The Planning Inspectorate

# Appeal Decisions

Site visit made on 24 October 2022

**by Nick Fagan BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 14 November 2022**

**Appeal A Ref: APP/R3650/X/22/3296280**
**Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Angela Jenkins against the decision of Waverley Borough Council.
- The application Ref WA/2021/01773, dated 25 July 2021, was refused by notice dated 23 August 2021.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is described as the continuous use of keeping non-agricultural horses for a period of more than 10 years.

**Appeal B Ref: APP/R3650/W/22/3300338**
**Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mrs Angela Jenkins against Waverley Borough Council.
- The application Ref WA/2022/01523, is dated 30 March 2022.
- The development proposed is change of use from agriculture to a mixed use of agriculture and equestrian use.

## Decisions

1. Appeal A is allowed and attached to this decision is a certificate of lawful use describing the existing use which is considered to be lawful. Appeal B is allowed subject to conditions.

## Applications for costs

2. An application for costs was made in respect of both appeals by the appellant against the Council. These applications are the subject of separate Decisions.

## Appeal A

### Main Issue

3. The main issue is whether the Council's refusal to issue a certificate of lawfulness for the non-agricultural equestrian use was well founded.

4. Under s191(1)(a) of the 1990 Act, any person who wishes to ascertain whether any existing use of buildings or other land is lawful may make an application for the purpose to the local planning authority specifying the land and describing the use. S191(2)(a) of the 1990 Act specifies that for the purposes of the Act, uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

5. The time limit relevant for taking enforcement action under s171B(3) of the 1990 Act regarding the use of buildings or other land is the end of ten years beginning with the date of the breach.

6. The ground under which the appellant applied for the LDC was that the use began more than ten years before the date of the application, 25 July 2011 in this case. The appellant needs to demonstrate that conclusively, on the balance of probability.

**Reasons**

7. The site comprises all the land owned by the appellant as set out on the red outlined plan submitted with the application. It includes all the land in this part of Nutcombe Valley, bordered to the east by the A287 Hindhead Road, to the south and west by Nutcombe Lane and to the north by the line of the Public Right of Way (footpath) that links Nutcombe Lane to the A287.

8. At my site visit I was able to see that there was a horse box trailer in the car park next to the entrance to the field, as well as the stable building and adjacent shed, both sited next to the boundary hedge.

9. The Council's Officer Report in respect of this application sets out an accurate summary of the appellant's evidence in support of the lawful equestrian use of the site and refers to the evidence available from two previous LDC applications for the same use, LPA Refs WA/2020/0233 and WA/2021/01108, on which appeals are stated to be pending (albeit it would seem that they have now been withdrawn).

10. The Council also refers to its appeal statement for the first of these applications (Appendix 1 to its appeal statement on this appeal); it claims that its reasons for concluding that equestrian use of the site is unlawful in that statement can equally be applied to this appeal, given that the equestrian use alleged is the same.

11. The reasons are essentially as follows:

    - that it is unclear whether the horses are fed from food brought onto the site as opposed to them grazing the field;
    - no details have been given of whether horses are schooled, ridden, jumped or kept overnight on the site rather than merely grazed, which would amount to an agricultural use;
    - no detail of how many horses have been kept on the site have been provided;
    - insufficient detail of continuous use during the period has been given by the four tenants during the relevant period such as to exactly how long

each tenant kept horses and how many horses at the site (including no statutory declarations) to prove continuous use for 10 years; and

- whether the entirety or merely some of the land has been used for equestrian purposes.

12. The following documents were submitted with this application: statutory declarations by the appellant and the agent (Graham Lea); letters/statements from Jane Liverton who she says rented the whole site from 2008 to 2105 for the purpose of keeping her and her daughter's horses, from Lisa Hamilton who she says has rented the site for her horses (normally 3, currently 2) since 2015 to the present, and from Andrew Meehan, a local resident and former estate agent who arranged the lease of the field (the site) to Jane Liverton in 2008 and who knows the site and area well including over the last 10 years.

13. There is also an appeal statement by Peter Williams of Reading Agricultural Consultants (RAC), who states that he attended the site on two occasions, in 2013 and 2021, when it was clear that the site was being used for the keeping of horses, albeit this in itself does not demonstrate a 10 year continuous use.

14. The statutory declarations from Angela Jenkins and Graham Lea confirm that the site has been used continuously for a period in excess of 10 years prior to the date of the application and continues to be so used today, and, in the case of the latter, that feed for the horses was stored on the land by the tenants from 2007 to the present day.

15. Jane Liverton confirms that she rented the whole field the subject of this appeal, that feed and equestrian equipment was stored in the shed including tack and rigs, that large bales of hay and haylage were stored on the hardstanding inside the first gate and that the flat area of the field was used for lungeing and schooling young horses. She also confirms her use of the stable and the caravan, which is shown on the photos with the RAC appeal statement (the caravan since having been removed).

16. Lisa Hamilton confirms that since 2015 she has used the site including the stable/field shelter and caravan solely for equestrian activities, that she has (had) a container for storing items associated with her equestrian activity, parks her horse box on the site, feeds her horses twice a day from feed (hay/haylage, hard feed/grain, Alpha chop) kept in the stable and exercises the horses regularly in the field.

17. From these documents I conclude as follows in relation to the Council's reasons set out in my paragraph 11 above for deciding that the equestrian use is unlawful:

    - although the horses kept on the site may well graze the land, they are principally sustained from feed brought onto the site and stored in the stable building, and have been continuously for the last 10 years;

    - from the statements of Jane Liverton and Lisa Hamilton it is clear that horses have been kept on the site including overnight (including in the stable) and ridden and schooled on the site for at least the last 10 years;

    - from their statements it is clear that, on the balance or probability, at least two horses have been kept on the site continuously for at least the last 10 years, albeit their statements do not make it explicit exactly

when one tenancy ended and the other began in 2015 and no copies of such tenancies have been provided;

- there does appear to be some inconsistency between the use of the site by four tenants when the evidence I have been presented with indicates only two tenants since 2008 and I am unclear who the other two tenants were since that information has been redacted, assuming it was set out on Graham Lea's declaration; however, the evidence from Jane Liverton and Lisa Hamilton is clear and the Council does not dispute what they say;
- their evidence, and that of the appellant, agent and Andrew Meehan, all confirm the use of the whole site for equestrian activity continuously since 25 July 2011; the Council has no substantial counter evidence; although it refers to the July 2015 tenancy agreement between the appellant and Lisa Hamilton it has not produced it or explained in any detail why it prevents equestrian use of the site by Ms Hamilton and her horses.

18. For these reasons, on the balance or probability, and with regard to the relevant part of Planning Practice Guidance[1] regarding the determination of LDC applications as referred to by the appellant, I conclude that the documentation provided by her is sufficient to confirm that the lawful use of the site is for equestrian use, because such use has taken place continuously since at least 25 July 2011 (a period of 10 years) prior to submission of the application and still continues today.

19. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of equestrian use was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

## Appeal B

### Main Issues

20. The main issues are whether the proposed mixed equestrian and agricultural use would lead to the loss of best and most versatile agricultural land, its effect on local character including the Area of Outstanding Natural Beauty (AONB), Area of Great Landscape Value (AGLV) and ancient woodland on the eastern part of the site, and its effect on local residential amenity.

### Reasons

21. The site in respect of this application is merely a part (approximately a quarter) of the appellant's total land ownership as applied for in the above LDC application – a middle section of the site immediately to the south of the stable building.

22. The Council's Officer Report regarding this application confirms that, if there had been no appeal against non-determination, planning permission would have been granted subject to three conditions. This would have mirrored the reasons for the Council granting permission for the northern part of the field

[1] Paragraph: 006 Reference ID: 17c-006-20140306

immediately abutting this site (LPA Ref WA/2022/00474 granted 15 March 2022).

23. I understand, from comments made at the site visit by the agent, that the only reason that planning applications have been made for these smaller parts of the whole field the subject of the above LDC application, is that this obviated the need for so many survey etc documents to be provided in order to validate an application for the whole field, all of which is owned by the appellant.

24. The Officer Report makes clear that the Council accepts the contents of the RAC Report concerning the agricultural land classification and usefulness of the land for agricultural purposes. In summary, the Council accepts that the site is lower grade agricultural land (Grade 3b or below) and that it is unsuited to arable farming and conventional farm animal grazing because of its steep slope, water course and pond, and problems accessing large farm machinery including because of its narrow restricted northern entrance. The wider site is not part of a wider agricultural holding. For these reasons the Council considers its partial loss to a mixed agricultural/equestrian use is acceptable in principle and accords with 'saved' Policy RD9 of the Waverley Borough Local Plan 2002, which militates against the loss of the best and most versatile agricultural land. I agree.

25. The Officer Repot concludes that since the proposal would involve no additional buildings, it would not materially impact upon the intrinsic local character and overall AONB and AGLV landscape character as an equestrian use would not be out of keeping within these areas, nor adversely affect the ancient woodland on the site. As such the proposal would not conflict with Policies TD1, RE1 or RE3 of the Waverley Borough Local Plan (Part 1) adopted in February 2018, which together require good design and preservation of the character and beauty of the countryside including the AONB and AGLV within which the site lies. I have no reason to disagree.

26. I also agree with the Council that the proposed development is modest in nature and that, as such, factors of noise and disturbance are unlikely to be excessive and cause significant harm to the living conditions of nearby residents.

27. For the reasons given above I conclude that the appeal should be allowed, subject to the conditions in the Schedule below, essentially as proposed by the Council and for the reasons it gives, albeit I have altered Condition 1 simply because it merely defines the site, although these conditions are in essence superfluous given that I have granted an LDC for the use of the whole field owned by the appellant as set out in Appeal A.

**Conclusions**

28. Both appeals are allowed for the above reasons. The documents on the next pages below comprise the Lawful Development Certificate and its accompanying Plan relating to Appeal A, and the Schedule of Conditions relating to Appeal B.

*Nick Fagan*

INSPECTOR

The Planning Inspectorate

# Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

**IT IS HEREBY CERTIFIED** that on 25 July 2021 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate (and on coloured copies), was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, the keeping of non-agricultural horses for a continuous period of more than 10 years has taken place on the land set out on the attached Plan.

Signed

*Nick Fagan*

Inspector

Date 14 November 2022

Reference: APP/R3650/X/22/3296280

***First Schedule***

The continuous use of keeping non-agricultural horses for a period of more than 10 years.

***Second Schedule***

Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The Planning Inspectorate

# Plan

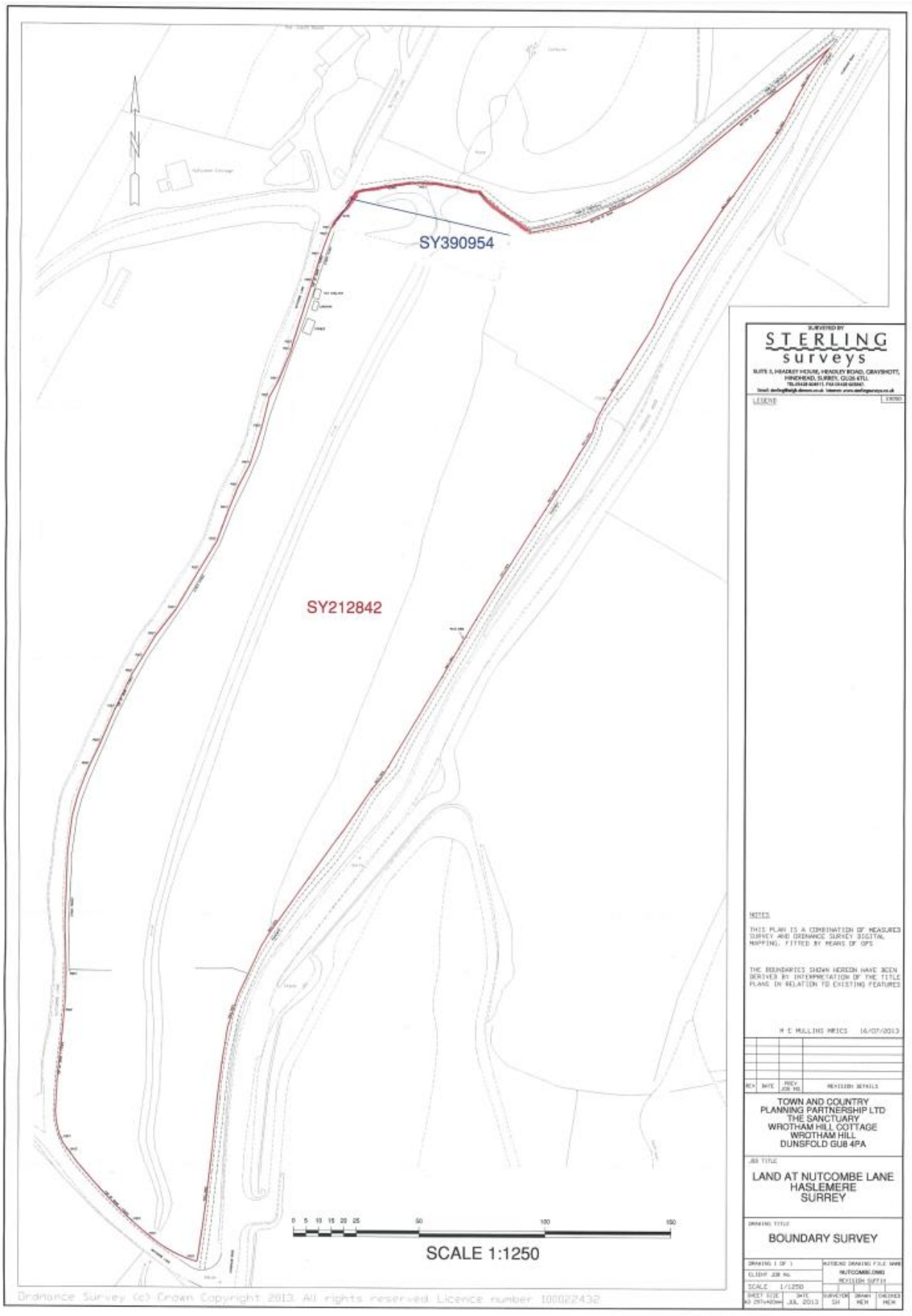
This is the plan referred to in the Lawful Development Certificate dated: 14 November 2022

**by Nick Fagan BSc(Hons) DipTP MRTPI**

**Land opposite junction of Glen Lea, Nutcombe Lane, Hindhead, Surrey GU26 6BP**

**Reference: APP/R3650/X/22/3296280**

Scale:1:1250


SY390954
SY212842
SURVEYED BY
STERLING
surveys
SUITE 3, HEADLEY HOUSE, HEADLEY ROAD, GRAYSHOTT, HINDHEAD, SURREY, GU26 6TU.
LEGEND
NOTES
THIS PLAN IS A COMBINATION OF MEASURED SURVEY AND ORDNANCE SURVEY DIGITAL MAPPING, FITTED BY MEANS OF GPS.
THE BOUNDARIES SHOWN HEREON HAVE BEEN DERIVED BY INTERPRETATION OF THE TITLE PLANS IN RELATION TO EXISTING FEATURES.
H E MULLINS MRICS 16/07/2013
REVISION DETAILS
TOWN AND COUNTRY PLANNING PARTNERSHIP LTD
THE SANCTUARY
WROTHAM HILL COTTAGE
WROTHAM HILL
DUNSFOLD GU8 4PA
LAND AT NUTCOMBE LANE
HASLEMERE
SURREY
BOUNDARY SURVEY
SCALE 1:1250
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**Schedule of Conditions – Appeal B**

1. The plan number to which this permission relates is the Location Plan at 1:1250 dated July 2013. The development shall be carried out on the land within the approved plan.

   Reason: In order that the development hereby permitted shall be fully implemented in complete accordance with the approved plans and to accord with Policy TD1 of the Local Plan 2018 (Part 1) and retained Policies D1 and D4 of the Local Plan 2002.

2. No lighting shall be installed within the application area to facilitate the proposed use without the written consent of the Local Planning Authority.

   Reason: To prevent light pollution to the detriment of the value of the landscape in accordance with Policies RE1, RE3 and TD1 of The Local Plan Part 1 2018, Policy H10 of the Haslemere Neighbourhood Plan 2013-2032 and Saved Policies D1 and D4 of the Waverley Borough Local Plan 2002.

3. No more than four horses shall be kept on the land at any one time.

   Reason: In the interests of the amenity of the area in accordance with Policy TD1 of Local Plan (Part 1) 2018, retained Policies D1, D4 and RD13 of Local Plan (2002).