

APPLICATION FOR MODIFICATION OF PLANNING OBLIGATION DELEGATED REPORT

APPLICATION REFERENCE:	PL/2025/07381
APPLICATION TYPE:	Modification of Planning Obligation
SITE ADDRESS:	Dairy Cottage, Park Farm, Pinkney, Malmesbury, SN16 0NZ
DEVELOPMENT DESCRIPTION:	Discharge of Planning Obligations A, B, C and D related to N/98/02279/FUL
RECOMMENDATION:	Approved with Conditions

PROPOSAL & SITE DESCRIPTION

This report considers an application seeking the discharge of planning obligations attached to planning permission N/98/02279/FUL. The application relates to the building identified by the applicant has given the address of “Dairy Cottage, Pinkney, Malmesbury, SN16 0NZ” which is understood to be a registered postal address, albeit the original site address was Park Farm, Pinkney. The proposal seeks to remove the entirety of the obligations within the Section 106 agreement.

Planning permission was granted in 1999 under reference N/98/02279/FUL for the conversion of a stables to residential accommodation. This permission was accompanied by a Section 106 agreement dated 20/05/1999, which imposed a number of obligations restricting the use of the accommodation (known as Dairy Cottage) to ensure it remained ancillary to the main dwelling at Park Farm.

The applicant, who owns Park Farm, has provided a statutory declaration which sets out the site’s occupancy history. According to this declaration, Dairy Cottage has been occupied independently of the main dwelling since 1999. It was initially occupied by farmworkers 1999-2018 and from 2018 – present, by private tenants. This information recently assessed under lawful development certificate application ref: PL/2026/00689, where the Council concluded that: “The LPA has no substantive evidence themselves to contradict the applicant’s version of events and has been provided with information satisfying them that, on the balance of probabilities, the site has a lawful use as an independent dwelling.”

A Lawful Development Certificate was subsequently approved in March 2026, formally confirming the lawful use of Dairy Cottage as a single independent dwellinghouse.

RELEVANT PLANNING HISTORY

Proposal / Summary
PL/2026/00689 - Application to demonstrate that a change of use of Dairy Cottage, used as a single dwellinghouse, is lawful – Approved with conditions
N/98/02279/FUL - CHANGE OF USE FROM STABLES TO RESIDENTIAL ACCOMMODATION – Approved with Conditions

RELEVANT LEGISLATION, POLICIES AND GUIDANCE

Town and Country Planning Act. 1990 (as amended)

Section 106A of the Town and Country Planning Act. 1990 (as amended) relates to the determination of applications modification or discharge of planning obligations entered into under section 106. It states that:

(6) Where an application is made to an authority under subsection (3), the authority may determine—

- (a) that the planning obligation shall continue to have effect without modification;
- (b) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- (c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

National Planning Policy

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

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:

Wiltshire Core Strategy (WCS)

- Core Policy 1 Settlement Strategy;
- Core Policy 2 Delivery Strategy;
- Core Policy 13 Malmesbury Community Area
- Core Policy 48 Supporting Rural Life
- Core Policy 50 Biodiversity and Geodiversity;
- Core Policy 51 Landscape
- Core Policy 57 Ensuring High Quality Design and Place Shaping;
- Core Policy 58 Ensuring the Conservation of the Historic Environment;
- Core Policy 60 Sustainable Transport;

- Core Policy 61 Transport & Development;
- Core Policy 64 Demand Management

Sherston Neighbourhood Plan

- No relevant policies

ISSUES

The key considerations in the assessment of this application are as follows:

- Determining whether the proposed amendments fall within the scope of Section 106A of the Town and Country Planning Act 1990 which allows for the discharge or modification of obligations attached to an existing planning permission.
- Assessing whether the obligations still serve a useful purpose

CONSULTATION RESPONSES

Sherston Parish Council: No objection

REPRESENTATIONS

None received

ASSESSMENT

Section 106A Para (3) states that A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [the local planning authority by whom the obligation is enforceable] [the appropriate authority] for the obligation—

- (a) to have effect subject to such modifications as may be specified in the application; or
- (b) to be discharged.

The S106 agreement is dated 1999, and therefore the relevant period has expired. The applicant seeks to discharge the entire planning obligations set out in the S106 on the grounds that they:

- *cannot serve a useful purpose;*
- *are no longer required to serve the intended purpose;* and, in part,
- *step beyond matters of land use with which the planning regime is concerned;*

The Section 106 Agreement accompanying planning permission N/98/02279/FUL imposed several obligations relating to the ownership, use, and occupation of Dairy Cottage at Park Farm. Following the recent grant of a Lawful Development Certificate (ref. PL/2026/00689,

issued March 2026) confirming that the building is lawfully in use as a single independent dwellinghouse, it is necessary to review each obligation in light of that lawful status.

Obligations (a) and (b)

Obligations (a) and (b) relate to the main dwelling and additional accommodation being retained within the same ownership and planning unit, in the interest of this accommodation being maintained as ancillary to the host dwelling.

- a) The Owner will not sell or lease for any term or otherwise dispose of the Main Dwelling unless such sale or lease or other disposition shall include the Additional Accommodation;*
- b) The Owner will not sell or lease for any term or otherwise dispose of the Additional Accommodation unless such sale or lease or other disposition shall include the Main Dwelling*

These obligations were imposed to ensure that the additional accommodation remained in the same ownership and planning unit as Park Farm, reinforcing its originally approved ancillary role. However, the Certificate of Lawful Use establishes that the LPA has “no substantive evidence” to contradict the applicant’s version of events. Evidence demonstrates that any ancillary link ceased in 2015. The building has facilities for independent living and has, on the balance of probabilities, operated as an independent dwellinghouse for a continuous period sufficient for the immunity period to pass. The certificate confirms that the use as a single dwellinghouse was lawful on 30.01.2026.

Given this lawful established use, obligations restricting ownership arrangements between the two properties no longer serve a planning purpose, nor do they meet the legal tests of being necessary, relevant, or reasonable. Obligations (a) and (b) are no longer justified and can be removed.

Obligation (c)

Obligation (c) relates to the use and occupancy i.e. that it can be used as an ancillary annexe or for farmworkers accommodation:

- (c) The Owner shall not cause or permit the Additional Accommodation to be used or occupied other than by members of the Owner’s family or friends or by the Owner’s employees employed solely or mainly at Park Farm aforesaid and in a matter incidental to the enjoyment of the main dwelling as a single dwellinghouse.*

This obligation was intended to maintain the accommodation as wholly ancillary, preventing it from being occupied as an independent dwelling. The lawful development certificate confirms that the building has, on the balance of probabilities, become a lawful independent dwellinghouse.

Once a use becomes lawful under s.191, a planning obligation seeking to prohibit that lawful use cannot meet the statutory tests and cannot reasonably be retained. Obligation (c) is now unnecessary and unenforceable. Its removal is appropriate.

Obligation (d)

Planning obligation (d) relates to clearing the site of the caravan and a wall:

(d) The Owner shall within six months of the granting of the said planning permission remove from the Land the residential caravan currently situate thereon and will dismantle and remove from the Land the concrete block wall currently situate in front of the proposed Additional Accommodation and identified shaded green on the Plan

Given the extensive time elapsed and the fact that the permission has long been implemented, this obligation is now obsolete and has no function. Obligation (d) can be removed.

PLANNING BALANCE AND CONCLUSION

The original Section 106 Agreement accompanying permission N/98/02279/FUL was imposed to ensure that the converted building operated strictly as ancillary accommodation to the main dwelling at Park Farm. However, the recent Lawful Development Certificate (issued March 2026) confirms, on the balance of probabilities, that the building ceased to function as ancillary accommodation in 2015 and has since been used continuously and independently as a single dwellinghouse. The LPA holds no substantive evidence to contradict this chronology. The use is therefore lawful and immune from enforcement action.

In light of this lawful established use, the obligations contained within the 1999 Section 106 Agreement no longer meet the statutory tests of necessity, relevance, or reasonableness. Obligations (a)–(d) do not serve any continuing planning purpose: the ownership restrictions are no longer justified, the occupancy restriction is now incompatible with the certified lawful use, and the requirement relating to removal of the caravan and wall is obsolete due to the passage of time.

This application has been submitted under Section 106A of the Town and Country Planning Act 1990, seeking the formal discharge of the obligations. Given the evidence now before the authority, and taking into account the conclusions of the Lawful Development Certificate, it was considered that the obligations no longer served a useful purpose and should be discharged. A Deed of Discharge of Section 106 Agreement was completed on 21 August 2026, which extinguishes the planning obligations contained within the agreement dated 20 May 1999 in full.

RECOMMENDATION: That the Section 106 obligations be discharged pursuant to Section 106A of the Town and Country Planning Act 1990.