

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2026/01731
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	Park Barn. Rockley, Marlborough, SN8 1RX
DEVELOPMENT DESCRIPTION:	Vary Condition 2 on PL/2024/10889 - Replacement Dwelling, Demolition of Existing House and Construction of a new single storey house with associated driveway
RECOMMENDATION:	Approve with Conditions

SITE DESCRIPTION/CONTEXT

The application site is situated in a remote location within the open countryside, approximately 1.4 miles to the northwest of Marlborough. The site is approximately 260.9m from Rockley Road, an unclassified section of the public highway to the south, with a private access track approximately 500m long leading to the access at Rockley Road to the southeast.

The application site comprises grassland and woodland, with an existing dwelling located in the southern area of the site. It is situated at a relatively elevated position in respect of surrounding land and is well enclosed by a block of woodland, set within an otherwise open downland landscape of the Marlborough Downs.

It is washed over by the North Wessex Downs National Landscape (formerly Area of Outstanding Natural Beauty).

Based on the latest national flood mapping data updated by the Environmental Agency in 2025, the site lies within Flood Zone 1 from fluvial flooding, and is identified to be at negligible risk of surface water flooding. According to the Council's Strategic Flood Risk Assessment in 2024, the site is identified to be at negligible risk of groundwater flooding.

PROPOSAL

This report considers a Section 73 application for the variation/removal of condition(s) imposed on planning permission PL/2024/10889. The application relates to the site at Park Barn, Rockley, Marlborough, SN8 1RX, and seeks to vary/remove condition(s) 2 in relation to permit a minor amendment to the approved scheme. These minor amendments include:

- Reduction of the overall footprint of the proposed replacement dwelling from 426sqm to 345sqm;
- To accommodate for the above footprint reduction, the proposal includes associated alterations to fenestration to reflect revised internal layouts arising from the reduced footprint;
- The replacement of the approved water source heat pump with an air source heat pump proposed on the northern elevation of the proposed garage.

- The application is accompanied by a Tree Protection Plan as required by condition 3 of planning permission PL/2024/10889.

One set of additional plans have been submitted, which updates other approved plans under the relevant conditions to reflect the proposed amendments of this application.

RELEVANT PLANNING HISTORY

Proposal / Summary
PL/2024/10889 - Replacement Dwelling: Demolition of existing house. Construction of new single storey house with associated driveway. – Approved with conditions 12 March 2026

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 14 Spatial Strategy Marlborough Community Area
- Core Policy 41 Sustainable Construction and Low-Carbon Energy;
- 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;
- Core Policy 62 Development Impacts on the Transport Network;
- Core Policy 64 Demand Management

Saved Policies of the Kennet Local Plan 2011 (KLP) (April 2004)

- Policy HC25 (Replacement of existing dwellings)

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 shall be made by the Council in May (2026).

Supplementary Planning Documents:

- Wiltshire Design Guide (adopted April 2024)
- North Wessex Downs National Landscape Management Plan 2025-2030 (adopted November 2025)

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

The following is a summary of consultee responses received. Full comments are available online.

WC Ecology: Comments

WC Highways: No objection.

WC Landscape: No objection.

WC Archaeology: No comments received.

Ogbourne St Andrew Parish Council: No comments received.

REPRESENTATIONS

No comments were received from the public consultation at the time of writing.

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 application seeks to vary condition 2 (Approved Plans) attached to planning permission PL/2024/10889 to permit a reduction in the overall footprint of the proposed replacement dwelling, including minor internal and external alterations to accommodate to the reduced footprint, as well as the substitution of the water source heat pump with an air source heat pump (ASHP). The proposed changes do not seek to alter the description of development or extend the time limit for implementation (the development has been implemented).

The principle of this residential development has already been established through the granting of planning permission PL/2024/10889 and the proposed amendments relate solely to the reduction in the footprint and detailed external appearance of the proposed dwelling.

The proposed as submitted would not result in a fundamentally different development from that originally approved. The scale, form and intended use of the building would not be materially different, given the changes in the proposed footprint is an overall reduction, the proposed amendments to the fenestration and the inclusion of the ASHP. Altogether, these 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.

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

There are no changes in planning policy, either locally or nationally, since the granting of planning permission PL/2024/10889 in 2025 that would render the amended proposed unacceptable.

Assessment of Conditions

Condition 2 – Approved Plans

The proposed variation is required to enable the reduction of the overall footprint of the dwelling and associated alterations in fenestration and internal configurations, as well as the replacement of the approved water source pump with an ASHP. It is therefore necessary for Condition 2 of planning permission PL/2024/10889 to be updated to reflect the substituted plans submitted within this application.

The proposed replacement dwelling sought by this permission would have a reduced footprint, it would remain as a single storey dwelling, with its height, overall form, and all materials remaining the same.

The Council's Ecologist has requested further ecological information in respect of the proposed amendments. However, the revisions would result in a reduced development footprint, thereby lessening the extent of land affected and, consequently, the potential for ecological disturbance. As such, the amendments would not give rise to any additional or material harm to biodiversity, including Biodiversity Net Gain (BNG), nor would they impact

priority species, remaining consistent with the parameters of the approved scheme. In this context, no further detailed ecological information is considered necessary at this stage. Notwithstanding this, Biodiversity Net Gain would be secured through the submission and approval of a statutory Biodiversity Gain Plan prior to the commencement of development.

The proposed ASHP is considered to be appropriately sited in close proximity to the proposed dwelling. Its siting would enable an effective domestic and functional use as an ancillary installation serving the future occupiers of the proposed dwelling.

The proposed amendments would result in a reduction in the size of the approved garage, such that it would accommodate one car parking space rather than two. However, the number of bedrooms would remain unchanged, and therefore the level of parking provision would continue to accord with the Council's adopted car parking standards. Furthermore, there is sufficient space within the site to accommodate any additional parking if required.

Having considered the above, the proposed amendments are not considered to render the proposal to be in conflict from the development plan. As such, Condition 2 can be amended to reflect the proposed alterations in this application.

Condition 3 – Tree Protection

This application has been supported by a Tree Protection Plan, which demonstrates protective fencing and construction exclusion fence to prevent access close to the existing trees on-site. This is considered sufficient to satisfy the requirements set out under condition 3. Therefore, the condition can be amended to ensure compliance with the submitted plan.

Condition 4 – Ecological strict compliance

The condition includes the approved 'Proposed Site plan' and 'Proposed Curtilage Plan', which can be amended to reflect the proposed alterations in this application. Other approved documents continue to be relevant and do not require amending.

Condition 5 – Demolition prior to occupation

Unaffected by the proposed amendments, therefore reapplied as original wording.

Condition 6 – Implementation of soft landscaping

Unaffected by the proposed amendments, therefore reapplied as original wording.

Condition 7 – No additions, extensions or enlargements

Unaffected by the proposed amendments, therefore reapplied as original wording.

Condition 8 – Restrictions in lighting

Unaffected by the proposed amendments, therefore reapplied as original wording.

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, 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 2 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 three years from the date of planning consent PL/2024/10889 (11th March 2025).

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:

Location Plan; 24074-PB-GA-000-PL1; received 27 November 2024
Proposed Site Plan; 24074-PB-GA-101-PL5; received 13 March 2026
Proposed South West Elevations; 24074-GA-105-PL2; received 13 March 2026
Proposed South East Elevations; 24074-GA-108-PL2; received 13 March 2026
Proposed North East Elevations; 24074-GA-106-PL2; received 13 March 2026
Proposed North West Elevations; 24074-GA-107-PL2; received 13 March 2026
Proposed Ground Floor Plan; 24074-GA-103-PL2; received 13 March 2026
Proposed Site Section AA; 24074-GA-110-PL2; received 13 March 2026
Proposed Landscaping Plan; DWG-1879-01 Rev C; received 8 May 2026
Landscape and Visual Statement; 24.1879 Rev B; received 27 November 2024
Proposed Curtilage Plan; 24074-GA-102-PL2; received 8 May 2026

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

3. The protective fencing shall be erected in accordance with the approved Tree Protection Plan (dwg no: 24074-GA-111-PL1; received 13 March 2026). The protective fencing shall remain in place for the entire development phase and until all equipment, machinery and surplus materials have been removed from the site. Such fencing shall not be removed or breached during construction operations.

No retained tree/s shall be cut down, uprooted or destroyed, nor shall any retained tree/s be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approval shall be carried out in accordance British Standard 3998: 2010 "Tree Work – Recommendations" or arboricultural techniques where it can be demonstrated to be in the interest of good arboricultural practise.

If any retained tree is removed, uprooted, destroyed or dies, another tree shall be planted at the same place, at a size and species and planted at such time, that must be agreed in writing with the Local Planning Authority.

No fires shall be lit within 15 metres of the furthest extent of the canopy of any retained trees or hedgerows or adjoining land and no concrete, oil, cement, bitumen or other chemicals shall be mixed or stored within 10 metres of the trunk of any tree or group of trees to be retained on the site or adjoining land.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs above shall have effect until the expiration of five years from the first occupation or the completion of the development, whichever is the later].

REASON: To enable the Local Planning Authority to ensure the retention of trees on the site in the interests of visual amenity.

4. The development will be carried out in strict accordance with the following documents:
- Protected Species Report. November 2024. Black Sheep Countryside Management
 - Landscape Implementation and Maintenance Plan. Rev B. November 2024
 - Proposed Site Plan; 24074-PB-GA-101-PL5; received 13 March 2026
 - Proposed Landscaping Plan; DWG-1879-01 Rev C; received 8 May 2026
 - Proposed Curtilage Plan; 24074-GA-102-PL2; received 8 May 2026

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

5. The dwelling hereby permitted shall not be occupied until all the existing buildings on site have been permanently demolished and all of the demolition materials and debris resulting there from has been removed from the site.

REASON: In the interests of the character and appearance of the area and neighbouring amenities, and as the development approved has been justified as a replacement dwelling and only on the basis that the existing is to be removed in full.

6. All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the building(s) 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 and the protection of existing important landscape features.

7. 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.

8. All lighting provided on site shall be in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication GN01:2021, 'Guidance for the Reduction of Obtrusive Light' (ILP, 2021), and Guidance note GN08/23 "Bats and artificial lighting at night", issued by the Bat Conservation Trust and Institution of Lighting Professionals and will demonstrate that bat habitat (trees, scrub and hedgerows) on the perimeter of the site will remain below 1 lux (or no higher than existing).

REASON: In the interests of the amenities of the area and to minimize impacts on biodiversity caused by light spillage to areas above and outside the development site.

INFORMATIVE NOTES:

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is deemed to have been granted subject to the condition “(the biodiversity gain condition)” that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

The planning authority, for the purposes of determining whether to approve a Biodiversity Gain Plan if one is required in respect of this permission would be Wiltshire Council.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. For further information on exempt developments please refer to:

<https://www.gov.uk/guidance/biodiversity-net-gain-exempt-developments>

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements are considered to apply.

Irreplaceable habitat

If the onsite habitat includes irreplaceable habitat (within the meaning of the Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations 2024) there are additional requirements for the content and approval of Biodiversity Gain Plans.

The Biodiversity Gain Plan must include, in addition to information about steps taken or to be taken to minimise any adverse effect of the development on the habitat, information on arrangements for compensation for any impact the development has on the biodiversity of the irreplaceable habitat.

The planning authority can only approve a Biodiversity Gain Plan if satisfied that the adverse effect of the development on the biodiversity of the irreplaceable habitat is minimised and appropriate arrangements have been made for the purpose of compensating for any impact which do not include the use of biodiversity credits.