would be increased impact upon the sustainability of the site and increased demand upon local community facilities and services.

It is also not considered appropriate through the planning system to add additional conditions to restrict the type of tenure or occupier for an unrestricted residential dwelling nor would it be possible to add further conditions which may be deemed necessary to protect the character and appearance of the site and the wider rural countryside.

Whilst the Framework requires planning decisions to promote effective use of land in meeting the need for homes, it also requires those decisions to recognise the intrinsic beauty of the countryside and be sympathetic the surrounding environment and landscape setting.

Other material considerations

The Planning Statement states that the Council cannot demonstrate the required 5-year housing supply. However, at present, this figure has been reduced by central government to a supply of 4 years, which, within Wiltshire, can be demonstrated. This is due to the adoption of the updated Framework and compliance with the relevant paragraph 226.

As such, in this instance, the tilted planning balance is not engaged. Planning legislation requires decisions to be made in accordance with the development plan unless materials considerations indicate otherwise and a holistic approach must be taken to the policies in the Core Strategy, the Framework and national guidance and that Wiltshire Council can demonstrate a 4 year Housing Land Supply. The proposal is not considered to accord with the development plan as a whole strategy and significant weight is given to the conflict with the policies of the development plan

When taking all three simultaneous permissions as a whole (referenced within a preceding section of this report), whilst there may be some weight to the overall gain of three unrestricted residential properties and the governments objective of significantly increasing the supply of housing, this weight is diminished by the Council's ability to meet the 4-year housing land supply

requirement and the very limited contribution that the proposed development would represent. There are also benefits associated with the economic boost associated with the full-time presence of additional households for local services and facilities, however given the distance between the site and any such facilities and the occupants' likely reliance on private transportation for even basic day-to-day requirements only very limited weight can be attached to this.

The proposal is therefore considered contrary to the overarching Policies of the Framework for sustainable development and Core Policies CP1, CP2, CP48, CP51, CP57 and CP60 and, as no material considerations would outweigh the breach in development plan policy, is unacceptable in principle.

Section 73, Variation of Planning Conditions and Description of Development

Whilst the named application to be varied is N/05/00384/S73A, the proposal ultimately comprises the variation of a condition imposed upon the original permission in 2000, N/00/00558/FUL, which granted permission for the use of the building as holiday accommodation. For clarity, that permission clearly and unequivocally denoted Barns A & B on the approved plans within that permission for the following:

Proposed Conversion of 2 No Barns to form Self Catering Holiday Accommodation.

Section 73 of the Act allows for development to be carried out not in accordance with conditions subject to which planning permission was previously granted. It is not intended to alter the fundamental character of the development.

With the application now proposed, the wording of the description of development for both the 2000 and 2005 permissions would then not be operative and require variation, which this S73 application does not allow for. This approach and the limitation of Section 73 of The Act has been clearly dealt with through the Court of Appeal, Finney and Welsh Ministers, Case Ref No: C1/2018/2922, known as The Finney Case. This case sets out that the original grant of permission and the "operative" grant of that permission, is the description of development. Within the transcript of that case, it is stated that one of the purposes of Section 73 is to safeguard the original grant of planning permission and that any change to that description would be outside the power conferred by Section 73.

Whilst it is acknowledged that in the intervening period, the Council permitted the use of one of the barns for carers accommodation, by way of N/05/00384/VAR (2005), and the use of a S73 application, the clear intention of that permission was to allow a small and temporary variation for the personal requirements of the applicant until such time as the carer was no longer required. The barn then reverting to holiday accommodation on the cessation of that use. As such, it is deemed that amending conditions in this way at that time was not entirely inconsistent with the original permission.

In any case, whilst it is acknowledged that the Council has already allowed a Section 73 Variation of Condition, on one of the two barns originally permitted under the 2000 permission, that permission was limited and the barn reverting to its original permitted use. It is also noted that the Finney Case is post that decision and the Local Planning Authority is now bound to be directed by that case law.

Therefore, in light of the case law it is strongly considered that to allow the variation of condition 5 of the preceding variation (2005), would be to ultimately change the overall description of development for the original permission (2000) which cannot be undertaken and that any requirement to do so should be done by way of a new application for planning permission.

Conclusion

Whilst the removal of the condition to allow permanent and independent residential occupation would contribute toward the availability of dwellings in the area, there is no clear evidence of need to support the proposal. The principle of the proposal outside the defined limits of development is contrary to the Vision of the Wiltshire Core Strategy and the Strategy for the Chippenham Community Area as set out in Core Policies 1, 2 & 10. Whilst the Core Strategy is accepting of the residential re-use of buildings in certain circumstances, the application does not provide the required 'clear evidence' of the impracticality of continued use as a holiday let that is required to demonstrate compliance with the adopted policies of the Core Strategy.

Furthermore, the occupants would have high levels of car dependence, thereby increasing unsustainable patterns of travel within Wiltshire contrary to Core Policy 60.

Additionally, the application by way of S73 Application would change the Operative part of the original Description of Development which cannot be undertaken by way of this permission.

It is therefore recommended that the application should be refused subject to relevant reasons for refusal. .

Refusal Reason(s): (2)

1 The proposed variation of condition 5 of Planning Permission N/05/00558/S73 would result in an unlawful conflict between that condition and the description of development. As it is not possible to vary the description of development using this process, the proposal therefore falls outside of what is lawfully possible in an application made under section 73 of the Town and Country Planning Act 1990 and the local planning authority has no basis on which to issue an unlawful permission in such a manner.

2 The site is located in open countryside outside of the limits of development defined in the Wiltshire Core Strategy. The proposal would therefore conflict with Core Policies 1, 2 and 10 of the Wiltshire Core Strategy (adopted January 2015) which seeks to ensure that housing developments occupy sustainable locations throughout Wiltshire including the Chippenham Community Area.

Furthermore, the proposal would conflict with the criteria set out in Core Policies 48, 51, 57 and 60 of the Wiltshire Core Strategy and with paragraph 55 and of the NPPF for the following reasons:

• the application does not include any ‘clear evidence’ of the impracticality of continued use as a holiday let,

• local services and facilities could not be easily accessed other than by use of unsustainable modes and patterns of travel,