Appeal Decision

Hearing held and site visit made on 21 October 2025

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 DECEMBER 2025

Appeal Ref: APP/M1710/C/25/3368242
Land at lot 10b Comley Hill, Rowlands Castle, Hampshire, PO9 5ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Alison Carter against an enforcement notice issued by East Hampshire District Council.
- The notice was issued on 27 May 2025.
- The breach of planning control as alleged in the notice is within the last 10 years and without planning permission, the material change of use of the land to a mixed use of equestrian and residential, including the erection of a wooden building used as a dwelling.
- The requirements of the notice are to:
  (i) Cease the residential use of the land
  (ii) Remove from the Land the wooden building in the approximate location hatched black on Plan A
  (iii) Remove all residential paraphernalia from the Land
- The period for compliance with the requirements is : six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with variations.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.

2. Matters concerning the Enforcement Notice (Notice) were raised in the Pre-Hearing Note. In my Pre-Hearing Note I had suggested varying requirement (i) of the Notice to require the appellant to cease the mixed use, by discontinuing the residential activities on the Land. This was to ensure the requirements matched the allegation of a mixed use, and I indicated that the appellant could rely on section 57 (4) of the 1990 Act to revert to the previous lawful use.

3. Prior to the Hearing, I had regard to the appellant's concerns that varying requirement (i) of the Notice in the manner suggested would cause injustice to the appellant by taking away planning permission for a commercial equestrian use granted via section 173 (11) of the 1990 Act, and would only allow the appellant to revert to a private equestrian use under section 57 (4) of the 1990 Act. I provided clarification on this matter via correspondence sent on 7 October 2025.

4. In that correspondence, I indicated that having reviewed the wording of section 173 (11) of the 1990 Act, I am of the view that my suggested variation would still only require the discontinuing of the residential activities and not any domestic or commercial equestrian activities on the Land. I was seeking to mirror the wording of the allegation, which refers to a mixed use, and it was my error to refer to the provision of section 57 (4) of the 1990 Act in the Pre Hearing note. As a consequence, even with the proposed variation, I clarified with the Council at the Hearing that I was of the view that the appellant would still be granted permission for the commercial equestrian activities once the requirements of the Notice have been complied with, via section 173 (11) of the 1990 Act.

5. The Council indicated that they understood this, but did not object to the proposed variation, as the fundamental aim of the Notice was to discontinue the residential activities and not the commercial equestrian activities on the Land. This variation would, therefore, not prejudice the Council's case or take away the permission afforded to the appellant via the initial requirements. As such, the requirements would not be any more onerous and could be varied in this manner without causing injustice to either the appellant or Council.

6. For clarity, in paragraph 5, requirement (i), the words shall, therefore, be deleted and substituted with the words 'Cease the mixed use, by discontinuing the residential activities on the Land.'

Preliminary Matters

7. The Notice does not include a postcode; however, it was included in the Appeal Form submitted by the appellant, and I am satisfied that it pertains directly to the land in question. Therefore, I have included it in the banner heading above.

8. The Council initially issued an Enforcement Notice, which was appealed on the grounds specified in section 174(2)(e) of the 1990 Act. This previous appeal was allowed on 2 May 2025 on ground (e), effectively quashing the original Enforcement Notice[1]. Following the quashing, the Council is precluded from pursuing further enforcement action unless a second Enforcement Notice is issued within the designated timeframe established under section 174B (4) of the 1990 Act, commonly referred to as the 'second bite' provision. It is not disputed by the parties that the Notice in this appeal was served under the Council's second bite powers.

9. The appellant raised concerns regarding the attendance of a Council Development Control Officer, who was neither the investigating Enforcement Officer nor the author of the Statement of Case. Additionally, the appellant expressed reservations about the presence of an agricultural consultant engaged by the Council at the Hearing.

10. I have had regard to the concerns raised over the attendance of the Council Officer and the agricultural consultant, but there is no regulation in the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2000 that restricts the representatives of the local planning authority to only those involved in the original investigation or those who drafted the written submissions. Rule 9 permits attendance by the local planning authority, and as the Inspector, I have authority to allow the participation of any individual at a Hearing. Given the nature of the appeal, which included a ground (a) appeal relating to an agricultural development, I did not

[1] Appeal references APP/M1710/C/24/3340163 and APP/M1710/C/24/3361897

object to the Council Officer or the agricultural consultant attending on the Council's behalf.

11. During the Hearing, the appellant also objected to the inclusion of the consultant's statement provided in Appendix A of the Council's final comments. According to Rule 5(4)(a) to (c) of the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2000, both the appellant and the local planning authority may submit final comments on each other's statements, including those made by third parties, within nine weeks from the start date. While the Council's final comments were submitted promptly, the appellant contended that the consultant's statement was new evidence which should be excluded.

12. I noted that these concerns regarding the final comments had not been raised prior to the Hearing, despite the documents being provided seven days in advance. The appellant's agent cited insufficient time to present concerns due to illness. Although I acknowledged these circumstances, I had already reviewed the final comments and found it challenging to disregard it entirely. The agent contended as the Council submitted late evidence at final comments stage, it contravened the Hearing Procedure rules, and injustice would be caused to the appellant by including them.

13. I informed the appellant of the option to apply for costs if they believed the Council's actions constituted unreasonable behaviour that led to wasted expenses during the appeal process. To avoid delaying the determination of the appeal, I suggested either continuing the Hearing or adjourning it to allow the appellant adequate time to review the consultant's observations on the rural enterprise. However, the other main issues could be considered at this Hearing event. Ultimately, the agent confirmed their intention to proceed while formally objecting to both the inclusion of the statement and the presence of the agricultural consultant.

14. In my assessment, while the statement may have been unexpected, it does not introduce new evidence but serves as an evaluation of the appellant's Agricultural Appraisal. Nevertheless, even if it is late evidence, the statement is relevant to the appeal, relatively brief and was submitted seven days before the Hearing. The appellant's agent demonstrated familiarity with the content, and the appellant was given the option of taking more time to consider it in more detail to avoid any injustice. The appellant could also make a case for costs if she considered the Council had acted unreasonably, resulting in wasted expense in the appeal process. As such, despite the objections to its inclusion, given these matters, I do not consider that me having regard to this evidence when making my decision will prejudice the appellant or any other party.

15. I also received late evidence in the form of written representations from the Parish Council, which was subsequently shared with the main parties. The Parish Council was in attendance, and indicated via email correspondence, dated 2 October 2025, that they wished to attend and speak. The Parish Council read out a representation and provided hard copies to the appellant and me at the event, as well as electronic copies that were distributed to all. The Parish Council indicated that they were not aware that they had to submit their written comments by a certain deadline and wanted them to be included. The two other Councillors present also provided observations orally but did not provide any written submissions.

16. The appellant expressed objections to the inclusion of the representation due to lateness, resulting in procedural unfairness to the appellant. I have had regard to this

as late evidence, and although it was submitted after the stipulated deadlines, it is relevant to the appeal and was not substantial enough to necessitate an adjournment. However, given the objections, I allowed the appellant 5 working days after the date of the event to provide a final comment, which was provided. Having regard to the representation and the appellant's final comments, there will be no injustice caused by me having regard to this when determining the appeal.

The Ground (a) Appeal and the Deemed Planning Application

17. The **main issues** are:

- Whether there is an essential need for a temporary dwelling in the countryside to accommodate a worker, having regard to the functional need and viability of the rural enterprise.
- Whether the site is suitable for a temporary rural enterprise dwelling, with regard to its location within Flood Zones 2 and 3.
- Whether the development provides adequate accommodation for its occupants, with specific regard to the size of the building as well as light and outlook.
- The effect of the development on ecology and biodiversity.
- Whether or not the site is suitable for a temporary rural enterprise dwelling, having regard to its location within a contaminated land buffer zone.

Reasons

Policy Context

18. Policies CP1, CP2, CP6, CP14 and CP19 of the East Hampshire District Local Plan: Joint Core Strategy 2014 (Core Strategy) set out the spatial strategy for development. The site lies outside of any designated settlement boundary and is therefore considered to be a countryside location for planning policy purposes, where development is limited to certain exceptions. These include development involving farm diversion, conversion of rural buildings for appropriate uses, affordable housing, forestry, farming and other rural enterprise development. These policies are generally consistent with the thrust of policies restricting development in the countryside set out in the National Planning Policy Framework (the Framework).

19. It was agreed at the Hearing that Saved Policy H14 of the East Hampshire District Council Local Plan 2006 (Local Plan) should also be considered. It 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 dwelling or a suitably tied dwelling in the area.

20. Paragraph 84 of the Framework is consistent with the approach in the Core Strategy and Local Plan, and states that it seeks to avoid the development of isolated homes in the countryside unless special circumstances apply. This includes paragraph 84a, which outlines an essential need for a rural worker, including those taking majority control of a farm business, to live permanently at or near their place of work. Paragraph 88 of the Framework also includes support for the sustainable growth and expansion of all types of business in rural areas, through conversions and the development of well designed, new buildings. Decisions should enable the development and diversification of agricultural and other land-based rural businesses.

21. The Planning Practice Guidance (PPG) sets out advice and guidance that is also relevant to consider when applying the provisions of paragraph 79a (now paragraph 84a) of the Framework[2]. In summary, these include the necessity for rural workers to live close to their workplace for the effective operation of enterprises, particularly when immediate attention is needed for animals or agricultural processes to prevent risks to health or security. Additionally, the viability of the enterprise for the foreseeable future, whether the dwelling can be provided by improvements to existing accommodations on site, and the possibility of granting temporary dwelling permissions for new enterprises for a temporary period.

Rural Enterprise

22. The appellant resides in a wooden building, which externally resembles a single-storey stable, but has been converted for residential purposes. The site also includes a stable building with six stables, one of the stables is dedicated to storage but can house a horse if necessary. A lean-to storage area at the rear of the stables can provide additional storage space and can be utilised as and when the additional stable is needed. The property also features a small grass paddock, several kennels, a ménage, and a mobile caravan.

23. The appellant owns the Land subject of the Notice, which encompasses approximately 2 acres. While the written submissions state that the land measures 2.98 acres, this figure includes adjoining land to the rear that the appellant rents, which is used for grazing behind the stables. For clarity, the appellant also rents a further 2 acre plot with a field shelter adjacent to her land. Additionally, the written submissions mention that the appellant rents 18 acres. However, it was clarified during the Hearing that this total includes the 5 acres located at Rowland Castle, which the appellant partly owns and rents.

24. Therefore, it was established that the appellant rents around 16 acres (excluding that owned by the appellant) for grazing purposes. The additional rented land outside of Rowland Castle is approximately a 10- to 15-minute drive south of the site. Though there are no permanent structures on the rented land, some do contain field shelters. Rental agreements for the land vary, with Fishbourne (5 acres) agreed yearly, Bosham (4 acres) under a six-month contract, and the remaining parcels at East Meon (2 acres), West Mardon (2 acres), and Rowlands Castle (3 acres) on rolling monthly agreements.

25. The Land facilitates a commercial equestrian business focused on horse breeding. Foals bred from the appellant's stallions are sold, with one kept and trained as a competition horse until maturity at around four years old. The stallions also service visiting mares, managed by the appellant, who additionally offers transport for visiting horses (and when attending shows), a clipping service, and a breaking-in service outside the breeding season. A small dog breeding business is also said to operate from the kennels. The business operation has been part-time since 2023 but has been fully operational for approximately ten months.

Essential Need for Dwelling

26. The appellant has submitted an Agricultural Appraisal (Appraisal) with the appeal, including an indication of the labour needs and a two-year budget for March 2027 and March 2028. The appellant lives at the site with her partner and two dependent

[2] Paragraph: 010 Reference ID: 67-010-20190722, Revision Date: 22 07 2019

children. The appellant seeks to retain the converted wooden building as a temporary workers' dwelling for three years. It features two bedrooms, a bathroom, and an open living and kitchen space, and is strategically located to the back of the stables for oversight of the animals. There is also CCTV monitoring at the stable entrance.

27. The appellant undertakes the role as a key rural worker in the enterprise. She is responsible for most tasks related to breeding and caring for the horses, as well as providing breaking-in and clipping services. However, it was indicated that her partner and daughter do provide some assistance in the activities. It has not been explained why she needs to be on-site 24 hours a day for the other aspects of the business, such as the horse transport service, clipping service, breaking-in of horses, and dog breeding. While these activities are conducted on-site for convenience, it seems that they are not essential for her constant on-site presence. The on-site presence is required in connection with the horse breeding elements of the business.

28. I was told at the Hearing that the breeding of horses can occur most times of the year, between February to December. While I was not informed of the number of foals bred at the site in the past 10 months, the written submissions indicate that several young horses will be available for sale at the end of this year. This includes two hackney colts, two traditional yearlings, one D colt, and a traditional colt foal. Stallions can breed with up to three mares a day, and mares can be on site and in season for anywhere between three days and three weeks. There are 15 mares expected to visit the site from customers for breeding in the upcoming calendar year.

29. The appellant is responsible for the general upkeep of the land, including turning out the stables and providing food and water for the animals. In addition to the care required for the stallions, who need more supervision than typical horses, the appellant also has a duty of care for visiting mares and foals during breeding. Visiting mares can be ready to mate at any time, often during unsociable hours at night or early in the morning. The appellant is on-site to monitor the condition of the mares and provide out-of-hours care in case of injury or medical emergencies. A veterinarian may need to be called on short notice to assist if a horse is unwell or in the process of foaling. I was also informed of the significant value of popular stallion horses and the corresponding need for on-site security to protect the animals.

30. Therefore, the appellant indicates that the proposed breeding business would not be viable unless the welfare and security of the horses can be ensured through an on-site presence. The standard labour allowance for the operation in Appendix 1 is provided to demonstrate the theoretical standard workday (SWD) to determine if the enterprise is full-time. If the activities of the enterprise require more than 275 SWDs, then it would amount to a full-time enterprise. The appellant's submissions indicate 2.1 in year one, extending to 2.4 full-time workers by year two. It is indicated that this does not include work for general maintenance on the land, and in year two, the hours are increased due to the need to train the competition horse.

31. The horse breeding operation in question, which requires an on-site presence throughout most of the year—especially during critical breeding periods—suggests a necessity for accommodation on the premises. It has also been demonstrated that there are no alternative buildings that could be used on the land, or affordable accommodation in the nearby settlement of Rowlands Castle, or suitably tied dwellings which could serve the business. However, the operational and financial planning associated with the business proposed for retention raises significant

concerns regarding its growth and viability over the foreseeable future, including the proposed three-year period.

32. While the current Framework does not mandate a financial test as stipulated in the previous Planning Policy Statement 7, it does emphasise the importance of viable development. The PPG reinforces this by indicating a need to assess the viability of the enterprise for the foreseeable future. The Local Plan's paragraph 5.177, which is supporting text to Saved Policy H14 of the Local Plan also supports the notion that planning permission can be granted, but only where there is clear evidence of both a functional need for accommodation and the financial viability of the enterprise.

33. In this case, the small amount of land owned by the appellant, and the lack of documented security surrounding the grazing land raises significant doubts about the adequacy of resources required for the proposed business for the 3 year period.

34. The two acres of land owned do not appear to encompass any grazing areas, while the additional 16 acres are rented. The appellant has indicated in the written submissions and at the Hearing the general size of each area of rented land and the area it is located. However, the Appraisal lacked clear documentation, such as a plan detailing its specific size, location and position relative to the land she owns. The appellant also set out in the Hearing that the various areas of rented land are subject to agreements—some verbal, others written—for durations ranging from monthly to 12-month periods. However, I have no evidence to show the written agreements, or any statements from the landowners to substantiate the verbal agreements to rent the land to the appellant.

35. This lack of clarity on the rented land raises significant doubts about the security of the grazing land needed to support the business, particularly when the agreements do not cover the three-year temporary period requested. Without formal evidence of the rental agreements over the temporary period, it is also not possible to ascertain whether the projected costs for grazing land are realistic.

36. Compounding the issue of the land security is the requirement for an additional six stables within the year. The appellant expresses a need for an additional six stables within the upcoming year to facilitate the planned growth of the business. Although it is mentioned that planning permission is not necessary since they would be on skids, there is no evidence to demonstrate this to be the case. There are also insufficient details on the new stable's location, development costs, and how these elements are incorporated into the financial strategy. The appellant has also not provided substantive evidence that demonstrates that the horses on site have the appropriate vaccinations to breed, and there is limited evidence to show commitment from clients that would be attending with visiting mares in the upcoming calendar year.

37. In this regard, the appeal submissions lack substantive evidence to support the appellant's claims regarding the business's growth and activities, which would be fundamental to the appellant's need to be on the site, and its sustainability over the next three years. The omissions of evidence to support the appellant's claims and demonstrate the business case make it challenging to assess the business's sustainability, and its viability for the foreseeable future.

38. Additionally, there are concerns regarding the number of man-hours necessary to sustain operations effectively. The Council has stressed that when factoring in various labour-intensive tasks—such as building maintenance, fencing repairs, and the training of both replacement competition horses and breaking in customers'

horses—the total labour requirement would reach approximately 3.2 full-time equivalents (FTEs). This figure is higher than the 2.4 FTEs outlined in the Appraisal and includes essential tasks that a worker would need to undertake to maintain business operations. Moreover, while the budget for the upcoming two years does include revenue from clipping horses, this activity has not been accounted for within the standard man-hour calculations.

39. During the Hearing, the appellant expressed a deep passion for her work and a strong commitment to fulfilling the required hours. However, it is vital to underscore that any approved development would be tied to the land, and thus, the sustainability of operations must be demonstrated through a comprehensive appraisal. This means that the operations should be viable based on realistic man-hour estimates rather than relying on an individual's willingness to work excessively long hours without fair compensation. The evidence submitted alongside the appeal paints a picture of a total labour requirement that appears inaccurate and insufficient to satisfy the demands of the business, even with assistance from family members. Such inconsistencies between labour requirements and budget projections do not adequately demonstrate the business's viability for the foreseeable future.

40. The projected profit margins for the next two years raise additional concerns, as they are inadequate to guarantee a sustainable living wage for at least one full-time worker. The financial forecast, while suggesting a more favourable return in March 2028, is heavily reliant on the sale of a competition horse. During the Hearing, it became evident that there is currently no second competition horse in training, which markedly increases the risks associated with the projected net profit for the business in the following year. This situation amplifies the concerns regarding the business's long-term viability and raises questions about how it could address potential financial shortfalls in the absence of contingency plans. While the budget does make provisions for “wages/holiday/sickness,” it appears insufficient if the need for additional labour arises or if the appellant is unavailable for any extended period.

41. I have taken into account the investment made to enhance the site, including the construction of stables and necessary drainage work, which demonstrates the appellant's commitment to both the property and the business. Additionally, informal testimony presented during the Hearing indicated that the appellant's stallion has gained a notable reputation locally, resulting in heightened demand for breeding services. Despite the evident interest in the breeding services provided, there remains a critical lack of substantial evidence to bolster these claims. The Appraisal, which is crucial for substantiating the appellant's assertions, also lacks the robustness needed to convincingly demonstrate the sustainability of the business over the requested temporary three-year period.

42. The appellant suggested that the assessment of the Appraisal was too critical, and that in other cases the Council's consultant did not demand such substantive evidence to support essential need. However, no specific details of these cases were provided during the Hearing or in the written submissions. While I acknowledge the appellant's concern over consistency in how an Appraisal is assessed, the absence of detailed evidence about these other cases makes it challenging to compare and evaluate their relevance. As a result, my decision has focused on the specific information presented in this case, and I have attributed limited weight to the appellant's references to other cases that lacked substantive detail.

43. The appellant also highlighted that the Council's consultant did not visit the site to assess the management of the stud, or the care of the mares, before providing observations on the Appraisal. I recognise the consultant did not undertake a site visit, but he did not claim to have visited the site, and his statement is an evaluation based on the information provided by the appellant. In any event, this does not absolve the appellant of the responsibility to present a solid evidence base for the appeal. Therefore, it remains imperative for the appellant to produce an Appraisal that is supported by evidence that demonstrates her case.

44. I acknowledge that the horse breeding business, particularly the supervision of stallions and visiting mares during critical periods of breeding, can necessitate an on-site presence in respect of the welfare of the animals, security and the ongoing viability. However, this alone does not justify retaining a rural worker's dwelling.

45. The appellant has not provided sufficient evidence supporting the financial viability and sustainability of the enterprise, even for the proposed temporary three-year period. The Appraisal lacks certainty regarding grazing land security, as rental agreements are either informal or short-term, with no documentary evidence to confirm their continuation. Additionally, financial projections rely heavily on speculative income, such as the sale of a single competition horse, without adequately accounting for realistic operational costs. The profit margins also do not appear sufficient to support a full-time worker at a reasonable living wage, and discrepancies between labour requirements and budget forecasts further erode confidence in the business's viability for the foreseeable future.

46. In the absence of substantive evidence to support the appellant's claims, the proposal does not satisfy the requirements of Saved Policy H14 of the Local Plan, and fails to accord with the Framework as well as the advice and guidance set out in the PPG, which allow dwellings in isolated locations provided it demonstrates there is an essential need for a rural worker. Furthermore, as the site lies outside of any designated settlement boundary and is not justified for the reasons set out, the development is contrary to Policies CP1, CP2, CP6, CP14 and CP19 of the Core Strategy, which set out the spatial strategy for the location of housing in the area.

Flooding

47. The development is a material change of use of the Land to a mixed use and includes the erection of the building for residential purposes, which would be judged as minor 'more vulnerable' development[3]. Most of the site is within Flood Zones 2 and 3, but areas to the northeastern corner are designated as Flood Zone 1. The appellant's submissions indicate that the building has been erected on stilts, with one end being 450mm above the ground and the other 150mm. Surface water from the building is piped to a swale that runs through the site.

48. At the Hearing, and as part of the written submissions, there was a dispute over whether the building erected and being used for residential purposes was situated within Flood Zone 1, or if the building was also within Flood Zones 2 and 3. The appellant provided a plan from a Flood Risk Assessment included with a historical planning application for stables on the site. The Plan was annotated to indicate the position of the dwelling in Flood Zone 1. The Council disputed this, indicating the building was situated within Flood Zones 1, 2 and 3 but did not produce a definitive plan at the Hearing.

[3] Annex 3: Flood risk vulnerability classification of the Framework

49. Considering the above, an updated plan was requested to the provided after the event, to be agreed between the two parties. The updated plan shows the position of the building being mostly within Flood Zone 1 but also being partly within Zones 2 and 3. In light of the evidence before me, the material change of use has occurred within Flood Zones 2 and 3, and part of the built development is also within these zones, despite also partly being erected in Flood Zone 1.

50. Paragraph 175 of the Framework states the sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in situations where a site-specific flood risk assessment demonstrates that no built development within the site boundary, including access or escape routes, land raising or other potentially vulnerable elements, would be located on an area that would be at risk of flooding from any source, now and in the future. Paragraph 181 of the Framework states where appropriate, applications should be supported by a site-specific flood-risk assessment (FRA)[4]. Policy CP25 of the Core Strategy echoes the Framework, requiring the appellant to satisfy the sequential and exception test as well as to provide a site specific FRA to demonstrate compliance with these requirements.

51. The matter concerning the sequential test was not explored at the Hearing. Nonetheless, the appellant has not demonstrated that alternative sites at lower flood risk were considered, and based on the Framework and Local Plan, it would be necessary for an FRA to be included with the application or appeal. Without a site-specific FRA, it is not possible to confirm that the development would be safe from flooding for its lifetime, include a safe access and egress and avoid increasing flood risk elsewhere.

52. The appellant did direct me to an FRA that was submitted as part of the planning application for stables undertaken in March 2020[5]. However, the FRA is 5 years old and was focussed on a less vulnerable building to stable horses. Given the time that has passed since this FRA, and the nature of the residential use of the building being applied for, the previous FRA could not be relied upon to inform my decision.

53. The appellant proposed conditioning the FRA to address site flooding issues within a specific timeframe. However, in my judgement and in this instance, it is inappropriate to condition an FRA as part of the permission. Establishing the principle of development requires prior compliance with both the sequential and exception tests, which cannot be deferred to a condition. An FRA must be submitted before consent is granted to demonstrate that there are overriding reasons for situating the dwelling in a flood-risk area. It must also confirm that the development is resilient to flooding, requires minimal refurbishment, and ensures safe access and egress from the site. Although the Council suggested a draft flood evacuation condition, this would also not address the deficiencies in the evidence presented with the appeal.

54. Although the appellant asserts that the building lies largely within Flood Zone 1, and is on stilts, the evidence before me confirms that the material change of use and part of the built development are within Flood Zones 2 and 3. Given the residential nature of the development, which is categorised as ‘more vulnerable,’ the lack of robust flood risk evidence raises significant concerns about occupant safety. The appellant

[4] Footnote 63 of the Framework- A site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3. In Flood Zone 1, an assessment should accompany all proposals involving: sites of 1 hectare or more; land which has been identified by the Environment Agency as having critical drainage problems; land identified in a strategic flood risk assessment as being at increased flood risk in future; or land that may be subject to other sources of flooding, where its development would introduce a more vulnerable use.
[5] Council reference 55617/001

has not demonstrated that alternative sites at lower risk were considered, nor provided a site-specific FRA to confirm that the development would be safe for its lifetime, with appropriate mitigation and safe access and egress. Reliance on the previous FRA is inadequate, and the principle of development cannot be established through a condition.

55. Accordingly, the development does not accord with the requirements set out in Policy CP25 of the Core Strategy, or paragraphs 175 and 181 of the Framework, which require a submission of an FRA and seek to direct development away from areas of highest flood risk and ensure the development is resilient to the risks of flooding.

Living conditions for occupiers

56. The appellant contends that the gross internal area of the wooden building designated as a residential dwelling is 56 square metres, which she considers to be sufficient as it exceeds the typical size associated with caravans, which are frequently approved as temporary dwellings. According to the written submissions, the building is inhabited by the appellant and her partner, but it was clarified during the Hearing that her two dependent children also lived at the site. One occupied the second bedroom, while the other slept in a mobile caravan situated on the premises.

57. Site observations revealed that the building comprises an open kitchen and living area, a bathroom, and two double bedrooms. Essential utilities, such as electricity and a water supply, are connected to the structure. The building features a front door equipped with glazed side lights; however, the bedrooms are served by stable doors without any fitted windows. This results in natural light and ventilation within these bedrooms being contingent upon the upper portion of the stable door being open.

58. Policy CP29 of the Core Strategy stipulates that new developments must exemplify high standards of design and architecture. Paragraph 130 of the Framework places importance on development protecting both existing and future living conditions of users. The Council provided relevant extracts from the Nationally Described Space Standards (NDSS), emphasising requirements concerning minimal floorspace for housing. Particularly, the minimum gross internal floor areas and storage recommendations for various configurations of dwellings. The NDSS specifies a minimum requirement of 61 square metres for three persons (2 bed), and 70 square metres for four persons (2 bed) for a 1-storey dwelling.

59. It is acknowledged that caravans are often allowed as temporary dwellings, but the structure in question is not a caravan. Furthermore, although caravans may accommodate smaller floor areas, they are specifically designed for residential purposes. Despite being proposed as temporary living accommodation, the development must still adhere to basic living standards, particularly given the intent to occupy it for three years.

60. The floor space of the building on site is below the technical standards and insufficient to accommodate the appellant and her family. The shortfall in adequate living space is highlighted by the reliance on a mobile caravan to provide adequate sleeping arrangements for the appellant's daughter. In addition, the absence of windows in the bedrooms results in conditions that fall below acceptable living standards. The stable doors permit airflow and natural light when open, but their practical use is likely to diminish during the winter. In this respect, the bedrooms

would be oppressive spaces at times, characterised by poor natural light and outlook.

61. The development does not, therefore, meet the criteria for high-quality design, nor does it provide satisfactory living conditions for its occupants. Living in an environment lacking sufficient floorspace, light and outlook can have detrimental effects on health and well-being. Accordingly, it contravenes Policy CP29 of the Core Strategy, paragraph 130 of the Framework, as well as the technical specifications defined in the NDSS.

Ecology and Biodiversity

62. According to paragraph 193 of the Framework, if significant harm to biodiversity resulting from a development cannot be avoided (including by relocating to a less harmful site), adequately mitigated, or, as a last resort, compensated for, then planning permission must be refused. Planning Practice Guidance[6] states that an ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate.

63. As such, where there is a reasonable likelihood of protected species and habitats being present, it is essential that their presence, and the extent to which they would be affected by the development, is established before planning permission is granted. The Council expressed valid concerns regarding the absence of a Preliminary Ecology Appraisal (PEA), which is crucial for evaluating the potential ecological impact of the development. The appellant claimed that such an appraisal was included in the planning application for the proposed stable in October 2020[7]. However, upon reviewing the documentation, the Council found no appraisal on file.

64. Nevertheless, the evidence presented by the Council from the previous application indicated that the Council Ecologist did not raise any specific concerns regarding the presence of protected species and habitats on the site, aside from the possibility of bats and birds nesting in the building proposed for demolition. It is critical to note that the development subject of this appeal does not entail the demolition of any buildings, and there is no evidence to suggest that any trees, hedgerows, or vegetation were removed to facilitate the development. Furthermore, the timber structure in question is situated on an existing hardstanding area behind the established stables.

65. Given the nature of the proposal, combined with the observations made by the Ecology Officers regarding the previous application, it is clear that there is no reasonable expectation of protected species or habitats being present that would warrant a PEA. Consequently, based on the evidence before me, the development has not resulted in significant harm to the biodiversity and ecology value of the site, complying with the policy requirements set out in paragraph 193 of the Framework.

Contaminated Land

66. The Council outlined at the Hearing that the land is within a contaminated land buffer zone, but they had not sought any advice on what the implications were in respect of the retention of the wooden building for residential purposes. It is understood that the building does not have any foundations but sits on stilts and does not include any

[6] Paragraph: 018 Reference ID: 8-018-20190721
[7] Council reference 55617/001

formal garden area. Given these facts, the potential effects of ground pollution contaminants on the residential use of the site seem to be minimal. In such a scenario, the Council accepted that it would not object in principle on these grounds, subject to a precautionary condition requiring a land contamination report.

67. Accordingly, subject to a land contamination report, the development complies with Policy CP27 of the Core Strategy, which requires that developments that may cause pollution, and developments sensitive to pollution, will only be permitted if they are appropriately separated and designed to remove the risk of unacceptable impacts. This is consistent with paragraph 196 of the Framework, which requires decisions to ensure that a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land instability and contamination.

Other Matters

68. It was indicated in the written submissions that there was a strategic issue regarding the recreational impact of residential development on birds. However, at the Hearing, the Council confirmed the location was just outside of the relevant zones. Nonetheless, the submitted evidence indicated that the site is also within the foul drainage catchment area of the Solent Special Protection Areas (Solent SPA), where potential adverse effects could arise from increased levels of nitrates entering the Solent SPAs from sewage discharge wastewater generated by overnight accommodation.

69. Mitigation strategies have been prepared to address the potential harmful effects from increased nutrients entering the system. The Council also outlined that the appellant could have proposed onsite bespoke mitigation to address the matter. However, the evidence provided lacks specific details regarding the nutrient load from the development, and the appellant has not proposed any onsite, or offsite, mitigation measures to address the potential harm to the Solent SPA.

70. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates that the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to allow permission for the proposal. However, due to a lack of evidence in respect of this matter, and as the appeal is being dismissed on other substantive grounds, it is not necessary for me to consider this matter any further.

Planning Balance and Conclusion on the Ground (a) and Deemed Planning Application

71. To allow the material change of use on the Land and the erection of the wooden building for residential purposes would run contrary to the policies of the development plan, which require an essential need for the dwelling on site in connection with the rural enterprise, high standards of living conditions for the occupiers and such vulnerable development to be located away from areas that flood. The development undertaken, therefore, conflicts with Policies CP1, CP2, CP6, CP14, CP19, CP25 and CP29 of the Core Strategy and Saved Policy H14 of the Local Plan, which are generally consistent with the Framework. I attribute significant weight to the conflict with these policies.

72. The benefits a single residential unit would make towards the supply of housing in the area would be small. There would also be economic benefits arising from the breeding of horses, and other horse related services the business provides to the

locality. The business also generates a direct and indirect jobs. The development is acceptable in respect of ecology and biodiversity as well as contaminated land, but these are neutral factors and cannot be considered a benefit of the development. Given the scale of the business, the benefits outlined would result in a limited uplift to housing supply and the economy in a rural area, but do not outweigh the significant harm I have identified to its conflict with the policies of the development plan listed.

73. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

The Appeal on Ground (f)

74. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the Notice exceed what is necessary to remedy the breach of planning control or to remedy any injury to amenity which has been caused by the breach.

75. The ground (f) appeal specifically relates to step (ii) of the requirements, which instructs the appellant to remove the wooden building from the land. The appellant asserts that this building constitutes an asset that could be utilised for commercial equestrian purposes, including a welfare area, secure storage for bedding, tack, and a feed room. Furthermore, it has been suggested that alterations to the front and internal modifications could create additional stabling facilities. At the Hearing, it was also noted that before its use as a dwelling, the appellant stated the building had been erected and used for storage and welfare activities in connection with the equestrian use for approximately a month or two, and included a kitchen and toilet.

76. Section 173 of the 1990 Act specifies two objectives that the requirements of an enforcement notice may aim to fulfil. The first, as articulated in section 173(4)(a), is to remedy the breach of planning control that has occurred. The second, under section 173(4)(b), seeks to remedy any amenity injury caused by the breach. In this instance, the varied Notice requires the mixed use of the land to cease, alongside the removal of the building erected and to restore the land to its previous condition. Thus, the purpose of the Notice is to remedy the breach of planning control, in line with section 173(4)(a) of the 1990 Act.

77. I have had regard to the appellant’s position, but the Notice alleges an unauthorised mixed use of the land and the erection of the building for residential purposes. In this regard, the Notice alleges both the material change of use to the mixed use and operational development in the form of the erection of a building. I have not been provided with any evidence that the wooden building had been on the land for the requisite 4-year period to gain immunity or that a valid planning permission was granted and implemented for the building for storage and welfare before being used as a dwelling.

78. In light of the above, to remove the building is not an undue demand; rather, it is a necessary measure to remedy the breach of planning control of unauthorised operational development and reinstate the land to its previous condition. Furthermore, within the parameters of the ground (f) appeal, I am unable to grant planning permission for an unauthorised building for a different use than what has been alleged.

79. Consequently, the appeal on ground (f) fails.

The Appeal on Ground (g)

80. An appeal on ground (g) is that the period specified in the Notice falls short of what should reasonably be allowed. The appellant did not set out how much time they considered appropriate to comply with the Notice in their written submissions but indicated 10 months at the Hearing. The appellant is, therefore, requesting an additional 4 months to comply with the requirements to cease the mixed use, remove the wooden building and to return the land to its previous condition.

81. The additional time requested is based on the difficulty the appellant would have to find an appropriate livery yard to house the stallion horses. Although the Council maintain the horses are not required to be taken off site, the appellant indicated that she would not be able to leave them at the site due to fear over their welfare and the prospect of them being stolen. Although not mentioned in the submissions, the appellant also has no alternative address and would need to find alternative living housing for her and her dependent children.

82. Having regard to the loss of the appellant's home and the impact on the operations of her business, together with her concern over the welfare of the animals without her on site presence, I consider that a period of time more than 6 months can be justified. A 10-month period to cease the use as well as remove the building and other residential paraphernalia would be sufficient. This time frame would strike an appropriate balance between having to minimise the harm identified and with the appellant's need to find alternative accommodation for her and the horses on site.

83. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Overall Conclusion

84. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. The requirements of the Notice are not considered excessive to remedy the breach of planning control, but the period for compliance with the Notice falls short of what is reasonable. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Formal Decision

85. It is directed that the enforcement notice is varied by:

In paragraph 5, step (i), delete the words in their entirety and substitute with the words 'Cease the mixed use, by discontinuing the residential activities on the Land.'

In paragraph 6, delete the words 'six months' and substitute the words 'ten months.'

87. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Stone	Planning Agent instructed on behalf of appellant
Cheryl Wellstead	Planning Agent instructed on behalf of appellant
Alison Carter	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Heather Gee	Principal Enforcement Officer- East Hampshire District Council
Summer Sharpe	Senior Planner- East Hampshire District Council
Roger Sewell	Reading Agricultural Consultants- instructed on behalf of East Hampshire District Council

INTERESTED PARTIES:

Cllr Chris Stanely	Rowlands Castle Parish Councillor
Cllr Charlene Mains	Rowlands Castle Ward Councillor
Cllr Marge Harvey	On behalf of adjoining residents

EVIDENCE SUBMITTED AT HEARING:

Written submission of representation from Cllr Chris Harvey on behalf of Rowlands Castle Parish Council