

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2026/00175
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	Wickfield Farmhouse, Wickfield Farm, Bincknoll Lane, Royal Wootton Bassett, SN4 8QR
DEVELOPMENT DESCRIPTION:	Removal of condition 1 of N/79/0637/F (condition restricting occupation to agricultural workers or their dependants).
RECOMMENDATION:	Approve

SITE DESCRIPTION/CONTEXT

The application site comprises land associated with a farmhouse located in the open countryside between Royal Wootton Bassett and Swindon. It is accessed from a country lane leading from the main road between these two towns. A public right of way, footpath LTRE9, runs to the south of the site, whilst farm buildings are located to the north.

The site is in an isolated location, being distant from anything that can reasonably be considered a settlement and adjacent only to development associated historically with the farm.

PROPOSAL

This report considers a Section 73 application for the variation/removal of condition(s) imposed on planning permission N/79/0637/F. The application relates to the site at Wickfield Farmhouse, Wickfield Farm, Bincknoll Lane, Royal Wootton Bassett, SN4 8QR, and seeks to remove **Condition 1** in relation to remove the agricultural occupancy condition because the dwelling has not been used for agricultural purposes since 2009, and there is no longer a local agricultural need for tied accommodation.

RELEVANT PLANNING HISTORY

Application No. N/79/0637/F is of relevance to this application. This sought planning permission for 'Farmhouse' and was approved on the 23rd of July 1979. This current application seeks to vary or remove condition 1 of the 1979 permission. The condition in question read as follows:

“The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(i) of the Town and Country Planning Act, 1971 or in forestry, (including any dependents of such a person residing with him or her) or a widow or widower of such a person.”

Also, Planning Application No.PL/2022/06894 is particularly relevant, which also sought the removal of condition 1 of Permission No. N/79/0637/F, in order to remove the agricultural 'tie'. To facilitate unrestricted open market use of the dwelling, which was subsequently refused.

Refusal Reason: The proposed development would result in an unrestricted residential use of a dwelling currently restricted to occupation by agricultural workers, resulting in an open market dwelling in an isolated location in the countryside for which there is no justification, contrary to Core Policies 1, 2 and 19 of the Wiltshire Core Strategy as well as saved Policy H4 of the Wiltshire Local Plan and paragraph 80 of the National Planning Policy Framework. No material considerations have been identified that are capable of outweighing the significant conflict with the provisions of the development plan.

Application PL/2024/03565 sought a Certificate of Lawfulness for existing use under Section 191, aiming to establish that Wickfield Farmhouse had been occupied in breach of the agricultural occupancy condition for a continuous ten-year period, thereby making the breach immune from enforcement. However, the application was refused because the evidence did not clearly or consistently demonstrate an unbroken period of non-compliant occupation. ***There were significant gaps between tenants, including periods exceeding five and six months where the dwelling was unoccupied, as well as other intervals where the occupants' employment status could not be verified. These breaks meant the Council could not confirm a continuous breach across the required ten-year timeframe, and therefore the statutory enforcement period had not been shown to have expired. As a result, the lawful development certificate could not be granted.***

Of some lesser relevance is prior approval granted in respect of the conversion of stables located to the north of the site to residential use in 2017 (under Application No. 17/03094/PNCOU) and planning permission granted to convert a farm building to residential use in 2002 east of the site (N/02/01272/COU & N/02/02974/COU). Application **18/01768/FUL** was granted in

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 3 Infrastructure Requirements;
- Core Policy 19 Spatial Strategy Royal Wootton Bassett and Cricklade Community Area
- Core Policy 45 Meeting Wiltshire's Housing Needs;
- Core Policy 48 Supporting Rural Life
- Core Policy 51 Landscape
- Core Policy 57 Ensuring High Quality Design and Place Shaping;
- Core Policy 60 Sustainable Transport;
- Core Policy 62 Development Impacts on the Transport Network;

Saved Policies

North Wiltshire Local Plan 2011:

Saved Policy H4

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.

CONSULTATION RESPONSES

Parish/Town Council: Comments “Noted”

REPRESENTATIONS

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

No public representations were received regarding the proposed application.

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 site lies in an isolated part of the open countryside, where development will not normally be permitted other than in accordance with one of a number of stated exceptions set out in the development plan. The existing use of the dwelling as one that is tied to agricultural workers' occupation would fall under one such exception, as a dwelling to meet the employment needs of rural areas offered support under Core Policy 48 of the Wiltshire Core Strategy. Other exception policies exist to support development needed for additional employment land, military establishments, development related to tourism, rural exception sites for affordable housing, and specialist accommodation provision for the housing of vulnerable and older people or gypsies and travellers. Saved Policy H4 of the North Wiltshire Local Plan offers additional support for replacement dwellings.

The proposal involves the removal of a condition that was required to make development acceptable and in accordance with policies in effect at the time of the original permission. Whilst the development plan has undergone iterative changes since that time, similar policies remain in effect. Indeed, the essential need for rural workers remains one of the few exceptions to a policy of restraint on housing in isolated locations set out at paragraph 80 of the NPPF. It is therefore considered that the condition proposed for removal continues to serve a useful purpose for planning; furthermore, it accords with the relevant tests for planning conditions set out in the Framework.

No suggestion has been made that, following the prospective removal of the condition, the proposal would conform to any of the stipulated exceptions to the general policy of restraint in the countryside.

Accordingly, the proposal would change the existing dwelling from a form of development enjoying policy support to one that conflicts with the development plan. In principle, therefore, the application is contrary to Core Policies 1, 2 and 19 of the Wiltshire Core Strategy and Policy H4 of the North Wiltshire Local Plan.

Other Material Considerations/Issues

Once the position of the development plan is established, the Council must consider whether any material considerations justify departing from it. Although the Council cannot currently demonstrate a five-year housing land supply, this carries little weight in this case because the proposal does not add to housing stock; it simply seeks to convert an agriculturally-tied dwelling into an unrestricted open-market home. The development plan therefore remains decisive.

This application is submitted on the basis that the applicant has marketed the property and has been unable to generate interest from any buyers capable of meeting the agricultural tie. A planning statement and marketing report were submitted in support of the proposal. The marketing strategy was comprehensive, including full sales particulars, online advertising, the agent's website, social media promotion, and a sale board, all targeted at the local agricultural

market. The first independent valuation by Alan Hawkins Estate Agents placed the property at £750,000 & £775,000 (with the agricultural condition tie) and second by Birkmyre the value at £825,000. The property was subsequently marketed with AJW Land and Development at a value of £625,000 described as being at a discount to reflect the agricultural tie. The supporting documents suggest that this reduction is consistent with typical discounts for tied properties and demonstrates that the dwelling was realistically priced to test local demand.

The statistical data covering June to September recorded online visibility but no meaningful engagement. Only one enquiry was received, and this did not progress once the prospective buyer understood the agricultural tie. There were no viewings and no offers, demonstrating an absence of demand from eligible agricultural workers. This supports the conclusion that the tie no longer meets a functional need.

Though not addressed within the application submission in addition to the ability to comply with the tie the LPA considers the matter of affordability for rural workers. Contemporary applications for rural worker dwellings are considered on the basis that the dwellings should be of a size and cost commensurate to the identified functional need and not be excessively large or expensive to the farm business or rural worker. In this particular case, the Council accepts with the value indicated by three independent estate agents, the property would prove to be out of the range of most agricultural workers.

Planning history is also a relevant material consideration. Two previous applications were made to address the same condition.

- **PL/2022/06894** sought to remove the tie through the planning system but was refused because no substantial evidence was provided at that time, and the Council concluded that the condition remained necessary to justify a dwelling in an isolated countryside location.
- **PL/2024/03565**, an application for a Lawful Development Certificate, was refused on evidential grounds because the applicant could not demonstrate a continuous ten-year breach of the condition. Significant gaps in occupation and unclear employment histories meant the condition remained enforceable.

These applications were refused for different reasons: the 2022 application failed on policy grounds, and the 2024 application failed on evidential grounds.

Since the dwelling was erected and the tie imposed, the immediate context has materially shifted: more than 5 neighbouring buildings on the holding have been converted to unrestricted residential use, creating a cluster of dwellings in close proximity to the proposal, including The Barn. Operationally, detail submitted suggest the farm has not required on-site agricultural occupation for many years.

PLANNING BALANCE AND CONCLUSION

The application has been determined under Section 73 of the Town and Country Planning Act 1990. The Local Planning Authority is content that the proposed amendments fall within the

scope of Section 73 and that the removal of the condition would be consistent with the operative part of the permission which related to a permanent residential dwelling.

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.

In weighing the planning balance, the following factors have been considered:

- **Benefits:** Removal of a redundant restriction that no longer serves a functional agricultural purpose. Preventing future vacancy and ensuring efficient use of an existing dwelling. Supporting housing flexibility in a location now characterised by established residential conversions.
- **Harms:** The proposal technically conflicts with policy resisting unrestricted dwellings in the open countryside. Loss of a dwelling theoretically available to agricultural workers—although the marketing evidence shows no realistic demand. No additional wider public benefits beyond the efficient use of the dwelling.

The evidence demonstrates that the agricultural occupancy condition no longer meets a genuine planning need. There is no functional agricultural justification and the site now sits within a cluster of more than five unrestricted dwellings resulting from past conversions. The farm no longer relies on on-site accommodation, and the comprehensive marketing exercise confirms that the tie is the sole barrier to occupation. The LPA accepts that there is unlikely to be demand from eligible local workers due to affordability constraints.

Given the clear absence of demand, the material change in local context, and the lack of any continuing agricultural purpose, the removal of the condition is justified. The benefits of lifting the tie outweigh the limited harms, and the proposal can be supported as a reasonable and appropriate response to current circumstances.

RECOMMENDATION:

That Planning Permission be GRANTED