

APPLICATION FOR VARIATION/REMOVAL OF CONDITION CASE OFFICER REPORT

APPLICATION REFERENCE:	PL/2026/03426
APPLICATION TYPE:	Removal/variation of conditions
SITE ADDRESS:	Copse Cottage, Semley, Shaftesbury, SP7 9AD
DEVELOPMENT DESCRIPTION:	Variation of condition 2 (approved plans) on 20/04526/FUL to allow for design changes to reduce the size and scale of the extension.
RECOMMENDATION:	Approve, with conditions

SITE DESCRIPTION/CONTEXT

The application relates to the dwelling known as Copse Cottage, being a detached dwelling house located in an isolated position within the countryside. The property has a relatively large residential curtilage with a high degree of natural screening within the surrounding landscape by reason of existing mature boundary hedges and trees. The dwelling house is located within the National Landscape.

PROPOSAL

This report considers a Section 73 application for the variation/removal of condition(s) imposed on planning permission 20/04526/FUL. The application relates to the site at Copse Cottage and seeks to vary condition 2 (Plans as listed) in relation to alter the overall design and scale of the proposed extension.

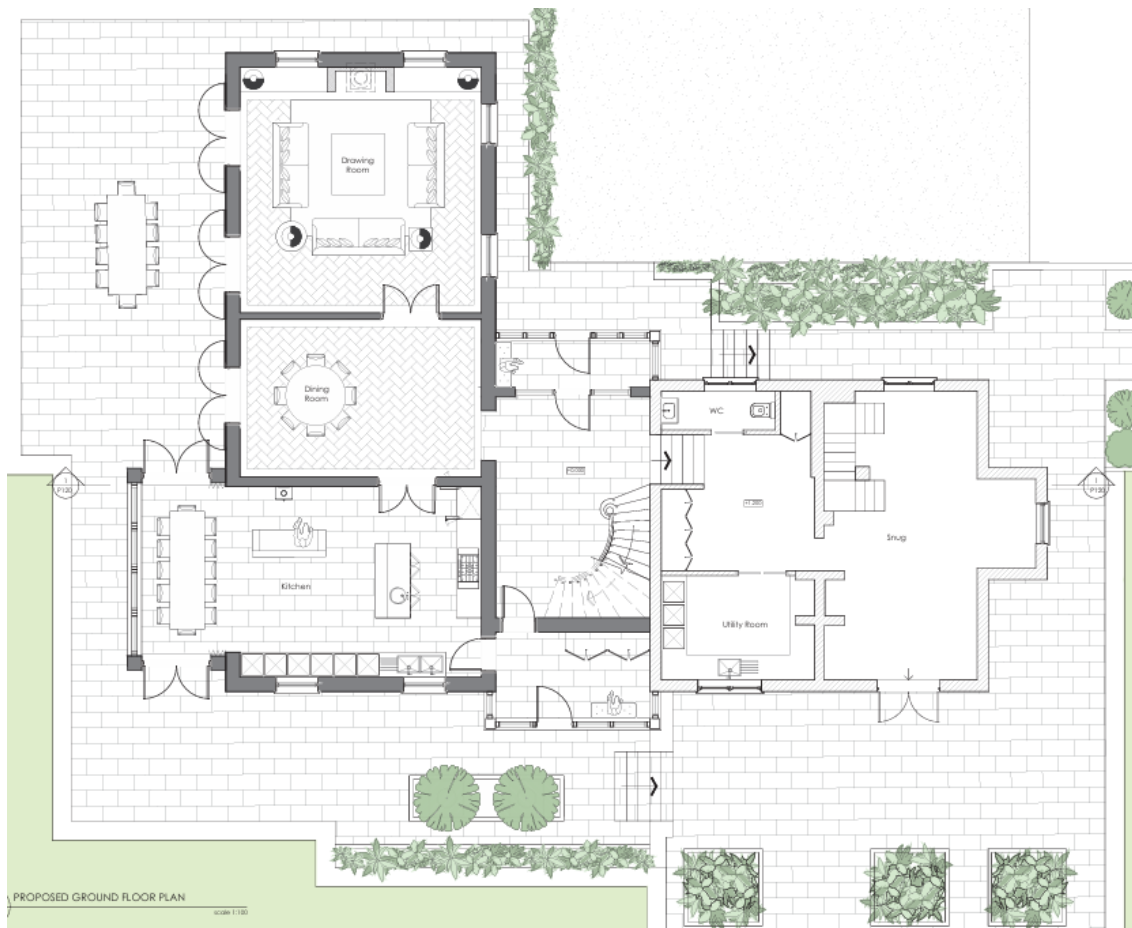


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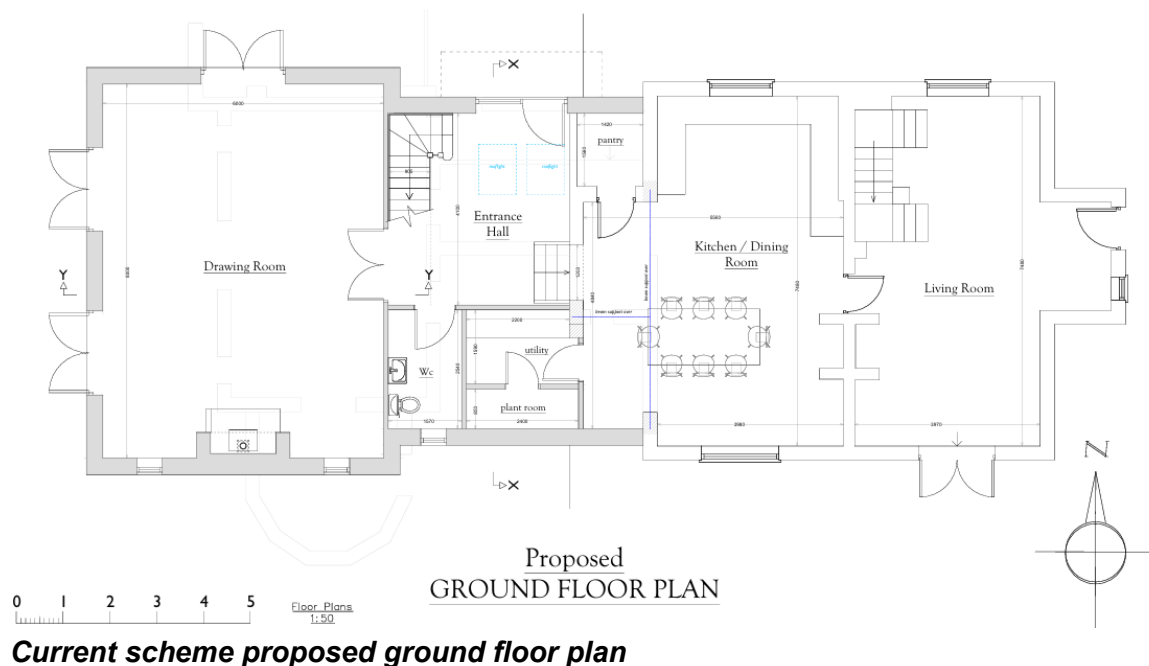
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2 PROPOSED REAR ELEVATION



2020 Approved ground floor plan



RELEVANT PLANNING HISTORY

Proposal / Summary
S/1985/0722 - Full planning permission Decision - Approved Date: 4/7/1985 – ADDITION OF TOILET AND DOUBLE GARAGE
13/00536/FUL - Full planning permission Decision - Approve with Conditions Date: 15/7/2013 – Construction of detached garage / carport with room over for home office
14/06219/FUL - Full planning permission Decision - Approve with Conditions Date: 2/9/2014 – Construction of detached garage/carport with room over for home office. (Amendmend to 13/00536/FUL)
16/06677/FUL - Full planning permission Decision - Approve with Conditions Date: 20/9/2016 – Construction of detached garage/carport building with home office and storage.
19/10308/FUL - Full planning permission Decision - Approve with Conditions Date: 9/12/2019 – Construction of detached garage/carport building with home office and storage. (Re-submission of 16/06677/FUL)
20/04526/FUL - Full planning permission Decision - Approve with Conditions Date: 7/9/2020 – Demolition of existing single storey extension including conservatory and garage, and replacement with a 2-storey side extension, alterations to domestic curtilage, access and associated works.
PL/2022/04178 - Hedgerow removal notice Decision - No Objection Date: 14/7/2022 – The removal of one 5m section of hedgerow is required for access in order to install new water main. Once the works have been completed, the hedgerow will be reinstated as per attached STD/836, using a mix of species to mix and match the surrounding hedge

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 23 Southern Wiltshire Community Area
- Core Policy 50 Biodiversity and Geodiversity;
- Core Policy 51 Landscape
- Core Policy 57 Ensuring High Quality Design and Place Shaping;
- Core Policy 64 Demand Management

Saved Salisbury Local Plan

H31 Replacement Dwellings and Extensions in the Countryside

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: None received

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.

None 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.

The proposed variation to condition two is sought by the applicant's requirements for a reduced extension scheme.

The changes are generally required to address budgetary constraints and therefore the current application seeks to alter the plans as listed condition originally imposed to result in a reduced extension with a revised design finish.

The revised plans illustrate the northern section of the extension removed from the scheme and the house is extended to the western side only. The previous approved extension comprised a built footprint of approx. 170m², whereas the reduced scheme has a footprint of approx. 93m², thus giving a reduction of approx. 77m² of overall built footprint.

Furthermore, the extension to the West is reduced from a projection of 13.5m down to an overall projection of 11.5m. The proposed Georgian style of the extension is also sought to be altered.

The overall reduction in mass and footprint is welcomed with the revised design being a more simplistic approach. The revised design is considered to sit sympathetically upon the host dwelling, with the overall alterations reducing the visual prominence of the proposal and therefore being complimentary to the overall character and appearance of the area.

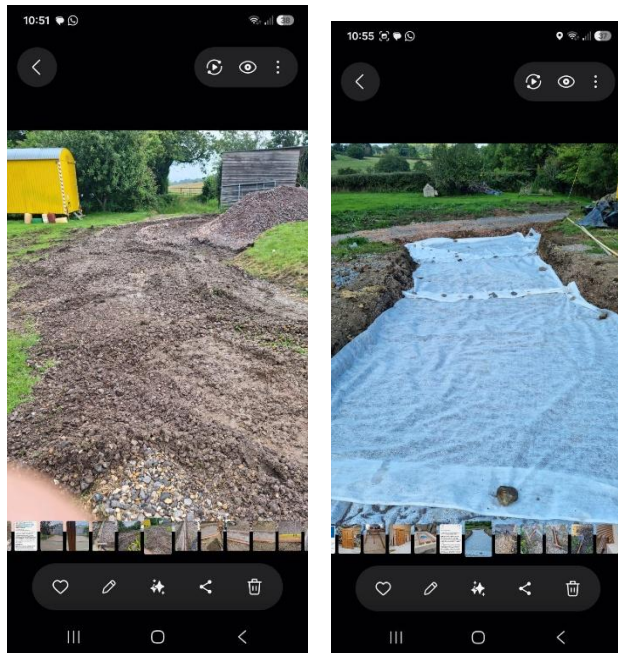
The proposal would be read in the context of the existing built form and would not result in any adverse effects upon the wider landscape character of the National Landscape.

In addition, further to the isolated position of the property in relation to any nearby residential properties, the works would not affect any residential amenities.

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.

Although a significant period has passed since the original approval, photos have been submitted to demonstrate that works have commenced on site in the way of the relocation of the approved access, and therefore the original approval is extant.



Compliance with the Development Plan

The revised scheme is in accordance with the development plan. The scheme is an overall reduction to the previously approved scheme with the overall design changes being respectful and sympathetic to the overall character and appearance of the area in accordance with Core Policy 57.

Assessment of Conditions

It is noted that the original three years for works to begin has subsequently long past. However, it is noted within the submitted supporting statement that works commenced on site in July 2021 and the associated access works which formed part of the original 2020 approval to which the current VAR application relates to were completed. Therefore, it is the officers view that as works relating to the original permission have commenced the application remains live.

However, all additional conditions previously imposed remain current and necessary to be carried forward upon any new approval.

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, any applicable Neighbourhood 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.

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:

19 / 702 / E001 Rev A Site location plan received 29/05/26

DWG No: 19/702/E002 Rev A Proposed Site Block Plan Date Received 29.06.20

DWG No: 5139/02 (Proposed Plans & Elevations) Received 29/05/26

DWG No: 19/702/P001 Rev B Proposed Site Layout Plan Date Received 29.06.20

DWG No: 916-SW-01 Proposed Landscaping Plan Dated Received 29.06.20

DWG No: 19/702/P003 Rev D Proposed Curtilage Plan Date Received 29.06.20

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

- 2, Prior to construction of the development hereby permitted above ground floor level details of the materials to be used in the construction of the works that shall include the type of brick, roof tile, cladding, windows, lintels, doors and rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved detail.

REASON: In the interests of the AONB and wider landscape.

3. No development shall take place, including demolition, ground works and vegetation clearance until a Construction Environment Management Plan (CEMP) has been

submitted to and approved in writing by the local planning authority. The CEMP shall include, but not necessarily be limited to, the following:

- a) Measures which will be used to avoid or reduce impacts during construction e.g. precautionary methods of working for birds, reptiles, amphibians (including great crested newts), bats and hedgehogs etc.
- b) Measures which will be used to reduce and protect Semley Common County Wildlife Site (CWS) from adverse impacts during construction e.g. the location of "Biodiversity Protection Zones" and protective fences.
- c) Turf stripping and laying methods to restore habitat within the CWS including within the construction footprint and resulting redundant area of drive.
- d) Area calculations and plans showing there will be no overall loss of CWS grassland.
- e) Measures to prevent the spread of soil containing the non-native variegated yellow archangel plants.
- f) The times during construction when specialist ecologists including Ecological Clerk of Works, will be present on site to oversee works.
- g) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

REASON: To ensure adequate protection, mitigation and compensation for protected species in accordance with Core Policy 50 and the National Planning Policy Framework and Section 40 of the Natural Environment and Rural Communities Act 2006.

- 4 The development hereby approved shall be carried out in strict accordance with the submitted Tree and Meadow Planting Proposals (Drawing Number 916-SW-01. Indigo Landscape Architects). Further, the proposed wildflower meadow planting must consist of seed of local native provenance to avoid altering the species composition of the adjacent CWS.

REASON: To ensure adequate protection, mitigation and compensation for protected species and to provide a biodiversity enhancement, in accordance with Core Policy 50 and the National Planning Policy Framework and Section 40 of the Natural Environment and Rural Communities Act 2006.

- 5 The development hereby permitted shall not be first brought into use until the first five metres of the access, measured from the edge of the carriageway, has been consolidated and surfaced (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

- 6 No development shall commence on site until details of the stopping up of the existing access has been submitted to and approved in writing by the Local Planning Authority. That stopping up shall take place in accordance with the approved details within one month of the first occupation of the development. No later than one month after the first occupation of the development, the sole means of vehicular access to the development shall be as shown on the plans hereby approved.

REASON: In the interests of highway safety.

- 7 No part of the development hereby permitted shall be first brought into use until the access, turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

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

- 8 Notwithstanding the submitted details, the proposed development shall not be occupied until means/works have been implemented to avoid private water from entering the highway.

Reason: To ensure that the highway is not inundated with private water.

INFORMATIVE:

1. There is a risk that bats may occur at the development site. Many species of bat depend on buildings for roosting, with each having its own preferred type of roost. Most species roost in crevices such as under ridge tiles, behind roofing felt or in cavity walls and are therefore not often seen in the roof space. Bat roosts are protected all times by the Conservation of Habitats and Species Regulations 2010 (as amended) even when bats are temporarily absent because, being creatures of habit, they usually return to the same roost site every year. Planning permission for development does not provide a defence against prosecution under this legislation or substitute for the need to obtain a bat licence if an offence is likely. If bats or evidence of bats is found during the works, the applicant is advised to stop work and follow advice from an independent ecologist or to contact the Bat Advice Service on 0345 1300 228, email enquiries@bats.org.uk or visit the Bat Conservation Trust website

2. The applicant(s) is advised that the discharge of this condition does not automatically grant land drainage consent, which is required for any works within 8m of an ordinary watercourse or any discharge into an ordinary watercourse. The applicant remains responsible for obtaining land drainage consent, if required, at the appropriate time.