

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

**Application No :** 17/05809/FULL1

**Ward:**  
**Darwin**

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

**Objections: Yes**

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

**Applicant :** Miss Sarah Williams

### **Description of Development:**

Removal of redundant equine building situated adjacent to the southern site boundary and the stationing of a log cabin for residential use (in alternative siting)

### **Key designations:**

Biggin Hill Safeguarding Area  
Green Belt  
London City Airport Safeguarding  
Sites of Interest for Nat. Conservation

### **Proposal**

The proposal involves the demolition of a redundant equine building situated adjacent to the southern boundary and the erection of a residential log cabin which would occupy a more western position adjacent to an existing cluster of equine structures. The area occupied by the equine structure proposed for demolition would be grassed over and planted with two native trees.

The proposed log cabin would incorporate external dimensions of 9.0m x 6.1m, an eaves height of 2.2m and a ridge height of 2.8m. Its external finish would comprise of wooden sections and it would be sited in close proximity to an existing barn. It would incorporate a similar footprint to the equine building proposed for demolition, but its ridge height would be considerably lower.

The proposed development is sought on the basis that the log cabin would provide essential accommodation required by the applicant in connection with her equine business which incorporates the sale and preparation of horses, dressage lessons, dressage riding experiences, full specialist liveries, demonstration days and training. A number of horses are kept at the site. This application has also been submitted on the basis that the applicant's existing accommodation within the site is subject to an active enforcement notice. The existing accommodation in effect comprises a makeshift flat within one of the barns which must revert back to its former equine use.

A report accompanying the application advises that constant supervision of the horses within the site is required in order to provide 24-hour care for their wellbeing and that any injury or death of a horse whilst at the stud due to lack of adequate supervision could have a serious effect on the enterprise, not just in relation to that horse but also in terms of reputation of the business, and therefore a direct effect on its profitability and sustainability. Furthermore, the report advises that the horses kept at the farm are extremely valuable and that the theft of horses has also become an increasing problem in

the UK. The report further advises that the strongest form of deterrent is on-site accommodation and day and night supervision; that care of the horses requires someone to work long and invariably unsociable hours; and that the applicant has to be on hand to administer medicines, change the dressings of sick or injured horses and to supervise and care for the horses generally. Given the nature and management needs of the enterprise, the report concludes that close supervision of many aspects of the business at one time is a common occurrence.

The application is accompanied by supporting documents, including a report by the agent.

#### Location

The Yonder Farm holding (i.e. the entire blue-lined area on the site plan) 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 is rural in character and 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 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.

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 subdivided to provide turn-out paddocks. All stables are alarmed and the muck is stored in a trailer and emptied each month. In addition, 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.

### **Consultations**

#### **Comments from Local Residents**

Nearby owners/occupiers were notified of the application. Representations were received in support of the application. These may be summarised as follows:

- o someone needs to be in residence the whole time from the point of view of security and animal welfare
- o modest proposal which will enhance the neighbourhood
- o essential that applicant is on site overnight
- o applicant provides quality supervised care
- o neighbouring residents have lived alongside the applicant for the last seven years and the site has been used for equestrian purposes
- o applicant's on-site presence has deterred thieves
- o there have been many break ins in the area with tack having been stolen

Representations were also received from the Downe Residents' Association in objection to the proposal which can be summarised as follows:

- o previous application for residential accommodation at the site ruled unlawful and subsequent appeal dismissed

- o previous Inspector identified Intentional Unauthorised Development on the applicant's part
- o previous Inspector did not in any way indicate agreement for applicant to live on site in order to provide necessary case for animals on the holding
- o applicant's planning statement regarding need for 24-hour supervised care in not supported
- o no other commercial yard has 24-hour supervision
- o commercial matters are not relevant for consideration of planning applications
- o whether or not the proposal falls within the definition of the Caravan Act will depend on the method of construction
- o provision of a dwelling within the site would give rise to a more intensive residential use harmful to the Green Belt
- o very special circumstances do not exist to outweigh harm to the Green Belt

In response to the representations from the Downe Residents' Association, a rebuttal letter has been submitted by the agent that contests the above points.

### **Comments from Consultees**

No technical Highways objections were raised.

No technical Drainage objections were raised.

### **Planning Considerations**

Section 70(2) of the Town and Country Planning Act 1990 (as amended) sets out that in considering and determining applications for planning permission the local planning authority must have regard to:

- (a) the provisions of the development plan, so far as material to the application,
- (b) any local finance considerations, so far as material to the application, and
- (c) any other material considerations.

Section 38 (6) of the Planning and Compulsory Purchase Act (2004) makes it clear that any determination under the planning acts must be made in accordance with the development plan unless material considerations indicate otherwise.

According to paragraph 216 of the NPPF decision takers can also give weight to relevant policies in emerging plans according to:

- o The stage of preparation of the emerging plan (the more advanced the preparation, the greater the weight that may be given);
- o The extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- o The degree of consistency of the relevant policies in the emerging plan to the policies in the NPPF, the greater the weight that may be given).

The Council is preparing a Local Plan. The submission of the Draft Local Plan was subject to an Examination In Public which commenced on 4 December 2017 and the Inspector's report is awaited. These documents are a material consideration. The weight attached to the draft policies increases as the Local Plan process advances.

The development plan for Bromley comprises the Bromley UDP (July 2006), the London Plan (March 2016) and the Emerging Local Plan (2016). The NPPF does not change the legal status of the development plan.

#### London Plan Policies

- 3.5 Quality and Design of Housing Developments
- 6.13 Parking
- 7.4 Local Character
- 7.16 Green Belt

#### Unitary Development Plan

- BE1 Design of New Development
- BE3 Buildings in rural areas
- H1 Housing
- H7 Housing Density and Design
- G1 The Green Belt
- L3 Horse-related development
- L4 Horse-related development

#### **Emerging Local Plan**

- Draft Policy 4 Housing Design
- Draft Policy 37 General Design of Development
- Draft Policy 49 The Green Belt
- Draft Policy 61 Horses, stabling and riding facilities
- Draft Policy 83 Non-designated employment land

The National Planning Policy Framework is also a material consideration, with which the above policies are considered to be in accordance. Sections 9 'Promoting sustainable transport'; 5 'Delivering a sufficient supply of homes'; 12 'Achieving well -designed places'; and 13 'Protecting Green Belt land' are of particular relevance.

#### **Planning History**

02/01905

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. Condition 4 stated:

"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 permission reference 02/01905 advised that the use permitted should ensure solely for the benefit of the applicants, and applications, and for no other party.

14/03187

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)."

14/03188 & subsequent appeal

Under reference 14/03188/ELUD another 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. The Inspector concluded the following: (1) that the change of use of the planning unit to a mixed use of residential accommodation and equestrian use was 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 (meaning that it would benefit from the 10-year 'exemption rule'); and (2) that the applicant had deliberately sought to conceal her occupation of the green barn at Yonder Farm until she judged it was immune from enforcement action; on the balance of probability and the facts of this case, the appeal also failed on the grounds of concealment and deception.

15/01584

An 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.

15/03133

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 was the subject a subsequent appeal dated 20 October 2017 (APP/G5180/W/15/3138202) which was allowed, subject to conditions.

### **Enforcement Notices**

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 were the subject of a planning appeal dated 20 October 2017 - references: APP/G5180/C/15/3141430 and APP/G5180/C/15/3141431. The first of these appeals quashed the enforcement notice in relation to the failure to comply with Conditions 3 and 4

of the 2003 planning permission; the second appeal upheld the enforcement notice concerning the unauthorised use of the land for a commercial livery yard, riding school and residential worker's accommodation. The Inspector concluded at para 27:

"I consider that in respect of the equine use the balance is clearly in favour of granting permission, and such that very special circumstances exist. However once the residential element of the use is taken into account the balance is altered by the considerable weight to be given in this case to there having been intentional unauthorised development. I consider that the balance is no longer clearly in favour of the proposal."

Given the Inspector's decision to allow application reference 15/03133/RECON, the sole requirement of the Inspector's decision was to require the removal of the unauthorised dwelling within the barn. The Inspector granted the Appellant 12 months for compliance with the notice. Accordingly, the applicant has until 20 October 2018 to remove the unauthorised dwelling. The current planning application seeks provision for alternative residential accommodation within the site.

16/02755

Application reference 16/02755 sought a retrospective permission for the change of use of the land and buildings to commercial livery yard, dressage centre and incidental groom's accommodation. The Council refused permission in September 2016 for the following reasons:

"1. The proposed development is inappropriate development in the Green Belt, causing harm to the openness and character of the Green Belt and the purposes of including land within the Green Belt which is not clearly outweighed by any benefits of the development and therefore very special circumstances do not exist contrary to Policies G1 of the Unitary Development Plan and 7.16 of the London Plan and Section 9 - Protecting Green Belt Land - of the National Planning Policy Framework.

2. The proposed development by reason of the intensification of horse related activities, including grazing not in accordance with the British Horse Society's recommended standards, would be harmful to the open and rural character of the Green Belt and detrimental to the surrounding countryside, contrary to Policies L3 and L4 of the Unitary Development Plan."

17/02337

Under reference 17/0233 a further application identical to that refused under reference 16/02755 was submitted; however, that was subsequently withdrawn by the applicant.

## **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.

At the outset it should be recognised that the application site benefits from planning permission granted for the use of existing buildings for stables and for a sand school (granted under application reference 02/01905). The October 2017 Appeal Decision permitted the removal of conditions 3 and 4 of planning permission 02/01905 to enable use of buildings and sand school for commercial use. This application seeks the provision

of a log cabin which would be used to provide residential accommodation in connection with the applicant's equine business and provide welfare and protection for the horses based at the site.

The application proposal involves the removal of an existing redundant equine building which is located approximately 40m to the east of the main complex of buildings and the installation of a log cabin which would occupy a position immediately to the east of the main complex of buildings. Both the existing and proposed structures would maintain similar floor areas, although the log cabin would incorporate a shallower roof pitch and shorter ridge height. The nature of accommodation would appear to be rudimentary, but suitable to satisfy the applicant's requirements and adopted housing standards.

In terms of planning policy, the NPPF advises that the erection of new buildings within the Green Belt is generally inappropriate, with exceptions for: (a) buildings for agriculture and forestry; (b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it; (c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building; (d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; (e) limited infilling in villages; (f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and (g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings). These sorts of development are provided on the basis that they would not have a greater impact on the openness of the Green Belt than the existing development; or not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

The NPPF further advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

In the case of this scheme, the proposed log cab would amount to new residential development, which would generally be considered to constitute inappropriate development in the Green Belt. The applicant has provided detailed grounds to demonstrate that this would comprise essential accommodation in connection with the equine activities undertaken at the site. In addition, the Council has sought independent advice from agricultural consultants who have reviewed the background information pertaining to the site and equine activities and concluded that there is an essential need for a worker to live on site in order to manage the horses and ensure that welfare is not compromised; further, there is an essential need for an equestrian worker to live on site in order to meet the requirements of the equestrian enterprise. In forming this view, the agricultural consultants have also reviewed the trading accounts of the equine business and concluded that the applicant's existing business is profitable and sustainable and likely to remain so in the future.

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.

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.

Notwithstanding the above, the proposal involves the removal of an existing structure which occupies a more isolated position within the site. In volumetric terms, there will be a nominal decrease in the quantum of development within the site; however, since the proposed log cabin would be sited in closer proximity to the existing cluster of equine buildings, it is considered that overall openness will be enhanced. The area occupied by the existing equine building to be demolished will be grassed over and benefit from additional trees.

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.

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.

Taking the above considerations into account, whilst it is considered that the proposal amounts to inappropriate development in the Green Belt, it is recognised that there are compelling very special circumstances to justify this proposal: these include: (1) the essential need for this accommodation in connection with the established equine activities and business; (2) the modest size of the proposal; and (3) the removal of an existing equine structure which will ensure that there is no net increase in the level of built development within the Green Belt.

Following on, 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.

It is also necessary to address the enforcement history relating to this site as set out above. Whilst the applicant is compelled to remove her existing accommodation within the site, it is noteworthy that the existing dwelling was erected without the benefit of planning permission, and the Inspector in the case of the October 2017 Appeal Decision found that this had amounted to intentional unauthorised development, to which he attached considerable weight as a material consideration. In this case, the applicant is seeking alternative accommodation which does not affect the removal of the existing unauthorised dwelling. This proposal will entail the removal of an existing structure to ensure that the existing quantum of development within the site is not increased. Furthermore, the applicant has clearly demonstrated an essential need for the log cabin, which will ultimately ensure that an existing outdoor sport and recreational facility in the Green Belt can be maintained.

## **Summary**

Taking into account the very special circumstances of this case 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. The applicant is clearly committed to the equestrian enterprise and has all necessary skills to continue to operate the unit successfully.

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.

**as amended by documents received on 20.06.2018**

**RECOMMENDATION: PERMISSION**

**Subject to the following conditions:**

- 1 The development to which this permission relates must be begun not later than the expiration of 3 years, beginning with the date of this decision notice.**

**Reason: To comply with Section 91, Town and Country Planning Act 1990.**

- 2 The landscaping scheme as shown on the submitted drawings shall be implemented in the first planting season following the first occupation of the buildings or the substantial completion of the development whichever is the sooner. Any trees or plants which within a period of 5 years from the substantial completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species to those originally planted. Furthermore any boundary treatments shall be retained in perpetuity.**

**Reason: In order to comply with Policy BE1 of the Unitary Development Plan to secure a visually satisfactory setting for the development and to protect neighbouring amenity.**

- 3 The development hereby permitted shall not be carried out otherwise than in complete accordance with the plans approved under this planning permission unless previously agreed in writing by the Local Planning Authority.**

**Reason: In order to comply with Policy BE1 of the UDP and in the interests of visual and residential amenity.**

- 4 a) The log cabin hereby permitted shall be only be occupied by the applicant, Ms Sarah Williams, and by no other person.**

**b) Following cessation of the equine use within the Yonder Farm site, this accommodation shall be dismantled with the residential use discontinued and the land returned to its former state.**

**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 13 of the National Planning Policy Framework - 'Protecting Green Belt Land'.**

**5 Before the log cabin is first occupied, the existing equine building denoted on200-01, Rev B shall be demolished and all rubble removed from site. The land upon which it is sited shall be the subject of the above landscaping condition.**

**Reason: In order to protect the openness and visual amenity of the Green Belt, and to accord with Policy G1 of the Unitary Development Plan and Section 13 of the National Planning Policy Framework - 'Protecting Green Belt Land'.**