

STATEMENT OF CASE

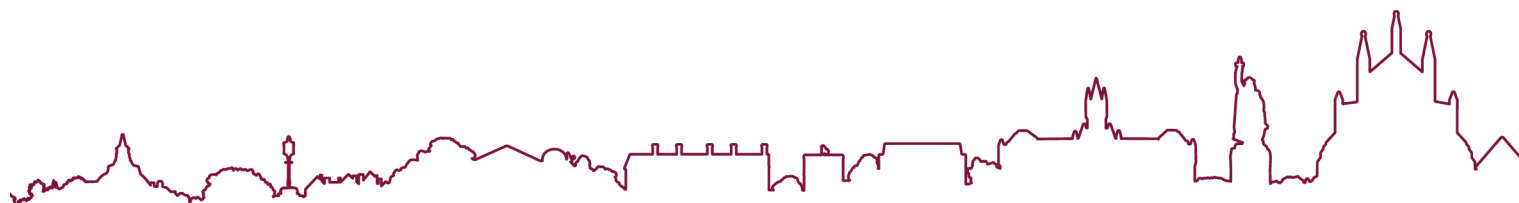
SITE: LAND AT SHEDFIELD EQUESTRIAN CENTRE, BOTLEY ROAD,
SHEDFIELD, SO32 2HN (2 BROTHERS CONCRETE PUMPING)

APPEALS BY: MR CHRISTOPHER COLLINS

AGAINST ENFORCEMENT NOTICE 11

DATE: DECEMBER 2023

APPEAL REF: APP/L1765/C/23/3331896



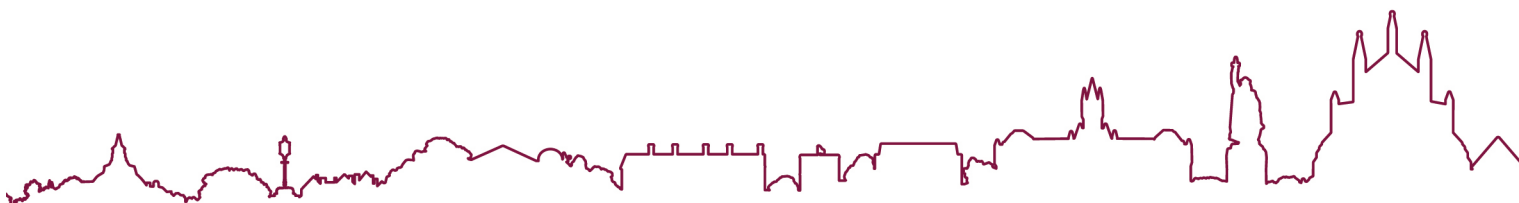
1.0 INTRODUCTION

- 1.1 Enforcement Notice 11 was issued on 21 September 2023; a copy of the notice is attached at Appendix A.
- 1.2 The Enforcement Officers report is attached at Appendix B and contains the history of the site and expediency considerations. Please note that the full site review mentioned in the Enforcement Officers report at paragraph 1.1 is not included with this statement. If required, this can be provided on request.
- 1.3 An appeal was lodged by the owner of the site on 24 October 2023 on Ground (a).
- 1.4 It should be noted that a significant proportion of surrounding uses within the larger Shedfield Equestrian site are unauthorised and are currently subject to formal enforcement action. The most recent enforcement notices – and ones most relevant to this site - were upheld at appeal (references: APP/L1765/C/22/3300697, APP/L1765/C/22/3300720, APP/L1765/C/22/3300722, APP/L1765/C/22/3309990). The appeal decision notices are attached within the enforcement report (Appendix B).
- 1.5 There are two ongoing, linked appeals currently before the Inspectorate (references: APP/L1765/C/23/3328885, APP/L1765/C/23/3328886).

2.0 RESPONSE TO GROUND (A)

PRINCIPLE

- 2.1 Policy MTRA4 restricts development in the countryside. In terms of employment this is restricted to that which has an operational need for a countryside location, such as agriculture and forestry, and the reuse of existing buildings for employment uses.
- 2.2 The proposal under consideration includes hardstanding, storage, fencing, and ancillary structures/buildings.
- 2.3 The appellant argues that the proposal would constitute an onsite expansion of an existing business that would be acceptable under MTRA4. It is the Council's view that the proposal is not the expansion of the existing business on site but rather the introduction of a new business into the countryside. The business/use under consideration is not related to the agricultural uses that are existing and has not resulted in the reuse or replacement of existing buildings for business uses. As such it is not considered that the proposal would meet the requirements of this element of the policy.
- 2.4 It is noted that a table of other sites that are available has been submitted for consideration and that many sites have been discounted due to the lack of planning permission. As the current site does not have planning permission it is considered that this site should also be included as not suitable on the basis of the appellants needs. It is also noted that at paragraph 3.47 the areas within the northern area of the district have not been taken into account as they are 'in a different marketing area.' It is also noted that the employment allocations and existing areas that have outline planning permission in Bishops Waltham and Waterlooville have not been considered.



2.5 At paragraphs 3.40 and 3.42 the appellant has raised other applications that are outside of the district or are in areas that have different material considerations. As such it is not considered that these can be given much weight in this case.

2.6 At paragraph 3.55 the appellant lists the advantages of the appeal site, these being:

- A small scale operation
- The site being previously developed land
- The site being in close proximity to other businesses
- No requirement for large buildings.
- No views of the site

2.7 To address each in turn:

A small scale operation – this is noted however the cumulative impact of the various uses on site must be taken into consideration. As has been noted by the appellant there are a range of authorised and unauthorised uses on the site.

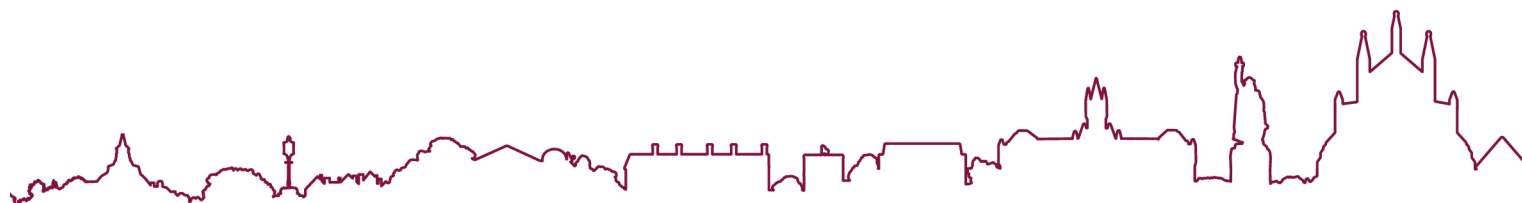
Previously Developed Land (PDL) – The NPPF describes PDL as:

Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.

The authorised use of the land is agricultural. The development that is currently in place was put in to allow for the business use, now under consideration, to take place. As such it is not considered that this area is previously developed land as there has been no authorised change from the agricultural use. In addition, this area of land is not considered to be within the curtilage of developed land (Shedfield Equestrian Centre) as claimed by the appellant; the only correlation between the two areas of land is that they are under the same ownership and an access is shared.

In close proximity to other businesses – While this is accurate, not all the businesses have authorised uses. The majority of the authorised uses on the site are located to the front of Shedfield Equestrian Centre, nearest the main road, or within the equestrian area to the north of the site by the sand school. It should also be noted that the majority of other authorised uses are retail and equestrian based. The other businesses that surround the site are subject to formal enforcement action as described at paragraph 1.4.

No requirement for large buildings – this is based on this business and any additional buildings would likely be subject to further planning applications. The containers on site are buildings (some are double storey), although this is disputed by the appellant. Due to the double storey containers size, degree of permanence, and attachment to the ground, they are deemed to meet the three tests as set out in Cardiff Rating Authority v



Guest Keen Baldwin's Iron and Steel Co Ltd [1949] 1KB 385 (subsequently endorsed by the Court of Appeal in Skerritts of Nottingham Ltd v SSETR (No 2) [2000] 2 PLR 102). The containers are stacked on top of one another, with the top of one container used as a terrace area. There are toilet/water facilities that have been plumbed into the building, and stairs attached to allow access to the top floors. The containers are intended to remain in place indefinitely and are unable to be moved without significant dismantling/demolition.

No views of the site – due to the site's location within the site behind a number of buildings it is not considered that the appeal site would be visible from public areas.

LANDSCAPE

2.8 The appellant goes on to say, at paragraph 3.59 that there would be no adverse landscape impact.

2.9 Winchester City Council's (WCC) Landscape Team have no objections to the development, subject to an appropriate landscaping condition.

2.10 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'. The Council's Landscape Team were consulted (as abovementioned) regarding this development and their comments have been taken into account in relation to the planning assessment of the development. However, even though there is no demonstrable harm in terms of visual intrusion, it is considered that the urbanising of the rural area with an unlawful storage use which has no justification and is contrary to policy MTRA4 will have an intrinsic harm to the countryside character.

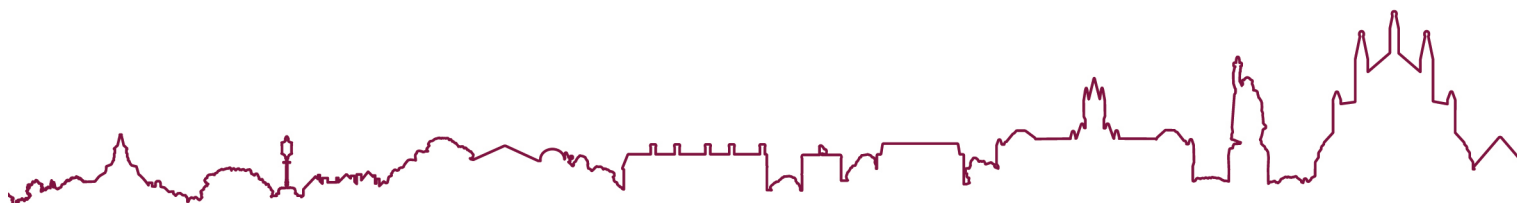
DRAINAGE

2.11 At paragraph 3.62 the appellant states that surface water would use the existing pond/watercourse. It is the Council's view that insufficient information has been submitted in this regard. There is no information submitted in regard to the capacity of the pond/watercourse or whether the appropriate licences and permissions have been achieved to discharge into the watercourse from the appeal site.

2.12 There is also no details on foul water removal. The appellant has stated that there is no permanent structure on the site, however, the buildings on site contain welfare facilities and details of where the foul water would be removed to should form part of the appeal. If no foul waste removal is proposed then further details are required, as the appeal is retrospective it is not considered appropriate for details to be secured via condition.

HIGHWAYS

2.13 Paragraph 3.64 identifies the travel assessment that has been included with the appellant's statement of case. The transport assessment is not considered sufficient. The report is specifically in regard to the nearby site at Lockhams Recycling. As such different vehicle movements and sizes of vehicles could be used. As such this is not sufficient to support the appeal.



2.14 The following response was received from Hampshire County Council as the Highway Authority in relation to this appeal:

The Transport Note provided in support of the appeal does not provide information on size of the site access or tracking for this access. The TN claims that these are not required as the site is already in operation. However, there The TN provides visibility splay drawings and states that land required for the vis splays is within land under control of the applicant or within the extent of the public highway.

The highway authority has the following comments. The applicant should clearly identify on a drawing those areas of land which are in their ownership, and which are required to achieve necessary visibility splays. They should highlight any obstruction within the visibility splays, such as the private signs which are observable on the photo provided within the TN. Any signs currently within the visibility splay would need to be removed and the visibility splays kept clear in perpetuity. To be able to assess the safety of this application the highway authority do require tracking drawings showing a vehicle entering the site whilst another waits to exit. As the TN has referenced use of the site by HGV this should be the size of vehicle tracking. The TN references two accesses but only states that the application site access is that shown in the photo within the TN. It appears that this refers to the main site access, that described as being to the southeast. The applicant should clarify which access is being assessed, and should this application be permitted, it should be conditioned so that this is the only access which can be used for this use/part of the site.

2.15 It should be noted that concerns were raised in relation to the size of vehicles using the Lockhams site as is highlighted in the transport assessment and that the Highways Authority requested additional information regarding swept path analysis to fully assess the impact of larger vehicles using the access on to the Botley Road. It is also noted that these have not been submitted. As such it is the Council's view that there is insufficient information to properly assess the impacts of additional large vehicles on the highways network and users.

TREES

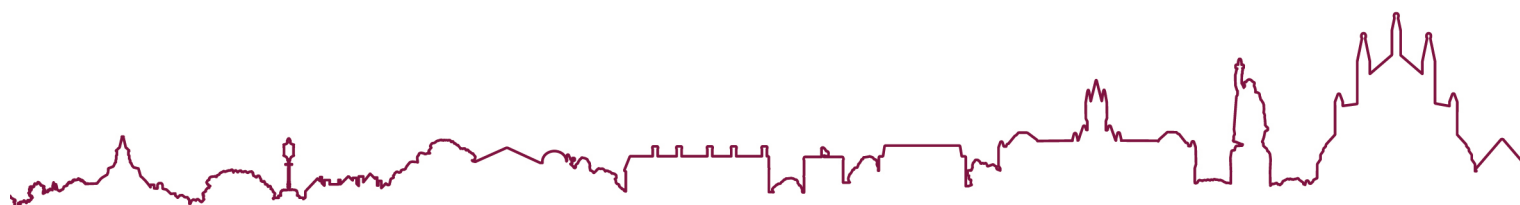
2.16 The site is entirely covered by a Tree Preservation Order (TPO). This was put in place to protect the trees that once grew on site, but the bulk have since been removed. Though the majority of trees have been removed, the TPO remains in place and is a material consideration.

2.17 The following consultation response was received from Winchester City Council's (WCC) Tree Team in relation to this appeal:

Following my earlier response below dated 26th September 2023 there has been an Arboricultural report submitted by Mark Hinsley Arboricultural Consultants Ltd dated 25th September 2023 submitted as part of this enforcement notice on behalf of the owner of the site.

Further documents I have referred to are:

- Tree Survey and Impact for Site 4 – Mark Hinsley Arboricultural Consultants Ltd



- Report by Andy Sherlock of Barrell Tree Consultancy Ltd dated 16th December 2020 – Report relating to the felling and damage to trees at Dagswell Copse and Shedfield Equestrian Centre. Ref:20203-Report-AS
- Photographs taken by the Principle Tree Officer, Ivan Gurdler of Winchester City Council of the site on 29th September 2022

Observations

1. The arboricultural report submitted by Mark Hinsley Arboricultural Consultants Ltd shows three trees directly impacted by the hard surfacing identified as T4, T5 and T7 (these are mature oak trees) and two groups of trees G2 and G3 this is two groups of Scots pine with 3 and 10 trees in the groups. They have categorised the trees as 'A' and 'B' grade which is a satisfactory grading. They have however suggested that there is good vigour from these trees directly impacted by the development. These statements about the growth of the trees I disagree with.

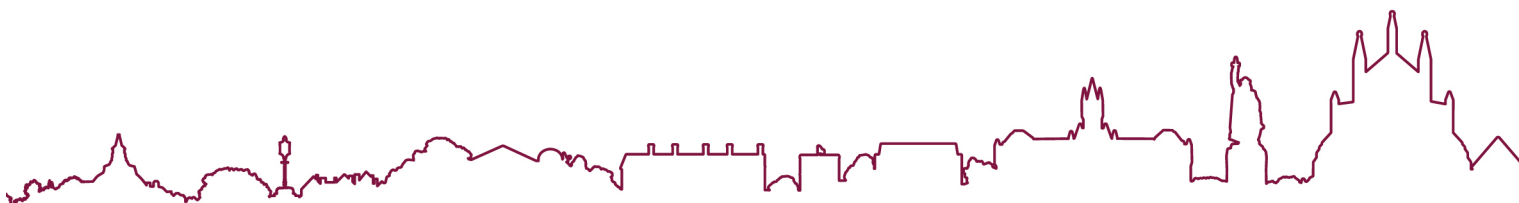
i. Vigour is defined as: The health and resilience of a tree (from the Latin 'to be strong'), reflected in the capacity of the whole tree to grow (see growth rate). The term is often used as a description of overall condition on a qualitative scale from 'high' to 'low'.

ii. Vigour and vitality normally get confused and are used interchangeably, however in this case I am not sure of this; as they haven't given a definition or scale of what good vitality/vigour means. I have concluded that 'good' is the highest on their scale and that is what they have meant by good vigour?

iii. The trees in my view are at best 'normal' or 'poor' vigour as in my view it is the overall growth extension of the tree relating to species and age of the tree which as I have shown in the photograph on my response below (2017 aerial photograph) the canopy of T4 isn't 'Retrenching' as described in the arb report. Retrenchment, in my view, is the slowing down of the growth of the tree as it goes from mature to over mature.

2. Further to my statement above regarding the vigour of the tree, Andy Sherlock had written a report for which I will take extracts from below:

i. Andy Sherlock report shows the tree what has been called T4 in Mark Hinsley report as T15:



Sketch plan BT1
Location of trees at Sheffield Equestrian Centre, Botley Road, Sheffield

Tree numbers

Barrell Drawing Ref: 2023-011

Provided Plan File: Aerial image

barrell
tree management

This drawing is to be manufactured in colour only.
www.barrelltreecare.co.uk



T15	Oak	16	75	Maturing oak. Canopy with heavy die-back. Soil bund 3m high and 4m wide formed adjacent to the tree. Figure 20 and 21.
-----	-----	----	----	--



Figure 20: View of T15 with the soil bund adjacent.



Figure 21: View of the die-back in T15.



i. Andrew Sherlocks opinion was as follows:

Raising the soil level around trees

ii. **Where has this occurred recently on site, and what depth is the raised soil around the trees:**

Ground levels have been raised recently around trees G7, A8, G9, T10, T11, G12, 152 G13, G14, and T15. The amount of increase varies between 30cm to 3m as set out in table one. It is evident that the raised soil level is recent as the structure of the soil is loose without any fine roots from weeds and grass holding it together.

In all locations listed it is also clear where the original soil level was, due to vegetation growing at the original level, and in some locations fences that are partly buried. It is also possible to see the increased soil levels around trees as the root flares, which are found at the base of trees, are buried/missing. In some places the raising of levels is very recent as there is no weed or grass growth on the new soil.

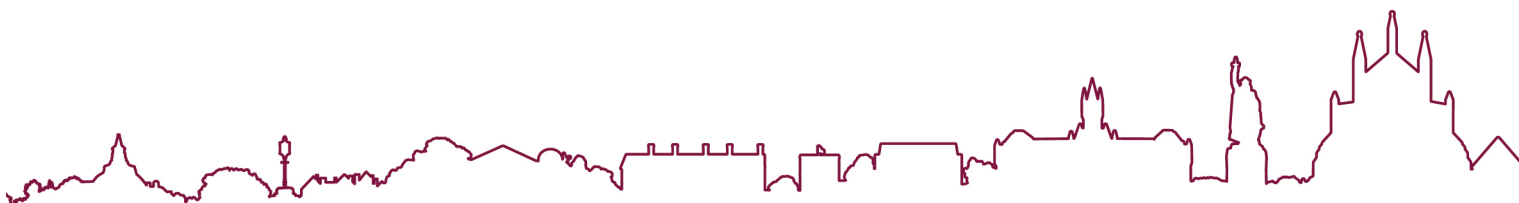
iii. **What are the effects to the trees health from mounding, levelling & raising soil levels around the trees:**

One of the consequences of increasing soil levels is that it inhibits and often prevents gaseous exchange taking place, which is the exchange of gases in roots of a tree by the process of diffusion. During diffusion, oxygen diffuses into the root hairs and passes into the root cells, from where the carbon dioxide moves out into the soil. The impact of this change is that the roots do not get the oxygen that they require, and the carbon dioxide is not removed. Raised soil levels also changes moisture penetration, which can result in water logging or drought.

iv. Andrew Sherlock goes onto say:

His opinion is that soil levels have been significantly increased around trees G7, 195 A8, G9, T10, T11, G12, G13, G14, and T15. The work involved in raising the soil levels and the consequences of raising the levels is that it has caused considerable damage. This damage has resulted in the death of trees and it will cause the death of more trees within the next five years.

3. The photographs of tree marked as T4 on Mark Hinsley report were taken by Ivan Gurdler Principal Tree officer for Winchester City Council on the 29/09/2022





Shows significant die back in the upper canopy when the yard was being constructed.



The above photo shows how close the development is to a major structural root, let alone all the feeder roots which were damaged as a result of the excavations.



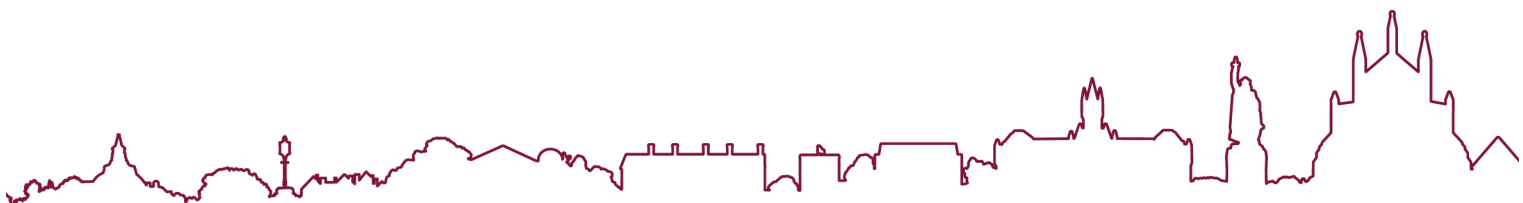


This photo was taken a year prior to the images taken by the report submitted by Mark Hinsley Ltd and shows the tree which is struggling to recover from the mounding of soil around the rooting area as shown in the photos by Andrew Sherlock.

i. The change in the density of the foliage of the tree over the period of the year shows the oak tree in clear decline. The decline is likely to be the greatest on this tree (T4) as there is clearly the greatest impact to the rooting system (RPA) of this oak.



This photo shows the tree marked as T7 (right hand tree) taken a year prior (by Ivan Gurdler Principal Tree officer WCC) to the report submitted and it shows the canopy of



the oak tree was in a healthier condition compared to the photo shown in Mark Hinsley report.

T5 (left hand tree) shows no decline in the canopy as far as I can tell on the photographs.

4. Conclusion

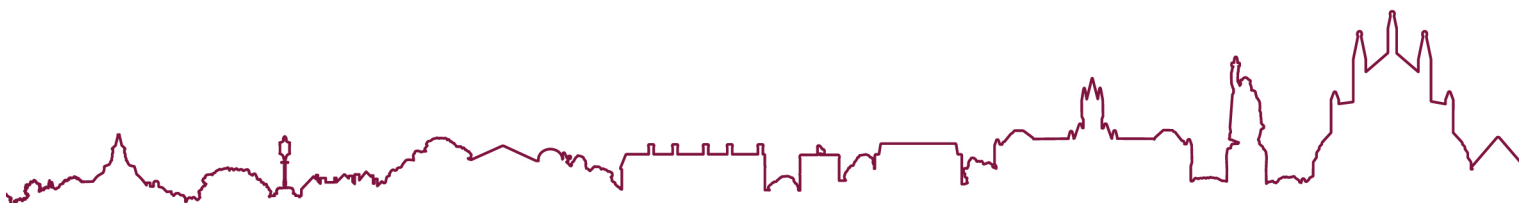
- i. The trees surveyed on Mark Hinsley report are all covered by the TPO 1569W1 (Dagwells Copse, Shedfield)
- ii. Two trees I have had previous photos for (T4 and T7 in the report) show a decline in the canopy cover because of the work carried out. This is a different conclusion as the one drawn by their arboriculturist.
- iii. The other tree (T5) which I have had a photograph for shows no change in the foliage density (which gives an indication of vigour/vitality of the health of the tree), I would conclude that this tree isn't good vitality as concluded in their report but low vitality as the growth is only sustained from the previous year.
- iv. It is quite clear from the map shown in their report the greater the impact to the RPA (Root Protection Area) the greater the impact to the trees.
- v. No previous photographs of the Scots Pine groups as G2 and G3 have been submitted so no conclusion can be drawn on their vitality, however the removal of feeder roots within the rooting zone is likely to have an impact.
- vi. Significant harm has been done to T4 and T7 as shown by the excavation within the rooting area of these trees.
- vii. The BS5837:2012 is clear section 5.3.1 states the default position should be that structures are located outside the RPAs of trees to be retained. However, where there is overriding justification for construction within the RPA, technical solutions might be available that prevent damage to the trees.
- viii. As shown there is a decline in the health of the trees (T4, T5 and T7) the project arboriculturist has not demonstrated the trees can remain viable.
- ix. Fine roots are dynamic and die off over winter, however the damage carried out to the rooting system of T4 as shown in the above photograph is more than fine roots.
- x. The trees have not adapted to their new situation.

If this application was submitted to planning with this Arboricultural report, furthermore detailed information would be needed to justify why the development needed to be within the rooting area of these protected trees.

Due to a lack of adequate Arboricultural justification the development is considered to be contrary to the NPPF 2021 and LPP1 Policy CP15 & CP16.

ENVIRONMENTAL PROTECTION

- 2.18 The appellant goes on to say, at paragraph 3.72 that the nearest dwellings are 180m to the east, with agricultural buildings in between, serving as an acoustic barrier. The Council contest this as there are dwellings located to the north of the site, within the equestrian area, approximately 55m away. There is also a dwelling on adjacent land approximately 54m away, and tourist accommodation within the equestrian area of the site approximately 80m from the application site (please see Appendix C for a map showing locations of known residential units). These units of accommodation do not have any buildings in between.



2.19 WCC's Environmental protection Team have no objections to the development, subject to appropriate conditions.

ECOLOGY

2.20 WCC's Ecology Team were consulted, and they provided the following response in relation to this appeal:

The appellant's written statement of case explains that the site is used primarily for storage of materials, vehicles, plant and machinery (and that concrete is not mixed or made on the land). It states that there is no external lighting.

The site is now comprised of hardstanding (tarmac or scalplings surfacing). Aerial photography from 2017 shows grassland with a few trees. The site is also mapped as Lowland Mixed Deciduous Woodland on the Hampshire Biodiversity Information Centre priority habitats layer.

There are four ponds located within 500m of the site. The habitat suitability of these ponds for great crested newts has not been assessed. It should be noted that the site is located within the red risk zone for great crested newts.

No ecology report has been submitted to show how biodiversity can be retained and protected. The removal of woodland, trees and grassland could have had a negative impact on protected species including great crested newt, common reptiles, bats, badger, hazel dormouse and nesting birds.

Paragraph 179 (b) of the NPPF 2021 states that "to protect and enhance biodiversity and geodiversity, plans should: promote the conservation, restoration and enhancement of priority habitats, ecological networks and the protection and recovery of priority species; and identify and pursue opportunities for securing measurable net gains for biodiversity."

Local Plan P1 Policy CP16 states that "the Local Planning Authority will support development which maintains, protects and enhances biodiversity across the District, delivering a net gain in biodiversity".

No information has been provided to show how biodiversity can be enhanced and a net gain achieved.

Due to a lack of information the development is considered to be contrary to the NPPF 2021 and LPP1 Policy CP16.

3.0 CONCLUSION

3.1 There is a distinct lack of information submitted in support of this appeal; the appellant is missing important details such as biodiversity reports, drainage reports, highways reports and drawings, as well as a sufficient justification for this use within a countryside location.

3.2 For the reasons given above and in the attached appendices, the Inspector is respectfully requested to dismiss this appeal and uphold the enforcement notice in its entirety.

