

APPLICATION FOR VARIATION/REMOVAL OF CONDITION DELEGATED REPORT

APPLICATION REFERENCE:	PL/2026/00343
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	11 Quemerford, Calne, SN11 0AR
DEVELOPMENT DESCRIPTION:	Removal of condition 4 granted under appeal ref APP/Y3940/W/25/3361260 reference occupancy age restriction
RECOMMENDATION:	Approve with Conditions

SITE DESCRIPTION/CONTEXT

The application site is situated within the area known as Quemerford, within the south of the market town of Calne. The application site is situated within the rear garden of an existing residential property: 11 Quemerford, Calne. Surrounding uses comprise predominantly residential, but the Grade II listed Talbot Inn Public House is situated on the north-west side of the application site.

Planning permission was granted at appeal on the site (in July 2025) for the erection of a single dwelling for “independent active older persons”. It was at that time (and continues to be) unclear as to what “independent older persons” means, but for the purposes of the appeal it seemed to distil down to an over 55 age limit. The Inspector duly imposed a planning condition limiting occupancy to persons meeting the designated age criteria, but appeared to place no weight on it as a material consideration.

PROPOSAL

This report considers a Section 73 application for the removal of condition 4 imposed on planning permission PL/2024/07571 granted under appeal ref APP/Y3940/W/25/3361260.

Condition 4 relates to an occupancy age restriction:

The development hereby permitted shall be occupied only by:

- i. persons of over the age of 55; or*
- ii. persons living as part of a single household with such a person or persons; or*
- iii. persons who were living as part of a single household with such a person or persons who have since died.*

RELEVANT PLANNING HISTORY

Proposal / Summary

N/05/02337/FUL - Full planning permission Decision - Approve with Conditions Date: 11/11/2005 – Rear Conservatory
N/88/02896/OUT - Outline Planning Decision - Refused Date: 21/11/1988 – OUTLINE - DWELLING AND GARAGE
PL/2021/05709 - Full planning permission Decision - Refuse Date: 29/11/2021 – Erection of a new dwellinghouse
PL/2021/06657 - Householder planning permission Decision - Approve with Conditions Date: 14/10/2021 – A first storey extension to the rear of the existing property
PL/2022/03438 - Full planning permission Decision - Dismissed Date: 21/3/2023 – The erection of a new dwellinghouse
PL/2024/07571 - Full planning permission Decision - Refuse Date: 8/1/2025 – Erection of a single dwelling for Independent Active Older Persons, Associated Parking, Landscaping and other associated works. – Allowed at appeal

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 8 Spatial Strategy: Calne Community Area;
- Core Policy 45 Meeting Wiltshire's Housing Needs;
- Core Policy 46 Meeting the Needs of Wiltshire's Vulnerable and Older People;

The adopted neighbourhood plan Calne Community Neighbourhood Plan 2 (March 2025) in regard to:

- Policy H4: Housing to meet the needs of Older People and those Living with Disabilities
- Policy H5: Adaptable and Accessible Housing

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

Calne Town Council - No comments received.

REPRESENTATIONS

No representations 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?

The proposal seeks the removal of Condition 4 attached to planning permission APP/Y3940/W/25/3361260. The application does not seek to alter the description of development or any physical aspect of the approved scheme. The proposed amendment therefore falls within the scope of Section 73 of the Town and Country Planning Act 1990 and may be determined accordingly.

Compliance with the Development Plan

The description of development remains unchanged from the appeal permission as a Section 73 application cannot amend the description of development. Whilst the approved description refers to a dwelling for independent active older persons, the current application seeks removal of the occupancy restriction imposed by Condition 4. The acceptability of this proposal therefore depends on whether the occupation restriction remains necessary to make the development acceptable in planning terms.

The principle of a dwelling on this site has already been established through the grant of planning permission under appeal ref. APP/Y3940/W/25/3361260. The current application

proposes no physical alterations to the approved development and therefore does not change the conclusions previously reached in respect of design, character and appearance, residential amenity, highway safety or the setting of the nearby listed building.

The site is located within the settlement boundary of Calne, identified as a Market Town within the Wiltshire Core Strategy, where the principle of residential development is supported by Core Policies 1, 2 and 8.

In allowing the appeal, the Inspector acknowledged that the proposal would provide accommodation for older persons and generally accord with Core Policy 46 of the Wiltshire Core Strategy and Policies H4 and H5 of the Calne Community Neighbourhood Plan. However, the appeal decision did not conclude that the dwelling was only acceptable by virtue of the age restriction and therefore placed no weight on it as a material consideration in favour of the proposals. It was at that time (and remains) unclear why the appellant sought to limit the occupation of the dwelling, but it is presumed they believed it would somehow garner additional support from the Inspector.

Indeed, in determining the substantive planning application it was concluded by the Council that the construction of a new dwelling on the site to be acceptable in principle in accordance with CP1, CP2 and CP8 of the WCS and Calne Community Neighbourhood Plan, with the applicant's self-imposed age restriction being largely irrelevant.

The reason for the condition being added by the Inspector was as follows: "As the application is for housing to be occupied by persons over the age of 55, I have included a condition limiting occupancy to persons meeting the designated age criteria." The Inspector's reasoning indicates that the condition was imposed to reflect the nature of the proposal as presented by the appellant, rather than because the restriction was necessary to make the development acceptable in planning terms.

Having regard to the above, it is considered that the removal of Condition 4 would not result in the principle of the development somehow becoming unacceptable. In light of the Inspector's earlier decision to allow the appeal, there remains no reason to resist the proposal to remove the condition.

Assessment of Conditions

Condition 4 restricts occupation of the dwelling to persons over the age of 55 and members of their household.

Paragraph 57 of the NPPF advises that planning conditions should only be imposed where they are necessary, relevant, enforceable, precise and reasonable. Whilst the appeal proposal was presented as accommodation for older persons, the Inspector did not identify the occupancy restriction as necessary to mitigate any planning harm or to make the development acceptable. As no physical changes are proposed and no additional planning impacts would arise from unrestricted occupation, it is considered that Condition 4 no longer meets the tests for planning conditions and can be removed.

PLANNING BALANCE AND CONCLUSION

The proposal seeks the removal of an age occupancy restriction from a dwelling already granted planning permission under appeal. The development itself remains unchanged and no additional harm has been identified. The occupancy restriction is not, and has never been, considered necessary to render the principle of development acceptable in planning terms. In view of the Inspectors decision to allow the development in other respects, there is no impediment to the grant of a fresh planning permission. Conditions imposed should reflect the inability to alter the time limit condition via s73 of The Act, as well the stating reasons which Inspectors, for some unknown reason, fail to allocate to each individual conditional matter.

Accordingly, having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the proposal is considered acceptable and planning permission should be granted.

RECOMMENDATION: That Planning Permission be GRANTED subject to the following conditions

1. The development hereby permitted shall begin not later than three years from 23 July 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 drawing nos:

1668-120 - Location Plan, 1668-101 A - Proposed Site Plan, 1668-102 A - Proposed Floor Plans & Elevations, 1668-105 - Existing & Proposed Site Sections, 1668-100 A - Existing Site Plan.

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

3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction;
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works;

viii. delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to in full throughout the construction period for the development.

REASON: In the interests of public safety and to ensure the health and safety of site operatives.