

APPLICATION FOR VARIATION/REMOVAL OF CONDITION OFFICER DELEGATED REPORT

APPLICATION REFERENCE:	PL/2026/03704
APPLICATION TYPE:	Removal/Variation of Condition (Section 73)
SITE ADDRESS:	Wendy Cottage, Back Hill, Malmesbury, SN16 9BT
DESCRIPTION:	Variation of condition 2 (Approved Plans) relating to application PL/2026/00948.
RECOMMENDATION:	APPROVE WITH CONDITIONS

PROPOSAL

The application is made under S73 of the Town and Country Planning Act 1990 to seek planning permission for development consisting in single-storey front and rear extensions, external alterations and alterations to parking area without compliance with Condition 2 of PL/2026/00948, which required that the development permitted be carried out in accordance with approved plans.

A set of plans were submitted with the application, with which it is sought to vary the requirements of Conditions 2 to instead allow the development to be carried out in accordance with them.

The main differences between the proposed scheme and the permitted scheme include:

- Increase ridge height of front extension by approx. 250mm;
- Changes to rooflight and fenestration layout to front extension;
- Change from zinc cladding to timber cladding on front extension; and
- Change from Juliet balcony to window on rear elevation.

SITE DESCRIPTION

The application site is a two-storey dwellinghouse known as Wendy Cottage. It has walls of render, a gabled tile roof, uPVC fenestration. It is unusually set back from the road behind a driveway with monopitched single-storey outbuildings to front extension, and to rear it has a garden backing onto the old Town Wall (Grade II listed building). Its setting is characterised by the enclosed townscape of Back Hill and the river valley behind. It is in the settlement boundary of Malmesbury. Relevant designations and constraints include the Malmesbury Conservation Area, several Grade II listed

buildings¹, and Flood Zone 1 and partial areas of risk of flooding from surface water 1 in 100 + Climate Change (40%).

PLANNING HISTORY

PL/2026/00948 - Single-storey front and rear extensions, external alterations and alterations to parking area (APPROVED WITH CONDITIONS 13/05/2026).

RELEVANT POLICIES AND GUIDANCE

Wiltshire Core Strategy (WCS):

- Core Policy 57: Ensuring High Quality Design and Place Shaping (CP57)
- Core Policy 58: Ensuring the Conservation of the Historic Environment (CP58)
- Core Policy 61: Transport and new development (CP61)
- Core Policy 62: Development Impacts on the Transport Network (CP62)
- Core Policy 64: Demand Management (CP64)

Saved policies of the North Wiltshire Local Plan 2011 (NWLP)

Malmesbury Neighbourhood Plan: Made 2015 (MNP)

- Volume I - Main Body: Policy 13
- Volume II – Design Guide

National Planning Policy Framework (NPPF)

Planning Practice Guidance (PPG)

National Design Guide (NDG)

Wiltshire Design Guide SPD (WDG):

- Appendix D – Design Guidance for Householder extensions

Malmesbury Conservation Area Appraisal 2007

Malmesbury Conservation Area Management Plan 2010

Historic England Guidance:

- Managing Significance in Decision-Taking in the Historic Environment. Historic Environment Good Practice Advice in Planning: 2 (GPA2)
- The Setting of Heritage Assets. Historic Environment Good Practice Advice in Planning: 3 (2nd Edition) (GPA3)

¹ Of which, Former Town Wall Extending North West of Silver Street to Rear of 28-34 (Not Included) [NHLE: 1269223] and 16 and 18 Silver Street [1269222] are likely to be sensitive to the development.

CONSULTATION RESPONSES

The following consultees and interested parties were invited to comment on the application:

Malmesbury Town Council – Comment, that the changes to the scheme have no effect on the town councils previous comments concerning the proposals (04/09/2026).

REPRESENTATIONS

Immediate neighbouring dwellings were notified of the application, and a site notice was displayed on 1 July 2026. Four letters of representation were made by members of the public (3 x Object, 1 x Comment). The matters raised therein are summarised:

- That the proposed extension is too high and dominant for the surrounding area;
- That improving the existing front extension would be more appropriate and less impactful for neighbours;
- That the introduction of an additional self-contained living space would increase footfall, traffic and demands on our little narrow street;
- That No.3 Back Hill will be more closely overlooked;
- That it is disingenuous that a two-storey extension was always planned;
- That timber is an improvement on the zinc cladding;
- That the proposed front extension would add considerable mass and bulk to the front elevation compared to the existing front lean-to that it replaces;
- That incorporating a ensuite bedroom within the roof space of the extension increases the height again;
- That the extension cannot be described as single-storey;
- That the ground floor room could still be used as a fourth bedroom;
- That the raised eaves height adversely impacts its external appearance;
- That the application must be assessed against as a whole;
- That the changes make impact on the conservation area and nearby listed buildings more likely to be negative; and
- That additional bedrooms mean car parking requirements would be reassessed and additional off-street parking required.

ASSESSMENT

Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications be made in accordance with the development plan unless material considerations indicate otherwise.

Preliminary matters

Representations repeat concerns raised during consideration that the proposed front extension was inconsistent with the description of development, in so far as the incorporation of rooms in the roof space renders it two-storeyed rather than single-storey as referred to in the description of development.

It is relevant to consideration of an application made under S73 to consider the implications of the *Finney* case². This established that the scope of S73 is constrained by the description of the development of the planning permission the conditions of which it is sought to remove or vary. No condition may be varied or removed in a way which alters the scope of the original permission.

Although the plans submitted in order to vary Condition 2 indicate that an ensuite bedroom would be incorporated into the roof space of the extension, rather than the mezzanine and void in the permitted scheme, the change would require no increase in the height of the eaves of the extension but an increase in the ridge height of the extension by 250mm.

The ensuite bedroom is a more intensive use of space than the initially proposed mezzanine, however this is not considered to be determinative of number of storeys. For example, a house may still be described to have two storeys based on its external appearance despite its loft having been converted to create, in essence, three floors of accommodation.

The effect of the changes would be such that “single storey” remains an accurate means of describing the front extension. If the LPA are minded to grant planning permission, varying Condition 2 to enable the development to be implemented in accordance with the submitted plans would be consistent with the description of development of the original permission.

Design and local character and appearance, with particular regard to the conservation area and the setting of the listed buildings

CP57 and CP58 of the Wiltshire Core Strategy (WCS) together seek to ensure all new development, including extensions and alterations to existing buildings, meet a high standard of design that contributes to the character of Wiltshire by, amongst other things, responding positively to the features of the site itself, its landscape or townscape setting, and the value of the historic environment by being sympathetic to and conserving heritage assets in a manner appropriate to their significance.

² *Finney v Welsh Ministers* [2019] EWCA Civ 1868

Policy 13 of the Malmesbury Neighbourhood Plan (MNP) advises that the accompanying design guide (Volume II) should be taken into consideration to ensure all new development achieves a high quality of design that complements and enhances the character, form and qualities of the town.

Appendix D of the Wiltshire Design Guide (WDG) expects, amongst other things, that a well-designed householder development should respect the original building and the neighbouring properties, not dominate the existing building rather appear as a subservient, supporting addition, and fit into the general street scene. It advises this could be achieved by replicating the style, form, rhythm, materials and architectural detailing of the original house or by contrast with a modern or traditional aesthetic.

DP3 and 4 of the NPPF sets out principles for achieving well-designed places and advises that substantial weight should be given to compliance with relevant development plan policies when assessing design quality. HE4 to 10 sets out a framework for assessing and securing the conservation of heritage assets.

Wendy Cottage (the “site”) is a post-war dwelling of little architectural merit, albeit located within Area 4 (Ingram Street & Silver Street) of the Malmesbury Conservation Area (MCA).

It is a duty under S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of MCA, which can partly be discerned from its protected buildings and features, archaeology, open space and historic routes, and its significant foliage.

The development is likely to affect the setting of nearby listed buildings, in particular 16-18 Silver Street [NHLE: 1269222] and a section of the former Town Wall [NHLE: 1269223]. While other listed buildings are found within 50m of the site, the nature and scale of development, the distances involved, and the intervening features, are sufficient to ensure their settings would be preserved.

It is a duty under S66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed buildings or their settings or any features of special architectural or historic interest which they possess.

The site creates a break in the street frontage on Back Hill, the house set back deeply in its plot behind a parking area and outbuildings. The published MCA appraisal³ (p.32) identifies this frontage as an area where “... *development has the potential to enhance the character of the Conservation Area*”.

³ Malmesbury Conservation Area Appraisal, April 2007.

The proposed garage alterations, parking area alterations and single-storey rear extension remain as per the permitted scheme. These elements were previously assessed to cause no harm to the character and appearance of the MCA or significance of other heritage assets, and there are no changes to them that would lead to a different conclusion in assessing this application.

The proposed alterations to the rear elevation differ from the permitted scheme only in relation to a change from a Juliet balcony to a casement window, reflecting the style and detailing of other fenestration details found in the development. Such a change, that responds positively to the building, would not harm the character or appearance of the dwellinghouse or MCA, nor would it adversely affect the ability to experience or appreciate the significance of the nearby listed buildings.

The proposed front extension differs from the permitted scheme in terms of its height, fenestration, external materials and internal layout. Although representations claim otherwise, the eaves of the extension remain as per the permitted scheme while it is the ridge height that increases approx. 250mm which lends its roof a marginally steeper pitch.

The front extension adds considerable mass and bulk to the appearance of the front elevation compared with the existing, modest front lean-to. However, it remains set back behind the street frontage and, although slightly taller and more steeply pitched, its gabled roof form is a complementary response to its immediate surroundings.

When compared to the permitted scheme the increased ridge height would emphasise the extension and the somewhat awkward break in the eaves line; however, this would not cause the development to detract from or appear unduly dominant in the street scene, nor undermine the ability to experience and appreciate the significance of the listed buildings.

The minor changes to the front extension's materials and pattern of fenestration are an acceptable response, and it is noted that neighbour's welcome a change to timber cladding. Volume II of the Malmesbury Neighbourhood Plan (Task 8.16) seeks to ensure complementary materials are used in all developments. Accordingly, and in the interest of the character and appearance of the MCA and the setting of the listed buildings, a condition is still recommended to require approval of details of external materials.

Regard has been had to the concerns raised and the matters of importance to local character and appearance. For the above reasons, the development would not harm the character or appearance of the dwellinghouse or the MCA in which it is located, nor the significance of nearby listed buildings through change within their setting. The development would preserve the setting of the listed buildings, to which special regard

has been had, and it would preserve the character and appearance of the MCA, to which special attention has been paid.

Varying Condition 2 to enable the development to be implemented in accordance with the plans submitted, and other conditions as were previously recommended to control delivery of the design to an acceptable standard, the expectations of adopted design guidance would be satisfied together with the requirements of Policy 13 of the MNP and CP57 and CP58 of the WCS.

The development plan remains broadly aligned with the national guidance at DP3 and 4 and HE4, 5, 6, 7 and 9 of the NPPF in so far as they are relevant to achieving well-designed places, assessing design quality and conserving the historic environment. Material considerations do not, therefore, alter the above conclusion.

Residential amenity

Core Policy 57 (vii) of the WCS seeks to ensure that the design of new development has regard to the compatibility of adjoining buildings and uses, the impact on the amenities of existing occupants and that appropriate levels of amenity are achievable within the development itself.

Appendix D of the WDG expects a well-designed householder development to respect neighbouring properties by advising, amongst other things, that they should not be unduly overbearing or unduly obtrusive, and that windows should not directly overlook neighbouring properties.

DP3 and 4 of the NPPF sets out principles for achieving well-designed places, including liveability by ensuring their function well over the lifetime of the development. P3 advises that developments should be appropriate for their location taking into account likely effects on living conditions from air, noise and light pollution, among other things.

The closest neighbouring dwellings to the application site are 16-18 Silver Street, 24, 26 and 28 Silver Street and 2 and 3 Back Hill.

The proposed rear extension, parking area and garage alterations remain as per the permitted scheme. The proposed changes to the scheme would not materially affect the relationship between these elements and neighbours, and accordingly they would continue to have acceptable effects on the living conditions of neighbours.

The proposed alterations to the fenestration on the rear elevation relate to existing openings, inserting a French door and changing the style of fenestration. Whereas the permitted scheme included a Juliet Balcony at first floor, the submitted plans seek a

window in its place. The effect of this would be of no detriment to the amenities of neighbours.

Concerns are raised in respect of the proposed front extension in relation to its dominant appearance for neighbours and the effects of overlooking, with particular reference to 3 Back Hill.

The proposed front extension is taller than the existing lean-to; it is appreciated that the effect may be visually undesirable for occupants at 16-18 Silver Street but planning legislation does not protect private views. Compared with the permitted scheme, the front extension would be 250mm higher at the ridge but with eaves maintained at the height already permitted.

The applicant has submitted a 'Daylight Study' which uses the 45-degree and 25-degree tests⁴. The evidence submitted is sufficient for the LPA to be satisfied that the front extension would not cause detrimental overshadowing or loss of outlook to No.16-18.

Although taller than the existing lean-to, the maximum height point of the proposed extension would be offset from the boundary, and the boundary wall lower than its existing height. There are also no windows proposed where these would overlook No.16-18, and control over inserting fenestration can be secured by condition in the interest of privacy. It would not, therefore, appear unduly overbearing or obtrusive nor cause a harmful loss of privacy for No.16-18.

The proposed front extension incorporates a window and ground floor which would direct views over the street and towards the front elevation of No.3 Back Hill. The window would not materially harm the privacy enjoyed by occupants of No.3, particularly due to the separation distance involved and as their front elevation faces onto a public road from which views are already achieved.

The loft space of the single-storey front extension would incorporate a bedroom, and the south-facing roof slope incorporates rooflights. The permitted scheme included similar rooflights, although the mezzanine was likely to be less intensively used than a bedroom.

Nonetheless, the rooflights would not cause harmful overlooking of neighbours, and in particular the outdoor amenity areas of Nos.24 and 26 Silver Street and 28 Back Hill, over and above the existing and not atypical baseline of overlooking in this urban area.

⁴ As described in *Building Research Establishment (BRE) document 'Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice'*, and indirectly referenced in 9.2.1 of the Wiltshire Design Guide.

Accordingly, there would be no unacceptable harm to the privacy afforded to their occupants.

Having had regard to the concerns raised, for the above reasons, it is concluded that the development would not harm the living conditions enjoyed by occupants of the site itself or neighbouring land, particularly in terms of privacy, outlook, overshadowing, or in terms of its scale and appearance. Subject to the recommended conditions, the expectations of adopted design guidance would be satisfied together with the aims of CP57 (vii) of the WCS.

The development plan remains broadly aligned with the national guidance at DP3 and 4 and P3 of the NPPF in so far as they are relevant to design and living conditions. Material considerations do not, therefore, alter the above conclusion.

Highway matters

The proposed alterations to the parking area remain as per the permitted scheme, and would provide off-street parking for two-vehicles that are appropriately surfaced.

The bedroom quantum would also be maintained at three bedrooms, as per the permitted scheme. The proposed internal layout now incorporates a bedroom in the loft space of the proposed front extension, and a living room at ground floor.

Representations suggest the living room at ground floor could still be used as a bedroom; indeed, it was a bedroom in the permitted scheme and has not decreased in size. Nonetheless, LPA must assess the development based on the plans submitted.

A three-bedroom dwellinghouse would be expected to provide two parking spaces to comply with minimum parking standards, which would be satisfied in this case. It is relevant that the town is a sustainable location, has public car parks, and that on-street parking is controlled on Back Hill.

The permitted scheme made provision for the management of construction activities by way of a Construction Management Statement (CMS). There is no reason that the effects of the proposed scheme could not be similarly managed, and that document should be retained in any approved plans list forming part of a variation of Condition 2.

Conditions 4, 5 and 6 of the permitted scheme sought to control matters related to the altered access and parking area. The applicant does not seek to vary or remove these conditions, and there is no reason to conclude that they are no longer necessary in the interest of highway safety. Accordingly, they are recommended on any varied permission.

Subject to conditions, the development would not have a severe or unacceptable effects on highway safety. Furthermore, it would not conflict with the aims of CP57 (xiv), CP61, CP62 or CP64 of the WCS.

The development plan remains broadly aligned with the national guidance at TR3, 4 and 6 of the NPPF in so far as they relate to access and highway safety. Material considerations would not, therefore, alter the conclusion above.

Archaeology

The town of Malmesbury has high archaeological potential, and this contributes to the character and significance of the MCA. The rear garden of the application site is retained by the former Town Wall, a Grade II listed building, and finds have been recorded in the vicinity on the Swindon and Wilts HER.

The development primarily replaces existing built form and over previously disturbed ground. No conditions were deemed necessary in granting the permitted scheme, and the changes proposed do not materially affect matters pertinent to archaeology.

There would be no conflict with CP57 or CP58 of the WCS in respect of archaeology and the historic environment, and the provisions of HE4 to 10 of the NPPF do not lead to a different conclusion.

Biodiversity Net Gain (BNG)

The development is exempt from the requirement to deliver 10% BNG, introduced by Schedule 7A of the Town and Country Planning Act 1990 (inserted by the Environment Act 2021), and the decision notice shall include the relevant informative note.

Other matters

Malmesbury Town Council commented that the proposed variation of condition does not affect their previous comments in respect of the development, being those made in respect of the original permission.

Their concerns included privacy, overdevelopment in proximity of the listed Town Walls, concerns regarding height, zinc cladding, an additional bedroom being provided in the mezzanine and insufficient parking. However, and for the reasons given in this assessment, the effects of the development in respect of these matters is considered acceptable.

PLANNING BALANCE AND CONCLUSION

Varying Condition 2 of PL/2026/00948 to enable the development to be carried out in accordance with the submitted plans would ensure the development continues to have acceptable effects in respect of matters of acknowledged importance to the public interest. It would not conflict with the development plan, and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. The statutory requirements have therefore been fulfilled, and the application should be supported subject to recommended conditions.

RECOMMENDATION

That a Variation of Condition 2 be APPROVED and planning permission GRANTED subject to the following conditions:

Conditions:

1. The development hereby permitted shall be begun before the expiration of 15 May 2029.

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 the following approved plans and documents:

Location Plan. L01. Received 11 February 2026.

Construction Management Statement. By Richard Barnes Ltd. Received 25 March 2026.

Proposed Plans. P05 Rev C. Received 1 April 2026. Received 11 June 2026.

Proposed Elevations. P06 Rev C. Received 1 April 2026. Received 11 June 2026.

Proposed Elevation and Section. P07 Rev C. Received 11 June 2026.

Proposed Block Plan. P08 Rev C. Received 11 June 2026.

Proposed Parking Plan and Section. P11 Rev C. Received 11 June 2026.

Daylight Study for 16-18 Silver Street. P09 Rev C. Received 23 June 2026.

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

3. Notwithstanding the approved plans, no works for the construction of the external wall surfaces of the extensions and alterations hereby permitted shall commence on site until details of the materials to be used have been submitted to and approved in writing by the Local Planning Authority. The details shall include the

material type, texture, and colour. Thereafter, the development shall be carried out in accordance with the approved details.

REASON: In the interests of visual amenity and the preservation of the character and appearance of the conservation area and the setting of the listed buildings.

4. The development hereby permitted shall not be first brought into use until the first 5m of the access, measured from the edge of the carriageway, has been consolidated and surfaced in accordance with the approved plans (not loose stone or gravel). The access shall be maintained as such thereafter.

REASON: In the interests of highway safety.

5. No part of the development hereby permitted shall be first brought into use until the parking spaces [2] have been completed in accordance with the details shown on the approved plans. The areas shall always be maintained for those purposes thereafter and maintained free from the storage of materials.

REASON: In the interests of highway safety.

6. The vehicle access and parking spaces hereby permitted shall remain ungated.

REASON: In the interests of highway safety.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or reenacting or amending that Order with or without modification), no window, dormer window, rooflight, or other form of opening, other than those shown on the approved plans, shall be inserted in the north side elevation or roof slope of the front extension hereby permitted.

REASON: In the interests of residential amenity and privacy.

Informatives to the Applicant:

1. 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.

