

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2026/00837
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	89 Braemor Road, Calne, SN11 9DX
DEVELOPMENT DESCRIPTION:	Variation of condition 2 (Approved Plans) for 20/07204/FUL
RECOMMENDATION:	Approved with conditions

SITE DESCRIPTION/CONTEXT

The application site comprises a development site comprising part of a former garden serving 89 Braemor Road within the market town of Calne (as defined by Core Policy of the Wiltshire Core Strategy).

The original description of the 20/07204/FUL development was:

The proposed demolition of the existing garage, the erection of 2 No. 2 bedroom semi-detached dwellings, the erection of a replacement garage and the provision of on-site parking.

The development was granted subject to several conditions including an approved plans condition (02) and a pre-commencement condition to agree details of a construction management statement (CMS), the details of which have been approved.

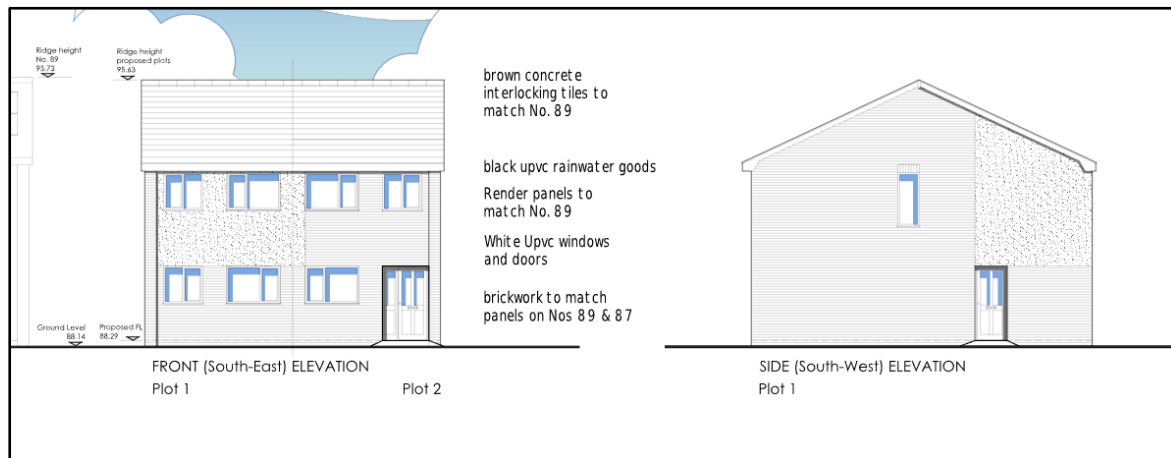


Figure 1 - Extract from approved elevations (front and side Plot 1)



Figure 2 - Extract from approved site layout plan

PROPOSAL

This report considers a Section 73 application for the variation of condition 2 (approved plans) to enable a revised design to ensure the development is wheelchair accessible in compliance with Part M of Building Regulations. The revisions include the relocation of the side door to the front, creating a 'handed' elevation to the neighbour and facilitate ramp access. The first-floor side windows are proposed to be resized fixed light with obscure glazing to improve privacy.



Figure 3 - Extract from proposed elevations

RELEVANT PLANNING HISTORY

Proposal / Summary

PL/2025/03869 - Discharge of Condition 3 (Construction method statement) for 20/07204/FUL - Approved

20/07204/FUL - The proposed demolition of the existing garage, the erection of 2 No. 2 bedroom semi-detached dwellings, the erection of a replacement garage and the provision of on-site parking - Approved with Conditions

RELEVANT LEGISLATION, POLICIES AND GUIDANCE

Town and Country Planning Act. 1990 (as amended) (TCPA)

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—

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

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 8 Spatial Strategy Calne Community Area;
- Core Policy 41 Sustainable Construction and Low-Carbon Energy;
- Core Policy 50 Biodiversity and Geodiversity;
- Core Policy 51 Landscape
- Core Policy 55 Air Quality;
- 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
- Core Policy 67 Flood Risk.

The Calne Community Neighbourhood Plan 2 (made in April 2025):

- BE1 – Integration and Landscaping;
- BE2 – Design Principles for Local Distinctiveness;
- BE3 – Parking Provision;
- C1 – High Quality, Sustainable Development in the Calne Community Plan Area;
- C2 – Sustainable Construction and Energy;
- GA1 – Highway Impact;
- GA3 – Sustainable Transport and Inclusive Active Travel;
- GA4 – Ultra Low Emission Vehicle Charging;
- H1 – Housing Within Settlement Boundaries;
- H3 – Housing Mix;
- NE2 – Protecting and Enhancing Biodiversity;
- NE4 – Trees, Woodland and Hedgerows;
- Calne Design Guide.

Draft Wiltshire Local Plan

At Full Council on 19th May 2026, the elected members of Wiltshire Council agreed to withdraw the emerging Wiltshire Local Plan. It will now be subject to a legal process to finalise its withdrawal - which is likely to happen in July or August (2026). The said Plan has no material weight for the purposes of the application.

Supplementary Planning Documents:

- *Wiltshire Design Guide* (adopted April 2024);
- *Wiltshire Local Transport Plan 3* including the *Wiltshire Parking Standards* (2015 - 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

Consultee responses to the application have been summarised as follows, the full responses are available within the application file.

Calne Town Council: No response (at the time of writing)

REPRESENTATIONS

No responses to the public consultation were 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?

Since the original grant of planning permission the LPA is aware that the development has commenced (following discharge of the pre-commencement condition). The scheme, as it was originally approved can therefore be implemented and exists as a legitimate fall-back position.

Notwithstanding the above, the LPA must consider any changes to the planning policy position since the original grant of permission, that could affect the overall principle of the development. A notable change is that the neighbourhood plan has been updated. The CCNP2 (made in April 2025) does not introduce any new policy requirements that would affect the principle of the development.

The NPPF, as updated in December 2024, has also introduced a requirement for the council to deliver a greater quantum of new housing and relegated the council's housing land supply to 2.4 years (prior to the updated NPPF it was closer to 4.2 years). As such, there is a national policy requirement for the LPA to provide increased support to the development of new homes.

The principle of the development is therefore supported by the development plan and NPPF.

As well as the policy position, the LPA must be satisfied that the changes sought do not give rise to a 'new' development and remain within the description of the original development.

The proposed amendments have been reviewed and are considered to be material but minor in nature and fall within the scope of Section 73 of the TCPA. 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 (the development has already been implemented).

As such, the application can be determined as a variation of condition of the original planning permission.

Compliance with the Development Plan

The changes sought to the design would be material, but are not considered to give rise to any harmful impacts on the visual appearance of the development nor impact on neighbouring residential amenities over and above those assessed as acceptable under the original permission. As well as a revised approved plans condition, the LPA is able to revise obscure glazing compliance conditions to ensure the privacy improvements associated with the altered first-floor windows are secured.

Ensuring the dwellings are wheelchair accessible and in compliance with Part M, Building Regulations is considered to be a broad benefit of the scheme that the changes will secure. The proposed off-road car parking would not be affected by the wheelchair ramp.

The development has also been re-assessed against the relevant policies of the CCNP2 and is not considered to give rise to any conflict with the revised neighbourhood plan. Of note is the CCNP2 policy requirement of policy C2 that aims to secure greater use of design measure to improve energy efficiency in new dwellings. The proposed changes also include the placement of solar panels to ensure the development meets updated Building Regulations and as such, complies with CCNP2 policy C2.

Overall, the development remains in compliance with Core Policy 57 of the WCS and no conflict with other relevant policies of the development plan are identified.

Assessment of Conditions

As stated above, construction of the development has been implemented and the 2021 permission is therefore live. The time limit condition (01) is not required to be re-imposed.

In addition, the proposed changes are acceptable and as such condition 02 (approved plans) can be varied to reflect the updated plan numbers.

Details of a construction management statement (CMS) were agreed in 2025 and the changes to the design of the development now sought would not prevent the CMS from being complied with. As such, the CMS condition can be revised to ensure compliance with the details as agreed in 2025.

The remaining conditions are either pre-occupation or compliance conditions and can be reapplied as per the original consent with the addition of the revised first-floor windows being obscure glazed.

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 adopted development 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 conditions is considered acceptable. The proposal remains in accordance with the development plan and relevant national guidance, and there are no material considerations that indicate an alternative approach is justified.

RECOMMENDATION:

That Planning Permission be GRANTED subject to the following conditions:

1. Approved plans;

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

- 3202 1A – Location Plan;
- 3202 2C – Ground Floor Plan;
- 3202 3C – First Floor Plan;
- 3202 4C – South East and North West Elevations;
- 3202 5 – South West Gable Elevation;
- 3202 6 – North East Gable Elevation.

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

2. Construction Management Statement;

Construction of the development hereby approved shall take place in accordance with the details of the Construction Management Statement (Dated: 11th April 2025) as approved by the local planning authority under discharge of condition application PL/2025/03869 on 10th July 2025.

REASON: In order that the development is undertaken in an acceptable manner, to minimise detrimental effects to the neighbouring amenities, the amenities of the area in general, detriment to the natural environment through the risks of pollution and dangers to highway safety, during the construction phase.

3. Obscure Glazing;

The dwellings hereby permitted shall not be occupied or brought into use until the first -floor, side facing windows have been glazed with obscure glass only [to an obscurity level of no less than level 3]. The windows shall be maintained with obscure glazing thereafter.

REASON: In the interests of residential amenity and privacy.

4. Parking Provision;

The dwellings hereby permitted shall not be occupied or brought into use until the parking areas shown on the approved plans have been consolidated, surfaced and laid out in accordance with the approved details. These areas shall be maintained and remain available for this use at all times thereafter.

REASON: To ensure that adequate provision is made for parking within the site in the interests of highway safety.

5. Permitted Development Removal.

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (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; and no garages, sheds, greenhouses and other ancillary domestic outbuildings shall be erected anywhere on the site other than shown on the approved plans.

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 additional built form.

Informative Notes:

The applicant should note that the grant of planning permission does not include any separate permission which may be needed to erect a structure in the vicinity of a public sewer. Such permission should be sought direct from Thames Water Utilities Ltd / Wessex Water Services Ltd. Buildings are not normally allowed within 3.0 metres of a Public Sewer although this may vary depending on the size, depth, strategic importance, available access and the ground conditions appertaining to the sewer in question.

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.

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.