

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2025/09525
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	Land to the rear of Yattendon, Vicarage Road, Tisbury, Salisbury, SP3 6HZ
DEVELOPMENT DESCRIPTION:	Variation of condition 2 (approved plans) to allow for inclusion of 5 rooflights and minor changes to the fenestration arrangements and condition 3 (external materials) on PL/2024/11296
RECOMMENDATION:	Approve with Conditions

SITE DESCRIPTION/CONTEXT

The site is located within the settlement boundary of Tisbury which is classed as a Large Service Centre and therefore the principle of such a development is acceptable. The site currently forms part of Yattendon's substantial rear garden and falls outside of the Tisbury Conservation Area. PL/2024/11296 resulted in planning approval for the Erection of 1 new dwelling, access, together with hard and soft landscaping, and associated works, subject to conditions.

PROPOSAL

This report considers a Section 73 application for the variation/removal of condition(s) imposed on planning permission PL/2024/11296. The application relates to the site at Land to the rear of Yattendon, Vicarage Road, Tisbury and seeks to vary condition 2 relating to the 3 approved plans and remove condition 3 relating to further information on materials following the submission of material details being included within the current submission.

RELEVANT PLANNING HISTORY

Proposal / Summary
PL/2024/11296 - Full planning permission Decision - Approve with Conditions Date: 24/9/2025 – Erection of 1 new dwelling, access, together with hard and soft landscaping, and associated works

RELEVANT LEGISLATION, POLICIES AND GUIDANCE

Town and Country Planning Act. 1990 (as amended)

Section 73 of the Town and Country Planning Act. 1990 (as amended) relates to the determination of applications to develop land without compliance with conditions previously attached. It states that:

(2) On such an application the local planning authority shall consider only the question of the conditions subject to which planning permission should be granted, and—

- a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and
- b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application.

The National Planning Practice Guidance (PPG) states the following:

- *Nature of the Application:* A Section 73 application is treated as a new planning permission, although it does not alter the original permission itself. The original permission remains intact and can still be implemented unless it has expired or been superseded.
- *Limitations:*
 - Section 73 cannot be used to change the description of development or the operative part of the permission (e.g. the nature or extent of the approved use).
 - It cannot be used to extend the time limit for implementing the original permission.
 - If the proposed changes go beyond what can reasonably be considered under Section 73, a new planning application under Section 70 would be required.
- *Decision-making:* The local planning authority must consider the application only in relation to the conditions subject to which the original permission was granted. However, it may impose new or revised conditions if granting a new permission.
- *Legal Agreements:* Because a Section 73 application results in a new permission, any existing Section 106 agreement may need to be varied or replaced via a deed of variation to ensure obligations continue to apply to the new permission.

National Planning Policy:

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- National Design Guide

Development Plan:

The development plan for Wiltshire comprises the Wiltshire Core Strategy (WCS) (adopted January 2015) and any made neighbourhood plans, which remains the principal statutory planning document guiding development across the county. In line with Section 38(6) of the Planning and Compulsory Purchase Act 2004, planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise.

Though the development plan is considered as a whole, those parts deemed to be particularly relevant to this application are listed below:

The adopted Wiltshire Core Strategy (WCS), with particular regard to:

Core Policy 1: Settlement Strategy
Core Policy 2: Delivery Strategy
Core Policy 27: Tisbury Community Area
Core Policy 50: Biodiversity and Geodiversity
Core policy 51: Landscape
Core Policy 57: Ensuring high quality design and place shaping
Core Policy 58: Ensuring the conservation of the historic environment
Core Policy 60 Sustainable Transport
Core Policy 61 Transport and Development
Core Policy 69: Protection of the River Avon SAC

Saved policies of the adopted Wiltshire Core Strategy (Appendix D)

Adopted Tisbury and West Tisbury Neighbourhood Plan

Other:

- Wiltshire Local Transport Plan – Car Parking Strategy: Chapter 7: Parking Standards
Wiltshire Design Guide
- Creating Places, Supplementary Design Guidance, adopted April 2006.
- The Conservation of Habitats and Species Regulations 2010,

EC Habitats Directive when as prescribed by Regulation 3(4) of the Conservation (Natural Habitats, &c.) Regulations 1994 (as amended). Circular 06/2005

ISSUES

The key considerations in the assessment of this application are as follows:

- Determining whether the proposed amendments fall within the scope of Section 73 of the Town and Country Planning Act 1990 which allows for the variation or removal of conditions attached to an existing planning permission.
- Assessing whether the development, as amended, remains in accordance with the relevant policies and provisions of the development plan, and whether the changes materially alter the nature or impacts of the approved scheme.
- Considering the need for a deed of variation to the original Section 106 agreement, as the grant of a new permission under Section 73 would result in a new planning permission.

CONSULTATION RESPONSES

Parish/Town Council: *Tisbury Parish Council resolved to support this application subject to mitigation being provided in the form of automatic blinds for the 5 rooflights which will impact negatively on the International Dark Sky Reserve within the Cranborne Chase National Landscape. Without mitigation, the application is not compliant with paragraph 198(c) of the National Planning Policy Framework and Section 4.3 of the made Tisbury and West Tisbury Neighbourhood Plan 2025 'Protecting the International Dark Sky Reserve'. Furthermore, the Council reiterates its request for screening to be provided to the Red*

House in the form of a 2 metre fence to reduce the extent of the loss of amenity and in line with its response to the previous planning application for this site.

REPRESENTATIONS

Below is a summary of the representations received during the consultation period. Only material planning considerations have been considered in the assessment of this application. Non-material issues, such as property values or private legal disputes, cannot be considered in the determination process.

One third part comment received: *In the previous application, there was a comment from the Parish Council that there should be a fence erected along the western boundary between the proposed site and the garden of The Red House. This does not appear on the revised plan. Whilst I support the planting of a hedge along this boundary, there will be very little privacy afforded in the short term whilst the hedge is being established. The plants proposed in this application are renowned for being slow growing. I would therefore appreciate it if the western boundary could be afforded the same treatment as has been proposed for the eastern boundary, erecting a close board fence at 1.8 metres high, as originally recommended by the Parish Council.*

Another consideration regarding the revised fenestration, will be to ensure compliance with dark skies recommendations, with appropriate timed blinds being installed to ensure that there is no increased light pollution created.

ASSESSMENT

Section 38(6) of the Planning and Compulsory Purchase Act 2004 states:

"If regard is to be had to the development plan for the purposes of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise."

In accordance with this statutory requirement, this application has been assessed against the relevant policies of the Development Plan, including the Wiltshire Core Strategy (2015) and, where applicable, any made Neighbourhood Plans. Consideration has also been given to the policies of the National Planning Policy Framework (NPPF) as a material consideration in the assessment.

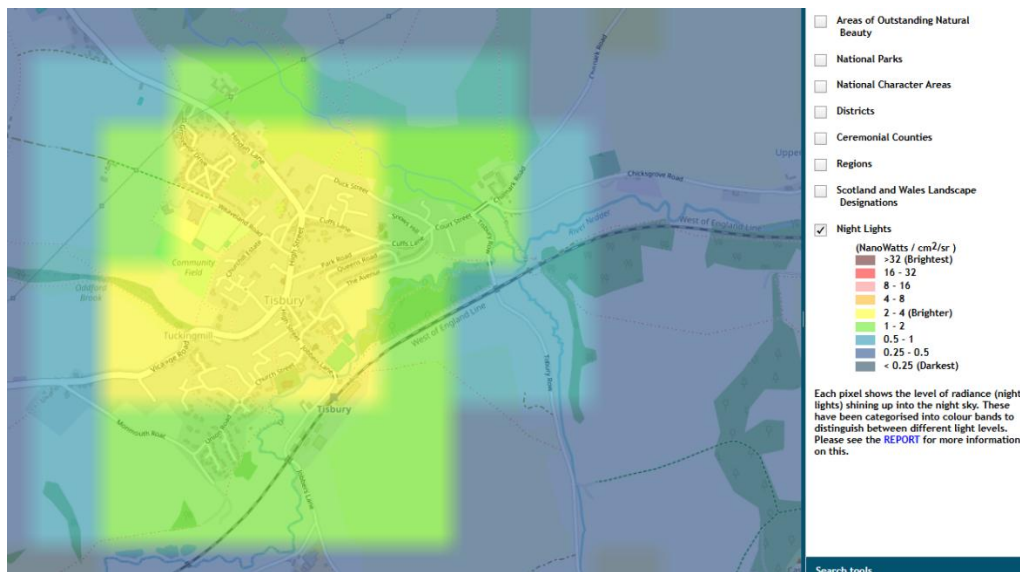
Principle of the Development – Do the proposed amendments fall within the scope of s73?

The proposed amendments have been reviewed and are considered to fall within the scope of Section 73 of the Town and Country Planning Act 1990. The changes do not result in a fundamentally different development from that originally approved, nor do they seek to alter the description of development or extend the time limit for implementation. As such, the application is valid under Section 73 and can be determined as a variation of condition(s) attached to the original planning permission.

Compliance with the Development Plan

The proposed variation to the plans includes the insertion of 5 new rooflights within the development. The scale of the rooflights is not considered to be excessive. Although the site falls within the National landscape, and this has also been highlighted by the Parish Council and third-party representations, the site is located within the settlement of Tisbury. The site is surrounded by residential properties and not within the open countryside.

In addition, on the automated blinds request, the dark night skies [interactive map](#) from CPRE shows that Tisbury and Vicarage Road in particular falls into the brighter category. As a result, officers consider the request unjustified and unnecessary.



The application also seeks to address condition 3 imposed upon the original approval relating to the proposed materials.

Full material details have now been submitted and are considered appropriate for the development and would ensure that although a contemporary design, the addition would sit sympathetically within the plot and would not result in any visual harm upon the overall character and appearance of the area.

All further conditions which were imposed upon the original consent are still considered necessary and would be carried forward upon any approval.

Other Material Considerations/Issues

The request received regarding a timber fence being erected along the Western Boundary have also been noted. However, this was not deemed necessary upon the original approval and officers concluded within the report:

The concerns received regarding the impact upon the garden of this property and potential loss of privacy/overlooking have been carefully considered. It is appreciated that the proposal would be visible from this lower end of the garden, however, the level of harm needs to be considered.

On balance, it is officers opinion that The Red House boasts a large garden with the majority of it being totally unaffected by the proposal. Although the proposal would be visible from this lower section, it would be well stepped back from the boundary and the larger storey being position adjacent the very end of the garden area.

The current submitted plans retain the provision for planting to be put in place along the boundary to aid with screening.

Section 106 Agreement

As the grant of permission under Section 73 results in a new planning permission, the original Section 106 agreement must be reviewed. Where obligations remain necessary to make the development acceptable, a deed of variation will be required to ensure those obligations apply to the new permission.

In the case of this proposal a deed of variation **will not** be required.

The legal agreement has a provision for S73 variations which states a new deed is only required if there is a consequential amendment required. Officer don't think this is the case, in this instance, given the legal agreement relates to it being a self-build, the S73 does not change this.

PLANNING BALANCE AND CONCLUSION

In determining this application under Section 73 of the Town and Country Planning Act 1990, the Local Planning Authority has considered whether the proposed amendments fall within the scope of Section 73. The proposed amendments have been assessed against the relevant policies of the Wiltshire Core Strategy, any applicable Neighbourhood Plan, and the National Planning Policy Framework. The assessment has also considered whether the development, as amended, materially alters the nature or impacts of the approved scheme.

The proposed variation of condition(s) is considered acceptable. The proposal remains in accordance with the development plan and relevant national guidance, and there are no material considerations that indicate otherwise.

RECOMMENDATION:

That Planning Permission be GRANTED subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 24th September 2028.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:

P001-PA-XX-01-DR-A-102 Approved Proposed first floor plan and loft received 03/12/25
P001-PA-XX-00-DR-A-106 Proposed materials received 03/12/25
P001-PA-XX-00-DR-A-107 Proposed materials received 03/12/25
P001-PA-XX-XX-DR-A-001 Site location and block plan received 03/12/25
P001-PA-XX-00-DR-A-100 Rev A Proposed site plan received 03/12/25
P001-PA-XX-00-DR-A-101 Rev B Proposed ground floor plan received 03/12/25
P001-PA-XX-00-DR-A-103 Rev B Proposed elevations and section received 03/12/25
P001-PA-XX-00-DR-A-104 Rev A Site boundary plan received 03/12/25
P001-PA-XX-XX-DR-A 100 Approved site plan received 03/12/25
P001-PA-XX-00-DR-A-102 Rev A Proposed first and loft floor plans received 03/12/25
P001-PA-XX-XX-DR-A-002 Existing site plan received 03/12/25
P001-PA-XX-XX-DR-A-103 Rev A Approved proposed elevations received 03/12/25
P001-PA-XX-XX-DR-A 104 Approved proposed site boundary plan received 03/12/25
P001-PA-XX-XX-DR-A101 Approved Proposed ground floor plan received 03/12/25

REASON: For the avoidance of doubt and in the interests of proper planning.

3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions to, or extensions or enlargements of any building forming part of the development hereby permitted.

REASON: In the interests of the amenity of the area and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions, extensions or enlargements.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No.3) (England) Order 2020 (or any Order revoking or re-enacting or amending that Order with or without modification), no windows, doors or other form of openings other than those shown on the approved plans, shall be inserted in the development hereby permitted.

REASON: In the interests of residential amenity and privacy.

5. Notwithstanding the approved details the sole vehicular access to the new dwellinghouse shall only be from the adjacent private road (Paradise Meadow) as shown on the approved plans.

REASON: In the interest of highways safety.

6. Prior to first occupation of the dwelling hereby approved, the on-site parking and turning area shown on the approved plans shall be made available for that purpose. The parking and turning area so provided shall be thereafter maintained for the lifetime of the development.

REASON: In the interest of highway safety.

7. Before the development hereby permitted is first occupied the 'slit' windows at first floor and loft floor level serving the bathrooms shall be glazed with obscure glass only [to an obscurity level of no less than level 5] and the windows shall be permanently maintained with obscure glazing for the lifetime of the development.

REASON: In the interests of residential amenity and privacy.

8. The existing landscaping around the existing boundaries as shown to be retained on the approved plans, shall be protected and retained during construction works. The proposed landscaping works shown on the approved plans shall be provided before the development is first occupied.

REASON: In the interest of visual amenity and biodiversity.

9. The development will be carried out in strict accordance with the following documents submitted under PL/2024/11296:

- Natural England Nutrient Neutrality budget calculator for the River Avon SAC. 03 January 2025;

- Section 5 of the Preliminary Ecological Appraisal. February 2024. Enims Ltd. Project No. EC2055;

- Proposed Elevations and Section. 05 December 2024. People Architects Ltd. Drawing Code. P001-PA-XX-XX-DR-A-103;

REASON: For the avoidance of doubt and for the protection, mitigation and enhancement of biodiversity.

10. The overnight development hereby approved shall be designed to ensure it does not exceed 120 litres per person per day water consumption levels (which includes external water usage) and a water efficiency assessment should be submitted. Before the development is brought into use, a water efficiency report certifying that this standard has been achieved shall be submitted to the local planning authority for its written approval.

REASON: To ensure compliance with the prevailing mitigation strategy for nutrient neutrality in the water catchment within which this development is located.

11. The development hereby permitted shall not commence until evidence of compliance to the Wiltshire Council River Avon Special Area of Conservation Mitigation scheme, or an alternative approved mitigation package addressing the additional nutrient input arising from the development, has been submitted to, and approved in writing by the Local Planning Authority.

REASON: To accord with the Conservation of Habitats and Species Regulations 2017, and Wiltshire Core Strategy Core Policy 69.

12. Any external security lighting on site will be in accordance with the appropriate Environmental Zone standards set out by the Institution of Lighting Professionals (ILP) Guidance Notes on the Avoidance of Obtrusive Light (GN 01/2021) and Guidance note GN08/23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals.

REASON: To avoid illumination of habitat used by bats.

Informative

- Regards condition 10 A water efficiency calculation will be needed to discharge this condition. For guidance on how to do this and what is required, please refer to the following document: *'The Building Regulations 2010 – Sanitation, hot water safety and water efficiency'*, Appendix A (p36-44).

Informative

- Evidence of compliance to the Wiltshire Council River Avon Special Area of Conservation Mitigation Scheme means the certificate of allocation of credits and confirmation of financial contribution to the scheme. An alternative mitigation package must be approved by the local planning authority and Natural England with evidence of allocation to the scheme.

Informative

- There is a low risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 (as amended) even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year.

Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or the applicant is advised to follow the advice of a professional ecologist or to contact Natural England's Batline through the internet.

Informative

- Any alterations to the approved plans, brought about by compliance with Building Regulations or any other reason must first be agreed in writing with the Local Planning Authority before commencement of work.

Informative

- The applicant is requested to note that this permission does not affect any private property rights and therefore does not authorise the carrying out of any work on

land outside their control. If such works are required it will be necessary for the applicant to obtain the landowners consent before such works commence.

If you intend carrying out works in the vicinity of the site boundary, you are also advised that it may be expedient to seek your own advice with regard to the requirements of the Party Wall Act 1996.