



Appeal Decisions

Inquiry Held on 1, 2 and 3 February 2023

Site visit made on 3 February 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2023

Appeal A: APP/M1710/X/21/3271902

The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG

- 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 Ms Alex Bett, Moonlight Ridge Stables Ltd, against the decision of East Hampshire District Council.
- The application Ref 56449/001, dated 30 November 2020, was refused by notice dated 3 February 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 Existing use of the site (being land extending to 9.64 acres with buildings sited thereon) for commercial equine purposes.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/M1710/W/22/3305231

The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Ms Alex Bett, Moonlight Ridge Stables Ltd, against the decision of East Hampshire District Council.
- The application Ref 56449/003, dated 24 March 2022, was approved on 11 August 2022 and planning permission was granted subject to conditions.
- The development permitted is Retention of a mobile home on the land for a minimum of 3 years as temporary essential rural/equine worker accommodation and change of use of all buildings and land for commercial equine use as a livery yard and stud.
- The conditions in dispute are Nos 1, 2, 3, 4, 5, 7, 8, 10 and 11 which state that: 1. This permission shall be restricted to a limited period expiring on 12th August 2025 when the uses hereby permitted shall cease. Within one month of the expiry of this permission, the mobile home, menage, and other structures shall be permanently removed from the site, and the site re-instated in accordance with details which shall be submitted to, and agreed in writing by, the Local Planning Authority; 2. The permission shall enure solely for the benefit of the applicant; 3. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order) the occupation of the mobile home hereby approved shall be limited to a person solely employed by Moonlight Ridge Stables Ltd; 4. The site, and menage, stables, and other structures hereby permitted shall only be used to provide mixed equine livery (full and part only, including foaling livery, livery for visiting mares to stallion), and also breeding and a stallion standing at stud. 'Do-It-Yourself' ('DIY') livery shall be limited to 3 horses at any one time and shall be 'at grass' only. At no time shall the stables be used in connection with the provision of DIY livery. An accurate and up-

to-date record of all horses receiving livery services by Moonlight Ridge Stables Ltd shall be maintained at all times and shall be made available for the inspection of the Local Planning Authority at any time. If at any time the land and/or building ceases to be used or required for such purposes the menage, stables, and other structures shall be removed shall be removed and the site re-instated to the satisfaction of the Planning Authority; 5. Within one month of the date of this approval a scheme for foul and surface water drainage (including calculations supported by a percolation test to BRE 365, details of surface water run-off, and details of the septic tank drainage field and drainage run) shall be submitted to, and approved in writing by, the Local Planning Authority. Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests.

The development shall be carried out in accordance with the approved details within one month of the date of any approval of details and shall be permanently retained and maintained thereafter; 7. The mobile home shall at no time be replaced, or relocated within the site; 8. Within one month of the date of this approval, the enhancement measures detailed in Section 7 'ENHANCEMENT RECOMMENDATIONS' of the submitted 'Preliminary Ecological Appraisal Report' by Darwin Ecology Ltd (February 2022) shall be fully implemented and details of which shall be submitted to, and approved in writing, by the Local Planning Authority; 10. No further stables, moveable structures, or field shelters or horse jumps, other than those shown on the approved drawings shall be erected or moved onto the site without the prior written consent of the Local Planning Authority; 11. The development hereby permitted shall be carried out in accordance with the

following approved plans and particulars:

Planning Application Form

CIL Form

1720/PL/08b - Planning Application Drainage – May 22 (received 25/05/22)

1720/PL/07b - Planning Application Location/ Site Plan – May 22 (received 25/05/22)

1720/PL/09 - Planning Application Location/ Site Plan

HM Land registry Official Copy of Title Plan – Title Number SH42830 (received 24/05/22)

HM Land registry Official Copy of Title Plan – Title Number SH32555 (received 24/05/22)

Planning Statement

Photographs of mobile home

Arboricultural Impact Assessment Report by Aspect Tree Consultancy (dated 18/03/22)

05777 LSP 18.03.2022 – Tree Planting Plan – 18/03/22

05777.TCP. 18.01.2022 – Tree Constraints Plan – 17/01/22

Tree Survey by Aspect Tree Consultancy (dated 17/01/22)

MRS7.Appendix – Environment Agency Flood Map for Planning (dated 24/03/22)

Site of 'Klargester' Septic Tank Plan

'Sigma Shallow Dig Septic Tank' Specification details

Mobile home floor plan, elevation, and roof plan

Preliminary Ecological Appraisal report by Darwin Ecology (dated February 2022)

Information to Support a Habitats Regulations Assessment by Darwin Ecology (dated February 2022)

Moonlight Ridge – 3 Year Turnover Business Plan (received 06/07/22)

Moonlight Ridge – 3 Year Stud Plan (received 06/07/22)

Copies of Equine Passports (received 05/07/22)

Email to the Council from J. Banks (dated 01/07/22)

Static Caravan Dimensions and Layout Plan (received 27/06/22)

17/20/PL/10 – Planning Application Survey – June 22

JBMRs.Sheds Vn2 – Position and details of existing sheds within the site (received 27/06/22)

Photograph of Mobile home front elevation with porch (received 27/06/22)

17/20/PL/09a – Planning Application Location / Site Plan - June 2022

Current Liveries June 2022 (received 21/06/22)

Stud 3 Year Plan Vn2 (received 21/06/22)

Moonlight Ridge Stables – Yard Code of Conduct (received 21/06/22)

- The reasons given for the conditions are: 1. To ensure that the site is used for equine livery purposes only since it lies within a rural area to which restrictive planning policies apply and where only that development needed to meet the overriding need in the interests of agriculture or forestry or other enterprise is normally permitted and to secure its removal if no longer required for agricultural purposes; 2. The site lies within predominantly rural surroundings where residential development is not normally permitted; 3. The site is in an area where a new dwelling would not normally be permitted except for the overriding need in the interests of agriculture or forestry or other enterprise; 4. a) The justification provided by the applicants for the retention of the mobile home is borderline and predicated on an apparent 'essential' need for a 24 hour on-site presence in connection with the operation of Moonlight Ridge Stables Ltd however at present, DIY forms a percentage of the income of the business. By its nature DIY does not require a 24 hour onsite presence and the approval of the temporary retention of the mobile home is to allow the applicant the opportunity to grow the part livery and breeding activities at the site as proposed. b) To also ensure that the site is used for mixed equine livery (as defined above) and breeding purposes only since it lies within a rural area to which restrictive planning policies apply and where only that development needed to meet the overriding need in the interests of agriculture or forestry or other enterprise is normally permitted and to secure its removal if no longer required for equine livery and breeding purposes; 5. To ensure adequate provision for foul and surface water drainage; 7. In the interests of the amenities of the area and wider landscape; 8. To protect biodiversity in accordance with the Wildlife & Countryside Act 1981, the NERC Act (2006), NPPF and with Policy CP21 of the East Hampshire District Local Plan: Joint Core Strategy. All ecological mitigation and enhancement measures must be implemented in strict accordance with the submitted details; 10. To allow the Local Planning Authority to retain adequate control of the uses of the site in the interests of the amenities of the site and wider landscape, and the amenities of the occupants of neighbouring properties; 11. To ensure provision of a satisfactory development.

Summary of Decision: The appeal is allowed and the planning permission is varied, subject to the conditions set out below in the Formal Decision.

Appeal C: APP/M1710/W/20/3249462

The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG

- 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 Miss Jessica Deans, Moonlight Ridge Stables Ltd, against the decision of East Hampshire District Council.
- The application Ref 56449, dated 30 May 2019, was refused by notice dated 23 September 2019.
- The development proposed is a New permanent essential rural worker's dwelling.

Summary of Decision: The appeal is allowed and planning permission granted, subject to conditions set out below in the Formal Decision.

Applications for costs

1. At the Inquiry an application for costs was made by Ms Alex Bett, Moonlight Ridge Stables Ltd, against East Hampshire District Council. An application for Costs was also made by the Council against Ms Alex Bett. These applications are the subject of separate Decisions.

Preliminary Matters

2. With regard to the matter subject to Appeal B, the appellant is aggrieved that the Council modified the description of the proposed development, without the appellant's agreement. The modifications include changing the proposed use from "commercial equine use to include use as a commercial livery yard and stud" to "commercial equine use as a livery yard and stud"; use of the word 'accommodation' rather than 'temporary essential rural worker dwelling'; deleting reference to '24 hours, 365 days per year' in terms of usage of the mobile home over the temporary period and deleting reference to 'pending resolution of the planning position regarding the provision of a permanent rural worker's dwelling'. Concern was also expressed that the wording 'Notice of Temporary Permission' was applied to the decision banner.
3. It was clarified in evidence given at the Inquiry that in terms of the proposed 'commercial equine use' the appellant is seeking only to undertake livery and stud related activities there. It was confirmed that there is no proposal to operate a riding school on the site.
4. The appellant has expressed concern about the significance of case law in terms of the amended development description¹. It should be noted that the 'Finney' principles are not applicable in relation to this type of appeal, which is made directly against conditions imposed on a planning permission. This is because this type of appeal includes the powers for the Inspector to consider the matter afresh and 'deal with the application as if it has been made to them in the first instance'. In light of this, in such cases the Inspector also has the powers to amend the description of the development should they consider it necessary.
5. In the context as set out above, I am satisfied that it is possible to consider the proposed development, with amended description, without causing prejudice to the appellant.

Appeal A

6. Uses and operations are lawful at any time if no enforcement action may be taken in respect of them, whether because they did not involve development, require planning permission or because the time for enforcement action has expired (s191(2)).
7. There is a further proviso that the development must not contravene the requirements of any enforcement notice then in force. I have not been told that there was any extant enforcement notice relating to the property at the time of this application.
8. In this case the appellant is relying on the passage of time. In order to succeed on this ground, in accordance with Section 171B(3) of the Act, it is necessary to consider whether, on the balance of probability, the use of the property for commercial equine purposes, has continued for a period of ten years or more prior to the date of the application, that being 30 November 2020, so as to be immune from enforcement.
9. The onus of proof rests with the appellant to provide evidence to support their case. It has been suggested by the appellant that the specific circumstances of

¹ *Finney v Welsh Ministers*, 2019 WL 05699117 (2019)

this case has resulted in key evidence not being forthcoming. Irrespective of whether this is true, I am required to reach a decision on the basis of the evidence before me. No allowance is made therefore for the potential significance of unseen or unheard evidence.

10. From discussion at the Inquiry, it seems to me that the umbrella term 'commercial equine purposes' may encompass livery, horse breeding and horse riding school uses, either alone or in some combination with one another. The appellant claims that the continuity of use in relation to which the LDC is sought specifically focuses on commercial livery. Therefore despite the potential breadth of uses encompassed within the term 'commercial equine', it would be possible for me to narrow any grant of certificate to exclude all but commercial livery should I find the appellant's case to have been made out.
11. It is undisputed that the appellant's company acquired the appeal site in 2015. The appellant's evidence is that the commercial equine use has continued since that date the use that had been taking place on the site since at least 2008. Various documents have been submitted in support of the application, including letters and sworn statements from the appellant and her daughter, who are directors of Moonlight Ridge Stables Limited, from those who previously owned or worked on the site, from a company with a business connection with the site and from local residents who claim to have long standing knowledge of the site.
12. The Council's case is that the various sworn statements have not been supplemented by any supporting corroborating evidence, such as account details and utility bills. Accordingly it suggests that the information provided is too vague.
13. However more significantly it claims that the use of a mobile home on the site for residential purposes resulted in the introduction of a further unlawful use within the last ten years. Whilst, in this context, it does not dispute the continuous use of the site since 2015 for commercial livery purposes, the effect of introducing the residential use was to create a mixed use for commercial livery purposes and a residential caravan site, which therefore gave rise to a material change of use of the land.
14. An interruption in the ten-year period can take the form of some cessation in activity or change to the character of the use. There can be no significant cessation in the use or intervening material change of use of the planning unit, including in the composition of any mixed use during the ten-year period.
15. At the Inquiry the appellant confirmed that the mobile home on the site contained all the facilities that would enable its use for residential purposes including living, sleeping, cooking and washing accommodation. The appellant accepts within their statement of case that the mobile home is unauthorised for residential use; also that there has always been a 24-hour residential presence on the site, facilitated by the mobile home, from a point following her acquisition of the business (such permanent presence undisputed to have been since April 2016).
16. Where residential use potentially needs to be carried out in connection with other uses, such as in this case where there may be a functional requirement for someone to live on or close to a commercial equine business, the occupation of the caravan might be regarded as functionally related to the equine use of the land. However the residential use will normally be regarded

as a separate main use, rather than ancillary use. This is why a condition must be imposed to control who occupies the residential development.

17. Whilst the appellant refers to continuing the residential use in a way that was taking place in any event prior to their acquisition of the site, I am not persuaded from the evidence before me, on the balance of probability, that a 24-hour full time residential presence on the site had been taking place continuously before the appellant's acquisition, as opposed to use of the mobile home for the purposes of rest, shelter and occasional overnight accommodation². This distinction may be perceived as small but would be noticeable enough in terms of less activity on (and use of) the site to distinguish the caravan from being in continuous residential use. My view in this regard is not changed by the apparent historic valuation of the caravan as a dwelling for Council Tax purposes, nor by the apparent occasional use by the current main occupier of the mobile home of facilities at an alternative address.
18. Drawing these considerations together it seems to me that that the introduction of the unlawful residential use since April 2016, having regard to the appellant's own evidence³ and that of her daughter⁴, resulted in a material change of use to a mixed use which served to interrupt the continuity of commercial livery as the sole primary use of the site. This means that the appellant is unable to demonstrate 10 years continuous commercial livery use of the site during the 10-year immunity period immediately preceding the date of the LDC application, that being 30 November 2020.
19. However this is not necessarily the end of the matter because any 10-year period of continuous use before the application date would potentially have been sufficient to accrue lawfulness. Notwithstanding the unauthorised material change of use to a mixed use which included residential, I am mindful that s57(4) of the Act provides that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which (in accordance with the provisions of this Part of this Act) it could lawfully have been used if that development had not been carried out. In other words it would be possible to revert to a commercial livery use had such a use accrued lawfulness prior to the material change to the unauthorised mixed use.
20. It is therefore important to examine the 10-year period prior to the material change to the mixed use (commercial livery and residential). From the appellant's evidence this period would be defined as April 2006 to April 2016.
21. In this respect, a number of the supporting statements have referred to a livery business in existence for many years, with at least one statement referring to the site being used continuously for commercial equestrian purposes since 2004. However the previous owner, having acquired the wider estate in 2003 states that Moonlight Ridge Stables were in commercial equestrian use between 2007 and 2014 when the land and buildings were tenanted to third parties who ran their own commercial operations⁵. Statements by others suggest that between 2004 and 2006 the equine use may have been at a personal level, before reverting to commercial use after

² Affidavit of Q Woods dated 6 February 2021 refers to the mobile home being used at various times for overnight accommodation.

³ A Bett representations to Inquiry.

⁴ Affidavit of J Deans dated 6 February 2021.

⁵ Affidavit of J Marshall dated 14 February 2021.

- this⁶. It therefore seems, particularly in the absence of any corroborating evidence to the contrary, that a material break in commercial use of the livery stables between 2004 and 2006 cannot be discounted⁷. I am therefore unable to conclude, on the balance of probability, that the appeal site was used continuously for commercial equine purposes between April 2006 to April 2016.
22. The Council has set out a further reason why it considers the grant of an LDC to be unjustified. This is because there is insufficient evidence to demonstrate that when the appeal site was acquired by the appellant in 2015, a material change of use did not occur by way of the intensification of livery use on the site and the corresponding exclusion of agriculture there.
 23. It appears that the site was historically part of a much larger estate, belonging to Home Farm which would connote agricultural use. However the aforementioned supporting statements do not refer to agriculture having taken place on the appeal site itself, and do not therefore exhibit the same ambiguity in this regard that I have found above in terms of the continuity of the commercial livery use. I therefore find it more likely than not that a material change of use did not take place from that of commercial livery and agriculture to commercial livery only, at the time the appeal site was acquired in 2015. This does not however overcome the flaw in the appellant's case that I have identified at paragraph 21 above.
 24. I am mindful that planning practice guidance states *"In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."*
 25. For the reasons given above, I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, continuous use of the land in question for commercial livery purposes over the requisite timescale. There is insufficient justification for the grant of an LDC on the balance of probability.
 26. I therefore conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of "Existing use of the site (being land extending to 9.64 acres with buildings sited thereon) for commercial equine purposes" was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

Reasons

27. There is no dispute between the parties that the proposed use of the site for commercial livery and stud purposes ought to be granted permanent planning permission. There is also no dispute between the parties over the justification for granting a temporary 3-year planning permission for the residential use by

⁶ See affidavit of Q Woods dated 6 February 2021– QW Plan C and letter from A Blaber dated 12 February 2021.

⁷ This includes having had regard to the affidavits of J and W Lewis (31 January 2021), in which reference is made to having only known of the stables being used on a commercial basis.

way of the mobile home, albeit I acknowledge the Council say the justification for the temporary permission is 'borderline'.

28. Notwithstanding this I have no reason to take a contrary view to the parties that a temporary permission for the residential use ought to be granted; also that a permanent permission in relation the proposed commercial livery and stud uses would be appropriate.

Conditions

29. The wording of conditions was discussed with the parties during the Inquiry, at a 'roundtable' session. Agreement was reached by the parties as to the need, in principle, to retain a majority of the disputed conditions, but with revised wording in some cases.
30. Conditions are required limiting the residential use to a temporary period, thereafter requiring the removal of the mobile home from the land, and restricting the occupation of the mobile home to a person employed in connection with the business, in recognition that the justification for the mobile home is linked to the future viability of the equine business and to secure the removal of the structure if no longer required for that purpose. A further condition is required restricting the number of DIY liveries at the site, as this type of livery, in itself, does not necessitate a residential presence on the site.
31. A condition is required prohibiting the development of a riding school to protect the living conditions of neighbours and in the interests of highway safety. A condition is required to secure details of surface water and foul drainage in the interests of flood avoidance and environmental protection. A condition is needed to limit the use of the parking spaces on the site to ensure adequate provision is maintained. Conditions are required preventing the relocation of the mobile home, restricting the size of any replacement structure and prohibiting the provision of additional stables and field shelters, all in the interests of visual amenity.
32. Conditions requiring the implementation of biodiversity enhancement measures, in the interests of environmental protection, and details of external lighting in the interests of residential amenity and highway safety are required. A condition confirming the approved drawings is required to ensure the provision of satisfactory development.

Appeal C

Main Issues

33. The main issues are whether there is sufficient justification, by way of essential need, for a new permanent dwelling in the countryside; the effect of the development on the character and appearance of the area and the effect of the development on highway safety.

Reasons

Essential need

34. The parties do not dispute that the site of the proposed dwelling would be within the countryside. National and local planning policy seeks to strictly control the development of new dwellings there. The National Planning Policy Framework (the Framework) states that the development of isolated homes in

the countryside should be avoided unless, amongst other things, there is an essential need for a rural worker to live permanently at or near their place of work.

35. Saved Policy H14 of the East Hampshire District Council Local Plan 2006 (LP) states that outside settlement policy boundaries residential development will only be permitted where it is essential to house a full-time worker in agriculture, forestry or other enterprise who must live on the site rather than in a nearby settlement. The policy goes on to set out a range of criteria against which that need will be assessed, including functional requirement and financial viability, the availability of alternative suitable accommodation and detailed siting. Notwithstanding this the parties agree that the question of essential need in this case turns on the functional requirement and financial viability of the enterprise and that this approach would not be inconsistent with the Framework.
36. In terms of consistency between national and local policy, the Framework does not require that regard must be had to financial considerations. However, there is nothing to preclude local policies from setting out how the question of essential need is to be judged. I therefore concur with the view that in this respect national policy and Policy H14 should not be read as inconsistent with one another.

Functional requirement

37. From the evidence provided the business is focused on the provision of 'part livery', where all care for the horses, with the exception of riding for the purpose of exercise, is provided. More recently the business has expanded to include horse breeding, with two foaling boxes being utilised. At present there are eight part liveries on the site and two broodmares and a stallion associated with the breeding side of the business.
38. The supporting text to Policy H14 states that a functional need to live at a particular site could be justified where the care of animals or agricultural processes require immediate attention at short notice. It is undisputed that the appellant uses the mobile home on the site to facilitate a continuous residential presence there, whether by herself or another person providing occasional relief cover. It is also unchallenged that alternative accommodation available at her father's home in Farnborough is at least a 30-minute drive away.
39. The appellant's justification that there is a functional requirement for a residential presence on the appeal site is based mainly on the need to secure animal welfare and to a lesser extent site security. The appellant cites an incident that occurred previously where a new-born foal required emergency, life-saving intervention followed by monitoring throughout the night. Had there not been an employee present on site at the time, the appellant says that the foal is certain not to have survived. They also say in evidence that horses can be susceptible to certain types of potentially fatal health complications such as colic. This has resulted in a number of medical call outs, or the need for veterinary attention away from the site, outside normal working hours, and subsequent monitoring through the night.
40. The number of unexpected incidents requiring immediate attention appear to have been relatively few in recent years. However I acknowledge that illnesses such as colic may rapidly become very serious, or even life threatening, if not

attended to quickly. I am also mindful that if the welfare of horses on the site was seen to be compromised or vulnerable, particularly in the context of the appellant living a considerable distance from the appeal site, this is likely to adversely affect confidence in and therefore the reputation of a company with a business ethos based on animal care. I also acknowledge that the appellant's business plan seeks to develop the foaling element of the business. Although the likelihood of a life-threatening incident to a foal occurring may be relatively low, the severity of impact on a developing business of this nature and in these circumstances, resulting from such an emergency, may be considerably higher.

41. That there is a lack of reasonably affordable alternative accommodation in the vicinity of the site is not an issue between the parties and I have no reason to take a contrary view. I also concur with the view that a half hour commute time is not necessarily conducive to checking and monitoring the welfare of animals, or to the security of the site, outside normal working hours.
42. I have taken into consideration the Council's representations regarding the possibility of using existing amenities on the site, temporarily in order to deal with an emergency, should it occur. However, whilst this may for example promote surveillance of foaling, I am not persuaded that it would be an entirely effective way of dealing with all types of unforeseen welfare emergency that may arise in connection with the business on an ongoing basis.
43. I am mindful that the Council, in its closing submissions, states that in granting planning permission for the temporary use of the mobile home as a dwelling it "accepted the appellant's business had demonstrated a need to accommodate a rural worker on site 24 hours a day, 365 days per annum". I concur with the view that there is a functional need for an on-site residential presence at all times in order to secure the high standard of animal welfare sought by the appellant.

Financial viability

44. The supporting text to Policy H14 states that financial viability is assessed in terms of the enterprise having been established for at least three years, profitable for at least one of them, being currently financially sound and having a clear prospect of remaining so.
45. The appellant has presented financial trading accounts for the business over the years 2016 to 2022. This information includes a profit and loss table showing that the business made a loss in its first year of trading, in 2016, of some £14,700. However since this time the business has traded profitably in each year, albeit the levels of operating profit year on year have not been significant.
46. The Council seeks to draw out the distinction between profitability and financial soundness, emphasising that there is a need to demonstrate both in accordance with policy guidance. It challenges the appellant's accounts on several grounds. It identifies discrepancies within the accounting information provided, which it says serves to highlight ambiguities as to the level of profitability. Notwithstanding this it sets out that the business is neither sufficiently profitable to pay the wages of a full-time equivalent worker now, nor to finance a second full-time equivalent worker said to be required in accordance with the appellant's own case; and is not sufficiently profitable to allow for reinvestment in the business, or the construction of the proposed

- permanent dwelling itself. All of this, it says, casts doubt as to the present financial soundness of the business, and underlines the need for the matter to be further tested, hence the grant of temporary permission for the mobile home.
47. The apparent discrepancies in the appellant's accounts information do not assist the case for the development. Notwithstanding this I find no compelling reason to doubt the most conservative assessment of the business' financial status, as presented on the aforementioned profit and loss table. I note that despite the Council's grave reservations it does not appear to doubt that the business has at least remained profitable over time.
 48. Taking the trading accounts presented, if in any given year the value of the Directors' remuneration were to be added to the operating profit, whilst discounting the payment of a one off Covid recovery grant in 2021, these sums would not exceed and would often fall significantly below £14,000. At the Inquiry, it was undisputed that the sums would fall notably below national minimum wage levels⁸.
 49. Notwithstanding this it is not unreasonable to think that a person might be prepared to accept a lower level of financial remuneration, when compared with the national minimum wage, and to adjust their personal living costs accordingly, in return for a lifestyle and vocation that is felt to be rewarding in other respects. That the business has continued for several years, despite yielding low wages, supports this hypothesis. That the appellant has also been prepared to accept the limited space and standard of living offered by the mobile home, for a relatively long time, should perhaps also be taken as indicative of a dedication to this line of work. Furthermore it does not take into account the possibility that personal savings and financial support from other family members may also be available to draw upon in future.
 50. The business has been able to demonstrate profitability over and above the test as set out within the local policy. However it is necessary to consider whether it is sufficiently financially sound to avoid a significant risk of it failing and leaving behind a dwelling that would not otherwise be approved.
 51. It is significant in my view that the business has managed to endure for several years, despite the absence of significant profits to date. Even so, it seems to me that it has now been tested over a relatively long time, with some seven years of accounting information provided. This timescale is not an insignificant proportion of a person's working life.
 52. I am also mindful that in 2021 the appellant purchased additional grazing land (some 6.85 acres) and has introduced a horse breeding programme at the site. These factors clearly indicate an ambition to invest in the business through expansion and diversification. I am in no doubt that the appellant genuinely seeks to establish a successful business on the site and I am not provided with any evidence to suggest that there is not a strong demand within the area for the type of equestrian services being offered there. I concur with the Council that the performance of the business to date suggests that a required second full-time worker would not be affordable at present. However I would interpret this as imposing a restraint on how quickly the business might develop, rather

⁸ Based on the appellant's business consultant, L Hiscock, calculation of a labour unit of one person equating to 2,225 hours per year.

than a fatal blow, particularly in light of the business having survived with a single full-time equivalent worker for a number of years.

53. As to the Council's criticism that the accounting information fails to demonstrate that the business would yield sufficient funds to finance the construction of the proposed permanent dwelling, I am mindful that there is no policy basis for this position. It may be the case that existing assets are available which serve to reduce borrowing requirements in this regard. In saying this I am mindful that the supporting text to Policy H14 seeks to avoid dwellings which are unusually large in relation to the needs of the enterprise, or unusually expensive to construct. I further consider the scale of development later in my decision.
54. Drawing the aforementioned considerations together, it seems to me that the business is robust and has a clear prospect of remaining financially sound. Furthermore, in as much as the profitability and financial soundness test is met, my finding would not be at odds with those of the Inspector who considered a previous, albeit ultimately unsuccessful, appeal for a permanent dwelling on the site⁹.
55. I acknowledge that legislation and policy guidance¹⁰ do not state that a residential presence is required in every circumstance where livestock is present. However I conclude, on the basis of the circumstances specific to this case, that an essential need for a new permanent dwelling on the site in order to house a full-time worker connected with the livery and foaling business taking place there has been demonstrated. Accordingly the proposal complies with the Framework, with Policy CP19 of the East Hampshire District Local Plan Joint Core Strategy 2014 (CS) and with Policy H14, criteria (e), of the LP insofar as this seeks a functional requirement for such, and the financial viability of the enterprise to be established. Because of essential need and compliance with Policies CP19 and H14 in this regard, I do not consider the proposal to be at odds with Policies CP10 or CP14 of the CS which are concerned with the spatial strategy for housing and affordable housing respectively.
56. Policy CP2 of the CS is concerned with the spatial strategy for new development and not directly relevant to this particular matter. For the avoidance of doubt, I concur with the Council's view that Policy CP6 of the CS relates, amongst other things, to farm diversification. This policy has not therefore influenced my findings.

Character and Appearance

57. The appeal site is within an area of undulating, wooded countryside, accessed from and adjacent to Frensham Lane which runs across a tree lined ridge in the landscape. Upon entry to the site, the land slopes markedly northwards towards a flatter arrangement of extensive paddocks.
58. Residential dwellings, varying in design, are sporadically dotted along Frensham Lane, with the dwellings known as New Farm Cottage, a 1.5 storey property with shorter detached garage, to the immediate west and Hanger Lodge a greater distance to the east. The proposed dwelling, a part 2-storey

⁹ Appeal reference APP/M1710/W/18/3201796

¹⁰ The Animal Welfare Act 2006; DEFRA Code of Practice for the Welfare of Horses, Ponies, Donkeys and their Hybrids.

and part single storey building, would roughly conform with the forward building line of New Farm Cottage, with Hanger Lodge more recessed and sited at a lower ground level.

59. The proposal follows in the wake of a previous unsuccessful appeal for a permanent dwelling on the site¹¹. Though occupying the same building footprint, it is common ground the key differences are that the current proposal has been reduced in height (by approximately 0.4 metres), incorporates a so-called half hip to the west elevation roof; and has windows set into the eaves.
60. The most important visual receptors for the development are Frensham Lane and a bridleway opposite the site. From my visit it was apparent that the appeal site, though close to the road, would be substantially screened, even allowing for seasonal leaf fall, by dense road-side planting. A dense line of trees would be retained directly in front of the proposed dwelling, such that clear visibility would be limited to relatively fleeting glimpses across the open entrances of the site and the New Farm Cottage driveway. The house would replace views of Hanger Lodge, presently visible from the latter viewpoint, thus mitigating the visual impact of new built development to a degree from this perspective.
61. Views of the dwelling from the bridleway would be screened or heavily filtered by tree planting. Though the development would be visible to a degree from various locations to the north within the appeal site, these are not public vantage points. Furthermore although the dwelling would be noticeable infill development, its visual and landscape impact would be substantially reduced by the screening or filtering effect of mature planting and by its setting against a background of mature trees along the ridge.
62. Whilst I concur with the view that the proposed building would serve to consolidate built development, its visibility both at short distance and in the wider landscape would be very limited. Ground levels would also be commensurate with those of the adjacent New Farm Cottage. Conditions could be imposed to establish appropriate slab levels and to ensure the use of suitable external materials.
63. During the appeal process, the appellant submitted a revised proposal for the dwelling, effectively shortening the single storey eastern wing and omitting a chimney¹². The appellant requested that consideration be given to this revision, should I find the development as proposed, and considered by the Council, to be unacceptable. I am mindful of the Council's position that consideration of this revised drawing is not a matter that should be before me, because it has not been subject to the usual consultation process. The Council consider the amendment to be a material alteration to the scheme.
64. I have given careful consideration to this matter. The revised proposal would be substantially similar in design, though smaller in scale and with fewer windows on the south elevation. Nevertheless I find that the revised proposal is not substantially different from the scheme for which the application was made.
65. Notwithstanding this, from my inspection of the site it seems to me that the siting of the revised scheme means that the dwelling would be less visible

¹¹ Appeal reference APP/M1710/W/18/3201796

¹² Drawing ref: 1720/PL/06

through the wide-open entrance of the site, viewed from Frensham Lane. In addition the shorter single storey eastern wing would appear more proportionate with the two-storey element of the building. I am not persuaded that the omission of the chimney would be significant, when taking into consideration that such features have not been identified by others as a key design feature or local building characteristic. The reduction in glazing would not significantly affect the design of the building. I therefore conclude that accepting this revised drawing for consideration, as part of the appeal, would not result in prejudice or injustice to the Council or to any third parties.

66. Policy H14 of the LP requires that the dwelling is commensurate in size to the established functional requirement and financial viability of the enterprise. The supporting text to Policy H14 states that in general an agricultural worker's dwelling should not exceed 140 square metres, measured externally, inclusive of all living accommodation and farm office.
67. By submitting this revision for consideration and confirming at the Inquiry that they would be content for a positive decision to be based on this revised design, the appellant effectively concedes that the design refused by the Council would exceed what they actually require. The revised proposal, by contrast, would achieve external floorspace dimensions marginally within the aforementioned guidelines. These factors lead me to the view that it would be commensurate with the operation taking place on the site and would therefore accord with Policy H14 in this regard.
68. Furthermore, as set out above, I find the revised proposal to be more visually fitting with the openness of the site entrance. It would also meet the Policy H14 requirement of where possible being located within or adjoining an existing group of buildings that already have a residential content. I have taken into account the appellant's Landscape and Visual Impact Assessment which concludes the (larger) development would have only a relatively small adverse impact.
69. Drawing the above considerations together I conclude that the revised proposal, which would be smaller in scale and footprint compared to that considered at the previous appeal, would not result in harm to the character and appearance of the area or wider landscape because of its siting, massing or plot coverage. The proposal therefore conforms with Policy CP29 of the CS and with the Framework insofar as they seek to secure very high standards of design.

Highway Safety

70. The Council's concerns in this regard focused on the shortage of provision for car parking within the site. Since the Council's decision details have been provided showing two car parking spaces to serve the dwelling and a further seven spaces to serve the equestrian business.
71. Neither the Council nor the highway authority have objected to the proposed updated arrangement and I see no reason to take a contrary view. I conclude that the development would not result in harm to highway safety, as a result of vehicles being displaced onto the public highway, and would accord with Policy CP31 of the CS in this respect. I further conclude that the development would not lead to overspill car parking around the site, resulting in visual harm, and

would not therefore be in conflict with Policy CP29 of the CS or with the Framework for this reason.

Other Matter

72. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

Conditions

73. Conditions are needed to agree external materials of the dwelling, finished floor levels, details of soft landscaping and the removal of the mobile home when no longer required in the interests of visual amenity. Conditions are required to secure details of surface water and foul drainage in the interests of flood avoidance and environmental protection. A condition to ensure reliance on a proportion of energy supply from renewable or low carbon energy sources is required, having regard to climate change and environmental protection.
74. Conditions are required removing permitted development rights for extensions and alterations to the dwelling and curtilage and to require use of obscure glazing where appropriate in order to protect visual amenity and the privacy of neighbouring residents.
75. Conditions are needed to provide and limit the use of the parking spaces on the site and restricting the position of gates to ensure adequate parking provision is maintained and in the interests of highway safety.
76. A condition is needed restricting the occupation of the dwelling to a person employed or previously employed in connection with the business or in connection with agriculture, in recognition that the site is located in an area where a new dwelling would not normally be permitted and is approved on the basis of being essential to house an equine worker in connection with the business operating there.
77. Conditions requiring the implementation of biodiversity enhancement measures, in the interests of environmental protection, and details of external lighting in the interests of residential amenity and highway safety are required. Conditions confirming the approved drawings and requiring details of cycle and bin storage are required to ensure the provision of satisfactory development.
78. I am satisfied, having had regard to the comments of the Council's Environmental Health Officer and to the long standing equine use of the site, that a condition to require checks for ground contamination would not be necessary in this case.

Conclusion

79. For the reasons given above I find that the proposed development would accord with Policy CP1 of the CS which states that the Council will take a positive approach towards sustainable development, as set out in the Framework. I conclude that the appeal should be allowed.

Formal Decisions

Appeal A

80. The appeal is dismissed.

Appeal B

81. The appeal is allowed and the planning permission Ref 56449/003 for Retention of a mobile home on the land for a minimum of 3 years as temporary essential rural / equine worker accommodation and change of use of all buildings and land for commercial equine use as a livery yard and stud at The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG granted on 11 August 2022 by East Hampshire District Council, is varied by deleting condition Nos 1 to 11 inclusive and substituting for them the conditions set out in the schedule below (entitled Appeal B – Schedule of Conditions).

Appeal C

82. The appeal is allowed and planning permission is granted for New permanent essential rural worker's dwelling at The Old Barn, Frensham Lane, Churt, Farnham GU10 2QG in accordance with the terms of the application, Ref 56449, dated 30 May 2019 subject to the conditions set out in the schedule below (entitled Appeal C – Schedule of Conditions).

R Merrett

INSPECTOR

APPEAL B – SCHEDULE OF CONDITIONS

- 1) The residential use hereby permitted shall be for a limited period being the period of three years from the date of this decision. The residential use shall thereafter be discontinued. Within three months of the aforementioned date, the mobile home shall be removed from the site and the land occupied by the mobile home reinstated in accordance with details which shall have been previously submitted to and agreed in writing by the local planning authority.
- 2) The commercial equestrian use hereby permitted shall be limited to the use of the land as a livery yard, a stud and for foaling, and for the avoidance of doubt does not include the use of the land as a riding school.
- 3) The occupation of the mobile home shall be limited to a person solely employed in the care of horses at Moonlight Ridge Stables Ltd, and to any resident dependants.
- 4) (i) Subject to paragraph (ii) below, the site, manege, stables and other structures shall only be used to provide mixed equine livery (full and part only, including foaling livery, livery for visiting mares to stallion) and also breeding and a stallion standing at stud.

(ii) 'Do it yourself' (DIY) livery shall be limited to three horses at any one time and shall be 'at grass' only. At no time shall the stables be used in connection with the provision of DIY livery.

(iii) An accurate and up-to-date record of all horses receiving livery services by Moonlight Ridge Stables Ltd shall be maintained at all times, listing the name and address of the owner, horse and dates and type of livery. The said record shall be made available for the inspection of the local planning authority at reasonable notice.

- 5) Within three months of the date of this approval a scheme for foul and surface water drainage (including calculations supported by a percolation test to BRE 365, details of surface water run-off, and details of the septic tank drainage field and drainage run) shall be submitted to the local planning authority.

Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests.

The development shall be carried out in accordance with the approved details within three months of the date of any approval of details being given in writing by the local planning authority and shall be permanently retained and maintained thereafter.

- 6) The parking spaces shown on the approved plans shall only be used for the parking of vehicles and not for the storage of horse boxes, trailers, boats and caravans.
- 7) The mobile home shall not be located in any position other than that shown on approved drawing 1720/PL/07b. Any replacement mobile home shall meet the definition of a caravan, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 as amended, with the additional proviso that it shall not be a 'twin-unit caravan'.
- 8) Within the first planting season following the date of this approval, the enhancement measures detailed in Section 7 'ENHANCEMENT RECOMMENDATIONS' of the submitted 'Preliminary Ecological Appraisal Report' by Darwin Ecology Ltd (February 2022) shall be fully implemented and details of which shall be submitted to, and approved in writing, by the local planning authority.
- 9) No external lighting/ floodlighting shall be installed on the site until such details have been submitted to and approved in writing by the local planning authority. The lighting shall be installed, operated, and maintained in accordance with the approved details.
- 10) No further stables or field shelters other than those shown on the approved drawings shall be erected or moved onto the site.
- 11) The development hereby permitted shall be carried out in accordance with the following approved plans:

1720/PL/08b - Planning Application Drainage – May 22 (received 25/05/22)
1720/PL/07b - Planning Application Location/ Site Plan – May 22 (received 25/05/22)
1720/PL/09a – Planning Application Location / Site Plan - June 2022
HM Land registry Official Copy of Title Plan – Title Number SH42830 (received 24/05/22)
HM Land registry Official Copy of Title Plan – Title Number SH32555 (received 24/05/22)
Arboricultural Impact Assessment Report by Aspect Tree Consultancy (dated 18/03/22)
Tree Planting Plan – 05777 LSP – 18/03/22
Tree Constraints Plan - 05777.TCP. 18.01.2022
Tree Survey by Aspect Tree Consultancy (dated 17/01/22)
MRS7.Appendix – Environment Agency Flood Map for Planning (dated 24/03/22)
Site of 'Klargester' Septic Tank Plan 'Sigma Shallow Dig Septic Tank'
Preliminary Ecological Appraisal Report by Darwin Ecology (dated February 2022)
Information to Support a Habitats Regulations Assessment by Darwin Ecology (dated February 2022)

APPEAL B – END OF SCHEDULE OF CONDITIONS

APPEAL C – SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Notwithstanding information given on drawing no. 1720/PL/06, no development above slab level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 3) No development shall commence on site until plans of the site showing details of the existing and proposed ground levels, proposed finished floor levels, levels of any parking areas and the proposed completed height of the development and any retaining walls have been submitted to, and approved in writing by, the local planning authority. The details shall clearly identify the relationship of the existing and proposed ground levels and proposed completed height of the building. The development thereafter shall be carried out in accordance with the approved details.
- 4) No development shall commence on site until details of a scheme for foul and surface water drainage (designed to cater for the 1:100 year + 40% climate change event and supported by detailed drainage layout plan, run-off calculations for the peak event and site percolation tests to BRE 365) has been submitted to, and approved in writing by, the local planning authority. Such details should include provision for all surface water drainage from parking areas and areas of hardstanding to prevent surface water from discharging onto the highway and should be based on site investigation and percolation tests. The scheme shall also demonstrate that there is sufficient capacity within the existing septic

tank. The development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained thereafter.

- 5) The proposed hard surfaces shall either be made of porous materials or provision shall be made to direct run-off water from the hard surface/s to a permeable or porous surface within the site.
- 6) Any gates provided shall be set back a minimum distance of 5 metres from the edge of the carriageway with the adjoining highway. Where gates are installed at the vehicular access, they shall be hung so that they open inwards into the site only.
- 7) No external lighting/ floodlighting shall be installed within the boundary of the site area (as depicted by the broken red line on drawing no. 1720/PL/03B) until such details have been submitted to and approved in writing by the local planning authority. The lighting shall be installed, operated, and maintained in accordance with the approved details.
- 8) The development hereby approved shall not be brought into use until a fully detailed landscape and planting scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall be carried out in accordance with the approved details in the first planting season after first occupation of the development, unless otherwise agreed in writing by the local planning authority.

Any trees or plants which, within a period of 5 years after planting, are removed, die or become seriously damaged or defective, shall be replaced as soon as is reasonably practicable with others of species, size and number as originally approved unless otherwise agreed in writing by the local planning authority.

- 9) On the day on which the new dwelling hereby permitted is first occupied or is practically completed, whichever is the earlier, the existing mobile home within the application site shall cease to be used for any purpose, and within three months of that day the existing mobile home shall be permanently removed from the site, and the land reinstated, in accordance with details which have first been submitted to, and agreed in writing by, the local planning authority.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no extension or alteration to this dwelling under Schedule 2, Part 1, Classes A, AA, B, C, E, and F, and Schedule 2, Part 2, Class A shall be made except with the prior written consent of the local planning authority.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows, doors, or roof lights shall at any time be inserted in the first floor elevations or roof of the dwelling hereby permitted without the prior written consent of the local planning authority.
- 12) Prior to the first occupation of the development hereby approved the first floor window in the elevation of the dwelling hereby permitted (shown on the approved drawings as serving an en-suite bathroom) shall be glazed with obscure glass and shall thereafter be retained.

- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the parking spaces coloured blue as shown on the approved plan, shall only be used for the purpose of parking private motor vehicles in connection with the residential use of the property and shall not, at any time, be used for the storage of boats, caravans or horse boxes / trailers.
- 14) No development shall take place until a scheme (including a timetable for implementation) to secure at least 10% of the energy supply of the development from decentralised and renewable or low carbon energy sources shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented and thereafter retained in operation.
- 15) The development hereby permitted shall not be brought into use until the area shown on the approved plan for the parking of vehicles has been made available and surfaced. The parking area shall then be permanently retained and reserved for that purpose at all times.
- 16) The occupation of the rural worker's dwelling hereby permitted shall be limited to a person employed solely in a commercial equine business operated from the land identified edged in red on the plan bearing the reference 1720/PL/09a forming part of this planning permission, or such larger area as shall include the whole of the same or, if the aforesaid commercial equine business should cease, to a person last employed solely in the said commercial equine business or a person employed or last employed solely in agriculture. For the avoidance of doubt the persons referred to in this condition include the spouse or a dependent of a person employed or last employed in the commercial equine business or agriculture.
- 17) Development shall proceed in accordance with the ecological mitigation, compensation and enhancement measures detailed within the Wildlife Survey report (Butler Ecology, December 2017) unless otherwise agreed in writing by the local planning authority. All ecological mitigation, compensation and enhancement features shall be retained and maintained in a condition suited to their intended function.
- 18) No part of the development hereby approved shall be occupied until details for the on-site provision of bin & cycle storage facilities have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the bin & cycle storage has been constructed in accordance with the approved details and thereafter retained and kept available.
- 19) The development hereby permitted shall be carried out in accordance with the following approved plans:
 1720/PL/06 (excluding chimney)
 1720/PL/02B (insofar as it relates to the red line development site boundary only)
 1720/PL/03B (insofar as it relates to car parking and condition no. 7 only)
 1720/PL/09a

APPEAL C – END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr Timothy Leader, Counsel for
the Local Planning Authority

He called:

Sabah Halli	Principal Planning Officer
Julia Allen	Senior Rural Surveyor

FOR THE APPELLANT:

Janine Banks,
Planning Consultant

She called:

Alex Bett	Appellant
Richard Sturt	Valuer
Lily Hiscock	Rural Consultant
Nick Bunn	Landscape Architect

INTERESTED PERSONS:

Cllr Anthony Williams	District and Parish Councillor
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Documents submitted at the Inquiry:

1. Council's opening submissions
2. Appellant's opening submissions
3. Councillor Williams' statement
4. Appellant's Costs submission
5. *Barton Park Estates Ltd v Secretary of State for Housing, Communities and Local Government & Dartmoor NPA [2022]*

Documents submitted following the Inquiry:

1. Wording for potential planning conditions
2. Council's and appellant's closing submissions