CASE OFFICER'S REPORT

Application reference:	PL/2023/09264
Publicity expiry date:	14/12/2023
(notice served on adjoining owner or occupier x5):	04/10/2023
Site Notice erected:	20/11/2023
Press Notice:	23/11/2023

APPLICATIONS TO MODIFY/DISCHARGE PLANNING OBLIGATIONS

Section 106A of the Town and Country Planning Act (see appendix 1) enables the modification or discharge of planning obligations to be achieved either by an agreement with the local planning authority (which must be executed as a deed), OR by an application to the local planning authority.

Periods within which applications to modify or discharge an obligation can be made, are as follows:

- for obligations entered into on or before 6 April 2010 – an application can be made at any time
- for obligations entered into after 6 April 2010 – an application can be made after 5 years beginning with the date the obligation has been entered into to.

The procedure for dealing with S106A application is set out in The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 (attached at appendix 2).

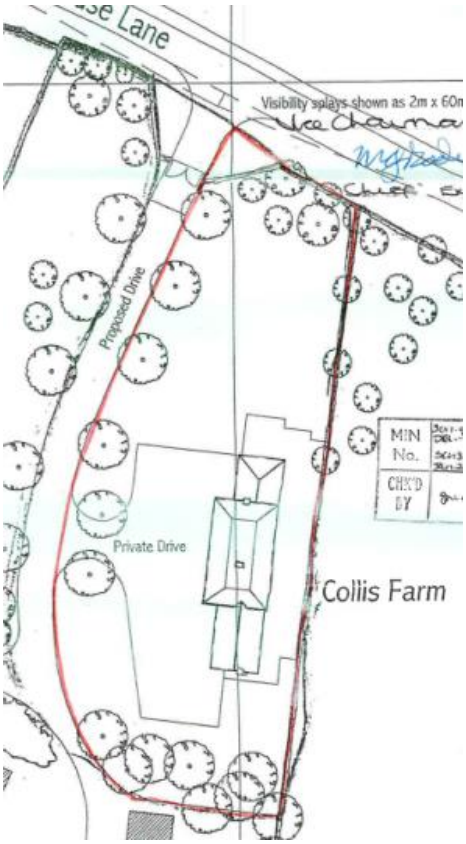
PROPOSAL/BACKGROUND:

This is an application is for the Discharge of two Planning Obligations relating to historic planning consents K/21467, K/38132 and K/40916.

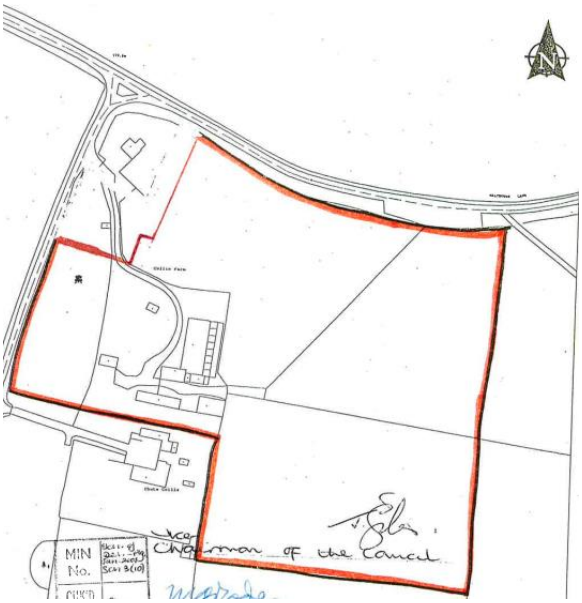
Extracts of the two S106 agreements are included in the planning application site history set out in appendix 3.

The S106 agreement relating to (K/40916) is dated 12/10/2001 and prevents the owner from selling, leasing or disposing of the residence and the associated residential curtilage (known as Collis Farm) from a wider area of agricultural land.

The earlier S106 agreement relating to K/28132 & K21467 is dated 13/02/2001 and also prevents the owner from selling, leasing or disposing of the residence and the associated residential curtilage (known as Collis Farm) from a wider area of agricultural land



Extract from S106 – Collis Farm curtilage



Extract from S106 – wider agricultural land

The application to discharge these S106 agreements follows planning consent having recently been granted under planning application reference no: PL/2023/06128 for:

'Planning permission for as built dwelling together with access and landscaping (approved under previous consent K/040916) and entrance gates set back 7.5m from the carriageway (approved under previous consent K/52370/VAR) and incorporating alterations made to the dwelling since construction in 2003'

The report to this recent application is attached at appendix 4, which explains that this was to effectively regularise the 'as built' dwelling which had been granted planning consent together with access and landscaping under two previous planning consents K/040916 and K/52370/VAR, as elements from both consents had been implemented. The dwelling that has been constructed and the entrance access is based on these two previous approvals (the house design having been granted under K/040916) and the entrance gates to the access that were amended under K/52370/VAR (being set back 7.5m rather than the 12m set back that was conditioned under K/38132).

The application also incorporated alterations that had been made to the dwelling since completion of the construction in 2003. The as built dwelling is two storey with two side wings (one of which was converted from a garage as part of the alterations since 2003).

PREVIOUS CONDITIONS AND CLE APPLICATION:

The previous consents were subject to conditions (included in the site history attached at appendix 3). As the recent application was effectively an application to regularise the 'as built development' the officer report attached at appendix 4 considered whether it was necessary to consider whether any conditions attached to the earlier consents were still relevant and should be added.

K/40916 was subject to a restrictive occupancy condition (condition 4). However, following a Certificate of Lawfulness (18/09445/CLE) application the council was satisfied that the dwelling has been in use in breach of the agricultural occupancy condition and the certificate of lawfulness was granted. The officer report to that

application is attached as an appendix to the PL/2023/06128 report and also explained that the later Section 73 application did not include a restrictive occupancy condition.

In light of the above, the officer report explains that it was considered to be unreasonable to reimpose a restrictive occupancy condition.

DO THE PLANNING OBLIGATIONS SERVE A USEFUL PURPOSE?

The main consideration with respect to this type of proposal – modification or variation of a legal agreement/planning obligation attached to a previous grant of planning permission – is whether or not that agreement still serves a useful purpose. Particularly whether or not the original intention if the requirements of the obligation/s are still material and should remain in place.

As the restrictive occupancy condition is no longer relevant following the Lawful Development Certificate for continued use as a dwelling in breach of an agricultural occupancy condition being approved, then it was not considered reasonable to require a deed of variation to carry forward the S106 obligation requiring the land to remain in the same ownership in the most recent application.

Therefore, it is also considered that the extant obligations restricting the severance of the wider agricultural land from the property are also no longer necessary and serve no purpose.

RECOMMENDATION: The extant planning obligations no longer serves a useful purpose and therefore should be discharged.

Appendix 1: S106A Town and Country Planning Act

[F1106AModification and discharge of planning obligations.

(1)A planning obligation may not be modified or discharged except—

(a)by agreement between **[F2**the authority by whom the obligation is enforceable**] [F2**the appropriate authority (see subsection (11))**]** and the person or persons against whom the obligation is enforceable; or

(b)in accordance with **[F3**—

(i)**]**this section and section 106B **[F4**, or

(ii)sections 106BA and 106BC.**]**

(2)An agreement falling within subsection (1)(a) shall not be entered into except by an instrument executed as a deed.

(3)A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to **[F5**the local planning authority by whom the obligation is enforceable**] [F5**the appropriate authority**]** for the obligation—

(a)to have effect subject to such modifications as may be specified in the application; or

(b)to be discharged.

(4)In subsection (3) “ the relevant period ” means—

(a)such period as may be prescribed; or

(b)if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into.

(5)An application under subsection (3) for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable.

(6)Where an application is made to an authority under subsection (3), the authority may determine—

(a)that the planning obligation shall continue to have effect without modification;

(b)if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c)if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

(7)The authority shall give notice of their determination to the applicant within such period as may be prescribed.

(8)Where an authority determine **[F6**under this section**]** that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified shall be enforceable as if it had been entered into on the date on which notice of the determination was given to the applicant.

(9)Regulations may make provision with respect to—

(a)the form and content of applications under subsection (3);

(b)the publication of notices of such applications;

(c)the procedures for considering any representations made with respect to such applications; and

(d)the notices to be given to applicants of determinations under subsection (6).

(10)Section 84 of the **M1**Law of Property Act 1925 (power to discharge or modify restrictive covenants affecting land) does not apply to a planning obligation.

[F7(11)In this section " the appropriate authority " means—

(a)the Mayor of London, in the case of any planning obligation enforceable by him;

[F8(aa)the Secretary of State, in the case of any development consent obligation **F9**...;

F10(ab). . . . . .**]**

(b)in the case of any other planning obligation, the local planning authority by whom it is enforceable.

(12)The Mayor of London must consult the local planning authority before exercising any function under this section.**]]**

Textual Amendments

F1S. 106- 106B substituted for s. 106 (25.10.1991 so far as substituting the new s. 106, 25.11.1991 for certain purposes and otherwise 9.11.1992) by Planning and Compensation Act 1991 (c. 34, SIF 123:1), **s. 12(1)**; S.I. 1991/2272, **art. 3(1)(a)**; S.I. 1991/2728, **art. 2**; S.I. 1992/2831, **art. 2**

F2Words in s. 106A(1)(a) substituted (6.4.2008) by Greater London Authority Act 2007 (c. 24), **ss. 34(2)**, 59; S.I. 2008/582, **art. 2(a)**

F3Word in s. 106A(1) inserted (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), s. 35(2), **Sch. 2 para. 4(2)(a)**

F4Words in s. 106A(1) inserted (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), s. 35(2), **Sch. 2 para. 4(2)(b)**

F5Words in s. 106A(3) substituted (6.4.2008) by Greater London Authority Act 2007 (c. 24), **ss. 34(3)**, 59; S.I. 2008/582, **art. 2(a)**

F6Words in s. 106A(8) inserted (25.4.2013) by Growth and Infrastructure Act 2013 (c. 27), s. 35(2), **Sch. 2 para. 4(3)**

F7S. 106(11)(12) inserted (6.4.2008) by Greater London Authority Act 2007 (c. 24), **ss. 34(4)**, 59; S.I. 2008/582, **art. 2(a)**

F8S. 106A(11)(aa)(ab) inserted (1.3.2010) by Planning Act 2008 (c. 29), **ss. 174(3)**, 241 (with s. 226); S.I. 2010/101, **art. 3(k)** (with art. 6)

F9Words in s. 106A(11)(aa) repealed (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 77(2)(a), **Sch. 25 Pt. 20**; S.I. 2012/628, art. 7

F10 Words in s. 106A(11) repealed (1.4.2012) by Localism Act 2011 (c. 20), s. 240(2), Sch. 13 para. 77(2)(b), **Sch. 25 Pt. 20**; S.I. 2012/628, art. 7

Marginal Citations

M1 1925 c. 20.

Appendix 2: Extract from The Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992 relating to Section 106A of the 1990 Act

Application

2. These Regulations apply to applications under section 106A of the 1990 Act and appeals under section 106B of the 1990 Act made in respect of the modification or discharge of planning obligations entered into under section 106 or section 299A of the 1990 Act.

Applications for the modification or discharge of planning obligations

3.—(1) An application for the modification or discharge of a planning obligation shall be made on a form provided by the local planning authority, which shall require the following information–

(a)the name and address of the applicant;

(b)the address or location of the land to which the application relates and the nature of the applicant's interest in that land;

(c)sufficient information to enable the authority to identify the planning obligation which the applicant wishes to have modified or discharged;

(d)the applicant's reasons for applying for the modification or discharge of that obligation; and

(e)such other information as the authority consider necessary to enable them to determine the application.

(2) An application for the modification or discharge of a planning obligation shall include–

(a)the information required by the application form;

(b)a map identifying the land to which the obligation relates; and

(c)such other information as the applicant considers relevant to the determination of the application.

Notification of applications by applicant

4.—(1) An applicant for the modification or discharge of a planning obligation shall give notice of the application to any person (other than the applicant) against whom, on the day 21 days before the date of the application, the planning obligation is enforceable and whose name and address is known to the applicant.

(2) In order to comply with paragraph (1), the applicant shall take reasonable steps to ascertain the name and address of every such person.

(3) Where the names and addresses of all such persons are not known to the applicant after he has taken reasonable steps to ascertain that information, he shall, during the 21 day period immediately preceding the application, publish notice of the application in a local newspaper circulating in the locality of the land to which the application relates.

(4) The notice required to be served or published by this regulation shall be in the form set out in Part 1 of the Schedule and shall invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is served or published, as the case may be.

(5) An application for the modification or discharge of a planning obligation shall be accompanied by a certificate, in the appropriate form set out in Part 2 of the Schedule, certifying that the requirements in the preceding provisions of this regulation have been satisfied.

Publicity for applications by local planning authority

5.—(1) When a local planning authority receive an application for the modification or discharge of a planning obligation they shall publicise the application by–

(a)posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or

(b)serving notice of the application on the owners and occupiers of land adjoining that land; or

(c)publishing notice of the application in a local newspaper circulating in the locality in which that land is situated.

(2) The notice posted, served, or published in accordance with paragraph (1) shall be in the form set out in Part 3 of the Schedule and shall invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is posted or served, or within 14 days of the date on which the notice is published, as the case may be.

(3) The local planning authority shall make a copy of the application and the relevant part of the instrument by which the planning obligation was entered into available for inspection during the period allowed for making representations pursuant to paragraph (2).

(4) In paragraph (1)(b) "owner" in relation to any land means any person who–

(a)is the estate owner in respect of the fee simple; or

(b)is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired.

Determination of applications by local planning authority

6.—(1) A local planning authority shall not determine an application for the modification or discharge of a planning obligation before the expiry of the period or periods provided for making representations in accordance with regulations 4(4) and 5(2).

(2) Subject to paragraph (1), a local planning authority shall give the applicant written notice of their decision within–

(a)8 weeks from the date on which the application is received; or

(b)except where the applicant has already given notice of appeal to the Secretary of State, such extended period as may be agreed upon in writing by the applicant and the authority.

(3) When a local planning authority determine that a planning obligation shall continue to have effect without modification, the notice of that decision shall–

(a)state, clearly and precisely, the authority's full reasons for their decision; and

(b)include a statement to the effect that the applicant may appeal to the Secretary of State against the decision within 6 months of the date of the notice or within such longer period as the Secretary of State may, at any time, allow.

Appendix 3: RELEVANT PLANNING HISTORY:

Application Reference No	Description	Decision
PL/2023/06128	Planning permission for as built dwelling together with access and landscaping (approved under previous consent K/040916) and entrance gates set back 7.5m from the carriageway (approved under previous consent K/52370/VAR) and incorporating alterations made to the dwelling since construction in 2003	Approved 19/10/2023 (1) The development hereby permitted approves the following approved documents and plans: Drawing No: PTAD/060623/01 Location & Block Plan, dated 25/08/2023, received by this office 25/08/2023 Drawing No: PTAD/060623/02 Elevations, dated June 2023, received by this office 25/08/2023 Drawing No: PTAD/060623/03 Floor Plans, dated June 2023, received by this office 25/08/2023 REASON: For the avoidance of doubt and in the interests of proper planning. (2) The highway visibility area at the entrance to the site shall be kept free of all obstructions to sight above 1m above the adjoining carriageway from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access to the points on the edge of the carriageway 35 metres to the south east and 120 metres to the north west from the centre of the access. REASON: In the interests of highway safety.
18/09445/CLE	Certificate of lawfulness for continued occupation of dwelling without compliance with the occupancy condition.	Approved 18/01/2019
	Decision wording: *Wiltshire Council hereby certify that on 18/10/2018 the operations described in the First Schedule to this Certificate in respect of the land specified in the Second Schedule to this Certificate and edged red on the plan attached to this certificate would have been lawful within the meaning of section 191 of the* *Town and Country Planning Act 1990 (as amended) for the following reasons:* *The Council is satisfied that available evidence indicates that the dwelling has been in use in breach of the agricultural occupancy condition on planning application reference K/040916 on a continuous basis, without any interruption for a period of ten years prior to the date of application.* *A later Section 73 application (K/52370/VAR) did not include a restrictive occupancy condition.* *On the balance of probability, there is sufficient precise and unambiguous justification to enable the Council to grant a certificate of lawfulness.* *SCHEDULE 1: Certificate of lawfulness for continued occupation of dwelling without compliance with the occupancy condition* *SCHEDULE 2: Collis Farm, Hookwood Lane, Upper Chute, Andover, Wiltshire, SP11 9EF*	
K/52370/VAR	Siting of entrance gates 7.5m back from highway (variation of condition on	Approved 29th July 2005

	planning permission K/38132)	
	Conditions: *1. INFORMATIVE TO APPLICANT:* *The Council is required to give a summary of the reasons for this decision and a summary of the development plan policies and proposals relevant to the decision.* *These are set out below:* *The decision to grant planning permission has been taken on the grounds that the proposed development would not cause any significant harm to interests of acknowledged importance and having regard to the following policies and proposals in the Kennet Local Plan 2011 namely: policies PD1 & NR8*	
K/40916	Amendment to house design approved under K/038132  Proposed West Elevation	Approved with conditions 26/10/2001 and S106 agreement dated 12/10/2001
	Conditions: No 01 The development hereby permitted shall be begun before the expiration of five years of the date of this permission. REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. No 02 INFORMATIVE TO APPLICANT: This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the 12th October 2001. No 03 No development shall take place until details of the materials to be used for the external walls and roofs (including samples if requested) have been submitted to and approved in writing by the	

local planning authority. Development shall be carried out in accordance with the approved details.

REASON:
To secure harmonious architectural treatment.

No 04
The occupation of the dwelling hereby approved shall be limited to a person solely or mainly working or last working at Collis Farm, or a widow or widower of such a person, and to any resident dependants.

REASON:
The site lies within open countryside where development is strictly limited to that which is essential.

No 05
Before any part of the development hereby permitted is first occupied the access from Malthouse Lane approved under permission K038132 shall be completed in accordance with the approved plans.

REASON:
In the interests of highway safety

No 06
All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the dwelling or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.

REASON:
To ensure a satisfactory landscaped setting for the development.

No 07
This permission relates to the scheme of development as submitted except insofar as amended by the landscaping details specified in the letter and plan from the applicant received on 17th April 2001 and further letter from the applicant dated 26th May 2001.

REASON:
For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration.

No 08
Before the development hereby permitted is brought into use, the highway visibility area shall be cleared and kept free of all obstructions to sight above 1 metre above the adjoining carriageway from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access to the points on the edge of the carriageway 35 metres to the south east and 120 metres to the north west from the centre of the access.

REASON:
In the interests of road safety.

No 09
Any gates shall be set back 12 metres from the edge of the carriageway and shall open inwards only.

REASON:
In the interests of road safety.

No 10
Before any part of the development is first occupied, the first 12 metres of the new drive , from its junction with Malthouse Lane, shall be properly surfaced with a consolidated material, not loose stone or gravel.

REASON:
In the interests of highway safety.

No 11
The existing access on Hookwood Lane shall be used to provide vehicular access to the existing dwelling known as Collis Farm only and there shall be no vehicular access in conjunction with the equine clinic.

REASON:
In the interests of road safety given the substandard nature of the access.

S106 Agreement

THIS DEED is made the 12th day of October 2001 BETWEEN (1) KENNET DISTRICT COUNCIL of Browfort Bath Road Devizes Wiltshire ("The Council") (2) Clive John Beeston Hamblin and Alison Jane Hamblin of Collis Farm Upper Chute Andover Hampshire ("The Owner")

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the owner of the Land which is registered under title number WT132730 at the Weymouth District Land Registry with title absolute and is described in the First Schedule.
3. Clive John Beeston Hamblin aforesaid ("the Applicant") has by application dated 28th February, 2001 and registered on the 1st March, 2001 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development").
4. The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the development would not have been granted.

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner covenants with the Council to observe the restrictions specified in the Third Schedule.
2. It is agreed and declared as follows:
   - 2.1 The expressions "the Council", "the Owner" and "the Applicant" shall include their successors in title and assigns.
   - 2.2 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of

which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

2.3 The covenants contained in this Agreement shall take effect only upon the date upon which the Development is begun within the meaning of section 56 of the Town and Country Planning Act 1990.

2.4 If the planning permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.

2.6 This Agreement is a Local Land Charge and shall be registered as such.

2.7 The Owner shall pay to the Council its proper and reasonable legal costs incurred in connection with this Agreement.

2.8 Nothing in this Agreement shall give any third party (not being a party to this Agreement) any right to enforce any of the obligations rights or covenants on the part of either the Owner or the Council or the Applicant under this Agreement whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise.

2.9 The Owner and the Applicant warrant that they are entitled to carry out the Development.

2.10 Where any party comprises more than one person the obligations and liabilities of that party shall be joint and several.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE the Land

"The Land" shall mean all that land and buildings known as Collis Farm Equine Clinic Upper Chute Andover Hampshire SP11 9EF as shown edged red on Plan 1 attached

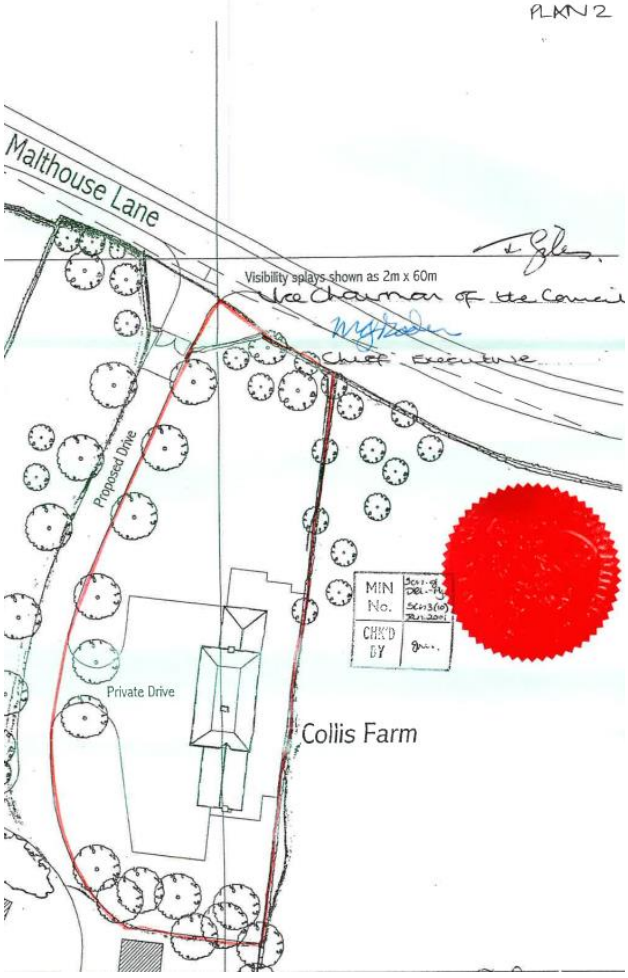
SECOND SCHEDULE the Planning Application

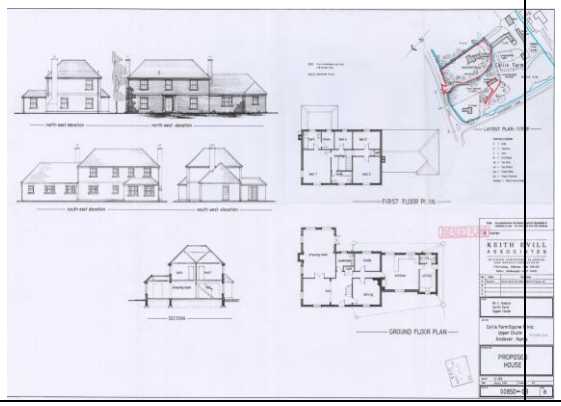
The planning application shall mean the planning application no. K/040916 for the provision of a garage and the amendment to the house design approved under planning permission no. K/038132 all located within the Land shown edged red on Plan 2 attached ("the Residence")

THIRD SCHEDULE Restrictions

The Owner hereby covenants with the Council not to sell lease or otherwise dispose of the Residence or any part thereof separately from the Land or any part thereof


T DISTRICT COUNCIL
No LA078328, 1999.
.:1750
n Copyright.
ORDNANCE SURVEY EXTRACT
Date of Printing: 04/07/01
Map reference: SU3053
All rights reserved.
PLAN 1
MIN No.
CHK'D
Vice Chairman of the Council
PLAN 2


Malthouse Lane
Visibility splays shown as 2m x 60m
Vice Chairman of the Council
Chief Executive
Proposed Drive
Private Drive
MIN No.
CHK'D BY
Collis Farm

K/38132	Provision of a new vehicular access and drive, new dwelling, isolation boxes and deletion of conditions 2 & 6 of K/21467 in respect of No. of employees and a consent personal to the applicant 	Approved with conditions 13/02/2001 and S106 agreement dated 13/02/2001
	Conditions: No 01 The development hereby permitted shall be begun before the expiration of five years of the date of this permission. REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. No 02 This permission relates to the scheme of development as submitted except insofar as amended by the revised plans drawing No. 00850-04 received on the 23rd March 2000 & drawing No. 00850-03 rev. B received 1st June 2000. For the avoidance of doubt as to the development authorised since the proposal originally submitted has been amended during the course of its consideration. No 03 No development shall take place until details of the materials to be used for the external walls and roofs (including samples if requested) have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. REASON: To secure harmonious architectural treatment. No 04 No development shall take place until there has been submitted to and approved by the local planning authority a scheme of hard and soft landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. REASON: To ensure a satisfactory landscaped setting for the development. No 05 All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the dwelling or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority. REASON: To ensure a satisfactory landscaped setting for the development. No 06 Before any part of the development hereby permitted is first occupied the access from Malthouse Lane shall be completed in accordance with the approved plans. REASON: In the interests of highway safety.	

Before the development hereby permitted is brought into use the highway visibility area shall be cleared and kept free of all obstructions to sight above 1 metre above the adjoining carriageway from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access, to the points on the edge of the carriageway 35 metres to the south east and 120 metres to the north west from the centre of the access.

REASON:
In the interests of highway safety.

No 08
Any gates shall be set back 12 metres from the edge of the carriageway, such gates to open inwards only.

REASON: In the interests of highway safety.

No 09
Before any part of the development hereby permitted is first occupied, the first 12 metres of the new drive from its junction with Malthouse Lane, shall be properly surfaced with a consolidated material, not loose stone or gravel.

REASON:
In the interests of highway safety.

No 10
The existing access on Hookwood Lane shall be used to provide vehicular access to the existing dwelling known as Collis Farm only and there shall be no vehicular access in conjuction with the equine clinic.

REASON:
In the interests of highway safety given the substandard nature of the access.

No 11
The occupation of the dwelling hereby approved, shall be limited to a person solely or mainly working or last working at Collis Farm, or a widow or widower of such a person, and to any resident dependants.

REASON:
The site lies within the open countryside where development is strictly limited to that which is essential.

No 12
INFORMATIVE TO APPLICANT:
This permission shall be read in conjunction with an Agreement made under Section 106 of the Town and Country Planning Act, 1990 and dated the 13th February 2001.

SECTION 106 AGREEMENT

THIS DEED is made the 13th day of February 2001 BETWEEN (1) KENNET DISTRICT COUNCIL of Browfort Bath Road Devizes Wiltshire ("The Council") (2) Clive John Beeston Hamblin and Alison Jane Hamblin of Collis Farm Upper Chute Andover Hampshire ("The Owner")

RECITALS

1. The Council is the Local Planning Authority for the purposes of this Deed for the area within which the land described in the First Schedule ("the Land") is situated and by whom the obligations contained in this Deed are enforceable.
2. The Owner is the owner of the Land which is registered under title number WT132730 at the Weymouth District Land Registry with title absolute and is described in the First Schedule.
3. Clive John Beeston Hamblin aforesaid ("the Applicant") has by application by his agents dated 22nd September, 1999 and registered on the 7th October, 1999 ("the Planning Application") applied to the Council for permission to develop the Land in the manner and for the uses set out in the Planning Application and in the plans specifications and particulars deposited with the Council and forming part of the Planning Application more particularly set out in the Second Schedule ("the Development").
4. The Council has decided to grant planning permission for the Development in accordance with the Planning Application subject to the making of this Agreement without which planning permission for the development would not have been granted.

NOW THIS DEED is made in pursuance of Section 106 of the Town and Country Planning Act 1990 and is a planning obligation for the purposes of that section and WITNESSES as follows:

1. The Owner covenants with the Council to observe the restrictions specified in the Third Schedule.
2. It is agreed and declared as follows:
   - 2.1 The expressions "the Council", "the Owner" and "the Applicant" shall include their successors in title and assigns.
   - 2.2 No person shall be liable for breach of a covenant contained in this Agreement after he shall have parted with all interest in the Land or the part in respect of

which such breach occurs but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest.

2.3 The covenants contained in this Agreement shall take effect only upon the date upon which the Development is begun within the meaning of section 56 of the Town and Country Planning Act 1990.

2.4 If the planning permission granted pursuant to the Planning Application shall expire before the Development is begun as defined above or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect.

2.5 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development as specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement.

2.6 This Agreement is a Local Land Charge and shall be registered as such.

2.7 The Owner shall pay to the Council its proper and reasonable legal costs incurred in connection with this Agreement.

2.8 Nothing in this Agreement shall give any third party (not being a party to this Agreement) any right to enforce any of the obligations rights or covenants on the part of either the Owner or the Council under this Agreement whether in accordance with the Contracts (Rights of Third Parties) Act 1999 or otherwise.

2.9 The Owner and the Applicant warrant that they are entitled to carry out the Development.

2.10 Where any party comprises more than one person the obligations and liabilities of that party shall be joint and several.

IN WITNESS whereof these presents have been duly executed as a Deed by the parties hereto the day and year first before written

FIRST SCHEDULE the Land

"The Land" shall mean all that land and buildings known as Collis Farm Equine Clinic Upper Chute Andover Hampshire SP11 9EF as shown edged red on Plan 1 attached

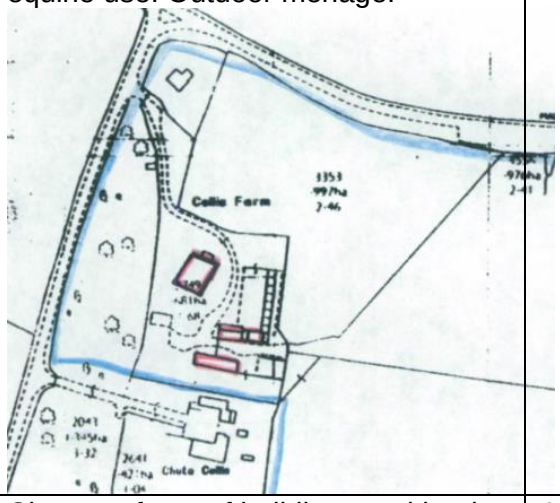


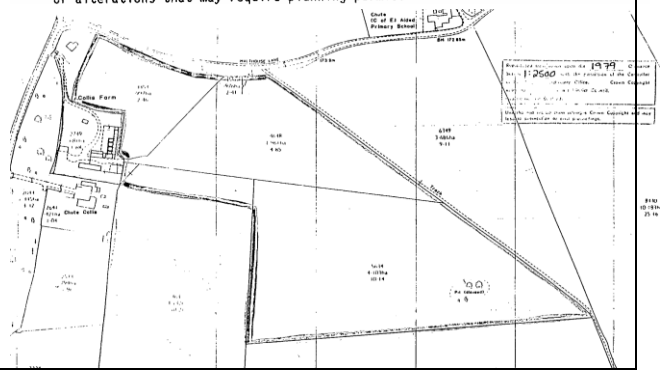
SECOND SCHEDULE the Planning Application

The planning application shall mean the planning application no. K/038132 for the provision of a new vehicular access and drive a new dwelling within the Land shown edged red on Plan 2 attached ("the Dwelling") isolation boxes also within the Land and the variation of conditions 2 and 6 of planning permission no. K/21467 in respect of the number of employees and such consent being personal to the Applicant

THIRD SCHEDULE Restrictions

The Owner hereby covenants with the Council not to sell lease or otherwise dispose of the Dwelling or any part thereof separately from the Land or any part thereof

		
K/38120	Change of use of building to equine veterinary use from agricultural. Demolition of chicken unit and erection of stable block for private equine use. Outdoor menage. 	Approved with conditions 06/07/2000 No 01 There shall be no burning of any waste material whatsoever emanating from the development hereby permitted on the site. REASON: In the interests of the amenity of the area and in the interests of the residential amenity of the neighbouring property.
K/21467	Change of use of buildings and land to equine use including veterinary use	Approved with conditions 09/05/1994 1. The development hereby permitted shall be begun within five years of the date of this permission. REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990. 2. The use authorised by this permission shall enure solely for the benefit of the applicant and only for so long as the applicant's main place of residence is at the property known as Collis Farm, Upper Chute. Should the applicant cease to reside at this property then the business use hereby permitted shall also cease and the use of the land or premises shall revert to its previous lawful use under the Planning Acts. REASON: In order to reserve to the Local Planning Authority long term control over the land and the buildings since this permission is granted solely to meet the needs of the present applicant in an area where the Local Planning Authority would not normally be willing to grant such a permission.

		3. The premises to which this permission relates shall be used for agricultural or veterinary purposes only and for no other purpose, including any other purpose within Class D.1.(a) of the Schedule to the Town and Country Planning (Use Classes) Order, 1987, or in any provision equivalent to that Class in any Statutory Instrument revoking and re-enacting or amending that Order. REASON: The proposed use is acceptable but the Local Planning Authority wish to consider any future proposal for a change of use, whether or not in the same Use Class, having regard to the circumstances of the case. 4. No materials or products of any description, skips, containers, scrap, or waste materials, whatsoever shall be stored on the site except within the building(s). REASON: To safeguard the amenities and character of the area. 5. The veterinary use to which this permission relates shall be confined to the loose boxes indicated in red on the attached plan only and the area of land indicated in blue on the attached plan shall be used solely for the keeping of horses by the owners of the site for their own purposes, or horses recuperating following treatment on site, or agriculture, and for no other purposes. REASON: To maintain planning control in the interests of safeguarding the character and the visual amenities of the area. 6. There shall be no more than two persons working on this site at any time. REASON: To limit the level of activity taking place on the site. 7. INFORMATIVE TO APPLICANT: This permission authorises a Change of Use only and does not authorise any works or alterations that may require planning permission. 

Appendix 4: Case officer report to PL/2023/06128

CASE OFFICER'S REPORT

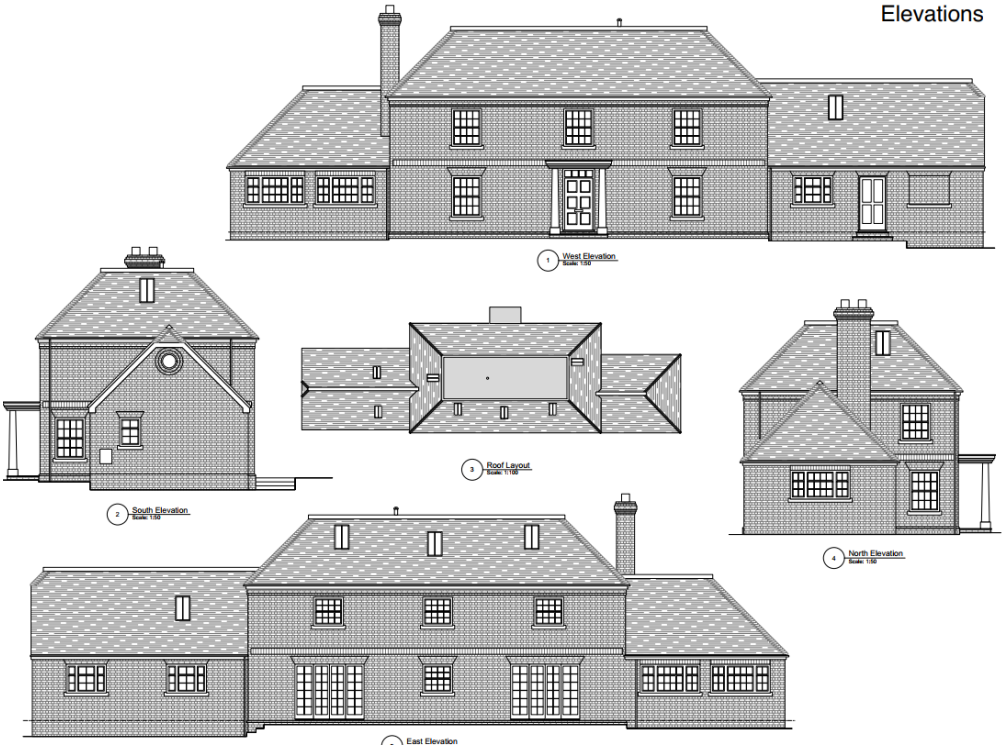
Application reference: PL/2023/06128
Publicity expiry date (notice served on adjoining owner or occupier x6): 04/10/2023
Target date: 20/10/2023

PROPOSAL:

'Planning permission for as built dwelling together with access and landscaping (approved under previous consent K/040916) and entrance gates set back 7.5m from the carriageway (approved under previous consent K/52370/VAR) and incorporating alterations made to the dwelling since construction in 2003'

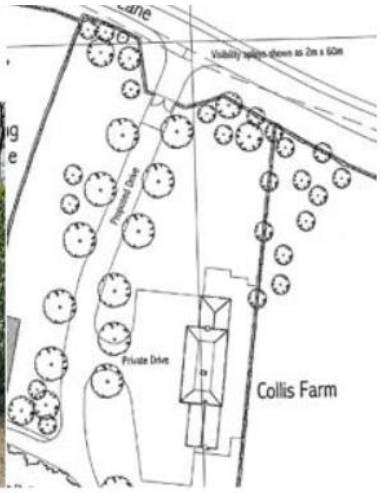
The application is to effectively regularise the as built dwelling which was granted planning consent together with access and landscaping under two previous consents K/040916 and K/52370/VAR, as elements from both consents were implemented. The dwelling that has been constructed and the entrance access is based on these two previous approvals (the house design having been granted under K/040916) and the entrance gates to the access that were amended under K/52370/VAR (being set back 7.5m rather than the 12m set back that was conditioned under K/38132).

The application also proposes to incorporate alterations that have been made to the dwelling since completion of the construction in 2003. The as built dwelling is two storey with two side wings (one of which was converted from a garage as part of the alterations since 2003):



The as built entrance gates are set back 7.5m:





RELEVANT PLANNING HISTORY:

SITE CONSTRAINTS:

The site is situated in the Tidworth Community Area. Upper Chute is defined as a Small Village by Core Policy 26 and has no defined limits of development/settlement boundary being a village that does not have a range of services, facilities and few employment opportunities where new housing development will be restricted. The site is also someway out of the main settlement area of Upper Chute, which lies to the northwest and is defined in the Village Design Guide as Chute Collis (a 'Small outlier group of mid -late 20th century dwellings in very large plots').

The site is also located within the North Wessex Downs AONB.

The site is located within Flood Zone 1 and is identified to be at low risk of flooding from groundwater and no risk from surface water in the Strategic Flood Risk Assessment.

The site is also within the catchment area of the River Test.

POLICIES:

The following policies are considered the most relevant to proposals:

Development Plan Documents:

Wiltshire Core Strategy (WCS):
Core Policy 1 - Settlement Strategy
Core Policy 2 - Delivery Strategy
Core Policy 3 - Infrastructure Requirements
Core Policy 26 - Spatial Strategy: Tidworth Community Area
Core Policy 41 – Energy Strategy
Core Policy 50 – Biodiversity & Geodiversity
Core Policy 51 - Landscape
Core Policy 52 – Green Infrastructure
Core Policy 57 - Ensuring high quality design and place shaping
Core Policy 60 - Sustainable Transport
Core Policy 61 - Transport and new development
Core Policy 62 - Development impacts on the transport network
Core Policy 64 - Demand Management
Core Policy 68 - Water Resources

Adopted Kennet District Local Plan saved policies:

None relevant

Wiltshire Housing Site Allocations Plan (February 2020) (WHSAP)

Government Guidance:
Planning Practice Guidance
National Planning Policy Framework (NPPF) 2023
National Design Guide (NDG)

Supplementary Planning Documents/Guidance:

Chute Design Guide (December 2022)

Wiltshire Local Transport Plan 2011-2026

Wiltshire Green Blue Infrastructure (GBI) Strategy 2022

Wiltshire Climate Strategy 2022-2027

Strategic Flood Risk Assessment (SFRA)

Community Infrastructure Levy - Wiltshire Council:
• Wiltshire Community Infrastructure Levy Revised Wiltshire Planning Obligations Supplementary Planning Document October 2016
• Infrastructure Funding Statement 2020

REPRESENTATIONS:

Highways: comment

I note that this is a historic permission, and I am happy that the layout and access is suitable from a highway perspective so have no highway objection to make.

Chute Parish Council: no comments received

No third-party representations received

ISSUES:

- The proposal/background
- Highway safety considerations
- Character and appearance of area, the wider landscape and amenity considerations
- Ecology considerations:
  - Biodiversity
  - Nitrogen/nutrient neutrality
- Previous conditions
- Previous planning obligations
- Sustainable construction

PLANNING ASSESSMENT:

The Proposal/Background:

At the heart of the NPPF is a presumption in favour of sustainable development and the Adopted Wiltshire Core Strategy seeks to build resilient communities and support rural communities but this must not be at the

expense of sustainable development principles. The Settlement and Delivery Strategies of the Core Strategy are designed to ensure new development fulfils the fundamental principles of sustainability.

This means focusing growth around settlements with a range of facilities, where local housing, service and employment needs can be met in a sustainable manner. A hierarchy has been identified based on the size and function of settlements, which is the basis for setting out how the Spatial Strategy will deliver the levels of growth.

The site is within the Tidworth Community Area and Core Policy 26 confirms that '*Development in the Tidworth Community Area should be in accordance with the Settlement Strategy set out in Core Policy 1.*'

Core Policy 1 of the Wiltshire Core Strategy 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. Only the Principal Settlements, Market Towns, Local Service Centres and Large Villages have defined limits of development/settlement boundaries. Settlement boundaries are essentially defined as the dividing line between areas or built urban development (the settlement) and non-urban or rural development (the open countryside).

Core Policy 2 of the Wiltshire Core Strategy sets out the 'Delivery Strategy'. It identifies the scale of growth appropriate within each settlement tier, stating that within the limits of development, as defined on the policies map, there is a presumption in favour of sustainable development at the Principal Settlements, Market Towns, Local Service Centres and Large Villages, and states *'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.'*

The National Planning Policy Framework (NPPF) (2023) confirms that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise (Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990); that the NPPF is a material consideration in planning decisions and planning policies and decisions must also reflect relevant international obligations and statutory requirements. Planning legislation establishes that other material considerations should also be taken into account in the determination of planning applications.

The Council has undertaken a comprehensive review of the limits of development/settlement boundaries to ensure they are up-to-date and adequately reflect changes which have happened since they were first established. The Wiltshire Housing Site Allocations Plan which was adopted in February 2020 amended settlement boundaries where necessary.

The site is outside the limits of development as defined on the policies map and is therefore considered to be open countryside. Ordinarily a new dwelling in this location would be unacceptable in principle, however the site history/previous applications are material considerations.

The supporting statement submitted with the application refers to the application seeking to correct errors made, historically, by the Council in issuing planning permission for development at Collis Farm, Upper Chute, Andover ("the Site").

The supporting documentation explains that it is considered that the LPA's decision notice was incorrect as the K/52370/VAR permission referred to an earlier dwelling design approved under K/038132 when the design had been varied by a subsequent permission under K/040916.

However, a letter from the applicant submitted with K/52370/VAR confirmed the VAR application was indeed to vary K/038132:

- Letter from applicant dated 02.06.05:

'I enclose an application to vary condition 8 on planning permission K/038132, dated 13.02.01. This condition requires that any gates be set back 12 metres from the highway, I have applied to have the gates sited 7.5 metres back from the highway (they have already been put up in error).

It is therefore clear, that the K/52370/VAR had been submitted and was approved to vary K/38132.

The K/38132 and K/40916 permissions were both subject to the following condition:

> *Any gates shall be set back 12 metres from the edge of the carriageway, such gates to open inwards only.*
> *Reason: In the interests of highway safety.*

Planning permission was then subsequently granted under planning application reference K/52370/VAR on 29/07/2015 for *'Siting of entrance gates 7.5m back from highway (variation of condition on planning permission K/38132)'*

Rather than reapplying to vary the K/040916 consent, the dwelling that has been constructed, and the entrance access is based on two different previous approvals (the house design having been granted under K/40916 which included a garage) and the entrance gates that were amended under K/52370/VAR.

Highway safety considerations:

Core Policy 62 seeks to mitigate any adverse impact on the transport network on transport users, local communities and the environment.

The alterations to the access (setting the gates 7.5m back from the carriageway rather than 12m) were considered acceptable under K/52370/VAR and are also considered to be acceptable now, with the highway's authority raising no objections to the as built development.

Character and appearance of area, the wider landscape and amenity considerations:

The NPPF 2021 (and still in the updated 2023 NPPF) placed a greater emphasis on the importance of good design and making beautiful places and paragraph 174 of the Framework seeks to ensure that decisions contribute to and enhance the natural and local environment. Core Policy 57 also requires a high standard of design in all new development which is expected to create a strong sense of place through drawing on the local context and being complementary to the locality.

Core Policy 51 of the WCS seeks to protect, conserve and enhance Wiltshire's distinctive landscape character and development *'must not have a harmful impact upon landscape character, while any negative impacts must be mitigated as far as possible through sensitive design and landscape measures.'* Landscape effects are generally defined as the effects of a proposal on the landscape as a shared public resource, with the quality and value of a landscape determining its capacity to absorb change. Visual effects relate to how people would be affected by changes to views and visual amenity at different locations. In the National Design Guide landscape is defined as the treatment of land for the purpose of enhancing or protecting the amenities of the site, the area in which it is situated and the natural environment.
Whilst the development must be considered against current planning policy, the as built dwelling which has a farmhouse character is very similar to that approved under K/40916 and is considered to be acceptable in terms of impact to the character and appearance of the area and the wider landscape designated as AONB.

Core Policy 57 also requires that development should ensure the impact on the amenities of existing occupants is acceptable and the separation distances between dwellings is such that neighbouring amenities are not adversely affected by the as built dwelling and the development is also considered to be acceptable in terms of impact to amenity.

Ecology considerations:

Biodiversity:

Core Policies 50 and 52 of the Wiltshire Core Strategy and the National Planning Policy Framework require that the planning authority ensures protection of important habitats and species in relation to development and seeks enhancement for the benefit of biodiversity through the planning system.

Applications should also include biodiversity enhancement measures, in accordance with paragraph 174 of the NPPF. Section 40 of the Natural Environment and Rural Communities Act (2006) also states *'Every public authority must in exercising its functions have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.*

Schedule 15 of The Environment Act 2021 requires Biodiversity Net Gain to be a condition of planning permission, although this is not yet in force. However, Core Policy 50 states that *'All development should seek opportunities to enhance biodiversity'.*

Landscaping was conditioned as part of the original proposals, and this is now mature given that the dwelling has been completed since 2003. No alterations are proposed as part of the development and as this is only effectively regularising the as built situation it is considered that the proposals will have no effect on biodiversity.

Nitrogen/nutrient neutrality:

The site falls within the catchment of the River Test SAC/Solent protected sites, protected under The Conservation of Habitats and Species Regulations designated for supporting habitats or species of high nature conservation importance in the European context. Any activity that has a detrimental effect on these European sites is made an offence under the Regulations.

When a European site is affected by a land use authorisation, it is necessary to consider whether the activity being authorised would impact on any of the designated features.

Where a development is likely to have a significant impact on a European site, the Regulations require a rigorous assessment of the impacts, known as an Appropriate Assessment in order to demonstrate that any likely impacts are avoided or reduced to levels as to avoid adverse impacts upon the SPA/SAC.

This assessment work is governed by the Habitats Regulations and is undertaken by the "competent authority", which for planning applications is "the planning authority".

Under the Habitat Regulations, any development with the potential to affect a SAC and its designated species must be subject to strict scrutiny by the decision maker, in this case the Local Planning Authority (LPA). The Authority should not permit any development, which would have an adverse effect on the integrity of the SAC, alone or in combination with other developments, unless certain rigorous tests are met.

Whilst the application site is not adjacent to any rivers, it is situated within the River Test catchment which drains into the Solent. This region is protected by a number of international designations including the Solent Maritime Special Area of Conservation (SAC), Chichester and Langstone Harbours Special Protection Area (SPA)and Ramsar site, Portsmouth Harbour SPA and Ramsar site, Solent and Southampton Water SPA and Ramsar site; as well as the nationally designated Sites of Special Scientific Interest (SSSIs) that underpin these international designations.

The Solent water environment is one of the most important for wildlife in the United Kingdom. It is protected under the Water Environment Regulations and the Conservation of Habitats and Species Regulations 2017 (as amended) as well as through national legislation for many parts of the coastline and adjacent maritime areas. Natural England has confirmed high levels of nitrogen and phosphorus are entering this water environment and that there is sound evidence that this eutrophication is causing excessive growth of plants and algae which reduces oxygen and light levels and is leading to negative effects on the special features for which the

European sites are designated. These nutrient inputs mostly come either from agricultural sources or from wastewater from existing housing and other development.

Natural England currently advises that every permission for new dwellings in the River Test Catchment Area could result in increased nutrients entering the Solent area from the increase in wastewater and land use change.

The application form states that the means of foul drainage is unknown. Wessex Water maps confirm that there is no mains drainage available in the area and the application forms to previous applications also stated drainage was to go to a septic tank. Given that the dwelling has been completed since 2003, there is no net gain in the number of people in the river Test catchment, and the Local Planning Authority is therefore able to conclude that this development will not lead to adverse impacts alone and in-combination with other plans and projects on the integrity of the River Test catchment.

Previous conditions:

The previous consents were also subject to conditions (included in the site history section above). As this application is effectively an application to regularise the as built development it is necessary to consider whether any conditions attached to the earlier consents are still relevant and should be added.

K/40916 was subject to a restrictive occupancy condition (condition 4). However, following a Certificate of Lawfulness (18/09445/CLE) application the council was satisfied that the dwelling has been in use in breach of the agricultural occupancy condition and the certificate of lawfulness was granted. The officer report to that application is attached at appendix A and also explained that the later Section 73 application did not include a restrictive occupancy condition.

In light of the above, it is considered to be unreasonable to reimpose a restrictive occupancy condition.

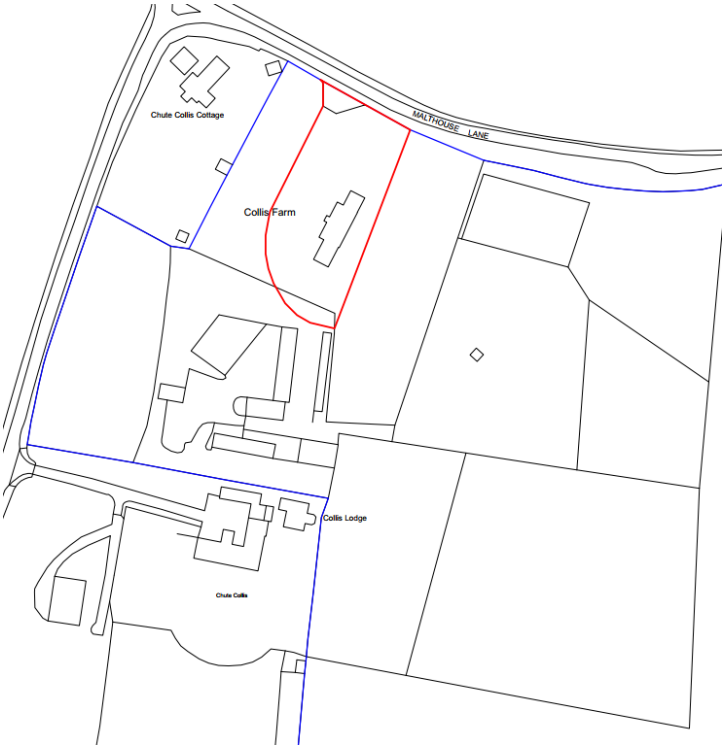
As the development is completed/constructed the majority of the conditions attached to the original consents are also no longer required, however for the avoidance of doubt a revised version of condition 8 of K/40916 should be added to require the maintenance of the visibility splays in the interests of highway safety:

No 08
Before the development hereby permitted is brought into use, the highway visibility area shall be cleared and kept free of all obstructions to sight above 1 metre above the adjoining carriageway from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access to the points on the edge of the carriageway 35 metres to the south east and 120 metres to the north west from the centre of the access.

REASON:
In the interests of road safety.

Planning obligations:

The site plan/block plan red lines originally submitted with this application at validation stage included additional land to that which was originally approved as residential curtilage. Revised plans were submitted reverting the extent of the residential curtilage to that approved under the earlier consents:



However, the larger area of land in the ownership of the application (blue land) is subject to the S106 agreements attached to K/40916 and K/38132 (copied above), which include that the owner covenants with the council not to sell, lease or otherwise dispose of the residence separately from this land (or any part thereof).

However, as the restrictive occupancy condition is no longer relevant following the Lawful Development Certificate for continued use as a dwelling in breach of an agricultural occupancy condition being approved, then it is not considered reasonable to require a deed of variation to carry forward the S106 obligation requiring the land to remain in the same ownership to this application.

Sustainable Construction:

The WCS' key strategic objective is to address climate change. It requires developers to meet this objective under Core Policy 41- Sustainable Construction which specifies sustainable construction standards required for new development.

Core Policy 41 identifies how sustainable construction and low-carbon energy will be integral to all new development in Wiltshire. The policy requires:

86. For residential development post-construction Code for Sustainable Homes assessments will be required which must be undertaken by an accredited assessor. For conversions and for non-residential development an appropriate post-construction BREEAM assessment will be required which must also be undertaken by an accredited assessor. Replacements for the BREEAM standards are being developed and this policy will apply the equivalent replacement standards. The policy will also apply to any future replacements to the Code for Sustainable Homes.

Carbon reduction is a key theme in the council's response to the climate emergency and the LPA encourages the incorporation of sustainable construction techniques/infrastructure and low carbon energy in development schemes where possible and an informative is added to decision notices to encourage this.

RECOMMENDATION: Approve with conditions

(1) The development hereby permitted approves the following approved documents and plans:
Drawing No: PTAD/060623/01 Location & Block Plan, dated 25/08/2023, received by this office 25/08/2023

Drawing No: PTAD/060623/02 Elevations, dated June 2023, received by this office 25/08/2023
Drawing No: PTAD/060623/03 Floor Plans, dated June 2023, received by this office 25/08/2023
REASON: For the avoidance of doubt and in the interests of proper planning.

(2) The highway visibility area at the entrance to the site shall be kept free of all obstructions to sight above 1m above the adjoining carriageway from a point 2.4 metres from the edge of the carriageway measured along the centre line of the access to the points on the edge of the carriageway 35 metres to the south east and 120 metres to the north west from the centre of the access.
REASON: In the interests of highway safety.

Appendix A: CASE OFFICER'S REPORT to 18/0445/CLE

Application reference: 18/09445/CLE
Date of site inspection: 05/11/2018
Date site notice posted: 05/11/2018 (Expiry date 26/11/2018)
Date of press notice: NA

Proposal:

This application is for a Lawful Development Certificate for continued use as a dwelling in breach of an agricultural occupancy condition.

ISSUES:

The main considerations which are considered to be material in the determination of this application are listed below:
1.Relevant legislation
2.Evidence

REPRESENTATIONS:

Chute Parish Council: Chute Parish Council at a meeting held on November 8th proposed not to object to this application

ASSESSMENT:

Background:

Planning permission was granted under application reference K/038132 on 13/02/2001 for *'Provision of a new vehicular access and drive, new dwelling, isolation boxes and deletion of conditions 2 & 6 of K/21467 in respect of No. of employees and a consent personal to the applicant'* and is subject to the following condition:

(1) The occupation of the dwelling hereby approved, shall be limited to a person solely or mainly working or last working at Collis Farm, or a widow or widower of such a person, and to any resident dependents.
Reason: The site lies within the open countryside where development is strictly limited to that which is essential.

Planning permission was then granted under application reference K/040916 on 26/10/2001 for *'Amendment to house design approved under K/038132'* and was also subject to the same occupancy condition.

Relevant legislation:

Under planning legislation and defined enforcement control, a use is deemed lawful if it has become immune from enforcement action through the passage of time. In this case, a certificate confirming its lawfulness of use would be granted if it is accepted that the dwelling has been in use as stated in breach of the agricultural occupancy condition on a continuous basis, without any interruption for a period of ten years prior to the date of application.

The key issue in processing a Lawful Development Certificate is the balance of probability of the facts of the case rather than the planning merits of the case.

Evidence:

This application includes the following supporting evidence:

Extracts from Statutory Declaration of Alison Hamblin stating:

'Some changes were subsequently made to the design of the building and the amended permission K/038132 was granted and the occupancy condition was re-imposed. The dwelling was commenced in 2002 and completed in 2003. We then moved into the dwelling.'

'…on 1 July 2005 the Partnership was dissolved. My husband then became a sole practitioner working as an ambulatory and racecourse equine vet…he ceased to carry out any work at Collis Farm and facilities on the site were no longer used for any business purpose.'

'At no time have I been solely or mainly working at Collis Farm..'

Extracts from Statutory Declaration of Clive Hamblin stating:

'In the time it had taken to obtain planning permission, two of our Practice partners had decided to withdraw and move away for personal, requiring payment for their share of the Practice. In order for the practice to remain financially viable Chute Collis Cottage was sold to raise capital for the business. The background to this was explained to the Planning Services Manager in 2003 following a complaint from a local resident…

'On 1st July 2005, the partnership was dissolved…I became a sole practitioner working on an ambulatory basis (ie. attending patients at my client's stables) and increasingly as a racecourse veterinary surgeon in the south of England.'

'…I no longer carried out any work at Collis Farm and the facilities on the site have since remained redundant.'

'The buildings at Collis Farm have been redundant since 2005 other than a few used for stabling the family horses and ponies.'

'In May 2005 a neighbour made a complaint about breach of conditions 7 and 8 planning permission K/038132. These conditions required a specified visibility splay and that any gates should be set back 12 metres from the edge of the carriageway and should open inwards only. These conditions were imposed because of the nature of the vehicles associated with the equine business use of the land. I contacted the council to explain that the site was no longer used as a commercial equine clinic. The council accepted this and it was agreed that a distance of 7.5 metres could be substituted for the 12 metres in condition 8. On 29 July planning permission was granted to vary the condition on the basis that the equine business use had ceased.'

Mr Hamblin's declaration is supported by letter from previous business partner, director of the old Practice, local farmer, former parish council, 3 clients, letter from Valley Equine Hospital, and correspondence with Valuation office and Kennet District Council in relation to business rates.

Planning Statement explaining *'condition 4 of K040916 has been breached for a period in excess of 10 years continuously. Therefore the breach of condition is immune from enforcement action and a certificate should be granted'*

Specifically, Mr and Mrs Hamlin have occupied the property since 2003. Originally this was in

compliance with the occupancy condition but since July 2005 neither Mr nor Mrs Hamblin have worked at Collis Farm either full time or part time. There have been no other occupants of the dwelling who have been in employment'

Mr Hamblin has worked as a vet on an ambulatory basis attending patients at clients' stables and racecourses since July 2005. Mrs Hamblin has been employed to assist him in this work. Evidence confirming these facts is provided in statutory declarations…'

Evidence from Planning History:

The K/038132 and K/040916 permissions were also subject to the following condition:

> Any gates shall be set back 12 metres from the edge of the carriageway, such gates to open inwards only.
> Reason: In the interests of highway safety.

Planning permission was then subsequently granted under planning application reference K/52370/VAR on 29/07/2015 for *'Siting of entrance gates 7.5m back from highway (variation of condition on planning permission K/38132)'*

The evidence in the planning file (extracts copied below) indicates that at that point the site was not being used as commercial equine hospital:

- Question 11 on application form:

11. Existing uses
(a) What is the current use of the site?
Answer – Private house yard and land. Equine and veterinary uses for some buiildings in yard and fields. Used as a base only for ambulatory veterinary work. – No hospital'

- Comments from Highways Officer:

'…I confirm that subject to the site not being used as a commercial equine hospital I would have no objection to the substitution of 7.5metres for 12 metres in condition 08 (planning permission K.38132).'

- Letter from applicant dated 02.06.05

'I enclose an application to vary condition 8 on planning permission K/038132, dated 13.02.01. This condition requires that any gates be set back 12 metres from the highway, I have applied to have the gates sited 7.5 metres back from the highway (they have already been put up in error.

When planning application was applied for and subsequently granted, condition 8 was requested by Wiltshire highways as the site was then going to be used as an Equine Veterinary Referral Hospital…Unfortunately due to the then existing veterinary partnership breaking up, the hospital was not developed, it was decided instead to improve our existing hospital based at Highclere, near Newbury, and use that instead…The above site has therefore remained as a base for myself only to work out of on a mainly ambulatory basis, (I am an equine veterinarian only, visiting my patients at their homes). It is obviously also the entrance to my private home and therefore used on a private basis by my wife and I.'

The agricultural occupancy condition was also not added to this permission which in effect supersedes the previous consents, so it appears that there is also no agricultural occupancy condition in place in any event.

Conclusion:

The Council is satisfied that available evidence indicates that the dwelling has been in use in breach of the agricultural occupancy condition on application reference K/040916 on a continuous basis, without any interruption for a period of ten years prior to the date of application.

A later section 73 application (K/52370/VAR) did not include a restrictive occupancy condition.

On the balance of probability, there is sufficient precise and unambiguous justification to enable the Council to grant a certificate of lawfulness.

Recommendation: That a Certificate of Lawfulness be Granted