

## **SECTION '2' – Applications meriting special consideration**

**Application No :** 16/02755/FULL2

**Ward:**  
**Darwin**

**Address :** Yonder Farm Orange Court Lane Downe  
Orpington BR6 7JD

**OS Grid Ref:** E: 543164 N: 162712

**Applicant :** Ms Sarah Williams

**Objections :** YES

### **Description of Development:**

Change of use of land and buildings to commercial livery yard, dressage centre and incidental groom's accommodation (Retrospective Application)

Key designations:

Biggin Hill Safeguarding Area  
Green Belt  
London City Airport Safeguarding

### **Proposal**

This retrospective application seeks the change of use of land and buildings to a commercial livery yard, dressage centre and incidental groom's accommodation.

The proposals are to retain the (unauthorised) conversion of the western end of the barn to the north of the yard area to provide basic living accommodation the applicant.

The planning application is accompanied by a supporting report dated June 2016.

### **Location**

The holding comprises approximately 2ha (4.9 acres) of land and buildings and is located at the end of Orange Court Lane along its northern side, approximately 200 metres to the east of its junction with Farthing Street, and to the north of Downe Village. The site falls within the Green Belt.

There are a number of buildings on the holding which provide stabling for 14 horses and ancillary storage areas including feed store, tack room, therapy room, office and hay/bedding store. A building to the north of the yard area incorporates a residential area (kitchen/diner, a bathroom, a bedroom and shower room/dressing room) to the western end, which has been occupied by the applicant since 2007.

There is also a manège (65m x 25m) sited to the north-western boundary of the holding and a horsewalker which is sited to the north of the yard area. The fields

have been sub-divided to provide turn-out paddocks. All stables are alarmed and the muck is stored in a trailer and emptied each month.

A brick building is sited in the paddock to the east of the yard area which incorporates gym and exercise equipment for use by the applicant.

The yard is currently used as the base for an equestrian enterprise operated by Ms Williams which includes the sale of horses, dressage lessons (on both owned horses and clients' horses), full livery service and training of horses (owned and belonging to others). There are currently sixteen horses on the holding, of which five are owned by the applicant (two are retired competition horses), two horses at full livery, and nine horses on training livery, owned by others.

## **Consultations**

### Comments from Local Residents

Nearby owners/occupiers were notified of the application. Representations were received from the Downe Residents' Association which can be summarised as follows:

- this application follows an appeal for a Certificate of Lawfulness involving the creation of a dwelling which was dismissed at appeal
- there are two other riding centres in the parish and at least seven other private stables
- too many horses kept at the site
- the applicant has no riding establishment licence so no lessons should be given
- it is not correct for the agent to state that the applicant can hold as many horses as she likes
- the site is subject to seven planning conditions
- there should be a maximum of eight horses stabled at the site given the plot size
- provision of a night watchman would be better alternative than providing for a groom asleep inside a dwelling
- foul sewage system should be investigated by the Council
- the site cannot be seen from public vantage points, contrary to the answer given in the application form
- the dwelling is on Green Belt land
- unclear whether council tax or business rates have been paid
- if permission is granted, a condition should be imposed restricting the number of horses kept to the acreage
- other local stables have no accommodation
- in breach of seven conditions previously imposed on the site

### Comments from Consultees

No technical Highways objections were raised.

## **Planning Considerations**

The application falls to be considered with regard to the following UDP policies:

- H1 Housing
- T18 Road Safety
- BE1 Design of New Development
- BE3 Buildings in rural areas
- G1 The Green Belt
- G11 Agricultural worker's dwelling
- L3 Horse-related development
- L4 Horse-related development

Paragraph 80, 89 and 90 of the NPPF are relevant to this application and relate to the Green Belt. Paragraph 28 concerns the rural economy.

Policy 7.16 of the London Plan gives the strongest protection to London's Green Belt in accordance with national guidance. Inappropriate development should be refused except in very special circumstances and development will be supported if it is appropriate and helps secure the objectives of improving the Green Belt as set out in national guidance; such improvements are likely to help human health, biodiversity and improve overall quality of life.

## **Planning History**

Under reference 02/01905 planning permission was granted for the use of existing buildings for stables and for construction of the sand school in October 2003. Condition 3 of that permission restricted the use of all buildings to:

"the private stabling of horses in the ownership of the person in possession of the land/buildings and shall not be used for or in connection with any commercial use."

Whilst Condition 4 states:

"The sand school hereby permitted shall only be for the use of horses in the ownership of the person in possession of the land/buildings and shall not be used for or in connection with any commercial use whatsoever."

Conditions 6 and 7 of that permission advised that the use permitted should ensure solely for the benefit of the applicants, and applications, and for no other party.

Under reference 14/03187/ELUD an application was submitted in August 2014 which sought to secure a Certificate of Lawfulness for the use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905. This application was refused by the Council in July 2015 on the basis the following ground:

"The evidence produced to support the application has been arrived at by a process of deliberate concealment and as such the applicant should be deprived of the immunity offered under s171B (3) of the Town and Country Planning Act 1990 (as amended)."

A further application was submitted in August 2014 (15/01584/ELUD) which sought to secure a Certificate of Lawfulness for the use of buildings and land as a stable and riding school without complying with condition 3, 4 and 7 of permission ref 02/01905. The Council determined that the existing use/development was not lawful, and refused the application in July 2015 on the same grounds as it refused application reference 14/03187/ELUD.

Under reference 14/03188/ELUD a further application was submitted in August 2014 which sought to secure a Certificate of Lawfulness for the use of part of a barn as residential dwelling. No decision was issued and this non-determination was the subject of an appeal (APP/G5180/X/15/3087194). The Appeal was dismissed in April 2016 and the Inspector concluded:

(Paragraph 33) "The change of use of the planning unit to a mixed use of residential accommodation and equestrian use is agreed to have commenced in about 2007 so that at the time of the application for the LDC it had not become lawful by reason of the passage of time. Thus the first issue indicates that an LDC for a separate dwelling should not be granted."

And

(Paragraphs 40 and 41) ".....I have no doubt, on the evidence before me, that Ms Williams deliberately sought to conceal her occupation of the green barn at Yonder Farm until she judged it was immune from enforcement action. I therefore consider that the appeal should, on the balance of probability and the facts of this case, fail on the grounds of concealment and deception....."

Application 15/03133/RECON was submitted in July 2015 for the removal of conditions 3 and 4 of planning permission 02/01905 (for use of building and land for stables and construction of sand school and use of land for keeping of horses) to enable use of buildings and sand school for commercial use. The application was refused permission in October 2015 on the basis that the proposed development would result in an undesirable intensification of use in the Green Belt. This application is now the subject of an ongoing appeal (APP/G5180/W/15/3138202).

Two Enforcement Notices were issued on 7 December 2015 (ENF 15/00593 and ENF 15/00182) relating to the unauthorised use of the land for a commercial livery yard, riding school and residential worker's accommodation and the breach of Conditions 3 and 4 of the 2003 planning permission (02/01905), as detailed above. These two Enforcement Notices are the subject of an ongoing planning appeal (APP/G5180/C/15/3141430 and APP/G5180/C/15/3141431).

## **Conclusions**

The main issues for consideration are: the appropriateness of this development in the Green Belt, including its impact on the openness of the Green Belt and the purpose of including land within it; and whether, if the development is inappropriate in the Green Belt, the harm by reason of inappropriateness or any other harm,

would be outweighed by other considerations so as to amount to very special circumstances. Further considerations are whether the proposal will not result in an unacceptable intensification of horse-related activities and whether, in the circumstances, associated grooms accommodation connected with the equestrian use can be justified.

The Council has instructed an independent consultant to advise on the equestrian matters and the conclusions of this report are included within the remainder of this report.

### Intensity of activities

As a basis for assessment, the UDP specifies that there must be a provision of 0.4ha per horses on an equestrian holding to provide the minimum grazing requirement - this is based on the British Horse Society (BHS) guidelines. There is currently approximately 1.6ha (3.95 acres) of grazing land available to the horses at Yonder Farm which, working to the BHS guidelines, would restrict horse numbers to four. However, the applicant operates a regime with very restricted grazing as evidenced by her ability to develop this enterprise over many years to current levels of sixteen horses and, from the information available, it would appear that horse numbers have been relatively constant since 2007.

There is no doubt that the existing management regime has implications in relation to the condition of the land and the need to sub-divide the land into separate paddocks, as evidenced during a recent site visit. The condition of the land is a matter of concern Council as referenced at supporting paragraph 9.15 of policy L4 of the UDP which states "over-intensive grazing and riding on footpaths, all of which the Council wishes to discourage in order to safeguard other uses of the countryside and to prevent the landscape becoming unsightly".

Even working to the recommendations of the Veterinary College at Newmarket, Suffolk - as outlined in the report supporting the application (the last paragraph at section 4) the land at Yonder Farm is capable of supporting up to eight horses, which is significantly less than currently on site.

However, it is evident that, working to existing management practices, the applicant has been able to develop, and maintain, the activity to current levels of sixteen horses. The horses have been seen to be in good condition and the continued demand for the services offered at the site is a clear indication that owners are satisfied with the facilities (including turnout) offered. The current permitted equestrian activity at Yonder Farm is the keeping of horses for private purposes only and there is no restriction (in planning terms) on the number of horses which can be grazed or stabled on the holding.

From the evidence provided, it would appear that this is a successful rural enterprise which generates a need for more than two full-time workers and that there is a continuing, and increasing, demand for the services offered. It would also appear that the enterprise in operation does not generate such significant traffic levels as to cause any specific highways issues or problems with neighbours.

### Nature of the activities undertaken

It is important to note that the horses which are liveried at Yonder Farm are kept on a full livery basis with all their day-to-day needs met by the applicant and her staff. Under this management regime, there is no requirement for owners to visit the horses twice daily to feed, turnout etc., as would be the case if the horses were kept on a DIY livery basis. If the core business was to move to a livery yard comprising mainly of DIY livery clients, this would have a significant impact on the number of visitors to the holding each day.

The current proposals include a change of use to a commercial livery which would give scope to develop a different business to that currently in operation. This may be a cause for concern and, whilst it is not part of the current business plan to develop a DIY livery yard at Yonder Farm, it is considered appropriate to impose a condition limiting the commercial livery use to a full livery service only. The applicant is a competitive dressage rider and also provides one-to-one lessons to clients on both their own horses and on her own horses.

It is stated in the supporting document that between 2 and 5 clients visit each day (in relation to both the livery enterprise and riding lessons) and, if Members were minded to grant planning permission for a commercial dressage centre at Yonder Farm, a condition restricting the numbers of lessons which can be carried out each day/week is included, and this could be managed under the auspices of a Land Management Plan.

The applicant does not benefit from a licence to operate a riding school. Clearly, in order to operate as a commercial dressage centre, it would be necessary for her to secure a licence to operate as a riding establishment. However, planning permission for the commercial use must be in place prior to applying for the necessary licence.

The proposals for a commercial dressage centre could have significant implications for travel levels to the site if the permission is without conditions (dressage competitions, multiple riders within the lessons etc., could all have an impact on the number of potential traffic movements to the holding).

If the applicant adhered to the current planning permission, there would be five horses (owned by the applicant) on the holding; at this scale there would be no justification for her to live on site to meet their welfare requirements as the scale and nature of the activity would not generate a need for a worker to be available on-site to provide for out-of-hours supervision. However, if this application for commercial use of the site is supported, it is likely that there would continue to be approximately sixteen horses on the holding at any one time, including valuable competition horses and one brood mare.

### Dwelling

Taking into account the very specific circumstances and existing scale and nature of the activity, it is considered that there is an essential need for a worker to live on site to support the existing activity, albeit this need is marginal. The applicant is

clearly committed to the equestrian enterprise and has all necessary skills to continue to operate the unit successfully.

In Green Belt terms, paragraph 90 of the NPPF lists the re-use of an existing building as being not inappropriate development. The current proposals for the dwelling house relate to the conversion of an existing building and therefore it is not necessary for the applicant to demonstrate very special circumstances to overcome the harm in Green Belt terms. However, in order to demonstrate an essential need for a worker to live permanently on site, it is necessary for the applicant to demonstrate special circumstances as set out at paragraph 55 of the NPPF.

The Inspector concluded in the April 2016 Appeal Decision that the residential accommodation (the grooms accommodation) within the barn at Yonder Farm was directly and intrinsically related to the equestrian use at Yonder Farm and was part of the wider, mixed use on the holding and was not a separate planning unit.

The need for a dwelling at Yonder Farm relates to the needs of the horses on the holding. Policy G11 of the Local Plan refers specifically to 'agricultural workers' dwellings' however it is accepted that the tests to demonstrate the need for an agricultural worker are analogous to the need for an equestrian worker. Therefore, this appraisal will use the same structure for assessment as that set out in G11.

The test of essential need requires evidence that a rural worker needs to live permanently at or near their place of work in the countryside, if workers are needed to be on hand day and night in case animals or agricultural processes require essential care at short notice or to deal with emergencies which could otherwise cause serious loss of stock.

However, in the round and taking all aspects of this complex situation into account, it is concluded that the applicant would not have been able to develop this enterprise to current levels without the provision of a worker living on site to meet the welfare requirements of the horses (owned by the applicant and third parties).

It is accepted that there is an essential need for a worker to live on site to support sixteen horses at full livery. If the management structure was to change to DIY liveries, then there would be no continuing need for a worker to live on site. This adds weight to the suggestion that it might be appropriate to impose a condition restricting the commercial livery to full livery service only.

The business has generated a profit over recent years although no allowance has been made within the accounts for payment to the applicant for the works undertaken by her on the holding. Furthermore, it is evident that the profits are insufficient to cover a notional cost for this return to labour of, say, £15,500.

However, it is evident that the applicant has been able to continue to operate the enterprise with sufficient funds available to provide for her day-to-day needs.

The business is clearly well-established and there is a strong demand for the services provided, as evidenced by the increasing turnover. Whilst profits are limited, it is evident that the business has generated sufficient funds to operate and continue to provide for the applicant for in excess of ten years.

The current financial position does not fit comfortably within the expectations of an enterprise which must demonstrate viability and sustainability in the long-term. However, taking into account the fact that the enterprise has been operating for more than ten years and that the applicant has been able to receive sufficient funds from the business to provide for her needs, it is accepted that the business has just managed to meet the requirement to demonstrate financial soundness and viability.

It is important to note that the proposals are for the conversion of an existing building (retrospective) and the applicant therefore does not need to demonstrate that the enterprise is capable of financing the cost of construction of a dwelling house. For completeness it is noted that, if the construction costs of a dwelling were to be considered as part of this financial assessment, the conclusion would have been that the enterprise was unable to meet the necessary tests to demonstrate financial viability and long-term sustainability. Especially when considered against the limited land availability.

The current residential provision offers limited facilities and is commensurate with the size of the holding and the current profitability of the enterprise. There would be no support for the provision of a new dwelling as opposed to the conversion of the existing building. Although marginal, it is concluded that the equestrian enterprise in operation at Yonder Farm is financially viable and sustainable in the long-term.

There is a need for the worker to live on site and no other dwellings available nearby would be able to meet the identified functional need for the worker. The proposed (retrospective) residential facilities which are clearly limited are commensurate with the size of the land holding and the profitability of the enterprise.

That the applicant has been able to live on site, albeit without planning permission, has given her the opportunity to develop the equestrian enterprise to current levels. The existing enterprise far exceeds the recommended stocking densities (numbers of horses per acres) as provided in the BHS guidance and referred to in the Local Plan and it is highly likely that, had an application for a dwelling been submitted prior to commencement and establishment of the enterprise to current levels, the provision of a worker's dwelling would have been resisted due to the anticipated inability of the client to develop the enterprise to the levels proposed with the facilities available.

However, clearly the applicant has been able to manage the enterprise in such a way as to far exceed the recommended horse numbers per acre. However, this enterprise management is specific to the applicant, and it is highly unlikely that any future purchaser of the land would be able, or willing, to operate at such stocking ratio.



Therefore, it is considered appropriate to impose a condition allowing the residential facilities to remain on site for only as long as the holding is owned and managed by the applicant, Ms Williams. Without this in place, it is highly likely that any future purchaser of the holding would seek to remove any occupancy condition imposed due to an inability to operate a successful business from such a limited land-holding.

### Summary

With regard to Green Belt policy, this proposal is for a commercial livery use and associated accommodation. This is inappropriate development in the Green Belt, and Members must carefully consider the specific circumstances set out in the above report including the established and successful business, the generally rural nature of keeping horses and the limitations which it will be possible to impose as a result of the Council granting planning permission to control the future use of the site. This is a finely balanced case but in light of the information presented above, it is recommended that Members agree that very special circumstances exist to warrant granting permission in this instance, subject to the conditions set out below.

Background papers referred to during production of this report comprise all correspondence on the file refs set out in the Planning History section above, excluding exempt information.

### **RECOMMENDATION: PERMISSION**

#### **Subject to the following conditions:**

- 1
  - a) **The site shall be used as a dressage centre and commercial livery yard with a full livery service only and for no other purpose (including any other purpose in Class D2 of the Schedule to the Town and Country Planning (Use Classes) Order 2015 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification).**
  - b) **The use shall be carried out only by the applicant, Ms Sarah Williams and by no other person without the agreement in writing by the local planning authority.**
  - c) **The use shall be discontinued on or before the site is vacated by the applicant Ms Sarah Williams and the cessation of activities hereby permitted.**

**Reason:** In view of the particular circumstances relating to the management of the site by the applicant, and to prevent an overintensive use of this rural site in the interest of protecting the openness and visual amenities of the Green Belt and to avoid activities which might undermine local highways conditions and local amenities, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.

- 2 **The use shall not include a DIY livery yard and horses at the yard shall only be kept in a full livery basis with all their day-to-day needs met by the applicant.**

**Reason:** To prevent an overintensive use of this rural site in the interest of protecting the openness and visual amenities of the Green Belt and to avoid activities which might undermine local highways conditions and local amenities, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.

- 3 No more than sixteen horses shall be kept or grazed at the site at any time.**

**Reason:** In view of the particular circumstances relating to the management of the site by the applicant, to prevent an overintensive use of use of the site in the interest of the visual amenities of the area and wider Green Belt and to achieve good land management, to protect the visual amenities and openness of the Green Belt, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.

- 4 No more than 2 riding lessons shall take place on any day.**

**Reason:** To prevent an undesirable intensification of use of the site, to protect the visual amenities and openness of the Green Belt, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.

- 5 Details of a Site Management Plan shall be submitted to and approved in writing by the local planning authority by 28 October 2016. This shall include details of the operation of an appointment system for all visitors to the site (including their purposes for attending the site), measures to control the number of vehicles attending visiting the site and the means by which it will be available to the local planning authority for inspection. Thereafter the permitted use shall be operated in accordance with the approved Site Management Plan.**

**Reason:** To prevent an undesirable intensification of use of the site, to protect the visual amenities and openness of the Green Belt, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.

- 6 a) The grooms accommodation shall be only be occupied by the applicant, Ms Sarah Williams, and by no other person.  
b) Following cessation of the use hereby permitted, this accommodation which occupies the larger barn structure shall be dismantled and the residential use discontinued.**

**Reason:** In view of the particular circumstances relating to the management of the site by the applicant which justifies the provision of residential provision within the site, and to accord with Policies BE1 and L3 of the Unitary Development Plan and Section 9 of the National Planning Policy Framework - 'Protecting Green Belt Land'.