

## MEMO

**FROM:** Kate Longley  
**OUR REF:** 17/00362/BCOND  
**TO:** Service lead legal  
**DATE:** 21 October 2022

**Type of notice to serve:**  
**2 x Enforcement notices**

**Land registry title number(s):** HP550903

**Statutory power:** The Town and Country Planning Act 1990 (as amended)

**Location/address of land to which the notices will relate:**

Greenclose also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton, Hampshire, SO32 2DA

**Notices to be served on:**

- Eric John Newbury Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Patricia Gwen Caddy Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Patricia Gwen Newbury Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Eric John Newbury the Bungalow, Woodlea Nurseries, Wintershill, Durley, S032 2AH
- Patricia Gwen Newbury the Bungalow, Woodlea Nurseries, Wintershill, Durley, S032 2AH
- Angela Horner Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Steven Horner Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Adam Horner Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Luke Horner Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Maria Davidson of Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA
- Aardvark appliances LTD (company no. 05685378) C/O Hjs Chartered Accountants, 12-14 Carlton Place, Southampton, Hampshire, SO15 2EA
- Aardvark appliances LTD, 13 Thornhill park road, Southampton, SO18 5TP

- The occupier Green Close also known as Lower Parklands, Wangfield Lane, Curdridge, Southampton SO32 2DA. A site notice to be placed on each caravan is also recommended to cover any occupiers given the nature of caravan/vehicle storage as the owners have not provided further information required to serve parties.

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Please find attached two draft Enforcement Notices in respect of the above breach of planning control.

**Would you please arrange to serve the notices as set out in the draft or in terms you consider appropriate ASAP.**

### **Introduction**

This report covers two matters which are to form the basis of two separate notices.

### **Notice 1 (17/00362/BCOND)**

It appears to the Council that the property is being occupied by a person who does not meet the requirements of condition 3 of application 86/01902/OLD which states;

*“The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and County Planning Act 1971, or in forestry (including any dependents of such persons residing with him) or a widow or widower of such a person.”*

The notice seeks to ensure compliance with the above condition, by requiring the current occupant to vacate and the property not be occupied by any person who does not comply with the attached condition.

### **Notice 2 (17/00329/USE)**

An area of land associated with the agricultural holding has been separated off to be used for caravan/vehicle storage and an equestrian use. This is considered to form part and parcel of the same planning unit despite the subdivision (reasoning outlined below in the relevant evidence/issues).

It is considered that a material change of use of the land from its authorised agricultural use to a mixed use for B8 storage use (storage of caravans) and equestrian has occurred.

The notice seeks to ensure the land is returned to its authorised use and the unacceptable mixed use for B8 storage use and equestrian use ceases.

### **The site and surrounding area**

The site comprises the residential property known as Greenclose and equestrian and agricultural land found to the north east of the dwelling. The land is accessed from the public highway (Wangfield Lane) via a metalled track, which also serves the bungalow at "Greenclose". This track does not serve any other land use or property owner.

To the north and east of the application site lies open agricultural land, and to the south and south west lie a small number of individual detached residential properties. To the north west of the application land lies a mixture of commercial, horticultural and light industrial units.

### **Relevant planning/enforcement history:**

**86/01902/OLD** - Erection of agricultural workers dwelling and vehicular access. **Permitted.**

**87/01262/OLD** - (Approval of reserved matters) Erection of agricultural dwelling and alteration to existing access - North of Parklands. **Permitted.**

**06/02307/FUL** – Construction of a 40 x 20 metre manage. **Permitted.** (This has not been implemented seems to be within the area of hard surfaced extension).

**17/00362/BCOND** – Breach of condition 3 relating to 86/01902/OLD agricultural occupancy condition (file relates to notice 1).

**17/00329/USE** – Alleged unauthorised storage of caravans/mobile homes (file relates to notice 2).

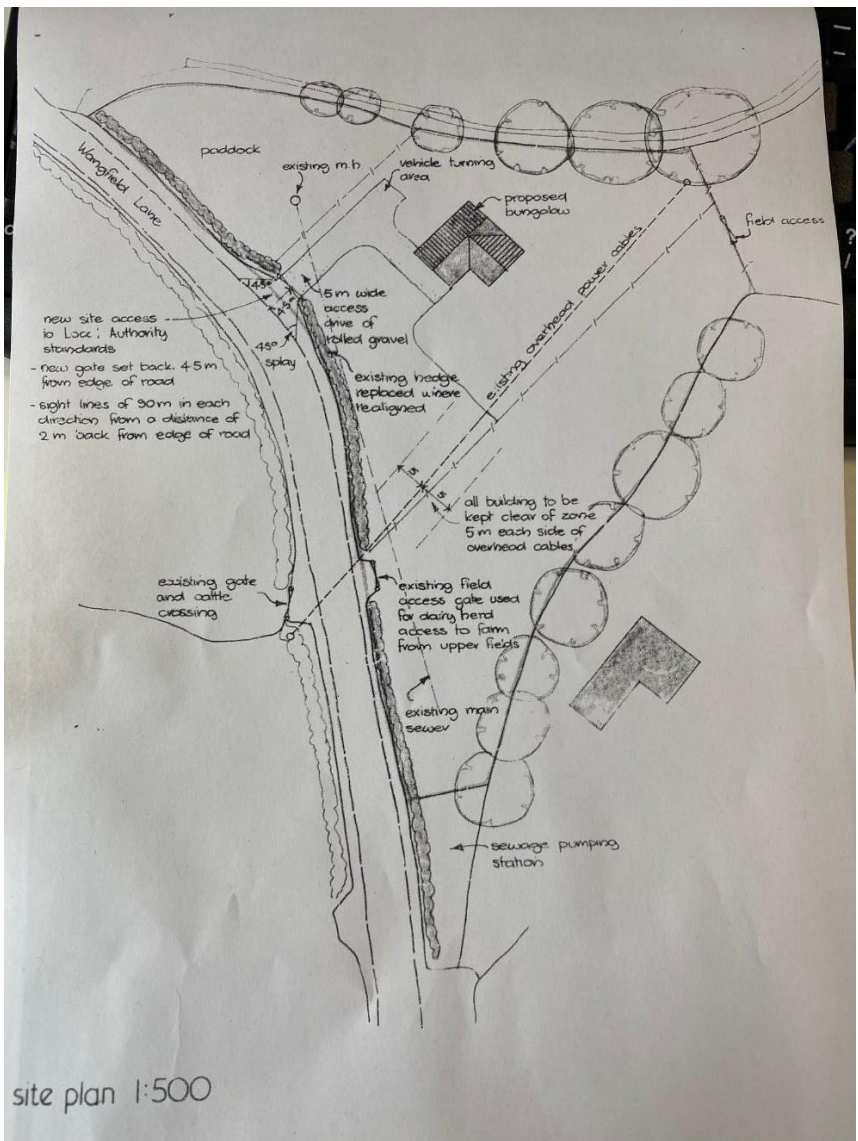
**19/02373/FUL** - Retrospective application for the change of use from equestrian / agricultural use to the storage of touring caravans. **Refused.**

**20/01196/FUL** - Retrospective application for the change of use from equestrian / agricultural use to the storage of touring caravans. **Refused.**

No other relevant history.

### **The relevant evidence/issues:**

15<sup>th</sup> September 1986 application 86/01902/FUL for the agricultural dwelling was submitted. Including the following plans which show that despite the clear functional link the dwelling appears to have always been physically divided from the larger site.





10<sup>th</sup> July 2006 – Application for the construction of a 40 x 20 metre manage. This was located to the South of the barn on site where there now appears to be an extension to the hardsurfacing. It does not appear that this was ever implemented, Internal satellite imagery shows a cleared area in 2013 but no ménage, then in the 2017 imagery there is an area of hardsurfacing. The planning approval included condition 1;

*‘The development hereby permitted shall be begun before the expiration of three years from the date of this permission.’*

The 2013 aerial indicates this was not commenced, clearance of land would not be deemed as commencement and as such the permission is no longer extant and the lawful use of the land remains agricultural. The application form lists the existing use as agricultural and grazing.

June 2009 the dwelling at this time was separated physically form the 'holding' much the same as current date although the fence has now been updated as seen on Google streetview.



April 2011 the dwelling was separated physically from the 'holding' much the same as current date although the fence has now been updated as seen on google streetview.



2013 – The property was sold. The previous owner confirms that the property was occupied by widow of a farmer who complied with the condition. They advised the property was sold to someone who met the terms of the condition also. This occurred in 2013 so even if it was January 2013 the earliest point – the 10 year period would not be up until 2023.

October 2014 – The current occupiers registered on the Electoral role during a canvas.

14<sup>th</sup> November 2017 the Council was notified that Greenclose appeared to be being occupied in breach of the agricultural occupancy condition and had also begun storing caravans for commercial purposes.

2<sup>nd</sup> November 2017 - Land registry search undertaken (HP742588) freehold owner listed as Eric John Newbury of Greenclose. Date of transfer 24<sup>th</sup> March 2014.

17<sup>th</sup> November 2017 at 10.55hrs a site visit was conducted to 'Lower Parklands'. Caravans were observed behind a hedge. The gates to the site were locked.

29<sup>th</sup> November 2017 – the council received further notification of caravan storage on the land, specifically on an area approved as a ménage. Also detailing that the agricultural barn was being used to store white goods.

30<sup>th</sup> November 2017 Mr John Newbury contacted the Council and arranged an appointment to visit the site at 10.30am on Monday 11.12.17.

8<sup>th</sup> December 2017 – further report of property being occupied in breach of condition as resident alleged to not comply with agricultural occupancy condition.

11<sup>th</sup> December 2017. Site visit conducted to Green Close, Curdridge Mr John Newbury and his agent Richard Stone present. The officer observed 24 mobiles homes/caravans/motor homes stored on the land. During the visit the barn was locked but the officer was able to see through gaps between the doors to confirm there were no caravans or other vehicles inside.

1<sup>st</sup> February 2018 and Email was sent to planning agent (Mr Richard Stone) requesting confirmation as to whether a planning application would be received for the storage of the Caravans. Greenclose, Curdridge (case ref. 17/00329/USE).

1<sup>st</sup> February 2018 agent responded to advise he was awaiting informal advice as to the potential acceptability of the storage should an application be submitted.

5<sup>th</sup> February 2018 email to agent requesting an application for storage of caravans by Friday 23<sup>rd</sup> March 2018.

4<sup>th</sup> March 2018 – site visit conducted observed the caravans to the rear and business Ardvark within barn. No one was present in the cottage but Council tax officer advised she had been told by the lady who lives there that she rents it from the land owner. She has no agricultural ties. There is clearly no agricultural use on the land, the rear is being used for storage of caravans and the barn (may partially be agricultural) is being used to store freezers/fridges for Ardvark a company in Thornhill.

6<sup>th</sup> April 2018 – telephone call to owner who advised all questions need to go through their agent. He refused to confirm if where he lives. When asked for his address to write to he confirmed Woodlea Nurseries is his address.

6<sup>th</sup> April 2018 – Email to agent advising of breach.

4<sup>th</sup> September 2019 – PCN served.

7<sup>th</sup> January 2019 - PCN returned but only by one owner - states breached over 10 years but no actual evidence provided. Agent emailed requesting more info/LDC app.

7<sup>th</sup> January 2019 – Agent confirmed LDC to be submitted.

1<sup>st</sup> February 2019 email to agent from officer and letter to owner outlining options in relation to breach. Including submission of an application, removal of unauthorised development or do nothing in which case enforcement action to be considered. Response required within 14 days of the email.

1<sup>st</sup> February 2019 – Email from agent to officer advising he is instructed to submit a CLEUD in relation to the agricultural occupancy alleging the condition has been breached for 10 years.



1<sup>st</sup> February 2019 - email from officer to agent requesting a reasonable timescale of when I can expect WCC to receive application for storage of caravans.

25<sup>th</sup> February 2019 site visit conducted caravans still present.

10<sup>th</sup> July 2019 Site visited observed caravans at rear of property.

30<sup>th</sup> July 2019 Email sent to Richard Stone (agent) regarding the caravans and the breach of condition requesting update.

7<sup>th</sup> August 2019 – Email sent to agent asking for an update on the applications for caravan storage and the change of use of the agricultural dwelling.

5<sup>th</sup> September 2019 Follow up email sent to agent, giving him 7 days to reply.

5<sup>th</sup> September 2019 email from agent stating that applications will be submitted. Application for caravans within 2 weeks and CLEUD for breach of condition before the end of the month.

5<sup>th</sup> September 2019 email to agent providing 14 days to submit planning application.

9<sup>th</sup> September 2019 email to agent confirming advising system to be checked for the submitted application on the 19/09/2019 and the LDC on the 30/09/2019.

30<sup>th</sup> September 2019 No applications submitted.

11<sup>th</sup> October 2019 Email sent to agent regarding the non-submission of applications.

29<sup>th</sup> October 2019 – Application 19/02373/FUL submitted for retrospective application for the change of use from equestrian/agricultural use to the storage of touring caravans. No evidence submitted to demonstrate the equestrian use as lawful.

19<sup>th</sup> December 2019 – Application 19/02373/FUL refused; retrospective application for the change of use from equestrian/agricultural use to the storage of touring caravans. No evidence submitted to demonstrate the equestrian use as lawful.

4<sup>th</sup> March 2021 – Site visited observed caravans still present.

8<sup>th</sup> March 2021 - Final options letter sent to owner including final request for caravans to be removed to cease to breach.

31<sup>st</sup> March 2021 – Owner emailed to confirm they were unaware their agent had not submitted an appeal - new agent instructed to submit application.

1<sup>st</sup> April 2021 Phone call with agent who advised the intention to submit an application for a temporary 1 year permission for the storage of the caravans. Expected by mid-late April 21.

30<sup>th</sup> June 2021 - Application not received.

25<sup>th</sup> July 2021 – further report that following refused applications caravans are still being stored on the land.

11<sup>th</sup> April 2022 – further report of a caravan stored on the land.

20<sup>th</sup> August 2022 – PCN returned from P.G Newbury and E.J Newbury.

3<sup>rd</sup> October 2022 – Email sent to owners requesting further details following the PCN as full details for the parties storing their caravans have not been provided and would be best to serve them specifically as interested parties. Providing 7 days for response with information. Also request as to progress of application said to be due for submission 30<sup>th</sup> October.

3<sup>rd</sup> October 2022 – Response from email to owner advising ‘they have already been posted’.

4<sup>th</sup> October 2022 – Confirmation that the PCN responses had been received but further information required.

12<sup>th</sup> October 2022 – Follow up email requesting confirmation as to whether the additional information will be submitted.

12<sup>th</sup> October 2022 – Contacted Aardvark appliances from the contact number on their website – 02380 366848. Spoke to the owner of the company Stuart McNee. He confirmed they use the barn to store their white goods/appliances. He advised that he pays business rates for a warehouse, he checked that he shouldn't pay agricultural rates and so believed the barn to be acceptable used in this manner. I confirmed that the barn has a lawful agricultural planning use and as such a change of use application would have been required, rates are separate and based on the actual use. It is the owner/occupiers responsibility to ensure they have all the required permissions to use the land in the manner they intend to. He has requested a copy of the notice also be served to; 13 Thornhill park road, Southampton, SO18 5TP as well as the companies house address listed online. Confirmation that the company is Aardvark Appliances LTD registered under company number 05685378.

This confirms the company to be served. As of the date of writing this report no further information provided regarding following;

Full names and addresses of the following parties (said to be storing their caravans on the land for a fee);

- Rawcliffe
- Heath
- Raven
- Waldren
- Morgan
- Gaugler
- Martin
- Lawler
- Tostivine
- Craggs

Given the potential implication of time frames and the lack of response from the owner the notices for these parties are to be served on the 'occupier' and individually attached to each caravan/vehicle.

### Planning unit

The site has never been one single unit the dwelling has always been subdivided to some degree with fencing/landscaping from the main holding. The site was approved in this manner physically but was owned and controlled in connection with the farm and as such was considered one planning unit. The courts have held that the planning unit should be determined by identifying the unit of occupation and whether there is a physical and or functional separation of primary uses as a matter of fact and degree. In case Bridge J three broad categories of distinction were outlined;

1. A single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary;
2. A single planning unit that is in mixed use because land is put to two or more activities and it is not possible to say whether one is incidental to another and it is not possible to say whether one is incidental to another;
3. The unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes.

In Ocado Retail LTD case Holgate J emphasised that the identification of a planning unit is a case of fact and degree and occupation is a significant consideration as it signifies control of an area of land by an occupier.

The site has a single access which leads to two separate gated accesses. Whilst there are occupiers on the land the land is owned and controlled by the same party Eric and Patricia Newbury. In a PCN dated the 20<sup>th</sup> August 2022 the owners confirmed that they have made no amendments to the physical division between Greenclose and Lower Parklands since their ownership and the change of use occurring. They also confirm there is no other access to 'lower parklands' and access has to be through Greenclose.

The land to the rear known as Lower parkland can only be accessed by crossing over land associated with the dwelling Greenclose.

It is considered that as the land is under one ownership it is controlled by one party who lets certain areas to people, either Greenclose for habitation or Lower parklands for storage, with an equestrian use for their own horses and as such is one planning unit with a mixed use.

The notices are to be issued separately and can be amended without prejudice should this approach be determined incorrect simply by amending the site plan.

**Consultations:**

None applicable.

**Planning policy:**

**Statutory background:**

The Town and Country Planning Act 1990 (as amended)  
The Town and Country Planning (General Permitted Development) Order 2015 (as amended)  
Human Rights Act 1998  
Equalities Act 2010

**National policy/guidance:**

National Planning Policy Framework (NPPF):

The National Planning Policy Framework was published on July 2021 and sets out the Government's planning policies for England and how these are expected to be applied. A number of sections are of relevance to this case, including:

- Chapter 4 – Decision making
- Chapter 12 – Achieving well-designed places
- Chapter 15 – Conserving and enhancing the natural environment

**Local policy/guidance:**

Winchester District Local Plan Part 1 (2013)

- DS1: Development Strategy and Principles
- CP13: High Quality Design
- MTRA3: Other Settlements in the Market Towns and Rural Area

Winchester District Local Plan Part 2 (2017)

- DM11 Housing for essential rural workers (included clause on removal of occupancy conditions).
- DM12 Equestrian Development

- DM15: Local distinctiveness
- DM16: Site Design criteria
- DM17: Site Development principals

### Other legislation

Winchester District High Quality Places Supplementary Planning Document

### **Planning considerations:**

The relevant material considerations are:

- The principle of the development
- The impact on the character of the area.

### Principle of development

Paragraph 47 of the NPPF requires that applications for planning permission be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Paragraph 80 of the NPPF states that:

*'Local authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: The essential need for a rural worker to live permanently at or near to their place of work in the countryside...'*

This is reflected in Policy MTRA 4 of the Winchester District Local Plan Part 1 which states that in the countryside (defined as land outside the built - up areas of Winchester, Whiteley and Waterlooville and the settlements covered by MTRA2 and 3) the Local Planning Authority will only permit the following types of development:

- Development which has an operational need for a countryside location, such as for agriculture, horticulture or forestry; (The storage of caravans/white goods does not have an operational need for a countryside location, the fact the bungalow is now being used for a non-agricultural worker suggests there is no operational need on this land) or
- Proposals for the reuse of existing rural buildings for employment, tourist accommodation, community use or affordable housing (to meet demonstrable local housing needs). Buildings should be of permanent construction and capable of use without major reconstruction: (the unauthorised storage use on the land even if the buildings are being utilised does not fall within any of the above uses) or
- Expansion or redevelopment of existing buildings to facilitate the expansion on - site of established businesses or to meet an operational need, provided development is proportionate to the nature and scale of the

- site, its setting and countryside location: (there is no authorised business running on the site and as such no operational need) or
- Small scale sites for low key tourist accommodation appropriate to the site, location and the setting (the development on site does not relate to tourist accommodation).

Policy MTRA4 of the LPP1 allows for development in the countryside which has an operational need for a countryside location, such as agriculture, horticulture or forestry. In relation to **Notice 1** the dwellinghouse was granted permission where housing would not normally comply with this development strategy, because it has a locational and operational need linked to an agricultural use and demonstrated through the assessment of the further detailed development management policy, currently DM11 LPP2. Removal of the agricultural tie would therefore not comply with policy MTRA4 LPP1 as it would allow an unrestricted dwellinghouse in the countryside contrary to the development plan development strategy for new housing and contrary to policy DM11 LPP2 which considers the removal of such conditions. It is expected that occupancy conditions on essential rural workers dwellings will only be removed if the LPA is satisfied that the long term need for the dwelling has ceased and there is no evidence of a continuing need for housing for workers solely or mainly employed in agriculture or forestry on the housing or in the surrounding area. No evidence has been provided in relation to the marketing of the property to assess future need and as such the local planning authority is not satisfied that it has been adequately demonstrated that there is no longer a need for an agricultural workers dwelling in the area.

The storage use alongside the operational development on site is not associated with any of the recognised development that will be permitted as outlined within MTRA4 LPP1. It is expected that a commercial storage use would be located within the settlement areas as such storage and in particular outside storage use will be harmful and unsustainable in a rural location. A smaller area of the hardsurfacing was existing as was the barn but it is clear that these aspects are not now used in connection with agriculture, horticulture or forestry as there is no such use on the land. The extended areas of hardsurfacing have been implemented to facilitate the outside storage of caravans and as such are to be included within the notice. The original area of hard surfacing appeared to provide a small area around the barn, the gradual extension of the hard surfacing has further eroded the rural nature of the site. The hardsurfacing now covers a significant area, approx. 1900sqm additional to the original area, which is larger than the floor space provided by the barn (approx. 470sqm).

The equestrian use alongside the associated operational development has led to the creation of additional hardsurfacing to form a track. The location is not sympathetic to the authorised forms of development and leads to further erosion of what is lawfully an agricultural site. Policy DM12 LPP2 specifies that horse related facilities/development will be permitted where a countryside location is necessary provided it is in compliance with the development plan and meets with certain objectives. In this instance it is not clear that the specific location is necessary in

this field and (i) states that the development should make best use of existing infrastructure. Rather than siting the use in a location so as to use existing infrastructure it has been placed in an area requiring further hardsurfacing/track to access. It has also been placed in the centre of the land away from any other authorised structures and is not considered to respect the existing landscape pattern (it is in the centre of the field) or minimise the visual impact (good practice is to tuck along the boundary edges or site near the existing built up part of a site next to existing buildings and ensure a backdrop of vegetation) (ii). The equestrian use has led to the installation of additional hardsurfacing, erection of a stable, another wooden structure, placement of a storage container and associated fencing which does not align with point (iii). Notwithstanding the unacceptability of the current scheme it is accepted that in principle such a use and structures may be acceptable within this site in a more suitable placement using existing lawful hardsurfacing/tracks and situated closer to the authorised structures on site. Such a use would also be conditioned. An unconditioned equestrian use on the land would not be acceptable in any form due to the controls needed (manure disposal, lighting, access, drainage, ecology mitigation and enhancement). The former planning application **20/01196/FUL** did not include the stables in the red line of the site and they were not assessed in respect of the policy.

The continued use of land for storage, and the equestrian use which further encroaches beyond the storage and into the countryside with the track and buildings, and the occupation of the dwelling by a non-agricultural worker, along with the associated development is unacceptable because it fails to meet the criteria set out in DM11 (Housing for Essential Rural Workers), DM12 (Equestrian Development) Local Plan Part Two, and MTRA4 of the Winchester District Local Plan Part One. As such it is contrary to Policy MTRA4 of the LPP1 and the NPPF 2021 in that it has not been demonstrated that there is an essential operational or agricultural need for the proposal.

#### Impact on Property and Character of Area

Paragraph 134 of the NPPF states that *'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents'*.

Paragraph 174 of the NPPF states that planning decisions *'should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes'* and *'recognising the intrinsic character and beauty of the countryside'*.

Policy CP20 of the LPP1 requires new development to conserve local distinctiveness, especially in terms of characteristic materials, trees, built form and layout, tranquillity, sense of place and setting.

DM23 (Rural Character LPP2) requires development in the countryside not to have an unacceptable effect on the rural character of the area by means of visual intrusion, the introduction of incongruous features, destruction of locally characteristic rural assets, or by impacts on the tranquillity of the environment. It is considered that the open storage of caravans, with the extended area of hardsurfacing is an incongruous feature in the countryside which has an unacceptable effect on the rural character of the area. It is also considered that the arrival and departure of cars and caravans could have impacts on the tranquillity of the environment and the rural roads in the vicinity of the site.

DM15 (Local Distinctiveness LPP2) sets out those features and characteristics which are considered to contribute to local distinctiveness. Development proposals should respect these features and characteristics and preserve or enhance them. The site is located in the countryside and the open storage of caravans with the extended area of hardsurfacing would be an uncharacteristic feature which could be intrusive and detract from the character and appearance of the countryside. What is distinctive about this area is noted below from the Landscape Character Assessment.

The use will generate traffic in the form of people delivering their caravans for storage and then collecting them when needed, also the delivering of white goods and collection when required. Whilst the Highways Engineer was satisfied in a recent application that the increase in vehicle movements resulting specifically from the caravan storage on the site can be safely accommodated at the existing access and will not result in a detrimental impact on the safety or operation of the local highway network, it is still considered that that it will harm the rural character, as the commercial activity will be apparent and have a detrimental impact on rural character and tranquillity. It is also important to consider that if there is no control of the storage operation it could increase and additional vehicles could be stored on the land with an additional erosion on the rural countryside due to even greater additional vehicle movements, or larger heavy goods vehicles being required to move certain stored items. The proposed development does not comply with the criteria in policy MTRA4 LPP1 or DM23 LPP2 and is not a type of development which would normally be acceptable in the countryside.

Winchester City Council's landscape character assessment (LCA) highlights the importance of Winchester's landscape, both locally and nationally, and the pressures that are being placed upon it. An LCA can help to protect and enhance the strong identity of Winchester's landscape, whilst accommodating necessary development and change. The LCA also aims to highlight trends and issues that are threatening the character of the landscape.

The LCA highlights a key issue in this rural area being the gradual proliferation of a suburbanised urban fringe character with assorted sheds, horse paddocks and fencing, a neglect of hedgerows, small nurseries and tipping (LCA p142). The character assessment recommends retaining the rural character of the local



minor roads and resisting development which suburbanises local settlements (LCA 143). This advice is carried forward in to the Local Plan and specifically policies DM15, DM16, DM17 and DM23 LPP2 which all have the objective of maintaining rural character and distinctiveness with the design and location of development appropriate in its response to it. The equestrian use that has been introduced appears to be a paddock for the owner's horses which a friend comes and exercises for them. There is a stable building and feed indicating they are not just grazing on the land. This area has been subdivided off with fencing and a gate, one stable building and what appears to be a hay store directly adjacent to the stable building have been erected, a container and a trailer which appears to be used for manure storage were also within this area. This is clearly highlighted as a concern within the LCA as detailed above and in this case is demonstrably harmful as they have been poorly sited in the open more central part of the field, with a track extending to it siting itself beyond what is now the unlawful storage part of the site. The result is that the buildings and works encroach further into the countryside than should otherwise be reasonable necessary to facilitate an equestrian use, and also therefore fails to comply with criterion I, ii, iii, iv and v. of DM12 and DM23 LPP2.



Conclusion

The development is contrary to the provisions of the development plan. The site is not currently authorised for commercial or storage use or equestrian purposes and is within the open countryside. There is no overriding need for the development to be located within the countryside and uses of this nature and

storage sites are typically situated within or adjacent to existing built-up areas to minimise car movements and visual impacts. The proposal would represent an unnecessary intrusion into the countryside, detrimental to the rural character.

Storage is an incongruous feature in this locality and represents an unnecessary intrusion into the countryside, detrimental to the rural character. The storage is harmful to the rural character and is therefore contrary to policies MTRA 4 Development in the Countryside of the Winchester Local Plan Part 1 and policies DM15 Local Distinctiveness and DM23 Rural Character of the Winchester Local Plan Part 2.

The equestrian use has led to subdivision through fencing, buildings and a container which is detrimental to the rural character and is therefore contrary to policies MTRA 4 Development in the Countryside of the Winchester Local Plan Part 1 and policies DM12 Equestrian Development DM15 Local Distinctiveness and DM23 Rural Character of the Winchester Local Plan Part 2.

The dwelling was approved with a condition limiting occupation in order to overcome policy objections to ensure the dwelling would be used for an agricultural residency. On the basis that the occupiers are not complying with the agricultural tie in any way, despite being made fully aware of the restrictions on the property prior to purchase, it is considered expedient to serve an enforcement notice. A longer compliance time has been recommended in order to give the applicant time to market the property (for let or sale) at a realistic price that reflects the agricultural tie. The use of the dwelling for non-agricultural purposes is therefore contrary to policies MTRA 4 Development in the Countryside of the Winchester Local Plan Part 1 and policy DM11 Housing for Essential Rural Workers Local Plan Part 2.

In summary, the unauthorised development is unacceptable and enforcement action is recommended in the form of two enforcement notices. The owner has been afforded ample opportunity to remedy the breach or submit alternative schemes without formal intervention but at this stage formal enforcement action is required.

**The reasons for issuing the notice:**

**Notice 1 (Occupation Greenclose):**

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The dwelling was approved with a condition limiting occupation in order to overcome policy objections to ensure the dwelling would be used for an agricultural residency. The use of the dwelling for non-agricultural purposes is therefore contrary to policies MTRA 4 Development in the Countryside of the Winchester Local Plan Part 1 and policies DM11 Housing for Essential Rural Workers Local Plan Part 2.

The Council do not consider that planning permission should be given because planning conditions could not overcome these objections to the development.

Notice 2 (unauthorised mixed use):

It appears to the Council that the above breach of planning control has occurred within the last ten years.

The mixed use of the land for storage and equestrian purposes is an incongruous feature in this locality and represents an unnecessary intrusion into the countryside, detrimental to the rural character. The mixed use is harmful to the rural character. The mixed use of the land for storage and equestrian purposes is therefore contrary to policies MTRA 4 Development in the Countryside of the Winchester Local Plan Part 1 and policies DM12, DM15 Local Distinctiveness and DM23 Rural Character of the Winchester Local Plan Part 2.

The Council do not consider that planning permission should be given because planning conditions could not overcome these objections to the development. In terms of the equestrian development whilst in principal it is acceptable the position currently would not be and conditions could not overcome the current scheme.

**Recommendation and time for compliance:**

Notice 1

That an enforcement notice is issued requiring the following steps to be taken:

- ① Cease the occupation of the property by persons not complying with condition 3 of application 86/01902/OLD which states;  
*“The occupation of the dwelling shall be limited to a person solely or mainly employed, or last employed, in the locality in agriculture as defined in Section 290(1) of the Town and County Planning Act 1971, or in forestry (including any dependents of such persons residing with him) or a widow or widower of such a person.”*

Time for compliance for the notice: 12 months from the date the notice takes effect.

This has taken into account timeframe for re let either for rental or sale for a party who can meet with condition 3 of application 86/01902/OLD, and also for the current occupiers to find a new rental. The household affected will also be referred to Winchester City Councils Housing team for support and practical advice. An extended period of time will be provided to comply with the enforcement notice because of this.

Notice 2

That an enforcement notice is issued requiring either of the following steps to be taken:

- i) Cease the use of the Land for storage and equestrian purposes
- ii) Remove from the land the buildings, fencing, storage container, caravans, vehicles and all other paraphernalia brought onto the land to facilitate the unauthorised use in (i).
- iii) Dig up and permanently remove from the land the hard surfacing (in the approximate location hatched in blue on the attached plan);
- iv) Remove from the land all materials, rubble, rubbish and debris arising from steps (i) to (iii).
- v) Reseed the land to grass.

Time for compliance for the notice: 6 months from the date the notice takes effect.

1 tenants would be required to vacate the premises as a result of this enforcement notice should it be complied with. An extended period for compliance will be offered to ensure enough time is given to find alternative premises to continue the business. In addition, the tenants will be referred to the Economies team at Winchester City Council for advice.

### **Other courses of action considered but rejected**

#### ***Notice 1 - Breach of condition notice***

Whilst a Breach of condition notice could be served in relation to breach of condition 3 of application 86/01902/OLD. Given that the occupiers will be made homeless by the notice it is considered more appropriate to allow a route of appeal should they wish to do so. Given this it is considered that the proposed breach of condition enforcement notice is the more appropriate action to be taken at this time.

#### ***Notice 1 & 2 - No further action***

This will result in the unlawful development remaining, with associated harm to matters of acknowledged importance and the identified harm would continue. The unauthorised uses have already led to a sprawl across the site of unacceptable operational development, encroachment into the countryside with hardsurfacing. The uncontrolled storage use could also further intensify and lead to greater harm. Whilst the Council's powers to pursue action is discretionary, taking account of Government advice and the fact that it is considered to be contrary to planning policies for the area, it is therefore in the public interest, and a proportionate response to the harm caused, to take the proposed course of action.

## **Human Rights**

The Human Rights Act 1998 makes it unlawful for the Council to act in a way incompatible with any of the Convention rights protected by the Act unless it could not have acted otherwise. In arriving at the recommendation to take enforcement action, careful consideration has been given to the rights set out in the European Convention of Human Rights including Article 6 (right to a fair trial), Article 8 (right to respect for private family life), Article 14 (prohibition of discrimination in enjoyment of convention rights) and Article 1 of the first protocol (the right to peaceful enjoyment of possessions). It is considered that where there is an interference with the rights of the recipient of an enforcement notice, such interference is considered necessary for the following reasons: the protection of the environment and the rights and freedoms of others. It is also considered that such action is proportional to the legitimate aim and in the public interest.

## **Service**

The notices are to be hand served where within the Winchester City Council area and via recorded post to others.

Fee =

**Notice 1** = £468.00 (2 x £234.00)

**Notice 2** = £924.00 (2 x £462.00)

Not considered that the appeal ground A would be fee exempt as the applications submitted under 19/02373/FUL & 20/01196/FUL covers the entirety of the breach. These applications related to caravan storage not including storage within barn, equestrian use and associated operational development.

If you require any further information or wish to discuss the matter in more detail, please let me know.

Kate Longley  
Planning Enforcement Officer

01962 84801962 848 480 EXT 2602

## **Enclosed:**

I have attached;

- Red line site plan
- Draft enforcement notice
- Land registry

**DELEGATED AUTHORITY**

I, Lorna Hutchings, being duly authorised to act for and on behalf of Winchester City Council with the powers delegated to me as Planning Delivery and Implementation Manager, do hereby authorise the proposed enforcement action in accordance with the above report and attached draft enforcement notice.



.....  
**Lorna Hutchings**  
Planning Delivery and Implementation Manager  
Build Environment  
Winchester City Council  
DATE 15.11.2022