



WHALEBACK

PLANNING STATEMENT

Hippenscombe Farmhouse

ADDRESS

Hippenscombe Farmhouse
Fosbury
Marlborough
Wiltshire, SN8 3NW

DATE

September 2026

REVISION

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WHALEBACK LTD

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Introduction

Whaleback is instructed by the applicant, Conholt Nominees Ltd, to prepare and submit an application under Section 73 of the Town and Country Planning Act 1990 to Wiltshire Council.

The application seeks the removal of Condition 5 of planning permission K/13576/O (approved in 1989), which restricts the occupation of Hippenscombe Farmhouse to persons working locally in agriculture or forestry, and any dependents. Condition 5 states: *"The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture, as defined in Section 290 of the Town and Country Planning Act, 1971, or in forestry, or a dependant of such a person residing with him or her, or a widow or widower or such a person."*

This Planning Statement describes the application site and its surroundings, the development proposal, the planning history of the site, and the relevant planning policy framework. A planning appraisal is provided to consider the merits of the application, demonstrating that the property has been occupied in breach of the agricultural occupancy condition for a continuous period exceeding ten years, followed by a conclusion.

Site and Surroundings

The application site comprises Hippenscombe Farmhouse, situated within the Hippenscombe Estate (forming part of the broader Conholt Park Estate), near Fosbury, Marlborough. The site falls within the Parish of Tidcombe and Fosbury, the District Ward of Pewsey Vale East, and within the administrative boundary of Wiltshire Council.

The property is a rural residential dwelling that has been detached from any functional agricultural operational requirements of the surrounding land holdings for a multi-decade period.

Despite its close proximity to Hippenscombe Farm, the property is both physically and functionally separate from the farm’s operations. It comprises a substantial rural family dwelling, accessed via a single-lane road extending approximately 2.5 km west from Conholt Hill.

The property is located within a generous plot, surrounded by mature trees and an expanse of garden. A bridleway runs some 100m in front of the property, south-west to north east.

The property has been let out as a residential dwelling since October 2002 to tenants who are not solely or mainly employed, or last employed, in the locality in agriculture.

Constraints & Designations		Description
Settlement Boundary	No	-

National Landscape	Yes	North Wessex Downs
Green Belt	No	-
Previously Developed Land (PDL)	Yes	In accordance with the NPPF definition, the site is PDL
Environmental Designation	Yes	Nitrate Vulnerable Zone
Flood Zones 2/3	No	Flood Zone 1
Article 4 Direction	No	-
Conservation Area	No	-
Listed Building	No	-
Locally Listed Building	No	-
Scheduled Ancient Monument	No	-
Risk Of Non-Designated Heritage Asset (Pre-1900)	No	-
Tree Preservation Order	No	-
Public Rights of Way (PROW)	Yes	Bridleway TIFO8 south of the site
SSSI Impact Risk Zone	No	-
Biodiversity Net Gain	N/A	No operational development
Historic Park and Garden	No	-

Development Proposal

The proposal seeks the removal of Condition 5 (agricultural occupancy condition) of planning permission K/13576/O under Section 73 of the Town and Country Planning Act 1990. This is on the basis that the dwelling has been occupied in breach of the condition since 1991 and that, having regard to the circumstances of the dwelling and its established occupation, the condition no longer serves a reasonable or necessary planning purpose.

Extensive evidential documentation is submitted alongside this application to prove on the balance of probability that the farmhouse has been occupied continuously by a non-agricultural worker for a period far exceeding ten years. Consequent to this immune breach, the restriction is spent and its removal is regularised under national planning provisions. The submitted evidence includes:

- Site Location Plan
- Statutory Declaration signed by Richard Taylor (Tenant)
- Statutory Declaration signed by Owen Davies (Former Managing Agent – Fowler Fortescue)

- Statutory Declaration signed by Lily Walker (Current Managing Agent - BCM Wilson Hill)
- Exhibits supporting each Statutory Declaration

Planning Context

Planning History

A review of the Local Planning Authority's public register identifies the original permission that activated the restriction on the site.

There is no other relevant or recent planning history modifying the residential status or occupancy controls of the dwelling recorded on the public register.

Planning Policy Framework and Practice Guidance

National Planning Policy Framework (NPPF) (2026)

A presumption in favour of sustainable development sits at the heart of the NPPF, which directs decision-makers to approve applications that accord with an up-to-date development plan without delay. Section 12 of the NPPF promotes making effective use of land, confirming that planning decisions should encourage the efficient use of existing housing stock and brownfield/previously developed assets.

Regarding the imposition and retention of planning conditions, Policy DM6 of the NPPF makes it clear that planning conditions should be:

- a. Necessary to make the development acceptable in planning terms;
- b. Relevant to the development and to planning considerations generally;
- c. Sufficiently precise to make them capable of being complied with and enforced;
and
- d. Reasonable in all other respects.

While the applicant recognises that a Certificate of Lawfulness could be sought to formally establish this immunity, the overwhelming evidence of an immune breach (as set out below) renders the condition fundamentally unenforceable, thereby failing the NPPF tests and justifying its removal under a S73.

Planning Appraisal

Condition 5 was originally imposed on Hippenscombe Farmhouse to restrict its occupation to persons engaged in agriculture, reflecting the longstanding planning policy objective of controlling residential development in the open countryside while allowing an exception where there is an essential need for a rural worker to live permanently at or near their place of work. This principle is now reflected in policies analogous to current NPPF

Policy S6 and Wiltshire Core Strategy Core Policy 48 which control residential development in the open countryside, but sets out the local exception for agricultural dwellings. Both seek to avoid the development of isolated homes in the countryside unless there is an essential need for a rural worker to live permanently at or near their place of work.

However, neither of these policies was in place when planning permission K/13576/O was granted in 1989. The relevance of the current policy framework is therefore not that it provides the basis on which Condition 5 was originally imposed, but that it provides the appropriate context for assessing whether the condition continues to serve a reasonable and necessary planning purpose today.

Principle of development and lawfulness of the breach

The primary determining factor for a Section 73 application - seeking the removal of an agricultural occupancy condition where a breach is established - rests on whether the restriction remains enforceable, necessary, and serves a useful planning purpose.

Section 171B of the TCPA establishes the timeframes in which development becomes immune from any enforcement action being taken. Section 171B (1) states: *"Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of; in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed"*

The ten year rule also applies to any other breach of planning control as stated in Section 171B (3) states: *"In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach".*

Highly reliable, cross-referenced documentation confirms that Hippenscombe Farmhouse has been occupied by Mr. Richard Taylor continuously as his sole private residence since 15 October 2002. Mr. Taylor's occupation spans an uninterrupted period of over 23 years. The continuous chronology of non-agricultural occupancy is supported by the following submitted instruments:

Assured Shorthold Tenancy (AST) Agreement (1 November 2002 to 31 October 2007):

- A fixed five-year tenancy agreement commencing 1 November 2002 to 31 October 2007 between Norman Court & Sowley Farms Ltd and Mr. Richard Taylor.

Lease Extension Agreement (10 February 2005 - 2015):

- Formal correspondence from Richard Williamson (Farms Director for Norman Court & Sowley Farms Ltd) on 10th February 2005 extending Mr. Taylor's lease to 2015 with an incremental rent schedule. Signed by Mr. Taylor.

Section 48 Notice (5 April 2024):

- Legal notification under the Landlord and Tenant Act 1987 confirming the transfer of the property's freehold to Conholt Nominees Limited and the appointment of BCM as managing agents.

Assured Shorthold Tenancy Agreement (1 January 2025 – 31st December 2025):

- A renewed 12-month fixed tenancy between Conholt Nominees Ltd and Mr. Richard Taylor confirming ongoing residential occupation at a rent of £1,800 per calendar month.

Statutory Declaration of Richard Taylor (Tenant):

- Mr. Taylor formally declares that he has continuously occupied Hippenscombe Farmhouse as his sole or principal private residence since 1 November 2002.
- He confirms that since the start of his tenancy, neither he, his family, nor any dependents residing at the property have been solely or mainly employed in agriculture or forestry.
- He categorically states that he has occupied the property in breach of the agricultural occupancy condition for the entirety of his 23-year occupation and has never received any enforcement action

Statutory Declaration of Owen Davies (Former Managing Agent – Fowler Fortescue)

- Mr. Davies, a director of Fowler Fortescue, acted as the managing agent for the former owner of the Hippenscombe Estate from 1 April 2016 until the estate was sold on 5 April 2024.
- He confirms that during his entire eight-year tenure, the property was continuously occupied by a single tenant, Mr. Richard Taylor.
- Mr. Davies verifies that Mr. Taylor's employment and income were independent of the agricultural sector and that the property never reverted to use by an agricultural worker.
- He also confirms that to his knowledge, the Local Planning Authority never issued an enforcement notice or breach of condition notice during this time.

Statutory Declaration of Lily Walker (Current Managing Agent - BCM Wilson Hill):

- Miss Walker, an employee of BCM Wilson Hill, confirms that her firm has been the managing agent since the estate was purchased by Conholt Nominees Ltd on 11 April 2024.
- She confirms that Mr. Taylor has remained in continuous occupation of the property during her time as managing agent and that none of the occupiers have been employed in agriculture or forestry.
- She categorically states the property has been in breach of the condition for the entirety of her management without any enforcement action.

At the date of submission, Mr. Taylor remains the occupant of the property.

Given that the non-compliant occupancy has persisted unimpeded for 23 years, the Local Planning Authority the breach of Condition 5 became immune from enforcement following the expiry of the applicable ten-year period under Section 171B(2) of the 1990 Act (as amended). The continuous residential use of the property without an agricultural employment tie has therefore become lawful.

As the dwelling has been completely severed from the agricultural operations of the surrounding estate for nearly a quarter of a century, the retention of Condition 5 serves no active planning purpose and fails the national policy tests of being "enforceable", "necessary", and "reasonable".

It does not safeguard local agricultural operational capabilities, nor does it meet a demonstrable, localised need for agricultural worker housing that cannot be met through alternative estate provisions. Leaving an unenforceable condition on the title is contrary to the clear guidance set out in the NPPF.

Conclusion

This Planning Statement has been prepared to assist Wiltshire Council in the determination of this Section 73 application to remove Condition 5 of planning permission K/13576/O.

Unambiguous, verified evidence demonstrates a continuous 23-year breach of the occupancy condition by a tenant who has no professional connection to agriculture or forestry. The restriction is legally unenforceable and spent.

In the event that the Local Planning Authority wishes to discuss any element of the application, the applicants would welcome an objective discussion prior to determination. Correspondence can be directed to Whaleback Ltd via the contact details provided below.

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