



Appeal Decisions

Date of Hearing 24 and 26 March 2021

Site visit made on 1 April 2021

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 1 October 2021

Appeal A: APP/R3650/C/19/3236157

Land at Haybarn, Dye House Road, Thursley, Godalming GU8 6QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr P Wedge against an enforcement notice issued by Waverley Borough Council.
- The notice was issued on 2 August 2019.
- The breach of planning control as alleged in the notice is: without planning permission the erection of a dwelling to provide grooms accommodation in the approximate position marked 'A' on the attached plan ('the Dwelling').
- The requirements of the notice are:
 - (i) Remove the Dwelling.
 - (ii) Remove all materials from the Land resulting from compliance with above step.
- The period for compliance with the requirements is:
 - (i) Six months from the date this Notice takes effect
 - (ii) Six months from the date this Notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2)(a)(b) and (g) of the Town and Country Planning Act 1990 as amended.

Formal Decision: The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/R3650/W/19/3236151

Haybarn, Dye House Road, Thursley, Godalming GU8 6QN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P Wedge against the decision of Waverley Borough Council.
- The application Ref WA/2019/0485, dated 5 March 2019, was refused by notice dated 24 May 2019.
- The development proposed is erection of a dwelling to provide grooms' accommodation in connection with existing commercial equestrian yard.

Summary of Decision: The appeal is dismissed.

Costs Application

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matter

2. The appellant objected to late representations from a third party, referring to the "*usual PINS practice and procedure of declining late submissions*". In this
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case the submissions were from a neighbour whose evidence was subsequently given orally at the hearing and whose representations, duly made to the Council when the application was considered, and later just before the hearing, provided context. The late submission was made expressly in view of the fact that the Statement of Common Ground (SoCG) was supplied to him a few days before the hearing and represented a “volte face” by the Council who had now agreed several matters that remained of concern to the objector and other interested persons. I decided to take them account and gave the appellant an opportunity to comment thereon during the hearing.

Matter concerning the enforcement notice

3. The appellant had maintained since he appealed the notice as far back as 29 August 2019 that the Council officer who signed the notice had no authority to issue it, it was procedurally flawed and a nullity. Only on the day before the hearing did the appellant send a message to the Planning Inspectorate through their agent that *“having considered the potential number of issues to be covered tomorrow”* they did not wish to pursue their claim of nullity.
4. I made it plain that no one would be prevented by time constraints from raising important matters in the hearing, such as the issue of nullity, even if the hearing had to be adjourned. The issue was pursued seriously by the appellant, rebutted by the Council and considered by me in preparation for the hearing.
5. Since the Council’s statement of 28 August 2020 the appellants had known of the Scheme of Delegation to Officers effective when the notice was issued. It confirmed that the Head of Planning & Economic Development had the authority to serve enforcement notices, and stated:

“In the event that a Strategic Director or a Head of Service’s post ceases to exist or his or her responsibilities are transferred to another officer (as the case may be), temporarily or permanently, then the powers given by this Scheme of Delegation shall be exercisable by the officer in whose area of responsibility the power falls to be exercised.”
6. The appellant’s agent’s only real point was that the notice was not signed by a person specifically named in the scheme. However it must have been clear by 28 August 2020 that the named officer on the notice, the Interim Head of Planning and Economic Development, had full authority to issue it, yet that part of the scheme was apparently overlooked.
7. No-one gave me to understand that they would be in difficulty were the agenda not completed before one day’s proceedings. It seems more likely that a more critical review of the strength of the appellant’s case was undertaken at a late stage in the proceedings.
8. The maintenance of baseless claims of procedural impropriety thrown into the mix and not critically reviewed until the eve of an oral event to hear the appeal, is to be deprecated. Here, basic due diligence would imply an earlier careful reading of the delegation scheme.
9. From the information made available to me I am unable to find that the notice is either procedurally defective or a nullity.¹

¹ A notice may be a nullity, eg because it is utterly meaningless, or issued under the mark of the office cat rather than by the authorised officer, in which case it is deemed not to have existed. It is what Latinists call a *non est*

10. I should add that the appellant's agent strenuously alleged throughout the hearing that the notice was also defective, because to call the subject matter of the notice a dwelling was "wrong and misleading". I disagree, for the detailed reasons I have found it necessary to give when discussing ground (b) below.

Appeal A on ground (b) - that the breach of control alleged in the enforcement notice has not occurred as a matter of fact

Whether a dwelling

11. The appellant's case is that the development enforced against should be termed "*groom's accommodation*", not a new dwelling because it "*is not a separate independent dwelling having a use and existence completely separate from the lawful equestrian use*". It is also said that the dwelling is not a separate planning unit in its own right and has no other role than to serve as accommodation for a groom employed at the equestrian facilities at Haybarn.
12. In *Gravesham Borough Council v Secretary of State for the Environment and Another* (1984) 47 P. & C.R. 142 the issue was what constituted a "dwelling-house" for the purposes of permitted development legislation that was concerned with the size, shape, appearance and position of buildings. The decision has been applied more widely, such that whether a building is or is not a "dwelling-house" is a question of fact, a distinctive characteristic being its ability to afford to those who used it the facilities required for day-to-day private domestic existence. Not every case is determined by having regard only, or even primarily, to the use to which a building was in fact put, nor is the duration or frequency of the user always relevant.
13. When questioned, Mr Ellis accepted that the development was in fact a building with all the usual characteristics of a dwelling. It is also undisputed that its purpose was in fact to provide accommodation for a groom. It is the permanent residence of the present incumbent (the occupier). On this basis the appeal must fail under ground (b) as the allegation accurately reflects the breach of planning control that has taken place.
14. In the well-known case of *Uttlesford DC v Secretary of State for the Environment and White* [1992] J.P.L. 171, the conversion of a garage to a granny annexe did not result in a change of use, where the elderly relative of the family in the main house had available all the facilities to enable independent living, there was no separate planning unit created thereby and no material change of use, yet the annexe was still a dwelling. It was the manner of occupation among other things that indicated that it was not used as a wholly independent dwelling.
15. I accept that there is a sense in which the phrase "separate dwelling" could be construed as a dwelling which in the circumstances comprises a separate planning unit. But there is no need to analyse the breach of planning control in this way on ground (b): the allegation is one of operational development, the erection of a dwelling. Nor would it assist the appellant's case to remove the second part of the allegation ("to provide grooms accommodation") because that simply reflects the ostensible motive for its construction.

factum, that is something that never happened in the first place. Alternatively a notice might be defective due to a breach of procedural requirements. In such a case it might be varied but if injustice to either party would result, it would have to be quashed.

16. The appellant through his agent has misunderstood well-established case law that a dwelling may fulfil a function ancillary to some other purpose and yet be a dwelling under the *Gravesham* test.
17. There was no appeal on ground (c). A case might be made as to the dwelling's ancillary nature, which is an apposite line of enquiry when it comes to examining the planning merits of the deemed application and applicable policies, but the development alleged is operational development requiring planning permission that has not been obtained before or since it was erected. Insofar as it may be relevant that there has been no material change of use on the basis that the residential use is ancillary to a primary use within the same planning unit, that is a matter discussed in ground (a).

Case law and appeal decisions

18. Much effort was expended by the appellant in the statements and before me to bring other case law² and previous appeal decisions to bear on a successful appeal on ground (b) but they do not alter my findings on this issue.
19. Of the appeal decisions relied on by the appellant, Appeals 3 and 7 are cited in reference to ground (b)³. The Buck Farm decision in 2014 involved a 40 stable barn and groom's flat. Whether the dwelling was ancillary or not was not a main issue, the Council did not argue there was no functional need for it, it was small and took up a small part of the building. In stating that in policy terms it should not be looked on as a "separate dwelling", the Inspector, clearly in my view, was not suggesting it was not a dwelling as such, but that its use was part of the same planning unit.
20. The 2017 decision concerned an extension of a garage, which had a "diminutive scale" relative to the stables, and which would "retain a barn-like appearance" for use as a 1 bed groom's accommodation with no garden curtilage, and ancillary to adjoining stables where he would be employed during the day. It is not relevant to ground (b). It puts in issue whether, in appropriate circumstances, a dwelling could amount to the provision of appropriate facilities under national Green Belt (GB) policy, a different point.
21. It is incorrect, misleading and an artificial construct for the agent to suggest, as he did, that these decisions "*did not regard the ancillary groom's accommodation to be dwellings*" when in common parlance they were exactly that. The conditions of the permission granted by the 2017 decision refer in terms to "dwelling hereby permitted". That contained in the 2014 permission was for a "groom's flat", and a flat is as much a dwelling as is a house.
22. In each case there was no dispute and there is no dispute in this appeal that the accommodation has all the attributes of a dwelling. Yet the appellant's statement maintains that "as a matter of fact its use is not a dwelling per se but is a small part of a bigger planning unit." That is not the issue on ground (b) in relation to the allegation of operational development. The courts have consistently denounced over complication of concepts that are basically simple.

² *Wealden DC v SSE & Day* [1988] JPL 268 dealt with "Agriculture" as defined in s336 and whether a MCU has occurred. *Hancock v SSE & Torridge DC*, *Tyack v SSE & Cotswolds DC* [1989] 1 WLR 1392; [1989] JPL 99 is authority for the proposition that where a building is demolished and a replacement is constructed without PP, the only lawful use is the lawful land use, such that there are no use rights for a building on the site in these circumstances.

³ Appeal 3, APP/T0355/A/13/2197609, 19 March 2014 (Buck Farm); and Appeal 7, APP/Y3615/D/16/3164022, 25 May 2017.

What we have here, purely and simply, is a dwelling. Unfortunately the argument put forward by the agent on this ground is specious.

Summary and conclusion on ground (b)

23. Plainly there is no material upon which I can reasonably conclude that the structure is anything but a dwelling, whether or not it is part of a larger planning unit.

24. The appeal on ground (b) fails.

Appeal A on ground (a) and Appeal B

Preliminary matters

25. In relation to Appeal B the description of the development in the banner heading above is modified to omit the words "retention of" as this would not be development.

26. Otherwise the appeal proposal reflects in substance the deemed application made under ground (a) for the description of development alleged in the enforcement notice to be in breach of planning control. That is to say, a dwelling to provide grooms' accommodation.

Background

27. Haybarn is an equestrian holding of some 11.3 ha with a main house and ancillary buildings, stable yard with some 13 boxes, tack rooms and feed stores to the front of the house (Bottom Yard); and a stable yard (Top Yard) to the west of the house with indoor and outdoor arenas, some 12 boxes, and barn with its own drive. Paddocks and grazing land are beyond the garden areas of the house.

28. The property is in the countryside south west of Thursley village within the GB, the Surrey Hills AONB and an Area of Great Landscape Value (AGLV). It is reached at the end of a lane half a mile long (owned by the appellant) passing a few other large residential plots. The lane is a public footpath (Greensand Way) within the eastern boundary of the site, where land rises southwards from the site to the Devils Punchbowl to the south-west.

29. The timber dwelling the subject of the notice was built in 2017 on the western boundary of the site and provides residential accommodation for a groom employed by the appellant to care for and exercise his wife's competition horses. It is next to Top Yard where the nearby stables were the subject of an appeal against another enforcement notice which granted permission for them.

30. The dwelling is a pitched roof log cabin with gross internal floor area of 92.1m² comprising on two floors: a porch, living room, kitchen and utility room on the ground floor and bedroom, bathroom and store at first floor, mainly in the roof space. The roof is 3.4m high at the eaves and has a ridge height of 5.8m. Its external walls are timber planks and the roof covering is green asphalt shingles. It sits on a gravelled area with a space for two cars to park in front.

31. Also nearby are an equestrian storage barn with a horsewalker and the outdoor and indoor arenas. Immediately west of the site is a stream valley and Smallbrook Copse, an area of ancient woodland. Beyond the copse is a residential property. There are fields to the north east, east, south and south

west. The appeal site is relatively close to but not within various designated protected areas such as special areas of conservation (SAC) and special protection areas (SPA), eg Thursely, Hankley and Frensham Commons SPA.

32. There are commons and bridleways nearby. The Haybarn has had stables since 1963 and more were added in 1969. It operated for several years as a riding school and has a long planning history of LDC and planning applications.

Main issues

33. The main issues are:

- 1) whether the development is inappropriate development within the GB, including its effect on the openness and purposes of the GB;
- 2) the effect of the development on:
 - a. the character and appearance of the area
 - b. the adjacent ancient woodland, and
 - c. the living conditions of neighbouring occupiers;
- 3) whether the development amounted to intentional unauthorised development within the meaning of the 31 August 2015 planning policy statement and if so what are the relevant factors to inform the weight to be attached to this consideration; and
- 4) if inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development including effect on openness and purposes of GB

Whether the dwelling would constitute appropriate facilities for outdoor sport

34. Paragraph 147 of the National Planning Policy Framework, (NPPF) advises that inappropriate development is by definition harmful to the GB and should not be approved except in very special circumstances.
35. The main parties are agreed that the development is an appropriate facility for outdoor sport and very special circumstances do not have to be advanced. However I expressed doubt about that at the hearing and as a result the matter was discussed at length. I have taken into account what was said and written on this point, including the judicial authorities and other appeal decisions supplied.
36. Within the GB and for the purposes of the National Planning Policy Framework, (NPPF) the construction of new buildings is inappropriate. The potentially relevant exception here is NPPF, paragraph 149 b):

"the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness

of the Green Belt and do not conflict with the purposes of including land within it..."

37. Inappropriate development is a broad concept of planning policy and not to be given the same level of legal analysis as statute. Applying it calls for realism and common sense, establishing the relevant facts and exercising planning judgement. However it is also established that policy statements "*should be interpreted objectively in accordance with the language used, read as always in its proper context*".⁴
38. Under the exception in paragraph 149 b) the building must clearly pass the test not only of being appropriate to the purpose to which it is put, but also as to the effect which it has. The essential purpose of each of the restrictions is to control the impact or significance of the development for the GB.
39. "Facilities" might connote a wide variety of things. Section 8 of NPPF references sports and recreational facilities (more in the way of public provision or at least provision that is generally available to the public) but the term used there is a generalised use. In sub-paragraph b) "facilities" is controlled by the initial words "construction of new buildings". There may be a logically prior question as to whether the facilities must themselves comprise the actual sporting facility in question. However it would seem that in principle an appropriate facility may have a use ancillary to the primary use of land for sporting purposes, such as for example a sports pavilion.
40. By definition the direct purpose to which the dwelling is put, as is any dwelling, is clearly residential. (This would be so even if, in a planning analysis of primary/ancillary uses, it is found that the nature of the use is ancillary to the primary use of the wider appeal site as an equestrian centre, rather than constituting a planning unit in its own right). The further, ulterior purpose to erecting the dwelling is to accommodate a groom who would be close to the workplace. In my view the words "in connection with" and "for" in sub-paragraph b) require a clear connection with the (as here existing rather than prospective) use of the site for equestrian purposes, whether or not the instant development can be proven to be, or by agreement would be defined as, ancillary. In *Bromley LBC v Secretary of State for Communities and Local Government* [2016] EWHC 595 (Admin) the court said at paragraph 43 that
- "The use of "for" in [indent 2 where the buildings are "for outdoor sport, outdoor recreation and for cemeteries"]...is a clear direction both as to purpose and planning use, in my judgment."* (My emphasis)
41. In the first instance judgment in *Europa Oil and Gas Limited v Secretary of State for Communities and Local Government, Surrey County Council, Leath Hill Action Group* [2013] EWHC 2643 (Admin) Ouseley J gave as an example of another type of building qualifying under the first limb (a sports pavilion), when making a broader point about similar buildings being treated differently according to the particular type of development:
- "...considerations of appropriateness, preservation of openness and conflict with Green Belt purposes are not exclusively dependent on the size of building or structures but include their purpose. The same building, as I have said, or two materially similar buildings; one a house and one a sports pavilion, are treated*

⁴ Tesco Stores Limited v Dundee City Council [2012] UKSC 13.

differently in terms of actual or potential appropriateness. The Green Belt may not be harmed necessarily by one but is harmed necessarily by another. The one it is harmed by because of its effect on openness, and the other it is not harmed by because of its effect on openness. These concepts are to be applied, in the light of the nature of a particular type of development." [66] (Emphasis supplied).

42. When we think of a sports pavilion, we know it would be fitted out with changing rooms and the like, rather than say, the seaside retreat of a Prince of Wales, but one does not have to find that to be a qualifying facility it can be summed up in a linguistic collocation such as "sports pavilion" or "riding arena". What remains important however in my view, is that there is a recognisable connection between the two, namely the facility and the use.
43. As to the alleged facility, the dwelling, there is a small cloakroom area inside that I saw was used for storing personal riding clothes and equipment but essentially it is a conventional timber-built house with no special or intrinsic attributes that would make one think there is a necessary connection with an equestrian use.
44. The "ancillary" test could be a relevant factor but as with the "essential need" test, is not determinative. There may be an essential need for a rural worker's dwelling in connection with the main development, however it may not be an appropriate facility for a number of reasons. The question of need and whether it could be met elsewhere is considered as an 'other consideration' that might clearly outweigh any harm to the GB and any other harm so amounting to 'very special circumstances', but I also I adopt my conclusions thereon here.
45. It is has been held in *Bromley* that:

"[34] The categories of new buildings set out in paragraph 89 involve wholly new buildings, or extensions to existing buildings, or replacement buildings. The exceptions are plainly intended to be restrictive and although they have antecedents in previous policy, must be construed as they now appear and in the context of the NPPF." (Emphasis supplied).
46. The appellant regards it as highly relevant throughout almost all grounds of his appeal that there would be no material change of use involved if, as he maintains, the house is deemed to be ancillary to a primary use within the same planning unit. However paragraph 149 focuses on the construction of new buildings, not the nature of the permission required for those buildings. Therefore whether the development amounts to a material change of use should not be directly relevant but I will examine the planning unit and whether a material change of use has taken place.
47. The primary use of a building is the main use or activity that is carried out by the occupier. The appellant emphasised the ancillary nature of the use, not to the existing main dwelling, but to the primary equestrian centre use within the site. The appeal dwelling itself is somewhat removed from the modest proposal for very small separate living accommodation in a converted garage for a relative as stated by the judge in *Uttlesford*. The original application to retain the house, WA/2018/0846 was for two bed accommodation for two grooms; however there appears to be no material change in the layout, so it would appear that it had been constructed to accommodate two independent persons. Although it occupies a relatively small footprint compared to the wider estate,

the dwelling provides all the facilities and characteristics necessary for it to be occupied as a self-contained dwellinghouse. There are shared vehicular accesses and public and private paths from the Haybarn.

48. I disagree that it has no curtilage: there is a clearly defined gravelled area to the front and one side of the dwelling, enclosed by timber fencing to one side and on the other, the side elevation of the stables. A paved path leads from the front door into the gravelled area which contains several ornamental plant tubs, and a waste bin, with space for parking two cars to the front, delineated by paviers marking the boundary between the appeal premises and the shared access path. The gravelled area continues around the other flank elevation of the dwelling as a narrow path that opens out at the rear into a larger space accessible also from the steps leading up to an additional side/rear door. The path and larger space are bounded by shallow timber edging, and directly to the rear of the building is a small secluded amenity area and raised platform with more ornamental planting, overlooking woodland.
49. The dwelling is well separated from the main house. It is positioned out of main views and separated by fencing, trees and shrubs and the like, but as one comes upon it, it has the appearance of a separate and distinct dwelling, set in its own small grounds with its own identity. Although hard by the stables the dwelling is not actually read as within the commercial yard complex, rather it sits at the extremity of the operational part of the site. It is close to the stables and walker and indeed is carefully screened from views from within the main part of the estate, but the entrance is also next to a wide path that divides the equestrian facilities from, and gives immediate access to, the fields and paddocks to the south. From a physical and locational standpoint it is not readily seen as associated with those operations but stands apart. None of these incidents of curtilage I have described, nor any of the characteristics of the dwelling itself has any especial relevance to the equestrian use of the site⁵.

Relevance of other appeal decisions

50. I have considered the relevance of the other appeal decisions submitted. The two appeal decisions I rejected as irrelevant to the ground (b) appeal, are among seven decisions submitted which are potentially relevant to consider here⁶. Appeal 1 (polo pitch) predated the NPPF, as did Appeal 2 (playing fields) and in both cases the criterion considered for appropriateness was confined to the effect on openness.
51. As previously described, Appeal 3 (Bucks Farm) concerned a groom's flat contained within the 40 stable block occupying the same site as an existing barn. It is not comparable to a separate two storey dwelling on previously undeveloped land but was regarded as an appropriate facility under Paragraph 149 b) as the groom's accommodation was notably small and occupied only a limited part of the building. There was no dispute there was a functional necessity for it and:

"as a subsidiary element of the larger scheme it forms part of the appropriate facility for outdoor sport and recreation and should not in Policy terms, be

⁵ Except of course the blank elevation of the stable building that assists in enclosing the forecourt and space to one side of the dwelling.

⁶ 1. APP/T035/A/06/2032675/2032659, 31.3.2008; 2. APP/X1925/A/09/211193, 3.3.2010; 3. APP/T0355/A/13/2197609, 18.3.2014 (Bucks Farm); 4 and 5. APP/R4650/A/14/2220144, 23.1.2015; 6. APP/K0425/A/14/2218051, 20.3.2015; 7. APP/Y3615/D/16/3164022, 25.5.2017 (Home Cottage).

looked upon as a separate dwelling on which other considerations would apply”.

52. Although in paragraph 11, the final conclusion is based on the NPPF, I note in paragraph 10 it appears the conclusion as to appropriateness was founded on the development plan formulation set out in paragraph 6 but then rejected in favour of applying the NPPF policy in paragraph 7. Ultimately these paragraphs may be reconcilable, but functional need was not disputed and was brought to bear in assessing compliance with paragraph 149 b).
53. Similarly, Appeal 7 (Home Farm Cottage) concerned a garage extension of a “diminutive scale” relative to the stables, which would “retain a barn-like appearance” for use as a 1 bed groom’s accommodation with no garden curtilage, and ancillary to adjoining stables. It was justified as appropriate facilities in paragraphs 7 and 8 of the decision letter, especially given the accepted need for a groom to be on site for the polo ponies and therefore “appropriate for its intended purpose”, and meet an essential need for a rural worker under the separate test in NPPF.
54. Appeals 4/5 (Barfold Farm) was about new stable buildings and equestrian facilities in the Council’s area. The stables were clearly linked to an established sporting use and the riding area was “clearly linked to the sporting use of the estate and the welfare of horses”. What was an appropriate facility was seen as a matter of judgement based in the circumstances of the case. The proposals did not include any residential accommodation. The Inspector agreed the new use would be ancillary to the “established and substantial polo activity” (paragraph 13 of the decision). As to the use, no material change of use was involved. For the stable buildings proposed, the key to the decision was more about the need to obviate stress in ponies by stabling them “in close proximity to the established facilities” and so they were appropriate facilities for outdoor sport. The decision rightly points out (paragraphs 39 and 49) that does not justify building of any scale, since *Fordent Holdings Ltd v Secretary of State for Communities and Local Government [2013] EWHC 2844 (Admin)* requires an analysis of the building in the context of the openness of the GB, which includes not just the proposed size but also its purpose.
55. Appeal 6 was another decision involving polo pitches and stable conversion, but did not consider GB policy.
56. The officer’s report that dealt with another application WA/2018/0197 at Barfold Farm (not the appeal decision) was for a modular construction of a steel container box to provide a mess room and four cabins for grooms for a limited period of 3 years, a quite different proposition from the current appeal.
57. Returning to the appeal dwelling itself, I find that the land has been divided into a separate planning unit comprising a dwelling with a primary residential purpose, and a material change of use has occurred. There is no dispute that its present manner of occupation might be regarded as functionally related to the equestrian use, and this has some relevance in assessing its appropriateness as a facility in connection with sport but so is the fact, as I have found, that in the circumstances the residential use is a primary use in its own right within a separate planning unit.
58. Although rented it is exclusively occupied by an employee of the equestrian centre as their only residence and as a separate household. A condition might

be imposed to restrict occupation but it would have to require demolition or sterilisation of the use if not occupied by workers at the appeal site. The appellant through his agent made it clear that he was unwilling to countenance a condition that required its removal, hence the anodyne form in which it appeared in the SoCG. In any case it is designed as a permanent structure and constructed as a separate self-contained unit with all the necessary facilities required to function independently from the main uses on site. Whether other dwellings might in principle be capable of meeting the requirements of NPPF Paragraph 149 b), the characteristics of this detached house in its own grounds, are not so connected to the equestrian use of the surrounding land as to make it in itself a facility that is appropriate for outdoor sport.

Conclusion as to whether the dwelling would constitute appropriate facilities for outdoor sport

59. Taking this information into account including what I have seen and read, I find that in the particular circumstances of the development and having regard to the considerations discussed, this dwelling would not constitute appropriate facilities for outdoor sport for the purposes of NPPF Paragraph 149 (b).

Preservation of openness and conflict with purposes of including land within the GB

60. It was agreed between the main parties that the development does not fail to preserve the openness of the GB, however this was objected to by interested persons at the hearing and a full discussion took place on this aspect of the development.

61. Whether a proposed facility for outdoor sport would "preserve the openness of the Green Belt" is largely a matter of planning judgement (*Alison Hook v Secretary of State for Housing, Communities and Local Government Surrey Heath Borough Council [2020] EWCA Civ 486 at [7]*). Furthermore, in *Turner v Secretary of State for Communities and Local Government [2017] 2 P&CR 1*, the court said several factors could be relevant in applying "openness" to the facts of a case, notably:

"how built up the Green Belt is now and how built up it would be if redevelopment occurs... and factors relevant to the visual impact on the aspect of openness which the Green Belt presents."

62. The Planning Practice Guidance, paragraph: 001 Reference ID: 64-001-20190722 advises that matters which may need to be taken into account in making this assessment include, but are not limited to the following:

- openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume;
- the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and
- the degree of activity likely to be generated, such as traffic generation.

63. The February 2020 appeal decision⁷ quashing the enforcement notice and granting permission for the adjacent stables is relevant. Unsurprisingly and,

⁷ APP/R3650/C/18/3214413, 24 February 2020

recognising that the Top Yard houses several horses that compete at a high level and were previously occupied by an international team who used the adjacent facilities to train for the Olympics, the Inspector found that the stables comprised appropriate facilities for outdoor sport but also that the stables preserved the openness of the GB and did not conflict with the purposes of including land within it. The reasons he gave were that they were discretely located next to the storage barn, woodland and a substantial hedge that restricted views of the stables other than from nearby and were not visible from the public footpath on the other side of the site.

64. Clearly the Inspector approached openness from the point of view of visual amenity with no consideration overtly given to the concept as involving an absence of development. There is no mention of the size or massing of the stables or any explanation of what was there before they were constructed. Although largely a matter of planning judgement I regard it as relevant to consider how built up the GB was before the house was erected and how built up it would be if it remained, as well as the visual impact on openness.
65. The Inspector was also aware of the requirements for additional new built residential accommodation and had seen the grooms' accommodation which is the dwelling the subject of this appeal. This appeared to him potentially relevant to the consideration of "living conditions of nearby occupiers" and was not a component of any cumulative impact assessment on openness. Clearly he thought that in light of the enforcement action, the Council's view that there was no need for additional accommodation, and that the tenant of the yard and his groom lived elsewhere, it was unnecessary to consider the matter further.
66. Openness does not imply freedom from any form of development; however GB openness is still considered primarily in terms of the absence of development. The footprint of the dwelling is very close to woodland and it is uncertain what vegetation may have been destroyed in the process, so the site and the surrounding area might be said to be not of an open appearance. However the house is a solid building of permanent and substantial construction that has had and would have a lasting and materially greater impact upon GB openness than would the absence of any built form thereon.
67. Indeed built development has steadily increased on the appeal site over the years. With each permitted development the GB appears to have suffered a loss of openness in the sense of development taking place where there was none previously. In the present case, a further incursion into the GB has resulted in a loss of openness that I regard as harmful to an essential purpose of maintaining the GB, to assist in safeguarding the countryside from encroachment. Although it has been carefully erected in a relatively secluded position the upper storey and openings can be clearly seen above the low-profile stables as one approaches it from the drive to the north. It would be an incongruous feature in the immediate local landscape. Cumulatively the visual impact on openness would be exacerbated through consolidation of a line of built development that is not more sensitively located away from the woodland. The overall effect of this loss of openness is harmful and the additional traffic likely to be generated at this location through the use of the new parking spaces only adds to this harm. I accord substantial weight to the harm caused.
68. The loss of openness caused by the development conflicts with a purpose of the GB in assisting to safeguard the countryside from encroachment.

Summary

69. For the above reasons I am satisfied from the evidence, including my site inspection, that the dwelling is inappropriate development in the GB for the purposes of NPPF Paragraph 149, and for the purposes of Policy RE2 of the Waverley Local Plan Part 1: Strategic Policies and Sites (LP1), which is the development plan policy reflective of national policy on this issue. By paragraph 148 of NPPF, substantial weight is given to any harm to the Green Belt.
70. If exceptions are to be made to the general rule, as they are for certain types of new buildings, it is not difficult to appreciate that they should be strictly applied. I have found as a matter of planning judgement that the particular housing development proposed is and would be intrinsically an inappropriate facility for the outdoor sporting use it seeks to facilitate. If I am wrong about that it follows nevertheless that the development is inappropriate by dint of the loss of openness. I note in passing Ouseley J's observation in *Europa* that:
- "It may be that giving substantial weight to harm through inappropriateness created only by harm to which moderate weight can be given is the wrong approach in cases where the type of development is not of itself intrinsically inappropriate."* [78]
71. I have found in this case that the loss of openness itself attracts substantial weight. The Court of Appeal in *Europa*⁸ did not develop the point. There is a danger of over-analysing the applicable exceptions paragraph. The essential purpose of each of those restrictions is to control the impact or significance for the GB. The answer may simply lie in the fact that in some specific cases, as in Paragraph 149 b), a loss of openness may itself result in the development being inappropriate and that very finding makes it intrinsically inappropriate.
72. I conclude that as well as being inappropriate development, the new dwelling would cause harm to GB openness and the purposes for which it is designated.

Effect on character and appearance, ancient woodland and living conditions

Character and appearance

73. The Surrey Landscape Character Assessment April 2015 includes the appeal site in the Open Greensand Hills landscape character area (sub area GO5 Churt to Hascombe) with the northern part of the Haybarn site itself within the Wooded Greensand Plateau landscape character area (sub area GP1 Frensham to Witley Common). The Surrey Hills Management Plan 2014 - 2019 contains policies to inform local plans and strategies and development management decisions, which do not specifically refer to equine development.
74. Waverley Borough Local Plan Part 1: Strategic Policies and Sites (WBLPP1) contains policies (Policies SP1, ST1 and RE2) relating to the presumption in favour of sustainable development, sustainable transport, GB and landscape character. Saved policies of the Waverley Borough Local Plan 2002 (WBLP) provide detail to the above strategic policies. Both plans predate the NPPF 2019 and due weight should be given to the relevant policies according to their degree of consistency with the NPPF.

⁸ *Europa Oil and Gas Limited v Secretary of State for Communities and Local Government*, Surrey County Council, Leith Hill Action Group [2014] EWCA Civ 825

75. No objection is raised by the Council to the design and materials of the building. Some criticism was made by interested persons of its appearance as a Swiss chalet type dwelling, as opposed to the character of the main dwelling which – and here I prefer the appellant’s appraisal to that of the Council – has a faux Surrey vernacular design. The appeal dwelling has a superficial resemblance to an alpine style chalet but it is neither reflective of the main dwelling nor, by reason of the choice of large patio doors at the rear does it reflect any of the examples shown in the Thursley Village Design Statement for new dwellings. It is set apart from the main dwelling and if anything its timber construction relates to the adjoining stables, although it is appreciably taller than the stables.
76. However my concern relates to the western boundary of the site where the dwelling has been positioned in such close proximity to the woodland and appears perched almost on the edge of the bank. I agree with the Council’s original view that it has unacceptably spread out the built-up development to the outer fringe of the site. This has had a deleterious visual effect on the vegetated boundary which would be eroded due to the cumulative effect of the development together with the barn⁹, stables and extension to the stables.
77. The main parties agreed that the appeal building, which is in a rural area, is not visible from nearby properties or public rights of way and no objection is raised in respect of “landscape impact”, including the effect on the Surrey Hills Area of Outstanding Natural Beauty (AONB) and the Area of Great Landscape Value (AGLV) in which it is located. However the parish council and others objected that the dwelling would conflict with AONB policy.
78. The NPPF recognises that the scale and extent of development within an AONB should be limited, and paragraph 172 gives great weight to conserving and enhancing the landscape and scenic beauty of AONBs, having regard to the scale and extent of the development. It is correct that the AONB officer considered that the location, design and external finish of the building do not raise any AONB concerns, noting it would be screened from wider landscape views by trees to the south provided they remain during the lifetime of the development.
79. When the AONB Officer’s comments are considered properly, it emerges that the lack of objection was predicated on there being a condition tying in the occupancy of the buildings to persons associated with the riding establishment and if the accommodation is no longer required for that purpose that the buildings be removed and the site restored. The officer justified this as an exception to planning policies “*restricting residential development in this highly protected nationally important designated landscape*”. However the Council declined to seek such a condition and as has been described above, none was offered by the appellant. In my view such a condition would be difficult to enforce and impracticable given that the house is not intended to be anything other than permanent.
80. I conclude on this issue that the development would have a moderately adverse effect on the character and appearance of the appeal site and its surroundings, causing some harm to the more immediate rural landscape setting, contrary to LP1 Policy TD1 and Policies D1 and D4 of the Local Plan 2002.

⁹ This barn was also the subject of enforcement investigation and referred to below.

Ancient woodland

81. To the west of the appeal site and running south to north is a stream valley and Smallbrook Copse, an area of ancient woodland, identified by Natural England (NE) as a Habitat of Principal Importance for the purpose of conserving biodiversity in England, pursuant to s41 Natural Environment and Rural Communities Act 2006.
82. NPPF, paragraph 175 c) states that development resulting in the loss or deterioration of irreplaceable habitats (such as ancient woodland and ancient or veteran trees) should be refused unless there are wholly exceptional reasons and a suitable compensation strategy exists. I drew attention to Government guidance on developments affecting ancient woodland, originally published in 2014, that includes advice on avoiding negative effects through mitigation, for example by designing open space around the trees, or the use of buffer zones.
83. The Council stated in its reasons for issuing the notice that the new dwelling and linked recreational use next to the ancient woodland would lead to pressure for other development that may deteriorate the valuable landscape resource and be detrimental to biodiversity and the visual amenity and character of the area. Although it later resiled from this view it remained concerned that landscape character and nearby ancient woodland should be protected by means of a condition requiring approval of a landscaping scheme to include new planting in the ancient woodland buffer zone to the west of the dwelling and retention of trees/vegetation to south of the dwelling.
84. Surrey Wildlife Trust advised that permanent retention of buffer zones should be secured as part of any planning permission. The appellant was unwilling to agree the landscaping condition proposed by the Council that would have secured such protection. His consultant's report noted there was no tree or woodland cover on the steep grassy bank at the rear of the cabin and no clear evidence of tree cover having formerly been present on the bank. However this assessment contrasts sharply with the evidence of the longstanding owner of the property on the other side of the bank. This was to the effect that the ancient woodland is a very special place and untouched until recently when the stable development was completed and the appeal dwelling was erected along the boundary which, according to him, was trashed by the destruction of trees in order to situate the house on the edge of the bank.
85. I saw that the house is very close to woodland and I noticed that a large well-established tree, probably an aspen or white poplar which it is within my knowledge is often found in ancient woodland, is only 1m from the dwelling. I cannot be certain that the erection of the dwelling has itself involved the destruction of ancient woodland. Sometime was spent examining aerial photographs of the site produced by one of the neighbouring objectors who presented detailed evidence that strongly suggested to me that some loss of tree cover had occurred, in particular a small sliver of ancient woodland that projected out from the rest of the ancient woodland and over part of the footprint of the development. I am mindful also of the owner of the residential property to the west of the site, whose detailed written representations included that:

"although we are unable to say with complete certainty, it appears to us that in the process of building, or preparing to build the Groom House, part of the wood (most certainly not belonging to Mr Wedge) has been grubbed-out, that

is to say, trees have been felled. We say this because we did not previously have a view through the trees on the eastern side of the Dye House wood. The tree coverage is noticeably thinner than it was, resulting in us being able to see the Groom House."

86. Having carefully reviewed the reports, plans, aerial images and testimony submitted, I am satisfied that there was probably some loss of woodland habitat due to the construction of the new dwelling. In any event, it is unacceptably sited so close to ancient woodland in my opinion as to raise serious concerns about the long-term effect on its integrity, or at least as to the potential for reduction of the semi-natural habitat near ancient woodland.
87. These direct and indirect impacts should be mitigated through a robust condition that would reduce the risk to an acceptable level, but that the appellant regarded the Council's proposed landscaping condition as impractical due to the steepness of the bank, only serves to demonstrate that it should not have been sited so close to it in the first place. The house as built was not actually on the appellant's land and only after complaint from the owner of the woodland, was a land swap achieved that permitted the dwelling to remain in place. Given the appellant's unwillingness to submit to the condition proposed by the Council, and indeed its inherent impracticability, I have no confidence that a future deterioration in a valuable landscape resource would be avoided.
88. As a consequence the development as it stands is contrary to Policies D7, D1(a), and D4(d) of the Local Plan 2002 in failing among other things, to provide for the long-term retention of important trees, groups of trees or hedgerows that are close to the dwelling.

Living conditions

89. The owner of Evergreen House to the west of the appeal site and the other side of the woodland, objected that the new house was visible from his own house. From within his property I saw that the house could be clearly seen through the vegetation, particularly the upper storey accommodation in the roof together with the large patio door and platform balcony. Therefore the SoCG is wrong and misleading in stating that the appeal building is not visible from nearby properties. That said, it was not overly conspicuous and considering the very large garden area enjoyed by the objector, the development itself did not have an overbearing appearance from anywhere within the objector's property.
90. However the large patio door of the appeal dwelling overlooks the owner's property and I accept that it would be more visible through the winter months. Moreover the cumulative effect of the stretch of buildings comprising the barn, the stables and now the dwelling, erected so close to the boundary of the appeal site, light up the previously pitch-black outlook eastward to the appeal site, to a degree that is capable of interfering with the tranquility and quiet enjoyment of a significant part of the grounds of Evergreen House.
91. I find on this issue that the design and location of the development is unneighbourly and causes and would cause materially detrimental harm by reason of overlooking, including a sense of overlooking and nuisance in the form of light pollution from the new house. The harm conflicts with Policy D1 of the Local Plan 2002 which states development will not be permitted where it would result in material detriment to the environment by virtue of material loss of privacy enjoyed by neighbours and disturbance resulting from the emission

of light. Policy D4 states that development should not significantly harm the amenities of occupiers of neighbouring properties by way of overlooking, loss of daylight or sunlight, overbearing appearance or other adverse environmental impacts.

92. Another matter that is of some concern from the point of view of the living conditions of the occupants is that it was alleged that the ground floor verandah at the rear which overlooks the steep woodland bank was of an unsafe design. It was subsequently confirmed at the hearing that the house had no building regulations approval. Strictly speaking that is not a planning matter but insofar as the living conditions, and indeed the safety, of the occupants of the dwelling are relevant, that adds to my concerns.

Intentional unauthorised development (IUD)

93. A written ministerial statement issued on 31 August 2015 stated that it is national planning policy that IUD is a material consideration to be weighed in the determination of planning applications and appeals. Knowingly acting in breach of planning control is a factor that would weigh against the grant of planning permission and which could not be ignored. A reason for the policy was the Government's concern that there is no opportunity to appropriately limit or mitigate harm that has already taken place. The statement also refers to such development involving local planning authorities having to take expensive and time-consuming enforcement action. Therefore relevant matters include whether the facts show the development was intentional and if so, whether damage has been caused as a result and the implications for local authority resources.
94. The parish council raised this matter. Several developments had been undertaken on the site without planning permission being obtained. Mr Wedge has had the benefit of professional planning advice on various planning applications and enforcement matters but none connected with the appeal dwelling, as he told me that he did not seek planning advice in relation to it.
95. Haybarn was purchased by the appellant in 2012. I was told that the dwelling was erected in 2017. The appellant had applied for planning permission for several developments on the site in 2013. In terms of other residentially related development, prospective planning applications were made for the replacement main dwelling in 2013 and separately for a car port to serve the replacement dwelling. Furthermore a private tennis court was also applied for prospectively by the appellant, as was an extension of existing sand school in 2013. In each case the appellant was the applicant.
96. The horse walker was applied for on 14 July 2018. Mr Wedge told me that planning permission was granted before it was erected but this was later contradicted by evidence from the Council as to the actual date of the application and email correspondence between the Council and the then planning agent. The application for the dwelling the subject of this appeal (s78) was made by the agent after it was built, and stated that its construction commenced in October 2017 and was completed in January 2018.
97. The appellant made replies to several planning contravention notices dated 1 February 2019, and 28 April 2019, relating to extensions to a stable block, and two outbuildings on the site which did not have planning permission or a LDC.

The questions in the PCNs were bespoke and all the replies to the PCNs were in the appellant's own hand.

98. In relation to the extension to the stables this was at Bottom Yard at the rear of the block, where I found through a pair of double doors the mess room with kitchen, "retiring" room, office, shower room and wc. The appellant believed that no permission was necessary as the works were "effectively" a repair of the existing roof and although there was an increase in height, this was very limited and no higher than the ridge of the existing building.
99. As to the outbuildings the appellant believed that "*a small domestic extension did not require planning approval*" and as to the second, he believed no permission was needed as it replaced two buildings on the same site.
100. Also on 28 April 2019 the appellant replied to a further PCN relating to the barn situate on the western boundary of the site previously alluded to. The Council had noted that a building in this approximate location was approved on 27 September 2019, under planning application Ref WA/2013/1252, but the building erected did not appear to be in same position and of the same dimensions of the building that was approved.
101. Asked to explain why planning permission was not applied for, the appellant stated he did "*not appreciate additional planning was required for additional storage*". It was clear from other replies that the barn had been extended in October 2017.¹⁰
102. The method of construction of the dwelling was described to me by the appellant, which included foundation piles. By any measure it is more than a small domestic extension. It is significant in my view that the appellant would have been aware of the need for planning permission for other residentially related development for which he applied for permission, in particular the replacement main dwelling and the car port. He is, or has been, a sophisticated businessperson who has been involved in a long series of planning applications for development at this location over a period of several years. It is reasonable to infer that if he applies his mind to the relationship between a small domestic extension and the need for planning permission it would have been readily apparent to him that planning permission was required for a detached one and half storey dwelling house. I find it probable that he knew permission would be required for the construction of a dwelling of the kind that he built and that consequently there has been intentional unauthorised development.
103. The opportunity to confirm exactly how the ancient woodland and associated habitat would be affected was lost when some clearing took place, and the new house was constructed. Ancient woodland takes hundreds of years to establish and is defined as an irreplaceable habitat. The point here is not that damage can be definitively established but the opportunity for so doing was lost due to the appellant's deliberate actions. I accord substantial weight to the IUD.
104. I have no doubt that the Council expended much time and resources in investigating and taking enforcement action and was frustrated as to the manner in which development took place. An indication of this is gained from the fact that ultimately, and this is not in dispute, when negotiations on the

¹⁰ It was as part of this PCN that the Council drew attention to the appeal dwelling as a result of being alerted to a social media post from the appellant's wife stating that historically there was live-in grooms accommodation available.

appeals were ongoing, the Council officer replied to the appellant that the best thing to do was to 'push off' the decision to the Planning Inspectorate. The appellant considers, and with some justification, that it was a vexatious response, but the indifferent or frustrated attitude of the Council is a symptom of the many problems caused by proceeding without planning permission.

Other considerations

105. What are very special circumstances is a matter of judgment for the decision maker (*Wychavon DC v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692).
106. The appellant cites other case law contending that compliance with development plan policy can contribute to "very special circumstances" (*R. (on the application of Khan) v Sutton LBC* [2014] EWHC 3663 (Admin)). This is so, although the facts of the case were unusual in that the Council, correctly, gave significant weight to the fact that the site was in existing waste management use and was expressly safeguarded for such use in the development plan.
107. The very special circumstances drawn to my attention were eightfold and specifically set out by the appellant in his statement and relied upon at the hearing. As to the first four, I have found that there is a significant conflict with development plan policy; the openness of the GB is materially harmed; and the development conflicts with the purposes of including land in the GB. I have also found that the use of the dwelling is primarily residential and not ancillary to the lawful equestrian use of the site.
108. In addition it is said:
- on-site accommodation is essential in the interests of horse welfare;
 - the development complements existing equestrian facilities;
 - the development is needed for consistency of training and exercise; and
 - the very special circumstances accepted in the Barfold Farm decision should apply.

Whether an essential need for on-site accommodation that should be met by the proposal/development

109. The appellant contends that the dwelling is essential to provide accommodation for a rural worker. The July 2020 updated assessment by Reading Agricultural Consultants (RAC report) concludes that there is an established essential need for at least one full-time worker to reside on site to meet the welfare needs of the appellants horses stabled in the Bottom Yard, and the additional stables in the Top Yard added to this need.
110. After considerable criticism by the appellant of the Council's failure to obtain independent advice, the latter had produced, also in July 2020 its consultant's report (Kernon report). It concluded that the provision of groom's accommodation was necessary for the Bottom Yard to cover the time when the owner was away, and to ensure there is the potential for the holding to always have key staff on site. However it noted the Bottom Yard was privately funded and did not operate in a normal, commercial way. The report stated it would be necessary to accommodate, as a minimum, a single worker in addition to Mrs Wedge and the dwelling was needed to serve both yards. It added that a key groom needs to be resident on site in addition to Mrs Wedge, "*so an extra dwelling on site is thus needed*" but other grooms could be accommodated

locally, where sufficiently affordable accommodation was more likely to be in a local town.

111. I do not take issue here with most of the findings in the reports save the conclusion that an extra dwelling on site is needed. Much criticism in the report is made of the Council's failure to obtain independent advice. However, contrary to the Council's position at the hearing, I find the objections set out in its delegated report persuasive. The application of common sense does not make an assessment unsound because it is not backed up by consultants. A residential dwelling (and other buildings) already exist on the site whose layouts could be so arranged to provide for the essential needs of the enterprise. I am not persuaded that there is an essential need for the type of accommodation comprised in the development the subject of these appeals.
112. There are no specific local plan policies relating to the siting of rural worker's dwellings. Paragraph 79 of the NPPF seeks to promote sustainable development in rural areas, and to avoid development of isolated homes in the countryside save in special circumstances that include an essential need for a rural worker to live permanently at or near their place of work in the countryside. I agree with the appellant that paragraph 79 would not apply to the development because although it is found within Haybarn which is a large site, it is adjacent to other large properties and not geographically or spatially isolated.
113. Saved Policy RD14 is concerned with the establishment of new, or the expansion of existing, commercial equine activities, not with the provision of a rural worker's dwelling. The appellant was adamant that the policy applied to the development as ancillary to the commercial use. The Council's planning officer was diffident about its applicability. In my view it is not applicable to establishing the acceptability of a new residential dwelling on the site. The supporting text at paragraph 11.90 states in terms that proposals for ancillary residential accommodation will be considered "in the light of" (the then) Policies C1 and C2 which restrain development in the GB. Also, sub-paragraph (h), in preventing development unless it would not be likely to generate future requirements for additional new built residential accommodation, would seem to militate against the use of the policy to justify such accommodation in the first place. The saving direction will not necessarily have saved the supporting text, but the policy does not fall to be interpreted without regard to it after expiry of the transitional period. Also, and tellingly in my view, the policy (RD14) refers in terms to equestrian "activities", not facilities.
114. Bottom Yard is occupied by Mr and Mrs Wedge's privately owned horses and is privately financed, the appellant covers all costs for the keeping of horses and employment of grooms. The appellant told me he worked in the city but was retired and his main source of income was from private investments and his wife told me that she relied on such income for her needs. The RAC report states that confidential accounts are available but none have been provided.
115. Although not rehearsed in detail at the hearing, there were written submissions on whether financial justification had been provided that Bottom Yard could support a permanent dwelling on the site and be viable. Whilst the agent made it clear no such justification was necessary, the RAC report acknowledged the issue and referred to several appeals and applications the full details of which I do not have and so am unable to give them significant weight. It may be possible that the appellant and his wife are able to meet the

costs associated with running two yards from private finance and the income received from Top Yard. But there is no concrete evidence, rather a series of assertions. The Top Yard is said to provide a small profit used for maintenance and repairs. The accepted test for a rural worker's dwelling is that the business could generate sufficient profit to provide a return to costs deployed and to finance the purchase or build cost of the permanent dwelling. In this case the Haybarn operates as part-private, part-commercial competition horse yard.

116. The written evidence was ambivalent in places on the question of exactly which yard it was deemed necessary to support by the new dwelling. It appears nonetheless that the essential need for a groom to permanently reside on site relates primarily to the Bottom Yard (at the opposite end of the site to where the dwelling is located next to Top Yard) for stabling of horses and associated areas for tack/staff/amenity facilities. As set out in paragraph 3.5 of the supporting needs statement, it is used by the appellant and his wife privately for horses they compete in various events. The appellant through his agent sought to clarify matters at the hearing. He stated that the need is in relation to Bottom Yard, but the dwelling is close to Top Yard where the occupant can lend a hand, although her duties are in relation to Bottom Yard.
117. Two outbuildings have been constructed on the other side of the site to the appeal dwelling and both are closer to Bottom Yard. They are however subject to lawful development certificate applications. Outbuilding A was "private guest accommodation" also used by the appellant's disabled parents when they visited. It has a footprint of 4.9m x 3.65m. Outbuilding B was first used as a site office by the contractor engaged on building the replacement main house, now used as "ancillary to the main house as a yoga studio". It also provides the main electrical distribution to the rest of the site and has a small landing at first floor level for domestic storage. I saw that inside the yoga studio, off the main area, were a kitchenette and shower and WC on the ground floor. Outbuilding A was nearer to Bottom Yard than B and had a main room with a kitchen area, heating, sofa, separate double bedroom, and shower, wc and basin.
118. At the Bottom Yard stables were two cctv cameras linked to one of the outbuildings. The owners have ipads and they are connected to the cameras so can be viewed from within the main house or anywhere the phones are taken. At these stables and through a pair of double doors, I observed that there is also a mess room. It includes a large kitchen area of some 20ft x 12ft, a "retiring" room about 7ft x 11ft, an office, shower room and wc. Furthermore at Top Yard there is a room about 12ft x 12ft that is part of the stables complex, comprising a desk, sofa, kitchen, washing machine and other domestic items.
119. In addition I was told the main house has 5 bedrooms, 3 garages and a large room over. Having had a good look around the site and inside the various buildings¹¹, I am satisfied that there is ample scope for the owners subject to necessary consents, to arrange existing facilities to accommodate any essential need for an employee to maintain a 24 hour presence on the site. The existing use made of IT in connection with surveillance further reduces the need to be present all the time at a particular spot within the site.

Complementing equestrian facilities and consistency of training and exercise

¹¹ I was unable to see inside the main house as I was told there were relatives self-isolating due to the Covid-19 virus.

120. In the sense of helping to make something more complete or effective, I have no difficulty in accepting that on-site accommodation in the form of a new dwelling would be more convenient for all concerned in the operation of the equestrian centre. Whether the development is truly needed for “consistency of training and exercise” is less easy to follow although in principle more accommodation provides more flexibility and therefore potentially greater efficiency in these matters.

Barfold appeal decision

121. The Barfold appeal decision¹² included consideration of two proposals presented in the alternative, the second of which was larger than the other and which was found to be inappropriate development. On the issue of very special circumstances that were advanced none justified the larger expanse of the second proposal. They included matters of animal welfare, economic benefits, reduced horse transporter movements, the elite level of the sport, and compliance with other local plan policies.
122. I agree that in principle these matters are capable of being very special circumstances. The appellant should not sell himself short here as, having read the various statements and reports, including the many letters in support, they amplify aspects referred to in the appeal decision but do so specifically in regard to the instant development. In particular I recognise the importance of maintaining a viable and successful equestrian centre in this location, not only to the appellant, his family and employees, but also its significance to a large section of the local community and indeed in the national and international equestrian sporting environment, whether or not on a commercial basis. That said, a substantial part of the enterprise is privately owned and managed and whilst the sport is carried on at an elite level, I have not been given a robust or detailed assessment of the wider economic benefits. Furthermore I accept the horses are high value and their welfare and safety is a principal concern for their owners and those who work with them.
123. For the avoidance of doubt I have also considered the application report concerning the separate proposed grooms’ accommodation at Barfold Farm. Key to that assessment of very special circumstances was that there was an essential need for that particular scheme, and the harm to the openness of the GB would only be temporary.

Other matters

Special Protection Areas (SPAs)

124. The third refusal reason stated:

“It has not been demonstrated at this time that there would not be adverse impacts caused to the nearby SPAs and the protected species which reside within. Therefore, this proposal has not demonstrated accordance with Policy NE1 of the Local Plan 2018 (Part 1) and the Conservation of Habitats and Species Regulations 2017.”

125. Thursley Common is part of the Thursley, Hankley and Frensham Commons Special Protection Area (SPA). The appeal site is not within the SPA. To the south is part of the Wealden Heaths phase II SPA. To the north east and north

¹² Discussed above in the context of whether the development constitutes appropriate facilities for outdoor sport.

west is a Special Area of Conservation (SAC), Thursley, Ash, Pirbright and Chobham SAC, which overlaps with the SPA.

126. The SoCG showed that the main parties had agreed that the development has no adverse impact on any of the nearby SPAs or SACs. Natural England (NE) was consulted on the earlier application Ref WA/2019/0003 and stated *"due to the proximity of the development to the Wealden Heaths Phase I SPAplease re-consult Natural England once this information has been obtained."*
127. As part of my request for further information I was referred to the Council's web site for this appealed application, but it appeared to contain NE's response on a different address and development, stating that no Appropriate Assessment was required nor would it result in an adverse effect on site integrity on Wealden Heaths SPA. The officer's report in this current appeal states *"Object – further information required"*. There is no evidence NE was ever re-consulted on the application.
128. Nevertheless the appellant produced two environmental reports with the application, on ecology in general and the nearby SPAs. On ecology it was concluded there were no habitats of importance that would be directly affected by the development. The site was of overall low ecological value with the species recorded described as common or abundant with no evidence of protected species recorded. Regarding the Wealden Heath SPA the appellant's report concluded that given the limited extent of the development, the distance from the site and intervening vegetation acting as an effective barrier, there were considered to be no adverse effects on the integrity of the SPA and SAC, therefore, no specific mitigation measures were considered necessary. The Council had these reports at the time of the application and had no evidence to contradict the reports.
129. I find that on the available evidence there would not be any likely significant effect on the integrity of the SPAs (or SAC) contrary to policy NE1 of the Local Plan 2018 (Part 1).

Planning Balance

130. The groom's accommodation has the appearance of a separate two or one and a half storey dwelling, set in its own curtilage, with its own identity, separated by trees and shrubs, with a separate forecourt parking, close by but distinctly separate from the main yard within the wider site. Although the occupant works on site, its primary use is not ancillary to the operations at the equestrian centre but is residential and as a matter of fact and degree a new residential planning unit has been formed in its own right. This factor, together with my finding that there is no essential need to erect a new dwelling in the grounds of Haybarn to accommodate a worker, predominantly weighs against a finding that for the purposes of NPPF, paragraph 149 b) it is an appropriate facility outdoor sport.
131. The development is therefore inappropriate development in the GB but in any event is inappropriate by reason of the harm caused by the dwelling to GB openness and the conflict with the purposes of the GB. Substantial weight is given to the harm caused by the combination of inappropriate development in the GB, loss of openness and encroachment into the countryside.

132. In addition some harm would be caused to the character and appearance of the area and further harm would be caused by the development without appropriate mitigation to ensure a landscape scheme in the form proposed by the Council to prevent future pressures that may lead to a deterioration of the ancient woodland. Further harm is caused by the insensitive and unneighbourly design of the building that overlooks the neighbouring property and, in combination with other development on the western boundary of the site, results in light pollution over a significant part of what were hitherto tranquil and unlit grounds.
133. The development is intentional unauthorised development through which there has been no opportunity to appropriately limit or mitigate harm that has already taken place in the form of loss of some woodland habitat, to which significant weight is given.
134. Weight is given to the very special circumstances advanced in favour of the development. However in light of my finding that there is no essential need for the new dwelling for the purposes described, the weight I can accord to these factors is no more than moderate at best. This is not in any way to decry the value of the enterprise to its many supporters.
135. On the basis of the evidence before me and my view of the site and its surroundings, the harm by reason of inappropriateness, including the specific harm caused by loss of openness and conflict with purposes of the GB, including the additional harm I have identified, is not clearly outweighed by the benefits described so as to amount to very special circumstances justifying an exception to GB policy.
136. The language of weight emphasises the seriousness of harm to the GB such that inappropriate development may not be approved unless considerations in favour of the development truly constitute very special circumstances so that the development can be permitted notwithstanding the importance given to the Green Belt. For the avoidance of doubt, I consider that even without the additional harm caused, the harm by reason of inappropriateness, loss of openness and conflict with purposes of the GB is not in itself outweighed by other considerations.
137. The appeal on ground (a) therefore fails.

Appeal A on ground (g) - that the time given to comply with the notice is too short.

138. The six months' period allowed for compliance with the notice is, according to the appellant, to misunderstand the equestrian use at Haybarn and its animal welfare and training needs. Therefore the period should be extended to twelve months to enable: continuity in the essential welfare, training and exercising of the horses; to prepare for and compete in the equestrian events they have qualified for; and for suitable alternative living accommodation for the groom to be located.
139. The Council does not now oppose such extension and of course it has discretion to extend the period of its own volition if circumstances obtain that make it expedient in its view to do so. However I am mindful of the substantial harm found to have been caused by the new dwelling. At the same time the occupant will need to find other accommodation, and this also is a concern. I

asked Mrs Wedge what security of tenure the groom had. There have been no tenancy agreements and clearly matters have proceeded on an informal basis. The current occupant is not the first groom to have lived there. Mrs Wedge confirmed to me that the occupant has exclusive occupation whilst she is working, she gets a wage and free accommodation, sometimes stays with her parents but the dwelling is her home. She is expected to give 2 months' notice and when pressed, Mrs Wedge for her part said that she would usually give 3 months' notice to the groom.

140. Given that there are other grooms who work there whose accommodation is outwith the Haybarn, I am not persuaded that the period for compliance in the notice is too short as would prevent alternative accommodation to be found. Nor, given the options clearly open to the appellant if it is wished to accommodate an essential worker, do I consider the compliance period too short to interfere with the welfare of the horses or unduly prevent continuance of equestrian events. The compliance period is a reasonable period for the occupant to arrange alternative accommodation and for the appellant to remove the dwelling and comply with the enforcement notice.

141. The appeal on ground (g) fails.

Conclusion on Appeal A

142. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Conclusion on Appeal B

143. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

144. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

145. The appeal is dismissed.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Ellis	Agent
Mr Wedge	Appellant
Mrs Wedge	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr Bennett	Senior Enforcement Officer
Ms Choularton	Planning Officer

Interested persons

Mr Mendelsohn	Chairman, Thursley Parish Council
Mr Johnson	Neighbour.
Mrs Beechey	Neighbour.