

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2025/09101
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	Summerleys, 16 Silver Street, Minety, Malmesbury, SN16 9QU
DEVELOPMENT DESCRIPTION:	Variation of condition 2 (approved plans) on PL/2023/03960 for the addition of 2 windows on the North West Elevation, addition of a toilet window on the South East Elevation and change from a single garage door to two smaller doors on the South West Elevation.
RECOMMENDATION:	Approved with conditions

SITE DESCRIPTION/CONTEXT

The application site comprises a detached, two-storey dwelling located on the south-western side of Silver Street within the village of Minety. Silver Street is a local highway running through the village, with residential properties situated on both sides of the road.

The surrounding area is predominantly residential in character and is defined by a mix of dwellings representing various historical periods and architectural styles. Many properties within the immediate vicinity are of a comparable scale and form to No.16. There is a prevalent use of light reconstituted stone within the locality, contributing to a relatively cohesive streetscape. Properties are generally set back from the highway, separated by grass verges, hedgerows and generous driveways, providing a sense of openness and spacing between dwellings.

Minety is identified as a Small Village in the Wiltshire Core Strategy. There is no defined settlement boundary, and for the purposes of planning policy the site is therefore considered to be located within the open countryside.

In terms of planning constraints, the site is not within any nationally or locally designated landscape or heritage area. However, the site is identified as being at risk of surface water flooding.

PROPOSAL

This report considers a Section 73 application for the variation of a condition imposed on householder planning permission PL/2023/03960 for the erection of a detached garage with room over. The application relates to the site at Summerleys, 16 Silver Street, and seeks to vary condition 2 (approved plans) to allow for the addition of two windows on the north-west elevation, the insertion of a toilet window on the south-east elevation, and the alteration of the south-west elevation from a single garage door to two smaller garage doors.

RELEVANT PLANNING HISTORY

Proposal / Summary

PL/2023/03960 - Householder planning permission Decision - Approve with Conditions Date: 21/7/2023 – Erection of detached garage with room over.

PL/2025/08276 - Non-Material Amendment Decision - Withdrawn by Applicant Date: 10/11/2025 – Non-material amendment to PL/2023/03960 - Erection of detached garage with room over - 1. Inclusion of 2 windows on the Northern side of the garage, 2. A change from one large garage door to 2 smaller doors, 3. The toilet is now on the ground floor

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 13 Malmesbury Community Area
- Core Policy 50 Biodiversity and Geodiversity;
- Core Policy 51 Landscape
- Core Policy 57 Ensuring High Quality Design and Place Shaping;
- Core Policy 60 Sustainable Transport;
- Core Policy 61 Transport & Development;

Draft Wiltshire Local Plan Policies

The examination of the emerging Wiltshire Local Plan has been paused and the weight to be afforded to any part of the emerging plan can be no more than very limited. A decision on how to proceed will be made by the Council in May 2026.

Supplementary Planning Documents:

Wiltshire Design Guide (March 2024)

National Planning Practice Guidance (NPPG)

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

Highways Officer- No objection

Minety Parish Council: Support.

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 comments received.

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?

Where the Proposal Can Be Considered Under Section 73

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 application seeks to vary condition 2 (approved plans) attached to planning permission PL/2023/03960 to allow for modest changes to the approved elevations, comprising the insertion of additional windows and alterations to the garage door arrangement. The proposed changes do not seek to alter the description of development or extend the time limit for implementation.

The principle of the residential development has already been established through the granting of planning permission PL/2023/03960 and the proposed amendments relate solely to the detailed external appearance of the approved building.

The current proposal does not result in a fundamentally different development from that originally approved. The scale, form and intended use of the building remain unchanged, and there is no increase in the built footprint or height. The amendments are limited to fenestration changes and refinements to the appearance of the garage doors, which are considered minor in nature.

Having regard to the above, the proposed amendments are considered to fall within the scope of Section 73 and it is appropriate to assess them against the relevant policies of the Wiltshire Core Strategy and the National Planning Policy Framework (NPPF) in force at the time of determination.

Accordingly, the application is valid under Section 73 and can be determined as a variation of condition 2 attached to the original planning permission.

Compliance with the Development Plan

There are not considered to be any changes in planning policy, either locally or nationally, since the granting of the original permission in 2023 that would render the amended proposal unacceptable.

Assessment of Conditions

The current proposal seeks to vary Condition 2 (approved plans) attached to planning permission PL/2023/03960, which controls the approved drawings relating to the siting, layout and external appearance of the dwelling. The proposed variation is required to allow for the insertion of two additional windows on the north-west elevation, a bathroom window on the south-east elevation, and the replacement of a single garage door with two smaller garage doors on the south-west elevation. It is therefore necessary for Condition 2 to be updated to reflect the substituted plans submitted with this application. No other conditions directly reference these elements of the development.

The proposed amendments do not alter the approved footprint, overall scale or residential use of the dwelling. The changes are confined to modest alterations to fenestration and garage door detailing and do not affect the height or massing of the building. As such, the variation relates solely to the external appearance of an already-approved dwelling and does not introduce any materially different planning impacts.

Core Policy 57 of the Wiltshire Core Strategy requires development to demonstrate high-quality design, respond positively to local character and safeguard residential amenity. The additional windows are appropriately scaled and positioned and would appear as minor design refinements. The revised garage door arrangement provides a more articulated and balanced appearance to the south-west elevation and remains consistent with the domestic character of the host dwelling and the surrounding area.

Whilst neighbouring residential properties are present, separation distances are generous. The nearest dwelling to the north-west, The Forge, is located approximately 18 metres from the application property, while No.14 Silver Street lies approximately 22 metres to the south. Given these distances, the orientation of the proposed windows, and the existing built form, the amended scheme would not give unacceptable rise to overlooking, loss of privacy or other harm to residential amenity. No third-party representations were received in response to the consultation on this application.

The site is not located within a conservation area and does not affect any listed buildings or other designated heritage assets. The proposed variation does not alter access arrangements, parking provision or highway safety, and it has no implications for previously discharged conditions. No conditions are rendered obsolete or unnecessary as a result of the proposed amendment.

Overall, the variation of Condition 2 is considered reasonable, necessary and justified to reflect the revised drawings. The updated condition would remain clear, precise and enforceable,

and the development as amended continues to comply with Core Policy 57 of the Wiltshire Core Strategy and the relevant provisions of the National Planning Policy Framework.

The works have commenced so the time limit condition is no longer required. The original conditions relating to the use of materials and use of the building remain relevant and shall be reapplied.

Biodiversity Net Gain

The original planning application for this development was submitted on 17 May 2023, which was prior to the commencement of the mandatory Biodiversity Net Gain (BNG) requirements introduced through the Environment Act 2021 and implemented from February 2024.

While BNG is now a statutory requirement for most new developments, the current proposal is a Section 73 application relating to a previously approved householder development within the curtilage of an existing dwellinghouse. Such proposals are exempt from the statutory BNG requirement.

Notwithstanding this exemption, the legislation requires that decision notices for exempt applications include an Informative reminding the applicant of the biodiversity net gain duties and the need to avoid harm to wildlife during construction.

Accordingly, an Informative will be added to the decision notice to highlight the current BNG regulatory framework and good practice expectations, even though the scheme itself is not required to deliver statutory net gain.

CONCLUSION

The proposed alterations as discussed throughout are acceptable in terms of their design, scale, and relationship with the surrounding area and would not result in any unacceptable harm to the character of the locality. Neither would there be any harm to the amenities of neighbouring occupiers, or the interests of highway safety or ecology.

The proposed alterations are therefore considered to comply with the relevant policies of the Wiltshire Core Strategy, the Wiltshire Local Plan, and the National Planning Policy Framework. As such, the application is recommended for approval, subject to the conditions set out below. In weighing the planning balance, the following factors have been considered:

RECOMMENDATION:

That Planning Permission be GRANTED subject to the following conditions:

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Location Plan- LPC 5576 EX 01; Received 17 November 2025
 - Proposed Elevations- 1348_03; Received 17 November 2025
 - Previously Approved Elevations- LPC 5576 PR 02 A; Received 17 November 2025
 - Planning Statement; Received 17 November 2025
 - Application Form; Received 17 November 2025

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

2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match in material, colour and texture those detailed on the application form and approved plans.

REASON: In the interests of visual amenity and the character and appearance of the area.

3. The accommodation hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwelling, known as 16 Silver Street, Minety, Malmesbury, SN16 9QU and it shall remain within the same planning unit as the main dwelling.

REASON: The additional accommodation is sited in a position where the Local Planning Authority, having regard to the reasonable standards of residential amenity, access, and planning policies pertaining to the area, would not permit a wholly separate dwelling.