Planning Inspectorate

# Appeal Decision

Hearing held on 16 September 2025

Site visit made on 16 September 2025

**by S Leonard BA (Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14th October 2025**

**Appeal Ref: APP/L1765/W/24/3349262**
**Cherry Tree Stables Ltd, Stoke Charity Road, Kings Worthy, Winchester, Hampshire SO21 2RP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Webster (Cherry Tree Stables Ltd) against the decision of Winchester City Council.
- The application Ref is 22/00281/FUL.
- The development proposed is use of an existing temporary dwelling as a permanent on-site dwelling for occupation as an equestrian manager's dwelling.

## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Following the refusal of the planning application and the submission of the appeal, a revised version of the *National Planning Policy Framework* (the Framework) was published on 12 December 2024. The main parties have had the opportunity to comment on the revised Framework, and I have taken it into account where relevant to my decision.

3. There is an emerging draft local plan (eLP), the Examination of which ended in June 2025. The Inspector's report is awaited, and I therefore afford limited weight to its draft policies. Moreover, the Council has confirmed that draft Policy H11 of the eLP, which will replace LPP2 Policy DM11, proposes no changes in respect of criteria i) to vi).

4. After the deadline for final appeal submissions, the appellants provided accounts for the year ending March 2025, by email dated 2 September 2025. I have accepted this late evidence on the basis that it was not previously available, and it is relevant to the consideration of the first main issue. The Council was aware of the late submission at that time, raised no objection to the evidence being taken into account, and was given the opportunity to respond to it at the Hearing. As such, I am satisfied that no prejudice has occurred.

## Main Issues

5. The main issues are:

   - Whether the appeal site is a suitable location for a permanent rural worker's dwelling having regard to the Council's development plan settlement strategy, with particular regard to whether the equestrian business is financially sound; and

- The impact of the proposal on the integrity of the Solent Special Protection Areas (the SPAs), with particular regard to nitrogen and phosphorus input.

**Reasons**

*Location and whether the business is financially sound*

6. The appeal site forms part of a wider area of land which is used as an equestrian livery business. It lies within open countryside on the east side of Stoke Charity Road, north of Kings Worthy.

7. The appellants own the business and have been running the enterprise since its initial establishment and throughout its subsequent expansion. They live in a single-storey park home type property, the subject of this appeal, which is sited in the northwest corner of the appeal site, next to the entrance and car park.

8. An initial 3-year temporary permission[1] for this structure was granted in July 2017, having regard to Policy MTRA4 (Development in the Countryside) of the *Winchester District Local Plan Part 1 – Joint Core Strategy* (2013) (LLP1) and Policies DM11 (Housing for Essential Rural Workers) and DM12 (Equestrian Development) of the *Winchester District Local Plan Part 2 Development Management and Site Allocations* (2017) (LLP2). These policies permit rural businesses, including equestrian enterprises, where a countryside location is necessary, and new permanent dwellings to support existing well-established rural enterprises where there is a functional need for such.

9. In considering whether to allow a permanent rural worker dwelling on the site, amongst other things, LLP2 Policy DM11 requires the appellants to demonstrate that the livery business has been established for at least 3 years, has been profitable for at least one of them, is currently financially sound, and has a clear prospect of remaining so (criterion iii).

10. Whilst paragraph 84 of the Framework does not specifically refer to a financial test in respect of demonstrating an essential need for a rural worker, the National Planning Practice Guidance (PPG)[2] is clear that the degree to which there is confidence that the enterprise will remain viable for the foreseeable future is a consideration that may be relevant to take into account when applying paragraph 84 (previously paragraph 79a in an earlier version of the Framework). Accordingly, I find no conflict between Policy DM11 and the Framework in this respect.

11. In initially granting temporary permission, the Council raised no objection in respect of criteria i), ii), iv) v) and vi) of Policy DM11. Moreover, it considered at that time that the appellants had clearly demonstrated evidence of a firm intention and ability to develop the business and that it had been planned on a sound financial basis with a functional need for the on-site living accommodation, which could not be satisfied by existing nearby accommodation. Accordingly, it was anticipated that, after 3 years, in accordance with the requirements of Policy DM11, the business would have grown as expected so that it would support a permanent dwelling.

[1] LPA Ref 16/02766/FUL
[2] Paragraph: 010 Reference ID: 67-010-20190722

12. Whilst such temporary permissions would not normally be renewed, a further 3-year permission[3] for the mobile home was granted in November 2020 to allow the business to establish, having regard to the impacts of Covid 19. This permission (the 2020 approval), which related to the same original 1.61 ha of land, also included a doubling of the number of horses from 10 to 20.

13. The appellants started the livery enterprise in 2013 on 1.61 ha of former agricultural land comprising part of a poultry farm. The approval for this use[4], which included the provision of a stable block and menage, restricted use to that in association with the applicant's own horses and upkeep of the land only, excluding any commercial or semi-commercial riding, livery, breeding or training.

14. Permission[5] was subsequently granted for a part commercial and part private livery use of the site for a maximum of 10 horses, including an additional building (store), and the enterprise has operated as Cherry Tree Stables Ltd since 2016.

15. It provides a mix of grass livery, part livery (horses are looked after for 5 days with additional services offered on the weekend) and assisted DIY livery (some duties and care are provided for 5 days with additional services available during the week and the weekend). Extra services include the provision of riding lessons and training by third party instructors, utilising the on-site riding arena.

16. The appellants run the business. Mr Webster works full time in connection with the enterprise. Mrs Webster also has other additional employment elsewhere. The appellants confirmed at the hearing that they do not employ any other workers and would anticipate that other family members would help with the business, should there be circumstances which meant they were unable to work.

17. The appellants have confirmed that, during the period while the business has been operating, they have been investing in it, and that it has organically grown. This includes the purchase of the land which is the subject of the aforesaid planning approvals, and a doubling of the originally approved 10 livery horses. Over the years, monies have also been invested into the fixtures and fittings of the livery yard.

18. I saw during my site visit that, in addition to the temporary dwelling, the land owned by the appellants contains 10 stables, a yard, a store building and an outdoor training/exercising arena, as well as several grassed paddock fields, and that the premises are well-maintained. By residing on the site, the appellants can provide 24-hour horse supervision, including late-night checks. This is a service not offered by all livery yards.

19. With the above in mind and having regard to the length of time the business has been in operation, I have no reason to doubt that the appellants are locally well-respected in the industry and that the enterprise currently has a good local reputation, a loyal customer base and a waiting list of potential future customers.

20. However, in considering whether it is appropriate to allow a permanent dwelling on the appeal site, I must be satisfied that the existing business is currently financially sound and has clear prospect of remaining so. In so doing, it is reasonable to use

[3] LPA Ref 20/01240/FUL
[4] LPA Ref 12/00565/FUL
[5] LPA Ref 15/00308/FUL

the business profit and loss and balance accounts as evidence when assessing the profitability of the enterprise and the equity held within.

21. The submitted business accounts indicate that the business made a loss up until 2021. In each of the subsequent years from 2022 to 2025, a small profit was recorded each time. However, in assessing the viability of this rural worker enterprise, account needs to be taken as to whether it can support the labour required to run it, whilst also providing sufficient profit to enable reinvestment in the business and financing the building of any dwelling required to support it, once all expenditure has been accounted for.

22. Up until 2021, the Directors' salary that was paid in each of these years was significantly lower than the National Living Wage (NLW) of a full-time worker, and no dividends are indicated as being paid. At the hearing, Mrs Webster confirmed that she derives income from employment elsewhere. However, the inclusion of the payment of just a single NLW in respect of Mr Webster's employment during the years up to 2021 would have resulted in an even greater loss showing in the accounts.

23. Moreover, since 2022, the appellants have decided not to take a salary from the company, preferring to reinvest all funds back into the company to ensure that it remains competitive when compared to other local livery yards. Based on the profit figures before me, and the non-payment of Directors dividends, the inclusion of a Director's salary based on the full time NLW would appear to result in business losses over these years.

24. Additionally, the submitted financial accounts show a history of negative equity, with the business being declared insolvent in 2023 by the then newly appointed accountants. I note that this is being resolved through the conversion of a Directors Loan Account into equity, and the waiving of the rights of the Directors to claim these funds from the company in the future. However, the amount of future equity in the business will only become clearly apparent through future business accounts.

25. The appellants have confirmed that their living and business expenses are supported by a 'quid pro quo' approach, involving a bartering of services in lieu of cash transactions. I have no doubt that this way of doing business is making a positive contribution to the ongoing continuation of the business and that the appellants have a comfortable lifestyle in accordance with their preferred way of life.

26. Some of these 'non-cash' transactions were explained in more detail at the hearing. However, their exclusion from the business accounts, together with some uncertainty within the accounts as to which expenses are attributed directly to the business and which are personal to the appellants, means that it is not possible to quantify a number of significant elements of income and costs, and to accurately assess the extent of the contribution of bartering arrangements to the financial viability of the business.

27. Moreover, such non-cash transactions appear to depend upon the ongoing support of clients, neighbours and other landowners for their future continuation. Whilst the appellants are confident that their current arrangements will carry on, I am not persuaded, based on the evidence before me, that this would necessarily remain the case should the ownership of the business change in the future. This is

significant in considering whether to grant a permanent dwelling, since planning permission enures for the benefit of the land not the appellants.

28. I have noted the stated intention of the appellants to review some costs and suppliers, pursue additional sources of income such as haymaking and increase the number of stables and land available for grazing, including through the purchase of additional land. However, I have no detailed financial projections before me as to the extent to which these proposals are intended to increase the future profit generated by the business. As such, at this moment in time, I do not have sufficient evidence that the suggested changes to the business 'on the ground' are likely to significantly increase its profitability going forwards.

29. I acknowledge that the previous purchase of the 1.61ha of land now owned by the appellants has indicated an intent to develop the business. However, the ownership of this land has already been factored into the accounts to date.

30. Moreover, in addition to this land, the appellants also rent a number of fields to the north/northeast of the site. These are used for grazing in connection with the business and also provide further stables/shelters. The information before me is that the enterprise extends to approximately 20ha in total. Accordingly, it is reasonable to assume that this rented land makes a significant contribution to the operation of the business, given its large land area in comparison to the amount of land which is owned by the appellants.

31. As such, I find that there is considerable uncertainty in respect of the future ability of the appellants to expand the business and improve its financial viability due to the rented nature of much of the land associated with the business. I accept that the risk associated with lease expiry is reduced by the fact that there are 3 separate leases. However, most of the rented land is subject to a lease which expires in October 2028 and includes clauses which could enable the landlord to terminate the whole lease before this date, giving between 3- and 12-months' notice. The two smaller leased parcels of land are also subject to agreements which allow the owner to terminate with 6 months' notice.

32. As such, whilst the appellants have confirmed that they have a good relationship with the landowners, there appears to be no long-term guarantee that these rented fields will remain available for use in connection with the business in the long term.

33. At the Hearing, the appellants stated that, in their opinion, the business would still be capable of operating in a financially sound manner, should the rented land no longer be available. However, there is no substantive evidence before me to support this assertion.

34. In addition, the Council's records indicate that these parcels of land were last used for agriculture, so that whilst this would encompass their use for grazing by horses, they do not benefit from permission to be used for equestrian commercial purposes. Moreover, since the expiry of the 2020 permission in November 2023, the lawful number of horses in connection with the business has reverted to 10.

35. I find that there is no cogent evidence before me of a firm intent to provide more certainty in respect of the incorporation of the rented land into the business, for example through the purchase of additional land and/or seeking planning permission for its use for commercial equine purposes. Nor have the appellants

sought permission to regularise the current apparent breaches of planning to establish more certainty moving forward.

36. The 2-bedroomed mobile home is in a good state of repair and appears well-maintained. Its wheels have been removed, the plinth filled in and a garden created beside it. The appellants intend to continue to live in it rather than replace it with a new permanent dwelling. Having regard to its condition and size, there is no substantive evidence before me to suggest that the existing structure would not be capable of providing adequate long-term living accommodation for the appellants.

37. Notwithstanding this, given the length of time the dwelling has been in situ by virtue of the appellants having demonstrated an essential need for it to be on site in connection with the business, it would not be unreasonable for the appellants, or any future proprietors of the business, to seek to replace it with a permanent structure, the cost of which could further undermine the ongoing future viability of the business.

38. Taking all of the above into account, I conclude that the appeal site is not a suitable location for a permanent rural worker's dwelling having regard to the Council's development plan settlement strategy, as the appellants have failed to demonstrate that the existing equestrian business is financially sound, contrary to LPP2 Policy DM11 (iii), insofar as it requires the enterprise to be currently financially sound and have a clear prospect of remaining so.

*SPA*

39. The appeal site lies within the River Itchen Catchment where foul water, via water treatment plants, is distributed into the Solent SPAs, which are European Designated Sites afforded protection under the *Conservation of Habitats and Species Regulations 2017* (the Habitat Regulations).

40. The special interest of the Solent SPAs relates to its habitats which support large numbers of waders and wildfowl that spend the winter in the area. Natural England (NE) has advised[6] that a net increase in housing/overnight accommodation within Winchester District is likely to result in impacts to the integrity of the Solent SPAs, due to a potential associated increase in levels of nitrogen and phosphorus entering the SPAs from wastewater from residential development.

41. This results in eutrophication, whereby the resulting thick mats of algae can cause important habitat and bird feeding grounds to be unavailable for use, thereby affecting the status and distribution of key bird species against the stated conservation objectives of the SPAs.

42. As a result of the appeal scheme, the number of people living in the area and the amount of wastewater has increased. As such, without mitigation measures to address these effects, I consider that the appeal scheme presents a likely significant adverse effect upon the integrity of the Solent SPAs, particularly when the impacts are considered in combination with other residential developments in the Solent area.

43. It is therefore necessary for me, as the competent authority, to undertake an Appropriate Assessment (AA) under the Habitats Regulations of the implications for

[6] Natural England Guidance on Achieving Nutrient Neutrality in the Solent Region (June 2020)

the sites in view of the conservation objectives of the SPAs. I have undertaken this on a proportionate basis having regard to the evidence submitted by the main parties, including the Council's Habitats Regulations Assessment of its eLP (July 2024) and the consultation responses from NE in respect of the planning application.

44. NE has advised that one way to address the uncertainty as to whether the increase in wastewater from new housing in the Solent catchment will have an adverse effect on the SPAs is for new residential development to achieve nutrient neutrality, so that it does not add to existing nutrient burdens on the SPAs.

45. To this end, NE has developed a methodology for assessing nutrient neutrality, including a nitrate calculator tool. This was updated in April 2022, to include highlighting an extra issue of phosphorus in addition to nitrogen in respect of the River Itchen SAC. The calculator has been included within the Council's adopted Position Statement[7] in respect of achieving nutrient neutrality (the NMPS).

46. The appellants have submitted a nutrient budget calculation which indicates positive nitrate and phosphate contributions arising from the development. Mitigation options include off-site or on-site nutrient mitigation measures. These could include either a financial contribution towards nitrate and phosphate credits arising from, for example, the purchase of agricultural land by the Council and it's subsequent de-commissioning to reduce nutrient production or the upgrading of some of the Council's own waste-water treatment works (WwTW) to generate nutrient credits, or the purchase of/or de-commissioning of suitable land by the appellants direct.

47. The appellants' view is that there is no requirement to provide SPA mitigation in this instance. This is on the basis that the appeal scheme dwelling already exists and the occupation of the dwelling, which was established in August 2017, has involved the operation of a septic tank in accordance with the original planning permission[8] which was granted in July 2017, prior to Natural England's guidance on this matter referred to in footnote 1.

48. However, notwithstanding the above, the existing dwelling on the site only benefits from temporary permission. The aforesaid original 3-year temporary permission was granted permission for a further 3 years[9], but this consent expired on 11 November 2023, and was subject to a condition that, on or before this date, the mobile home shall be removed from the site and the land returned to its former condition. No further temporary permissions for a dwelling on the site have been granted. As such, as it stands, there is no mechanism in place to secure SPA mitigation in perpetuity.

49. Moreover, NE's advice[10] is that, considering the expiry of the temporary permission, the appeal scheme represents a new application to establish permanent permission for the dwelling, and as such, the Habitats Regulations apply, and nutrient neutrality would be required as the existing dwelling would become a permanent dwelling. NE came to this view, notwithstanding that the land was previously used as a poultry farm prior to 2012.

[7] Winchester City Council Position Statement on Nitrate Neutral Development (2022)
[8] LPA Ref 16/02766/FUL – approved 18 July 2017
[9] LPA Ref 20/01240/FUL
[10] Emails to the LPA dated 7 June and 11 October 2023

50. The appellants have cited several appeal decisions[11] in support of their case. I do not find the specific circumstances of these decisions, none of which relate to sites within the Winchester City Council area, to be directly comparable to those of the current appeal. This is in respect of several factors, including the nature of the appeal schemes, which relate to gypsy pitches and caravan sites, the specific impact of the developments on the European sites as they related to recreational impacts, and the relevant development plan policies and/or SPA strategic mitigation solutions in place at the time. Moreover, I must determine this appeal on the circumstances and merits of the appeal scheme before me.

51. In so doing, I have taken account of the views of NE who were also aware of the aforesaid referenced appeal decisions in coming to their conclusion that mitigation is required. I find that there is no cogent evidence before me to justify a departure from NE's advice, noting that they are a statutory nature conservation body.

52. I have considered whether a Grampian condition which would require mitigation to be secured within a certain time limit of a positive decision letter would be suitable. I acknowledge that this approach is consistent with the Council's NMPS and has been adopted by the Council in granting planning permission for other new dwellings, such as in a case cited by the appellants[12]. This approach has also been taken by another appeal inspector dealing with a retrospective appeal scheme within the Council's area[13].

53. However, this approach requires reasonable certainty that the required mitigation package can be provided within the timescale set by the condition. Whilst the Council has confirmed that there is currently a degree of certainty in respect of the availability of nitrogen credits, it stated at the Hearing that there is presently a limited supply of available phosphorus credits.

54. Moreover, having regard to the location of the appeal site, the Council has confirmed that mitigation needs to be upstream from Alresford to ensure that it provides off-setting before the point at which the development impacts upon the SPA.

55. Upgrading of the existing septic tank, which was installed prior to the publication of NE advice and the Council's NMPS, was also put forward as a possible means of mitigation. However, I have not been provided with specific details.

56. With this in mind, and given the precautionary approach, I cannot be sure that adequate mitigation would be available in respect of the appeal scheme, and that phosphate mitigation would not require a Deed under s106 of the Town and Country Planning Act 1990 to provide certainty that the required mitigation can be achieved.

57. The Planning Practice Guidance (PPG)[14] makes it clear that a positively worded condition which requires the appellant to enter into a planning obligation is unlikely to pass the test of enforceability. A negatively worded condition which would prevent the occupation of the development until an appropriate mitigation package is secured, would not be reasonable in this instance as the development would be in breach of this condition from the outset.

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[11] APP/F1610/W/19/3237163, APP/U1240/C/10/2131503, APP/U1240/A/10/2131892 and APP/R3650/A/05/1195499
[12] LPA Ref 23/02123/FUL
[13] Ref APP/L1765/C/19/3230907
[14] Paragraph: 010 Reference ID: 21a-010-20190723

58. Moreover, the PPG states that the use of a planning obligation, before granting planning permission is the best way to deliver sufficient certainty for all parties. No such legal agreement has been provided as part of this appeal.

59. As the competent authority, I need to be satisfied that any mitigation scheme is certain at the time of AA, so that no reasonable scientific doubt remains as to the effects of the development on the international sites.

60. Without an approved mitigation package or an appropriate legal agreement, I must, therefore, adopt the precautionary principle embedded in the integrity test. I therefore conclude that the development would result in an adverse effect on the integrity of the Solent SPAs and would not accord with the Habitat Regulations. In the absence of the necessary mechanism required to secure appropriate mitigation measures, the development would be contrary to Policy CP16 of the LPP1 which supports development that maintains, protects and enhances biodiversity, including European Sites. It also conflicts with Chapter 15 of the Framework in so much as it seeks the protection and enhancement of habitats and biodiversity.

61. As I am required to consider the situation at the time of the determination of the appeal, this is the case despite the enactment of the Levelling-Up and Regeneration Act 2023 requiring a statutory obligation to upgrade selected treatment plants by 2030.

**Other Matters and planning balance**

62. There is a difference of opinion between the main parties as to whether the Council can demonstrate a five-year supply of deliverable housing. The Council considers that it can provide a 5.4-year supply[15] and has quoted several appeal decisions to support this view.[16] The appellants dispute this, also citing recent appeal decisions.[17]

63. Notwithstanding the above, there is no requirement for me to come to a view on this matter. This is because, having regard to my conclusion in respect of the second main issue, the impact of the proposal on the habitats sites of the SPAs, the presumption in favour of sustainable development set out in paragraph 11 d) of the Framework is not engaged for decision making purposes having regard to footnote 7.

64. Continued occupation of the dwelling would deliver some economic and social benefits, including through contributing to local facilities and services in the rural economy. However, such benefits would be small, given that only one dwelling is involved.

65. Moreover, the contribution of the appeal scheme to the Council's supply of housing would also be limited, so that even if a shortfall of housing were identified taking the appellants view as a worse-case scenario, given the modest size of the proposal, the harm I have identified in respect of the first two issues would not be outweighed by the provision of one additional dwelling.

66. The appellants have stated that the existing enterprise would continue should the appeal scheme be dismissed. I am not persuaded on the evidence before me that

[15] Winchester City 5-year Land Supply Position Statement Following the 2024 NPPF (August 2025)
[16] APP/L1765/W/24/3349843, APP/L1765/W/24/3351829 and APP/L1765/W/25/3360472
[17] APP/L1765/W/24/3347360 and APP/L1765/W/24/3350662

this decision would result in significant economic disbenefits because of how this would affect the subsequent operation of the business.

67. There are no objections from interested parties. However, this does not alter my findings in respect of the main issues. It is common ground between the main parties that the appeal scheme results in no harm in respect of matters including character and appearance, highway safety, flood risk, trees and neighbouring living conditions. The absence of harm is a neutral factor which does not weigh in favour or against the development.

**Conclusion**

68. The proposed development would conflict with the development plan taken as a whole, and there are no material considerations, including the Framework, that indicate that a decision should be made other than in accordance with the development plan.

69. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

*S Leonard*

INSPECTOR

**DOCUMENTS RECEIVED AFTER THE HEARING**

Emails dated 18 September 2025 from the appellant (x2) and the Council (x1) in respect of the Council's current Housing Land Supply position

**APPEARANCES**

FOR THE APPELLANT:

- Richard Osborn – Pro Vision
- Steve and Penny Webster - Appellants

FOR THE LOCAL PLANNING AUTHORITY:

- Cameron Taylor - Senior Planning Officer Winchester City Council
- Liz Young – Principal Planning Officer Winchester City Council
- Julia Allen – Senior Rural Surveyor, Bruton Knowles