The Planning Inspectorate

Appeal Decisions

Inquiry held on 15-17 October 2013 and 8 November 2013

Site visits made on 14 (unaccompanied) and 18 October 2013 (accompanied)

by N P Freeman BA (Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 7 January 2014

Appeals A & B: APP/Y9507/C/13/2195150 & 2195151
Brackenwood, Telegraph Hill, Midhurst, West Sussex, GU29 0BN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr N Clarke & Mrs Hurvenes-Clarke against an enforcement notice (Notice A) issued by South Downs National Park Authority[1].
- The notice was issued on 11 February 2013 - Council Ref FH/11/00487/EAGRNP-FH/22.
- The breach of planning control as alleged in the notice is "Without planning permission, change of use of the Land to a mixed use for agriculture and equestrian purposes, namely the keeping and training of polo ponies".
- The requirements of the notice are:
  - (i) Discontinue the use of the Land for the keeping and training of ponies;
  - (ii) Remove the large stable building in the approximate position shown on the attached plan from the land;
  - (iii) Remove the metal framed stable building in the approximate position shown on the attached plan from the land;
  - (iv) Remove the horse walker in the approximate position shown on the attached plan from the land;
  - (v) Remove the fencing and compacted material comprising the horse tethering area shown in the approximate position on the attached plan from the land;
  - (vi) Remove the timber structures, concrete bases and fixtures and fittings comprising wash bays in the approximate position shown on the attached plan from the land;
  - (vii) Remove the timber building comprising the hay store in the approximate position shown on the attached plan from the land;
  - (viii) Remove the timber stable block in the approximate position shown on the attached plan from the land;
  - (ix) Remove the trailer ramp and wheelbarrow ramp in the approximate position shown on the attached plan from the land;
  - (x) Break up and remove the hardsurface area in the approximate position shown crossed-hatched on the attached plan from the land;
  - (xi) Break up and remove the access track and parking area in the approximate position shown on the attached plan from the land;
  - (xii) Break up and remove the tarmac surface shown dotted on the attached plan from the land;
  - (xiii) Following completion of steps (x), (xi) and (xii) above, reseed with grass;
  - (xiv) Remove the surface material forming the exercise track in the approximate position shown on the attached plan from the land and infill the depression in the ground to match the profile of the existing land on either side and reseed with grass;

[1] The enforcement notices were issued by Chichester District Council (CDC) on behalf of the South Downs National Park Authority (SDNPA) who have an agency agreement under s101 of the Local Government Act 1972 with the SDNPA to discharge various functions, including the issuing of enforcement notices.

(xv) Following the completion of steps (ii), (iii), (iv), (v), (vi), (vii) and (viii) break up and remove the foundations of these structures from the land;
(xvi) Remove all the resulting rubble from the land.

- The compliance period is three months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the notice is upheld with corrections and variations as set out in the Formal Decision.

Appeal C & D: APP/Y9507/C/13/2197046 & 2197047
Brackenwood, Telegraph Hill, Midhurst, West Sussex, GU29 0BN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr N Clarke & Mrs J Hurvenes-Clarke against an enforcement notice (Notice B) issued by South Downs National Park Authority.
- The notice was issued on 11 April 2013 - Council Ref. FH/11/00487/EAGRNP-FH23.
- The breach of planning control as alleged in the notice is "Without planning permission, the construction of:
  (i) a large stable building and associated hardstanding to the south and north of the building;
  (ii) a metal framed stable building;
  (iii) a horse walker;
  (iv) a horse tethering area comprising fencing and a hard base;
  (v) two wash bays comprising timber walls with concrete bases;
  (vi) a timber hay store building;
  (vii) a timber stable block;
  (viii) a trailer ramp and wheelbarrow ramp comprising timber walls and concrete base;
  (ix) an access track and parking area comprising the excavation of surface soil and laying of rolled scalpings;
  (x) an exercise track comprising excavation of surface soil and the laying of surface material;
  all in the approximate positions shown on the attached plan.
- The requirements of Notice B are essentially similar to those set out in Notice A with the exception of the requirement to discontinue the use of the land for the keeping and training of polo ponies.
- The compliance period is three months after the notice takes effect.
- The appeals are proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals succeed in part and the notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal E: APP/Y9507/A/13/2200208
Brackenwood, Telegraph Hill, Midhurst, West Sussex, GU29 0BN

- The appeal is made by Mr N Clarke under section 78 of the Town and Country Planning Act 1990 against the decision of South Downs National Park Authority to refuse to grant planning permission.
- The application Ref. No. SDNP/13/01290/FUL, dated 20 March 2013, was refused by notice dated 11 June 2013.
- The development proposed is the "Retrospective change of use of land to a mixed use comprising equestrian use and agriculture, retention of barn, timber stables, temporary stabling, two pony wash down areas, hay shed, horse walker, hard surfaced areas for parking/access and pony tethering and exercise track".

Summary of Decision: The appeal is dismissed.

Procedural matters and the notices

1. There are two local planning authorities engaged in these appeals given the overlapping responsibilities for planning matters and witnesses from both authorities gave evidence and were legally represented by the same barrister. In terms of the witnesses those from CDC primarily gave evidence on enforcement matters (Appeals A-D) and those from SDNPA on planning matters (Appeal E).

2. Legal submissions were made on behalf of the appellants concerning the extensive list of requirements contained in Notice A. It is asserted that they go beyond remedying the breach of planning control, which is a change of use of land, and should be confined to remedying that breach. This is essentially a ground (f) point. However, I did raise this at the opening of the inquiry and sought an explanation of why all these requirements had been included when there was a separate notice (Notice B) which targeted the claimed unauthorised operational development.

3. It was explained for the planning authorities that having regard to case law it was possible to require the removal of operational development that facilitated a change of use but that in this instance, given the separate notice this was not necessary. Consequently it was conceded that it would be acceptable for the requirements of Notice A to be varied using the powers conveyed by s176(1)(b) of the Act to delete the majority of these. In this respect a draft notice[2] with a revised form of wording was provided which contained only two requirements relating to ceasing the use described in the alleged breach and removing the exercise track with ground restoration and re-seeding. It was accepted on behalf of the appellants that this was reasonable and would not cause injustice and that it would overcome the criticisms relating to the legality of the notice and the arguments on ground (f). Given the consensus reached, I will vary the wording of Notice A in these respects whatever the outcome of the appeal.

4. I also requested that consideration be given to making the requirements of Notice B clearer by the use of colouring. The response was the production of another draft amended notice[3] by CDC which annotates colouring to identify the various elements targeted on a revised plan. Again there was agreement that this was clearer and could be substituted using the powers conveyed by s176(1) without causing injustice.

5. A further concession on the part of the planning authorities is a willingness to extend the compliance period for both notices from 3 to 6 months. This overcomes some of the concerns raised for the appellants that the period is unreasonably short to achieve compliance but not all of them. The request remains for the period to be extended to 12 months. I will deal with the arguments made for the parties below under ground (g).

6. For the sake of clarification, it was confirmed for the appellants that ground (d) relates only to the alleged material change of use and not to any of the operational development. It is accepted that the buildings, structures and hard surfaces referred to in Notice B are not immune from enforcement action due to the passage of time given the dates of construction.

[2] Doc 8
[3] Doc 9

7. The evidence of all witnesses was taken on oath.

Background

8. The appeal site comprises a large field of about 6.2 hectares (ha) in area located in a rural area about 3 miles north-west of Midhurst. It forms part of the property known as Brackenwood a detached dwelling with outbuildings set within a separate land area of about 1.4 ha. to the north beyond an access track which serves this dwelling and Pine Hill House and Pine Hill Cottage to the east. Access to these properties is gained via King's Drive, which leads to the redundant King Edward Hospital and is the subject of planning permission for residential redevelopment, and some other isolated residences.

9. The site is in an elevated position on the Greensand Ridge close to Telegraph Hill (former Admiralty signal station) within the South Downs National Park (SDNP). The surrounding area is characterised by substantial stands of woodland within which there are historic clearings known as 'assarts', the appeal site being such an example. The access track close to the western boundary is a public right of way (PRoW - FP 1282) beyond which is the expanse of Woolbeding Common, a Site of Special Scientific Interest (SSSI) in the ownership of the National Trust.

10. Along the western side of the site, close to the wooded boundary are the various buildings, structures and hard surfaces referred to in the enforcement notices. Towards the south-western corner there is an outdoor 'school' which benefits from planning permission as a dressage arena granted in July 2009 (used by the co-appellant Mrs Hurvenes-Clarke). The field itself has a well-maintained grass surface with an oval, all-weather circuit finished in wood chippings towards its edges which is used for exercising polo horses. At the southern end of the field there are number of fenced enclosures or corrals which I understand are used to segregate the horses when put out to graze. There is also a 'yard' area beyond the dressage arena in the south-west corner for the storage of vehicles, machinery and materials used in connection with the equine activities taking place on the land.

11. Brackenwood, including the appeal field was bought by Mr Clarke in late 2005 from a Mr Johnson-Davies (Mrs J-D) who had lived there for many years and owned some horses and grazed her sheep on the land. Prior to that Mr Clarke was renting Pine Hill House on a five year lease (2000-2005) which has stables which he used for keeping his horses (about 8 originally[4]). He now lives at Blackdown House, near Haslemere with the house at Brackenwood occupied by Mr & Mrs Flowers his mother and step-father. He uses the appeal site for his polo activities along with his daughter who keeps 2-3 dressage horses. A limited company (Brackenwood Polo Limited) has been established which was said to be for tax liability reasons. It does not trade as a commercial business but only as a personal operation, which was said to make a loss rather than a profit. Mr Clarke is 'patron' (the financier) of a 'high goal' polo team (Salkeld) which competes in the top tournaments in the summer months, mainly at Cowdray Park, Midhurst and the Guards grounds at Windsor. These are the main centres for polo competitions and training facilities in the UK.

[4] Clarke – Evidence in Chief

Ground (d) – Appeals A & B – Notice A

12. There is agreement that the critical period to consider in terms of the claims regarding the use, having regard to statute, is the 10 year period prior to the issuing of the enforcement notice. The key matters to consider are:

- What was the nature of the use taking place on 11 February 2003 (the 'relevant date') and was this materially different from the use described in the notice and taking place on 11 February 2013;
- Whether the nature of the use has intensified to the point where its character has changed fundamentally during that 10 year period or by the relevant date, and;
- Whether there have been any material breaks in the continuity of uses taking place which would undermine the claim of lawfulness over the 10 year period.

13. I should add that lawfulness can be accrued over any 10 year period prior to the issuing of the notice and that this can lead to success provided the use in question was not abandoned or supplanted by a different use before the notice was issued. In this case the appellant has not pursued this argument but I will have regard to the uses claimed to have been taking place before 11 February 2003 where they are relevant.

14. There is agreement between the parties that based on court authority[5] the presence of horses on land can be for different purposes and uses. The main distinction of relevance in this case is between the horse that is turned out onto land for grazing – which comes within the definition of agriculture set out in s336 of the Act – and the horse that is kept on the land being fed wholly or primarily by other means so that such grazing as may be occurring is incidental. The distinction may not be clear cut and the uses may not be mutually exclusive. In such situations it will be a matter of judgement for the decision-maker based on the facts. In this instance the notice does not allege a change of use from agriculture to equestrian purposes but to a mixed use for both of these purposes. From the evidence before me and my own observations on the land I have some doubts about whether any agricultural use is presently taking place. However as neither the Council nor the appellants have pursued this point I do not intend to take it any further.

15. I will start by setting out, in summary, the positions of the main parties based on the evidence given and the submissions made. I do not intend to recite all the copious evidence presented but will identify what I consider to be the salient points supporting each side's case. Having done so I will identify the points of general agreement before coming to my conclusions on the areas of dispute.

Case for the Appellant

16. The land was already in mixed equestrian and agricultural uses in February 2003 and had been for a number of years prior to that. Mrs J-D kept about 5-6 horses on the land, 3 of which were her own, which were stabled there in building ('A') shown on aerial photographs taken in 2001 and 2005[6]. Although

[5] *Sykes v SSE [1981] 42 P&CR 19* and *Fox v FSS [2003] EWHC 887 (Admin)* cited for appellants
[6] Corroborated by the Statutory Declarations (SD) of Mr Clarke, Mr Stevens and Mrs Johnson

by 2003 she was not riding herself, due to her age, she went hunting and her horses were used for this purpose and not simply turned out onto the field to graze; they were ridden and exercised on the land. The aerial photographs also show the subdivision of the land into paddocks, especially at the northern end near building A. The north-western paddock was used to graze sheep[7] and the photographs show an associated field shelter ('B'). This evidence indicates that a mixed use was already taking place at least as early as 2001 and, based on other evidence, for many years before back to about 1980. Hence, the alleged use was taking place on the relevant day and the notice can only stand if there was a subsequent intensification which amounted to a material change of use.

17. Mrs J-D had a groom who lived in a caravan at Brackenwood and exercised her horses when she was no longer riding. Other horses were brought to the land for grazing and exercise, including those from nearby stables (Woolbeding Riding Stables, Pound Farm) and riding lessons took place on occasions[8].

18. Mr Clarke began using the southern part of land to exercise his polo ponies (between 8-14) from 2000 when he took the lease at Pine Hill House. At first he would bring them from the stables at that property to the appeal field along the access track but subsequently he created a gap in the tree line on the eastern boundary to provide a more direct link which is shown on the 2005 aerial photograph. At this time Mrs J-D kept her horses and sheep on the northern part of the field and Mr Clarke would ride his horses down the middle of the field to exercise them on the southern part where a clear worn circuit is apparent on the 2005 photograph. This continued until 2005 when he bought Brackenwood and sought planning permission in June 2005 (withdrawn August 2005) for the formation of a private polo practice area with the present use described as "equine" on the planning application form[9].

19. At this stage he demolished and removed the stables, field shelter and paddock fencing. He then carried out significant ground improvements[10] (ploughing, 500 tons of sand spread across the whole field, top dressed with lime and reseeded). He continued to exercise his polo horses on the land during this time by alternating between the west and east side before taking the horses off the land for winter grazing to other rented land in Woolbeding or to his property at Blackdown.

20. From 2005, the numbers of polo horses he has owned has grown to 34-35 (with a further 2-3 dressage horses kept there for his daughter). This is the requisite number needed for a 'high goal' polo player and is consistent with those kept by other players at equivalent polo training establishments in the Midhurst area. The buildings and facilities that now exist are to support the keeping, training and exercising of these horses. The field is used for 'stick and ball' practices between 2 pairs of players with goal posts erected on occasions but it is not suitable for competition matches due to its sloping topography[11]. Ground raising and levelling would be needed for a playing pitch of the required quality for matches to be created.

[7] Exhibit 5 (Clarke) – Cover page of 2005 sales particulars shows the presence of sheep and stable building 'A'
[8] Mr Clarke's and Mrs Johnson's evidence and SDs; Mr Stevens SD
[9] Ellis – App 1 p.10. Mr Briggs agent – his supporting letter dated 03/08/05 refers to 15 horses kept at Pine Hill
[10] Photographs and letter of Mr Briggs (04/10/2005)– App E (Hawks)
[11] Mr Clarke and Mr Craggs evidence

21. The Council produce no evidence of their own to contradict that of the appellants. Strong reliance is placed by the Council on the absence of any horses on the land when inspected at various times, especially around 2005-2006. This can be explained for a number of reasons. Firstly 2005 was a time of change in ownership when Mrs J-D was vacating the land and Mr Clarke was still using land and stables at Pine Hill House, where his horses could have been. Secondly, even if Mr J-D had not moved her horses from the land by this time they could have been in the stables (Building A) - Mr Price (CDC enforcement officer) said he did not look inside when he visited. Thirdly the visits may have coincided with the periods in the year when the horses were put out onto Woolbeding Common. Fourthly, Mr Price did not see horses on the land when he visited in August 2006, February 2007 or August 2008 – at times when the Council accepts that a mixed use for equestrian and agricultural purposes was taking place. Therefore, the absence of horses is not conclusive to a claim that equestrian use was not taking place.

22. The Council have been aware that the use they claim is unauthorised has been taking place for many years in one form or another. This is clear from the time of the 2005 planning application and in other correspondence thereafter, including some letters of complaint from local residents. Nevertheless, they did not consider it expedient to take enforcement action until 2013 after the associated buildings and structures had been erected. Even when the Planning Contravention Notices (PCN) were served on 21 October 2011 no details were sought about the use and the questions relate solely to the buildings and operational development. The only logical explanation is it was considered that no material change of use had occurred given the length of time that the land had already been used for equestrian purposes.

23. As to the Council's claims that there was a substantial material break in the equestrian use during the carrying out of the groundworks in the autumn of 2005, this is refuted. Firstly, Mr Clarke said that he rotated his exercising of the horses around the field during the phased groundworks so the use did not cease. Secondly, reliance is placed on the authority of *Basingstoke & Deane BC v SSCLG [2009] EWHC 1012 (Admin)* which makes it clear that a gap in actual activity resulting from works of improvement which are intended to facilitate the continuance of a use will not necessarily amount to a material break and any breach of planning control could continue throughout that period. This was the situation on the appeal site in autumn 2005 and the winter period that followed was a time when the polo horses would be grazing elsewhere anyway.

24. As to the matter of intensification the leading cases[12] make it plain that this can only amount to development where a material change in the definable character of the use occurs. Mere intensification absent of such a change would not constitute a change of use. This argument was only raised by the Council in closing submissions for good reasons. These are the fact that when the old stables (Building A) and fencing were removed and the surface of the field improved they did not amount to a breach of planning control[13]. The increase in the number of horses kept, exercised and trained on the land is not significant and the occasional polo practice game, although a difference, has not changed the character of the use of the land. The number of vehicles

[12] *Lilo Blum v SoS [1987] JPL 278, R v Thanet DC [2001] 81 P&CR 37 & Herts CC v SSCLG [2012] EWCA Civ 1473*
[13] Hawks - App E p.19 – his letter dated 25/07/06 to Woolbeding Parish Council confirms

coming to and from to site (no precision on numbers) is likely to have increased with the number of horses kept. However there were already considerable numbers being taken to polo matches and regular visits of feed and bedding merchants, farriers, vets and other support activities from 2003 onwards.

25. Taking these findings together it is not accepted that the changes that have taken place, which may have led to some intensification in the use, have resulted in a material change in the definable character of that use of the land over the requisite 10 year period. Consequently this does not amount to development or a material change of use requiring planning permission.

26. Having regard to the totality of the evidence provided for the appellants it is submitted that the mixed use for equestrian and agricultural has been taking place for a period in excess of 10 years before the notice was issued and that for this reason this use is lawful and does not amount to a breach of planning control. Consequently the appeal should succeed of ground (d).

Case for the planning authorities

27. The appellants have not shown on the balance of probability that the mixed use described as the breach of planning control has been carried out continuously on the land for the requisite 10 year period from 11 February 2003. The claims of Mr Clarke in his SD that Mrs J-D kept horses which were stabled, exercised and ridden on the land are at least questionable based on his answers and the responses of Mrs Johnson (no relation) given at the inquiry. The reasons why these claims are in doubt are as follows:

- It was agreed by Mr Clarke that by 2005 Mr J-D was not able to ride her own horses because of her age and that he had never seen her riding a horse. Mr Clarke volunteered that the horses Mrs J-D owned were essentially "retired" and included some "shabby" ones which would be less fit for riding out. It appeared that some she kept as "pets" which were not ridden;

- Between 2000-2005 Mr Clarke was not permanently resident at Pine Hill House. He worked away for much of this period in connection with his business and generally spent weekends there with longer stays in the summer months. So he could not give evidence as to the use of the land for the majority of the years in this period. He claims he knew what the horses were doing but he could not have known if he was absent for most of the time;

- Mrs Johnson has only known the site since July 2003 when she was first employed by Mr Clarke at Pine Hill House and so cannot corroborate what was taking place before then. When asked she could not describe the extent of the land used for keeping horses or how often they were on the land. She also said she did not take much notice of the people claimed to be riding on the land before Mr Clarke's purchase in 2005. She stated that the main reason the horses were on the land at that time was to graze and the first mention of "exercising" is only after Mr J-D sold to Mr Clarke in 2005;

- It is common ground that sheep were grazing on part of the site up to 2005 and there presence would make it unsafe or impracticable to ride horses on the land at the same time;

- Mr Clarke's use of the field for the riding and exercising of horses was confined to the bottom half of the field until 2004 and it was only after he gained control of the land that the paddock fences were removed enabling the whole area to be used. This is consistent with the aerial photographs which show a distinct exercise circle in 2005 but no such circuit in 2001. The inference is that the use of the wider field did not occur until closer to 2005, when the land was purchased.

28. The conclusion drawn from these findings is that in the period from 2000-2005, prior to Mr Clarke's purchase, any equestrian use was, at most, ancillary to the agricultural use of the land. The evidence is not sufficiently clear and precise to warrant the conclusion that, as a matter of fact and degree, an equestrian use constituting a separate primary element of a mixed use was taking place.

29. Analysis of the evidence from July 2005 onwards also reinforces these conclusions. Photographs taken on 5 July 2005[14], after Mr Clarke applied for planning permission for a private polo practice area, do not show the land in use for keeping horses. Notwithstanding Mr Clarke's assertion that this was around the time of change of ownerships, there is no equestrian paraphernalia evident (e.g. hay bales, feed bins, jumps) and Mr Price's notes of his inspection are consistent with this finding[15].

30. Mr Clarke's reliance on the description in the 2005 sales particulars[16] that the property included "paddocks" does not assist. As he agreed the word paddocks is not especially informative as it means a field where horses may be found and not the reason why they are present. The horses could simply be grazing the land, an agricultural use. The claims about a horse being in the field in the front cover photograph of the sales particulars cannot be relied on due to the lack of definition and even if it is a horse it was clearly not being ridden.

31. The claims that riding lessons took place are not verified by any detailed information and the evidence about Mrs J-D's groom and what she did was vague and lacking in detail as to her tasks.

32. The 'improvement' works to the field took place after Mr Clarke had withdrawn his planning application for the polo practice area. He said this occurred in two distinct phases over about 2-3 weeks which enabled the western side to continue in equestrian use whilst the works took place on the eastern side. By the time it came to improve the western side it is said the horses would have been out to graze on Woolbeding Common.

33. This is disputed on the basis of the photographs[17] and observations of the Council's witnesses which show the entirety of the field covered in sand with no grass or grazing land evident. These works and the condition of the ground with a lack of grass would have precluded any grazing or exercising of horses for a significant period from Sept 2005 until at least March 2006 when the new grass would have started to germinate. Support for these claims can be found in the photographs taken on 21 March 2006[18] which show that only a thin grass sward had developed on the field by that date.

[14] Hawks - App J p.37
[15] Hawks - App J p.38
[16] Clarke – Exhibit 5 p.14
[17] Hawks – inserted at App E – dated 14/09/05
[18] Price – App B p.5

34. The significance is, even if the claimed mixed use had commenced by February 2003, there was a significant and material break in the continuity of the use for about 6 months within the requisite 10 year period which undermines the claim of immunity – having regard to court authority[19]. The appellants' reliance on *Basingstoke & Deane v SSCLG [2009] EWHC 1012 (Admin)* is noted but this is distinguishable on its facts. It dealt with a situation where a house was being refurbished. It was held in that case that the period during which these works were taking place did not break the continuity of use as it was clear that the intention was to resume occupation as a dwellinghouse once the works were complete. In the present case the circumstances are significantly different with a gap of at least 6 months in the relevant 10 year period.

35. Moreover, unlike the *Basingstoke* case it would not have been clear why the works were being carried out and what use the land would be put to on completion. Having regard to *Swale* and *Thurrock,* the Council would not have been in a position to take enforcement action regarding the unlawful use during the 6 month hiatus as no equestrian use was taking place and success on appeal under s174(1)(b) leading to the quashing of notice would have resulted. The groundworks undertaken marked a material change in the character of the use of land within the 10 year period from agriculture, with ancillary equestrian use, to a mixed agricultural and equestrian use, with the land having been extensively adapted to facilitate the keeping, riding and exercising of polo horses. Such a change is borne out by the photographs and evidence of the Council that what was rough grazing with an informal appearance had become a field with a very uniform and formal grassed surface suitable for polo-related activities.

36. If this analysis is not accepted then there is also the question of whether a change of use has taken place due to a material intensification in the nature of the use. The Council's position is that having regard to the authority of *Brooks Burton Ltd v SSE [1977] 1 WLR 1294* this is the case. The number of horses kept has risen from 5-6 during Mrs J-D's ownership to in the region of 34-37 working horses today. The former were mainly retired horses, some kept as pets, whereas the latter are thoroughbred animals kept solely for the private recreational activities of dressage and polo, competing at national and international levels. The physical infrastructure needed to facilitate the latter marks a significant change in the character of the use undertaken on the land. Moreover the level of activity and the comings and goings of vehicles has increased considerably compared with what was occurring in Mr J-D's day.

37. In summary the groundworks that took place in late 2005 marked a step change in the nature of the use of the land resulting in a material change of use from a primarily agricultural use, with ancillary equestrian use, to a mixed use for agriculture and equestrian purposes. Alternatively if this is not accepted, the 6 month break that occurred between September 2005 and March 2006 resulted in a break in the continuity of the mixed use during the 10 year period. Alternatively, if neither of these arguments prevails, then a material intensification in the equestrian element of the mixed use occurred from around 2005/06 which led to a material change in the character of the use. For all of these reasons there should be no success on ground (d).

[19] *Swale BC v FSS [2005] EWCA Civ 1568* & *Thurrock BC v SSETR [2002] EWCA Civ 226*

Points of agreement

38. Taking the cases of the main parties together the following points can be said to be agreed as uncontested:

- The previous owner (Mrs J-D) owned horses and a stable building (A) was constructed on the land for their use[20];
- The maximum number of horses kept by Mr J-D in the critical 10 year period was 5-6 of which only 3 were likely to be her own;
- During her time of ownership none of these horses were used in connection with the sport of polo;
- She had ceased riding these horses by 2005 and some of the horses were 'retired' or kept as 'pets';
- Mr Clarke rented Pine Hill House from 2000-2005 where he originally kept his polo horses which ranged in number from 8-14; he used the southern part of appeal site to exercise these horses during this period;
- Mr Clarke purchased Brackenwood in 2005 and made a planning application for a private polo practice area in the summer of 2005; although the present use at that time was described as "equine" the application was submitted;
- This application was subsequently withdrawn but soon after in the autumn of 2005 groundworks were undertaken to improve the surface of the field across the whole area which led to the creation of the even grass surface that exists today;
- From 2005 onwards, once the groundworks had been completed, Mr Clarke gradually increased the number of polo horses that he kept to 34-35 and constructed the buildings, facilities and yard to serve the polo training enterprise based at the appeal site;
- His daughter also keeps 2-3 dressage horses on the land in separate stables and an arena has been created to school these horses which benefits from planning permission[21].

Conclusions on ground (d)

39. I will address the three key matters to consider as defined in paragraph 12 above. The onus is upon the appellants to demonstrate that on the balance of probability the claim of lawfulness due to passage to time is made out having regard to the evidence presented. Based on the authority of *Gabbitas v SSE & Newham LBC [1985] JPL 630*, if the local planning authority have no evidence of their own, or from others, to contradict or otherwise make the appellants' version of events less than probable, then there should be success on this ground of appeal, provided the appellants' evidence alone is sufficiently precise and unambiguous to demonstrate lawfulness or immunity from enforcement action on the balance of probability.

[20] There is also stabling available within the curtilage of Brackenwood containing 3 boxes and a tack room
[21] The fencing that now exists around the arena is not as permitted; it has been boarded in and then raised in height with taller posts and wire fencing

40. I asked both parties to give me their views on the relevant planning unit to consider as this is a fundamental starting point when assessing whether a material change of use has occurred. In this respect there was unanimity that, given the history of use, the appeal site is the correct area to consider as the planning unit, having regard to the tests that flow from case law. I have no reason to dispute this and will therefore take this as being the appropriate planning unit for the purposes of the appeals.

1) Whether there has been a material change of use in relevant 10 year period

41. There is agreement that Mrs J-D owned horses which she kept on the land and that there was a stable building (A) which is likely to have been used for the stabling of some or all of her horses. I have no precise details of the number of boxes that this building contained but there was and still is another stable building within the curtilage of Brackenwood which contains 3 boxes and a tack room and from examining the aerial photos it appears to be larger. It is likely therefore that both of these buildings were used by Mrs J-D for stabling of the 5-6 horses which were kept as building A would be unlikely have been large enough to accommodate all these animals. This is corroborated by Mr Clarke who says she kept horses in stables near the house and those on the field[22].

42. As to the claim that Mrs J-D hunted, I have no reason to dispute this but such hunting is unlikely to have occurred on the land but elsewhere, off the site. The presence of fencing at the northern end of the land in her time of ownership would be consistent with a view that the horses were turned out to graze in smaller paddocks and this accords with Mrs Johnson's evidence; to quote "During the years of Mrs J-D's ownership there were regularly horses on the land. Not only were they housed in the stables but they were grazed on the land. Whilst in the stables the horses were fed, watered and cared for." I have no details to show how much feed was brought in as compared to the food obtained by grazing the land. The majority could have come from the latter, supplemented by the former. There is therefore at least doubt in my mind as to whether the horses owned and kept by Mrs J-D on the land were primarily being fed by other means or whether they were mainly reliant on grazing for food, which would equate to an agricultural use. The evidence of Mr Clarke, Mrs Johnson and Mr Stevens does not clarify the matter.

43. There is then the point about how much riding or exercising took place on the land. Mr Clarke claims that Mrs J-D exercised and rode her horses on the land. However, he was frequently away during his period of occupation of Pine Hill House, from 2000-2005, and could not provide any clear details of times, dates or numbers of horses. Indeed, he accepted that he had not see Mrs J-D riding a horse, that she was not able to ride from 2005 due to her age and that her horses were mostly retired with some kept as pets. This does not corroborate the claim that she was regularly exercising and riding her horses on the land during the critical part of the 10 year period from 11 February 2003 to 2005 when she sold the land to Mr Clarke.

44. Mr Stevens claims in his SD that Mrs J-D's horses were ridden out daily by herself, her family and the hired groom but this could have been on the surrounding bridleways, tracks and common land. He also, like Mrs Johnson, claims that the horses were exercised and ridden on the land but he did not appear at the inquiry to provide details and his comment is not supported by

[22] Para 9 – Mr Clarke's SD

any other evidence. It may be that some occasional exercising on the land did take place but I have no photographic evidence to verify this was the case and the photos provided, placed at their highest, only show that there may have been a few horses on the land in the time of Mrs J-D's ownership, but not that they were being ridden or exercised on the land.

45. There is then the claim that others brought their horses to the land to exercise and that riding lessons took place up to 2005. To be clear, Mrs Johnson says in her SD "On occasion, ponies from Woolbeding Riding School also grazed on this land". In answer to my question she said they may have been brought up for grass. Grazing alone is an agricultural use, irrespective of where the horses had come from. She said in chief that she had a horse and that Mr Clarke let her ride around the exercise track on the land just after 2003 or from 2004; this she asserted occurred either every day or every other day. However this would not cover the period from February 2003 to 2004. She also could not assist on how much land was used for 'keeping' horses.

46. As to riding lessons Mrs Johnson had no idea whether any lessons were taking place. I have no documentary evidence – bookings, bills, receipts, – to show that this happened as a formal activity. Mr Clarke states in his SD that "People would regularly come from Pound Farm to attend riding lessons" but his oral comment was that he had heard about riding lessons going on rather than witnessing them himself although he also said they took place every weekend. The evidence on this use is vague and I am led to conclude that if riding lessons did occur they were likely to be of an infrequent and informal nature.

47. In terms of Mr Clarke's use, for the period up to taking ownership of the land, and the carrying out of the groundworks in autumn 2005, the evidence indicates that, on the balance of probability, he was using the southern end of the appeal field to exercise his polo horses. The informal worn circuit that had been created by 2005 – as shown on the aerial photograph of that year - accords with this finding. He said that the numbers of horses owned and exercised during this period increased from about 8 to 14 which would be consistent with the gradual scaling up of his polo interests. However, the use is only likely to have taken place on the southern part with the northern part still in use for the grazing of Mrs J-D's horses. Sheep were still grazing on the north-western part and Mr Clarke himself said he would ride his animals down the middle of the field to get towards the bottom.

48. Taking these findings together, I consider that it is likely that the primary use of the appeal field was for grazing purposes for the period 2000-2005. I have considered whether the equestrian uses conducted during this period – whether those associated with Mr Clarke's polo horses of other horses kept by Mrs J-D or brought to the land by others - would have amounted to a separate primary element of a mixed use. I am inclined to conclude from the evidence before me that on the balance of probability that they would not. Even if such a mixed use was occurring by 2004 when Mr Clarke suggested he effectively started to have control over the land (although he had not bought it at this stage), I am not convinced that before that time back to February 2003 the equestrian use was anything other than a modest ancillary or incidental activity to the primary agricultural use of the land for the grazing of horses and sheep. Consequently a material change of use to the mixed use alleged has occurred within the relevant 10 year period which undermines the claim to immunity.

Whether the nature of the use has intensified to the point where its character has changed fundamentally

49. It is common ground having regard to court authority that intensification of a use (or uses) does not in itself amount to a material change of use. However, if the character of the use of the land changes fundamentally due to the intensification of use then this could lead to a material change of use requiring planning permission.

50. In assessing this there is no dispute that the number of polo horses kept by Mr Clarke on the land has risen from about 8 (which in any event were also stabled on adjoining land at Pine Hill House) to in the region of 34, with 2-3 dressage horses as well. This is a dramatic increase in number. I accept that this in itself is not conclusive that a material change of use has occurred. Nevertheless what I find particularly telling and relevant is what happened in the autumn of 2005 and the period immediately before. It seems that once Mr Clarke gained control of the land – whether by ownership or agreement with Mrs J-D – he removed fencing and embarked on the project of converting what was up until that time a field of rough paddocks into an exercise and practice area for his polo horses with the appearance of a playing field.

51. There can be little doubt about his intentions as he applied for planning permission in June 2005 for this use – presumably because at that time he was being advised that permission was necessary. Whilst the application was withdrawn soon after, he undertook extensive groundworks seemingly across the whole field to improve the condition of the ground and to create the even grass sward that exists today. He then proceeded to use the whole area in connection with his polo operations, with the exception of the small part used by his daughter for her dressage animals.

52. Having regard to the evidence before me, and comparing the nature of the field before and after these groundworks were undertaken, I conclude that they resulted in a significant and material change in the character of the use of the land thereafter. At this point there was a step change which was more than just an increase in the number of horses. The very nature of the land was radically altered to facilitate the keeping, riding and exercising of polo horses the number of which has risen markedly from the pre-autumn 2005 situation. The physical infrastructure that has been built along with proportionate increase in the vehicular activity required to sustain and service the use, reinforce my finding that the magnitude of the intensification that has taken place has resulted in a material change in the definable character of the use.

53. Consequently, I find myself in agreement with the Council's position that even if a mixed use for agriculture and equestrian use was taking place on the relevant day in 2003 that there has been a substantial intensification in the equestrian element from 2005/06 which has led to a material change in the character of the use.

Whether there have been any material breaks in the continuity of uses taking place

54. The matter to consider here is whether the period during which the groundworks were undertaken in late 2005 was sufficient to amount to a material break in the continuity of use. Mr Clarke claims that these works took place in phases which enabled the equestrian use to continue until the horses went off to their winter grazing. I consider that the photographic evidence

from CDC tends to suggest otherwise. The extent of groundworks which appears to cover all the land and the presence of earth moving machinery make it highly unlikely that valuable horses would be exercised on the land at the same time. The claimed phasing is not supported by any documentary evidence and I therefore consider it reasonable to prefer the Council's photographs and notes as the best evidence. Those taken in late March 2006 reveal that by that stage a thin grass surface had formed and I would not expect the land to have been safely usable for exercise or grazing until that time.

55. With this conclusion in mind, it is likely that any equestrian use would have ceased for at least 6 months whilst the works took place and the grass surface became established. I appreciate that Mr Clarke says he normally takes most of his horses off the land during the winter period to graze elsewhere but in this instance the hiatus was not down to the normal management regime that he operates but in order to carry out extensive groundworks to bring about the major improvements to the condition of the surface of the field.

56. I have taken account of the principle that the carrying out of improvement works may not necessarily break the continuity of use if the intention is to resume the same use thereafter and the period of dis-use is reasonably short. I have had regard to the case of *Basingstoke* which has been cited. The issue of relevance from this judgment is whether a period of vacancy for the refurbishment of an agricultural workers' dwelling amounted to a break in the continuity of use. It was held, on the facts in that case, that it (along with a further period for marketing) did not as what was done was in furtherance of the use claimed to be lawful. It was also held that the Council in that case could have taken enforcement action during the period the dwelling was unoccupied as the underlying use had not ceased.

57. The facts in the present case are not directly comparable as they concern the use of land rather than the use of a building – a dwelling – which remained in situ. As far as the general principle goes it may have been that a break to carry out some limited ground improvements would not have broken the continuity in the period of use, accepting the fact that horses are taken off the land to winter grazing. However in this case, having regard to my findings above, what took place was a fundamental change in the character of the use. I consider that this was not a 'break' in a continuing use but the introduction of a new primary use which marked the start of a new chapter in the history of the use of the land.

58. I would add that the Council would have had difficulty issuing an enforcement notice at that time as whilst the groundworks were being undertaken it would not have been clear why the works were being carried out and what use the land would be put to upon completion. They might have assumed that the works were in connection with the formation of a polo practice area, for which a planning application had recently been made and then withdrawn but they could not be sure at that time. It was only afterwards from around March 2006 onwards that the nature of the use became apparent.

59. I note that they did not and have not served a PCN requesting details of the use and that taking enforcement action against the claimed unauthorised use has only occurred about 7 years later. Be that as it may, this does not preclude the action now taken and the test on ground (d) remains the

establishing of a 10 year period of continuous use prior to the issuing of the notice. Nevertheless, I find that these points are academic as I have already concluded that I am not dealing with the break in the use for essentially the same purpose but a material change in the character of the use that took place from early 2006 onwards.

60. Based on the above reasoning, I conclude that a material change of use has taken place during the relevant 10 year period from a primary use for agriculture with some ancillary or incidental equestrian use to a mixed use for agriculture and equestrian purposes, namely the keeping and training of polo ponies, as alleged. Having regard to my findings at paragraph 48 above, I conclude that put it at its highest for the appellants such a mixed use would only go back to 2004 and this is after the key date of 13 February 2013. Moreover, I am more inclined to favour the Council's analysis that the material change occurred between September 2005 and March 2006 when the groundworks were undertaken. This marked a major step change in the use of the land with the equestrian use becoming a primary activity. Furthermore it led to a substantial intensification in the use of the land for equestrian activities – in particular the polo-related uses – and this resulted in a material change in the character of the use of the land. For these reasons I find that, on the balance of probability, the alleged use is not lawful or immune from enforcement action and consequently there is no success on ground (d).

Appeal E

Preamble

61. Before coming to the main issues to consider, it is apparent from the evidence of and submissions for the respective planning authorities (CDC & SDNPA) that the use of the land for equestrian purposes is acceptable in principle. The relevant saved policy concerning equestrian facilities – Policy R6 of the Chichester District Local Plan (CDLP) First Review (adopted 1999) – indicates that such development will be permitted provided that a number of criteria are met, to which I shall return. There is no specific policy relating to equestrian uses in the National Planning Policy Framework ('Framework') and no bar on such development in the SDNP can be inferred from any local or national policy. There are other policies governing development in National Parks and it is common ground that the proposal before me must comply with these to be permitted, unless material considerations are sufficient to outweigh any conflict with these policies, having regard to the terms of s38(6) of the Planning and Compulsory Purchase Act 2004.

62. It was accepted by the planning authorities that equestrian uses are normally found in rural locations. The critical question to answer in this case is whether the specific equestrian use[23] with the associated buildings and infrastructure is acceptable in this particular location having regard to the nature of the development and the constraints and policies applying. The assessment that needs to be carried out is highly fact sensitive and the local circumstances of particular significance. A number of other equestrian developments within the SDNP have been referred to for the appellants but I am not aware of the detailed circumstances that apply in these instances and have not seen these sites. They do not add anything of substance as it is agreed that equestrian uses in the SDNP will be permitted where all other relevant policies are met.

[23] Private polo enterprise

63. It is also agreed that the development would not cause any material harm to the nature conservation interests or value of Woolbeding Common SSSI and this is reinforced by the fact that Natural England raised no objection subject to strict adherence to the details of the application[24].

Planning policy

64. The Statement of Common Ground (SoCG) helpfully sets out at Section 4 and Appendix 2 the policies from the Framework and the CDLP which are pertinent. It also explains that prior to the SDNP coming into being in 2010 a draft Core Strategy was being prepared by CDC. This was the subject of examination in 2007 and was found to be unsound. It was subsequently withdrawn and CDC are working on a new Core Strategy which excludes the SDNP area where it overlaps the District boundary. The SDNPA will also be preparing a National Park Local Plan but his is not expected to be submitted for examination until 2016 and so is of no weight at this time.

65. Paragraph 115 of the Framework states that National Parks enjoy the highest status of protection and great weight is to be given to conserving their landscape and scenic beauty. The twin statutory purposes for the designation of a National Park[25] are firstly, to conserve and enhance the natural beauty, wildlife and cultural heritage and secondly, to promote opportunities for the understanding and enjoyment of the special qualities of the Park by the public. Where there is conflict between these purposes, the conservation purpose takes precedence. There is also a duty to seek to foster economic and social well-being of local communities in the Park. The statutory purposes apply to how the land is managed and not to each planning proposal in terms of development control considerations. So whilst enhancement is to be sought as an overall purpose of designation, the policy test flowing from paragraph 115 of the Framework is whether the landscape and scenic beauty would be conserved. The Framework also contains other paragraphs of relevance which I shall come to below.

66. As regards the CDLP[26], Policy RE1 requires development outside settlements in the countryside to comply with a raft of policies. In this case I consider that Policy R6 concerning equestrian facilities is the most relevant. Policies B11 (new development), BE14 (wildlife habitat, trees, hedges and other landscape features), R4 (public rights of way) are also of importance and Policy RE12, concerning rural employment and diversification, is of bearing. Given the finding above on the lack of harm to nature conservation interests there is no need to consider policies relating to these matters. I also consider that Policy R2 (provision of facilities – including recreational activities – in rural areas) is of limited relevance as the private polo enterprise provides no recreational facility of benefit to the general public. Instead I prefer Policy B6 which relates directly to the use in question.

[24] Consultation response letter from Natural England to CDC dated 12 April 2013
[25] Part 1 of Section 1 of The National Parks and Countryside Act 1949 referred to the duty of the "preservation and enhancement" on those exercising the functions conferred on them; this was changed to "conserving and enhancing" in the Environment Act 1995
[26] All policies referred to are 'saved'

Main issues

67. With these preliminary findings in mind, and having regard to the stated reasons for refusal and evidence advanced, I consider that the main issues are as follows:

    1) The effect on the landscape character of the area, in particular the Greensand Hills which form part of the SDNP;

    2) The visual impact on the surroundings, especially the adjacent public right of way (FP 1282), having regard to the siting, design, extent and layout of the development;

    3) The impact on the sense of tranquillity;

    4) The impact on the trees along the western boundary of the site.

68. Having considered these main issues I will then go on to take account of the other material considerations identified as factors that weigh in favour which broadly fall into the categories of economic and social benefits.

Reasons

Issue 1) – Landscape character

69. In addition to the local and national policies described above there are other guidance documents of relevance to the assessment of this issue. Natural England has recently updated the National Landscape Character Areas (NCA) and the appeal site comes within the "Wealden Greensand" area. At the local level the South Downs Integrated Landscape Character Assessment (SDILCA) – December 2005 – identifies the site as being within Character Type "N Greensand Hills" and Character Area "N1 Blackdown and Petworth Hills". For the purposes of this appeal, the key characteristic of relevance identified is fields within clearings with wooded edges which support rough grazing. The landscape qualities that are of importance to the overall character are a sense of mystery, remoteness, tranquillity, lack of overt human impact, low density of any settlement, dark skies and low noise levels. There is also specific reference in the SDILCA to ensuring that equestrian activities do not erode the sense of tranquillity and recognition that the distinctive rural, remote character of the area is vulnerable to hobby farms and horse grazing uses.

70. My attention has also been drawn to Historic Landscape Character Assessment (HCLA) which involves mapping the historic dimension of today's rural and urban landscapes. Two assessments of this nature have been undertaken, one of which informed the SDILCA, the other – the Pan Sussex HLCA[27] - which builds on the earlier assessment. One of the purposes of these assessments is to consider the 'time depth' of the landscape. The use of HCLA to inform landscape character assessments accords with paragraph 170 of the Framework.

71. What can be gleaned from these assessments is that the appeal site is an "assart" – an historic clearing used for grazing purposes – which forms part of a mosaic of such features found within the woodland and common land of the

[27] An analysis carried out by East and West Sussex County Councils in conjunction with English Heritage between 2007-09

Greensand Hills. According to the Pan Sussex HLCA[28] it is of medieval origin, dating from the period 1500-1599. It is therefore of considerable historic importance due to its age and its value as a contributor to the prevailing landscape character of the area which the policy framework requires to be conserved. It was also explained by Miss Craddock for the SDNPA that the Pan Sussex HLCA revealed that this assart is of the 'cohesive' type which is more often found in the Greensand Hills and is likely to be older than an 'aggregate' assart, which is more typically located in The High Weald character area.

72. A Landscape and Visual Impact Assessment (LVIA) has been produced for the appellants[29]. This is said to accord with the appraisal methodology set out in the Guidelines (GLVIA) 2002 – 2nd Edition[30]. Miss Craddock for the SDNPA, whilst accepting that the LVIA is set out in a manner which is generally promoted by the GLIVA, criticises this claim on the basis that the guidelines do not apply to development already undertaken but should be used as part of the iterative process to inform the design of the development that emerges. The assertion is that what has been produced retrospectively seeks to justify what has taken place and the opportunity to tailor the development to respect the landscape character, in line with an assessment carried out beforehand, has been missed. A further criticism is that there are fundamental omissions from the landscape baseline assessment which do not provide a firm foundation from which to assess impacts.

73. The response for the appellants, based on the rebuttal evidence of Mrs Brockhurst and summarised in submissions, is that the criticisms do not undermine the relevance of the LVIA and that the SDNPA has not produced any assessment of its own and only latterly has a critique of the conclusions of Mrs Brockhurst been provided in the form of a rebuttal from Miss Craddock. As to the particular criticisms it is said that the need for rigour and objectivity does not disappear simply because the development has taken place. It is also not accepted that it is impossible to describe the baseline (pre-development) as there is a considerable amount of information that assists in this respect from which qualified professionals can draw conclusions. It is argued that it would not be correct to follow Miss Craddock's line of reasoning as this would mean that it would be impossible to define the baseline to assess whether development has caused harm where it has already taken place.

74. In my opinion, whilst it would clearly have been better to have conducted the LVIA before the development took place and to use this to shape the form of development that was proposed, I have to deal with situation as it exists and to reach an informed conclusion on landscape and visual impact, having regard to the totality of the evidence before me. I certainly do not find that the absence of the production of a LVIA before development took place is in itself a reason for withholding planning permission. The fundamental test, as with any development, is whether any material harm has been caused and not whether every aspect of the recognised guidelines has been followed. Moreover this is not a situation where no LVIA has been produced but one where an assessment agreed as being generally in accordance with the guidelines is before me.

[28] Craddock – App III - plan
[29] By Tyler Grange (Mrs Brockhurst), dated 5 March 2013 – Doc 7
[30] There is now a 3rd edition but this is of no consequence in this case

75. Turning to the other point of criticism that the LVIA fails to have regard to the historic dimension I find this to be without substance. The assessment has taken account of the SDILCA which had regard to the HLCA in its formation. The assertion for the SDNPA is that the later Pan-Sussex HCLA emerged after the publication of the SDILCA and therefore could not take account of it. This is correct as a matter of fact but the critical point is whether it adds anything of material relevance in terms of the historic context and time frame. The questioning of Miss Craddock revealed that the only additional information uncovered was that the assart might be older than first thought. Hence, I find this criticism to be a weak point. I am also satisfied that LVIA provides a reasonably robust baseline appraisal and that the impact assessment follows the guidelines in considering the sensitivity of receptors and the likely magnitude of change. Tables describing the impact on the landscape are at Appendix 3 of the LVIA, with further comments added by the parties in the respective rebuttal proofs.

76. There is also the matter of whether sufficient regard has been taken of Landscape Character Assessments at the wider levels than local. The LVIA does not ignore them but, in my view, fairly concludes they are of limited relevance as they refer to many landscape characteristics and features which have no bearing on the development in question as they are either not present or sufficiently removed to be unaffected – an example being "hidden valleys and deep gullies". The overall approach followed in the LVIA is to work down from the national to the regional to the local level identifying any key landscape characteristics of relevance. This is a transparent, systematic and logical approach.

77. Before coming to the impact assessment in the LVIA and the SDNPA response, it is worth stepping back and considering what has changed in terms of the landscape character of the site. It seems to me that from the SDILCA and the HCLA the most important consideration is whether the historic assart has been harmed in terms of its extent and characteristics. The development along the western edge has led to some ground coverage with built form but the majority of the land area remains an open expanse and is not significantly different in area to what existed prior to the development taking place.

78. As far as the character of the land is concerned, this has changed from what appears to have been informal paddocks used for rough grazing, consistent with the historic use and value as an assart, to a formalised and somewhat manicured surface, the majority of which has the appearance of a playing field. I consider that this change has had a detrimental effect on the character of the field and introduced a uniform appearance at odds with the historic nature of assarts as grazing paddocks within the Greensand Hills. There is a point for the appellants that the removal of the former fencing that split the field into paddocks is advantageous in terms of landscape character as it opens up the land. I do not necessarily agree as historically it is possible that assarts of this type would have been subdivided with typical low post and wire/rail fencing.

79. CDC made it clear in correspondence in 2006 that the groundworks and surface improvements did not require planning permission but this was in the context of an understanding that the land remained in agricultural use and could only be used as a polo practice ground for up to 28 days in a year. I consider it is reasonable to assess the physical changes from the perspective of why they came about. The works were not undertaken to improve the land for the lawful

agricultural use but to facilitate the polo horse training and exercising use which continued and intensified thereafter and which I have found required planning permission. So whilst in isolation the groundworks may not have required permission what followed in terms of the use of the land and the subsequent operational development did resulting in the land form that exists today.

80. In respect of the buildings and operational development, whilst they are located close to the tree line, they extend for about 185m of the 320m western boundary. The linear form and position limits the degree of encroachment onto the wider field. However the development, with areas of hardsurfacing and driveways, is nevertheless extensive and includes buildings of considerable size, especially the American Barn (about 43m long and 6.8m high to the ridge), which is substantially greater in scale and massing than the modest stable building and small field shelter that previously existed on the land. I consider that these changes are marked and detract from the historic and largely undeveloped character of the assart that previously existed as the baseline for assessment. In my view the scale of development also greatly exceeds what would normally be expected to support a private equestrian use. I have no reason to question the appellants' evidence that a 'high goal' polo player would expect this range of facilities, and probably more, but this is a very specialised and particular 'requirement' and not typical of the majority of equestrian activities found in the countryside and the SDNP.

81. I have taken account of Mr Spragg's evidence for the appellants showing the location of other polo establishments in the area. It is clear that they are a feature of the Midhurst area and that some, such as Great Trippetts Estate, are far more extensive. They are an aspect of the character of the wider area but a number are in the Rother Valley on lower-lying ground of a very different landscape character. The closest to the east at Madams Farm and Verdley Farm are located in a similar character area close to the ridgeline of the Greensand Hills but I am not familiar with their origins or full history and they are located closer to the A286 Midhurst to Haslemere road than the appeal site which occupies a more remote position. It is also not disputed that the creation of all of these establishments pre-dated the designation of the SDNP.

82. Returning to the LVIA the conclusions drawn in this document, based on the impact assessment conducted, are that although the landscape is of high sensitivity being an historic clearing within a remote part of the SDNP the magnitude of the impact is either low to negligible, which are the lowest categories in the spectrum. The overall significance of the effects ranges from no change, through negligible to minor adverse. On this basis it is asserted that no significant harm to landscape character has arisen or would result from the retention of the development and the continued use.

83. The rebuttal provided by Miss Craddock reaches differing conclusions having regard to the key sensitivities defined in the LVIA which flow from the landscape qualities indentified in the SDILCA as set out in paragraph 69 above. Taking these in stages she considers that the increased intensity of use and associated infrastructure has had a moderate to high adverse effect on the perceived naturalness and lack of visible overt human impact. She distinguishes the impact from the proposed housing development permitted on the King Edward VII hospital site given its distance away (1km) and the fact that it is previously-developed land. She finds that the sense of remoteness

arising from the low density of settlement with associated dark skies and low noise levels has also experienced a moderate to high adverse effect brought about the increased vehicular movements, noise, artificial lighting (rooflights in barn) associated with the keeping, care and exercising of up to 35 horses. She does not agree that this impact is limited in character, extent and duration.

84. In terms of the remnants of heathland whilst she accepts that the development itself does not encroach onto Woolbeding Common, concern is raised about the effect of the increased numbers and speed of vehicles using the PRoW which has been widened and improved since the development took place eroding the sense of perceived naturalness for users of the footpath – argued as amounting to a localised moderate adverse effect. There are also arguments that the pattern of the assart enclosure has been materially affected by the presence of the development close to the western boundary which has damaged trees, led to the removal of vegetation and the infilling of a ditch which is an historic parish boundary; that the recreational use of the area has increased; that the fencing, track, hardstandings and other paraphernalia are not sensitively integrated into the landscape; that a loose agglomeration of development on the common-edge has not been maintained; that the design of the development has not been informed by any characterisation process of local vernacular; and, that the sense of tranquillity assessed using the Council for the Protection of Rural England (CPRE) scoring system has been significantly reduced.

85. I will come back to some of these points when considering the other main issues identified. This is not an exact science and although the LVIA approach introduces a level of objectivity whether the effect is minor adverse or moderate adverse is matter of interpretation for the professional. It is not surprising that the views of Mrs Brockhurst and Miss Craddock differ in degrees as they are presenting arguments to support the cases of those they represent. I tend towards the conclusion that Mrs Brockhurst underestimates the magnitude and significance of the effects whereas Miss Craddock overestimates these effects.

86. In terms of the landscape character, based on my own findings above, I consider that the development has had more than a negligible or minor adverse effect. The character and appearance of the field has changed significantly from the rough grassed paddocks that preceded it to the extensive managed playing surface that now exists. This has come about due to the change of use that has taken place without planning permission. The buildings and structures strung out along a considerable length of the western field boundary go beyond what would typically be expected on a field of this size in connection with an equestrian use and have an unsatisfactory urbanising effect. These changes undermine the historic integrity of the assart and do not conserve the natural beauty of the landscape of the SDNP – the key test.

87. The use is said to generate in the region of 70 vehicle movements per week which is a considerable number and likely to be greater than what was taking place before the development occurred, with more trailers, horseboxes and associated commercial vehicles visiting the site. The level of activity (mucking out, feeding, exercising, grooming, and practice games) will have intensified as a consequence of the increase in the number and type of horses kept on the land and this is likely to also have led to an appreciable increase in noise levels associated therewith. I accept that the access track and PRoW could have

been improved even if the development had not taken place and no point is taken that any possible widening would have required planning permission. However, it seems likely that the improvement works were primarily undertaken to facilitate the development in question.

88. The potential light spillage from the 28 rooflights in the roof of the American Barn is another cause for concern in terms of maintaining 'dark skies' in this sensitive rural location. It might be possible to impose a condition to restrict this through the use of a certain type of glazing and winter use may be limited due to the way in which the polo enterprise is operated but I am not convinced that this could be controlled to the level where it would be possible to conclude there would be no material effect and this would be at odds with the terms of paragraph 125 of the Framework. This concern is heightened by the number of rooflights in question, which are more akin to what would be found in a commercial building rather than a private equestrian facility.

89. Bringing these findings together, I conclude that the development has not conserved the landscape and scenic beauty of the SDNP but introduced a form of development which has marred this beauty, contrary to the requirements of paragraph 115 of the Framework and criterion (1)(ii) of Policy R6 and criteria (1) and (4) of Policy BE11 of the CDLP. There is also conflict with some of the aims and objectives of the SDILCA to maintain a high level of perceived naturalness and a lack of visible overt human impact. In these respects I am mindful that there are already 3 dwellings at Brackenwood, Pine Hill Cottage and Pine Hill House to the north and east but these are isolated properties and their presence does not mean that more development should be allowed if it undermines the policies and guidelines that seek to safeguard the remoter parts of the SDNP.

Issue 2) - Visual impact

90. Some aspects of visual impact have already been touched on in assessing the effects on landscape character above. I will however consider the direct effects having regard to the evidence provided and my own observations. It is common ground that the development has had no material impact on wider, panoramic views from public vantage points including those from Woolbeding Common itself. I was able to approach the site from the west from the public car park on the road up to Older Hill. The ground rises steeply to the PRoW (FP 1282) along the western flank of the site and it is not until going onto the footpath itself that the development becomes noticeable. I was not made aware of any other footpaths in the vicinity that are directly affected. I have taken account of the long distance waymarked trails[31] which pass close by but they deviate westwards at the south-western corner of the site and then skirt around or away. On this basis I do not consider that the users of these trials would experience any material visual detriment to their enjoyment of the SDNP countryside. The land to the north, east and south is privately owned and not publicly accessible.

91. The primary concern of both CDC and SDNPA is the visual impact on the users of the PRoW which runs the full length of the appeal site continuing beyond in a northerly direction. This is part of a network of footpaths in the locality and I would expect it to be regularly used by walkers and those out exercising dogs.

[31] Serpent and Lipchis Trails

In this respect both Mrs Johnson and Miss Craddock said that they had walked their dogs along this route in the past.

92. There were differing views about what would have been seen when viewing from this path prior to the development taking place. The photographic evidence before me is not clear on this as most of the photos show the post-development situation. For the appellants the claim that views across the open field could be obtained from the path is contested on the basis that the screening woodland edge of trees and understorey planting would have largely prevented seeing into the site. This is emphasised on the basis that the SDNPA raise a separate concern about the loss of vegetation on this boundary that has occurred since the development took place. Whilst this is so I would still have expected glimpsed views of the field to be obtainable, especially in the winter time when the predominant mature tree species on this boundary (oak and beech) would have shed their leaves. The degree of visibility or permeability would have been limited but of some value.

93. The situation that now exists is a range of buildings and other structures running along over 185m of the boundary which are close to the footpath and which can be glimpsed through the tree belt. Particularly apparent is the large American Barn and the 'temporary' stables building both of which are noticeable features which are visible along sections of the path. I was observing the situation at a time when leaves were still on the trees and once they have been shed the likelihood is that the buildings and structures would become more readily apparent, detracting from the pleasant enjoyment of this rural right of way. Some of the photographs provided for the SDNPA taken in early springtime support this conclusion[32].

94. It is also possible that due to the position of these buildings and structures, which it is accepted are likely to have caused substantial root damage, that some of the trees may suffer the loss of limbs or die completely. This would increase the visibility of the development rendering it more dominant and intrusive in the landscape. There is little scope to introduce any screen planting given the proximity of the development to the boundary and the land beyond between the path and the site is outside the appellants' control.

95. It is argued that the CDC permitted the dressage arena and that this is more apparent as it is located towards the south-western corner where there is a gap in the vegetation. From my own observations this appears to be the case. However, this is a relatively modest development in comparison with the unauthorised buildings and structures now erected and consists of a dressed surface and some fencing. It is also evident that the fencing that now exists is taller than what was permitted and boarded in on the lower portions contrary to the approved details. A comparison of the photographs showing what was permitted and what now exists[33] illustrates the extent of the differences and I would expect the arena to be less noticeable from the footpath if the fencing reverted to what was permitted. I have taken account of the 2 water tanks that exist in the north-western corner but these were not granted planning permission but benefit from a Lawful Development Certificate issued in March 2012. Moreover, I do not consider that they are comparable in terms of visual impact to the totality of the new development as constructed.

[32] Bettany-Simmons – App II – photos 1-4
[33] Bettany-Simmons – App II – photos 15 & 16

96. For the appellants it is submitted that the siting and layout of the buildings along the woodland edge is the most appropriate solution and that creating a courtyard of buildings elsewhere on the land, possibly in the north-eastern corner of the field, as implied by Miss Craddock, would be more harmful to the character and appearance of the area. I am not dealing with alternative proposals and it is not a case of accepting that the buildings and structures must be permitted somewhere on the land. Alternative proposals may be brought but these would for the SDNPA to consider in the first instance. My decision concerns the impact of the development as built and I find that the siting and layout of the buildings is detrimental to the visual amenity value of the adjacent PRoW. Moreover, the increased use of this track by vehicles would lessen the enjoyment of the use of this footpath and be likely to present some hazards for users. For these reasons the development is contrary to Policy R4 and criterion (2) of Policy R6 of the CDLP.

97. As regards design, the cladding of the American Barn and smaller stable block in timber is typical of buildings used for equestrian purposes in the countryside and a suitable facing material in principle. However, it is the sheer scale of the Barn which makes it visually intrusive from the PRoW. The prefabricated 'temporary' stables although a smaller and lower building is not of a design in keeping with its rural surroundings and fails to accord with the terms of paragraph 64 of the Framework. The offer of the appellants to remove this between November to March and accept a planning condition to this effect would lessen the visual impact but would still leave the building in situ for 8 months of the year, at times when the PRoW is likely to be in greatest use by walkers. Other aspects of the development, such as the horse walker, have only a limited visual impact but they form part of the wider range of facilities that are claimed to be needed to support the polo enterprise and add to the cumulative adverse visual impact which would fail to comply with criteria (1) and (2) of Policy BE11 of the CDLP. Overall, my findings on this issue weigh against the granting of permission.

Issue 3) - Tranquillity

98. Paragraph 123 (4th bullet point) of the Framework states that planning decisions should protect areas of tranquillity which have remained relatively undisturbed by noise and prized for their recreational and amenity value. Leaving aside any tranquillity mapping, which I will come to below, there is general agreement that this is a relatively tranquil location some distance from any settlements or significant concentrations of development. I have taken account of the substantial housing development that is proposed at the former hospital site on the access road to the site from the A286 road but this is some distance away and is unlikely to impinge on the noise environment at the appeal site. The qualities of importance to the Greensand Hills identified in the SDILCA include remoteness, tranquillity, and lack of overt human impact and, given the limited number of houses in the vicinity and the wide expanses of open common land nearby, it is reasonable to conclude that this is one of the more tranquil locations within this part of the SDNP.

99. Such a conclusion is reinforced by my site inspections and the general perception of an air of peace and tranquillity with low noise levels. I did note that a radio on the appeal site was audible from the PRoW on one visit and this was at time of the year when there were only a few horses remaining in the stables – the others having been taken down to winter pasture. Sources of

disturbance such as this would be likely to be more frequent in the months of the year when the majority of the polo horses are being kept, groomed, trained and exercised on the land. The increased intensity of activity would coincide with the times when the PRoW and Woolbeding Common are in greatest use by the public. Whilst no objective noise measurements have been provided to compare the noise prior to the development taking place with what is now occurring it is reasonable to draw some conclusions having regard to the changes that have occurred.

100. Prior to Mr Clarke purchasing the land I would expect the use of the land for equestrian use to have been relatively low key. Even his use of the southern part for exercising his horses as claimed would have been for a maximum of 15 horses and at that time he was bringing them from the stables at Pine Hill House to the east some distance from the publicly accessible land. There may have been some horses brought onto the land by others for exercise but again I would expect this to be of low intensity generating few, if any, vehicle movements. There were only two buildings on the land at this time and they were both of modest size with the stables located well away from the western boundary.

101. This can be compared and contrasted with the likely levels of noise generated by the present use which is concentrated along the western boundary in close proximity to the PRoW. The two main stable buildings can accommodate up to 34 horses with a further 3 boxes available in the smaller timber stables. The number of horses likely to be present on the land through much of the summer months is therefore 37. These animals would need to be mucked out, fed and groomed as well as being exercised and ridden on the land with occasional polo practice games or 'stick and ball' training. There are two wash-down areas within the group of buildings and I would expect these to be in frequent use to wash and groom the horses. I did observe the horsewalker in use with one animal inside but the motor for this did seem relatively quiet and unlikely to be a source of disturbance.

102. There would be a considerable staff presence on a daily basis to carry out the required tasks and a significant amount of their work would be conducted outside. Whilst I have no reason to assume that this would necessarily lead to shouting, I would expect conversations to be apparent on occasions and that audio equipment could be played to entertain the workers. All of this activity and potential noise intrusion that it generates would be focused adjacent to the PRoW and Woolbeding Common beyond.

103. There is also the matter of traffic generation on the track which coincides with the PRoW. I do not have details of precise numbers but I consider that the estimate for the appellants of 70 vehicle movements per week associated with the polo enterprise is considerable and likely to significantly exceed the numbers associated with the former lawful uses. As well visits by vets, farriers, feed and bedding merchants, waste disposal services there would be regular movements associated with the comings and goings of horse boxes and lorries during the summer polo season to take the animals to competitions and when the horses are taken off to winter pasture at Blackdown. In combination I consider that the noise generated by the totality of the polo enterprise is likely to be materially greater than what previously occurred and could result from the lawful use of the land. Given the lack of complaints from users of the PRoW I am doubtful that it would be such as to cause a serious disturbance or

nuisance. However, the policy objectives are to protect areas of tranquillity and limit overt human impact and in this respect I find that the development would run counter to these objectives reducing the level of tranquillity.

104. I have gone on to consider the tranquillity mapping relied on by the SDNPA which is based on the CPRE methodology. The maps provided[34] show the appeal site as being in a grid square with the highest tranquillity score in the locality of 37.11. I agree with the submission for the appellants that this does seem odd as other grid squares, such as the one immediately to the east, have lower scores even though they appear to contain no built development. Attempts were made to explain this by reference to ground levels and the presence of conifer plantations and power lines but I do not find the explanations convincing. I am still puzzled as to why the appeal site square which contains 3 dwellings would have a higher tranquillity score than a square where there are none.

105. My attention has been drawn to the Secretary of State's appeal decision and the associated Inspector's report relating to proposals at London Ashford Airport, Lydd, Kent[35]. The detailed nature of the development proposed in that case is of no particular bearing but the comments on the value or otherwise of the CPRE tranquillity mapping as a tool to inform the decision-maker are. The Secretary of State indicates his agreement with the Inspector's conclusions. These are that the mapping methodology is at an early stage and the results are too crude to be of any use at a local level without a local assessment. It was also stated that it is the granularity of the exercise which makes it unsuitable for development control. I do not intend to go into detail about the 44 positive and negative factors that are weighted to arrive at the scores for the grid squares as I am in agreement that this is a crude tool which, based on the seeming anomaly described above, is not a reliable basis for dealing with localised impact of a proposal.

106. Even if I were to place some weight upon it, there is little clarity as to what difference the development makes in terms of scoring. Miss Craddock's rebuttal proof seeks to remedy this by weighting certain factors which she considers are engaged as a consequence of the development[36]. She attributes a combined total of -18.07 which she argues would reduce the total for this grid square to +19.03. This presumably assumes this level of impact across the whole square which seems questionable. Moreover even if this figure were accepted it is still positive and in the upper half of the range within the SDNP of -68.8 (worst) to +50.87 (best).

107. My inclination given the criticisms of the scoring methodology is to prefer a localised assessment based on the evidence of the uses taking place, the buildings and structures present and my own observations. In this respect, having regard to the above findings, I find that the development is likely to have caused some reduction to the tranquillity of the area, especially along and close to the western boundary of the site where the PRoW is found. This would be at odds with the thrust of paragraph 123 of the Framework and would conflict with criterion (2) of Policy R6 of the CDLP which seeks to prevent adverse impact on the amenities of the users of the countryside.

[34] Craddock - Appendices VIII & IX
[35] Paragraph 32 of the Decision and paragraphs 14.10.7 to 14.10.16 of the Inspector's report concern tranquillity
[36] App I - p.10

108. I am mindful that Woolbeding Common being open access land with some car parks will itself attract members of the public throughout the year, and that they are more likely to visit in the summer. I have also taken account of the occasional events that apparently take place there which would also bring a human presence to this locality. Nevertheless, I consider that they would normally be more dispersed and have less of an impact on tranquillity than the focused use of the appeal for a relatively intensive equestrian activity. I therefore conclude that the likely reduction in tranquillity that has resulted weighs against the granting of permission.

Issue 4) - Trees

109. There is agreement that the development as constructed has caused harm to a number of mature trees, mainly oak and beech, adjacent to the western boundary. This harm is explained in the Arboricultural Impact Assessment (AIA)[37] submitted with the planning application and can be summarised as that resulting from the lopping of branches and limbs of the trees and root damage caused by ground excavation and foundation construction within the root zones. The AIA reveals that 14 out of the 25 mature trees surveyed have incurred root damage. 11 have experienced a high level of root damage and 4 of these are category A trees. This could lead to the die back or death of these trees especially the beech specimens which are particularly sensitive to ground disturbance given their shallow root plate.

110. I noted that the canopies of two of the beech trees are now badly misshapen. It is suggested that one, which is now more like a stump with only a few remaining lateral branches, was 'topped' to counter storm damage. However, it appears that others were lopped so as to enable the buildings to be sited in the positions chosen. There was some suggestion by Mr Bettany-Simmons for the SDNPA that a line of trees may also have been felled to accommodate the development but I have no clear evidence on this and the aerial photographs of 'before' and 'after' tend to suggest otherwise.

111. The trees enjoy no statutory protection by virtue of being the subject of a Tree Preservation Order or within a conservation area. It is acknowledged that the trees are of value in the landscape but that what has taken place cannot be reversed. The question to consider is what would be the best course of action for the future health of the trees.

112. For the appellants it is argued that it would be better to leave the buildings and structures in situ and to undertake mitigation measures as set out at Section 5 of the AIA[38]. The reasoning is that the groundworks necessary to remove the buildings are likely to cause more damage to the roots of the trees and that refusing permission and upholding the enforcement notice B would not require the ground levels to be reinstated or the top soil to be put back. Consequently it is argued that the health of the trees would be likely to be further undermined than at present.

113. The SDNPA take the opposite view arguing that the careful removal of the buildings and structures would enable the root zones to be cleared of development and with suitable mitigation measures as recommended in the

[37] Arboricultural Impact Assessment dated February 2013 compiled by Mr B Harverson

[38] Collection of foul water from wash bays into interceptors/tanks, directing clean surface water run-off back towards the trees and ditch, perforating the hardsurfacing to allow water to percolate beneath and aerating/feeding the root systems

AIA water, air and nutrients would be able to reach the trees assisting their recovery and longevity.

114. There is no doubt in my mind that the siting of the buildings so close to the trees beneath their canopies and within their root zones is contrary to the requirements of Policy BE14 of the CDLP; the design and layout chosen has not protected the existing trees but harmed them. If the development had not taken place this would have been a strong reason for not granting planning permission for the development carried out. Nevertheless I accept that the trees were not and are not protected by law and that the planning system does not operate to penalise landowners for wrongdoing. As both parties agree the damage caused has happened and it is a question of what should be done in the best interests of these trees.

115. I accept that if permission is not forthcoming and Notice B is upheld then the buildings, structures and hardsurfacing will need to be removed. I do not have details of the foundations but it is said that the American Barn has piled foundations, the removal of which would no doubt cause considerable ground disturbance some of which would encroach onto the root protection areas. I also note that the requirements of the notice would not lead to the reinstatement of the ground levels or top soil and in such circumstances any re-seeding with grass is unlikely to be successful. It would therefore be a matter of the goodwill on the part of the appellants to do so and to undertake mitigation measures, which could instead be conditioned if planning permission were granted. Nevertheless, the removal of the operational development would open up the ground to the air, water and nutrients which will have been seriously reduced by its presence. The mitigation measures suggested in the AIA could help in these respects but the retention of the buildings and the hardsurfacing is likely to continue to threaten the health of the trees due to its presence (possible need to fell further branches overhanging the buildings) and the extensive ongoing ground compaction in the root zones.

116. This is clearly a balanced judgement and not an easy one to reach but I am not convinced that retaining the development is necessarily in the best interests of the trees. I also consider that the findings on this issue have to be weighed along with those reached on the other main issues and any other considerations. It is certainly not a case of setting aside any other harm that I have found because removing the buildings might cause some further damage to the trees. To do so would send out the wrong message and could encourage developers to cause wilful damage to trees on the basis that this could, using the argument advanced, work in favour of retaining what has been constructed. I will come back to this when carrying out the balancing exercise below.

Other considerations

117. The 'golden thread' running through the heart of the Framework and the national policies is the presumption in favour of sustainable development[39]. The 3 dimensions of sustainable development are set out in paragraph 7 of the Framework and are the economic, social and environmental roles. The analysis and assessment of the main issues carried out above focuses primarily on the latter. I turn to consider the other two roles and the points argued for the appellants on each.

[39] Paragraph 14

118. In terms of the economic role, paragraph 28 of the framework promotes a strong rural economy through local and neighbourhood plans and advocates support for the expansion of all types of business and enterprise in rural areas and leisure developments that benefit businesses and communities in rural areas. Policy R12 of the CDLP encourages the provision of additional employment opportunities provided, amongst other things, the development in question would not be visually damaging or obtrusive within the landscape or result in a type and level of activity which would be detrimental to the character of the surrounding area.

119. It was stressed for the appellants that this is not a commercial business and so it cannot benefit from the national or local policy support that applies in general to businesses in the countryside. It is a private interest which is being pursued due to Mr Clarke's passion for polo. Nevertheless, it is claimed to provide employment for 4 local people as well as some seasonal work for Argentinian grooms who will be making some contributions to the local economy in terms of the food and services they require. Work is also provided for local vets, farriers, feed and bedding merchants and other suppliers and horse specialists. I have no reason to dispute these claims but the actual benefit to the local economy is likely to be limited or modest, as submitted for the appellants, and primarily seasonal in nature.

120. In terms of the social role because it is a private enterprise it does not provide a recreational facility that directly benefits the community. It is not accessible to the general public and so it does not support any community need or make any provision which contributes towards the social well-being of the area.

121. I have taken account of the fact that the Midhurst area is renown for the sport of polo and the evidence before me from Mr Spragg identifies the range of facilities and premises that already exist which I appreciate will be contributing towards the local economy. That said, it does not mean that another enterprise is inevitably acceptable in this location simply because it is where polo enterprises are focused. Mr Spragg in answer to questioning said that there was enough space in terms of stables in the Midhurst area for 'high goal' players and no need has been demonstrated through the submission of studies from Sport England or respected polo societies. There is also a distinction to be drawn between been demand and need. Mr Clarke may demand or want the facility he has created but this does no equate to manifest need. In the absence of evidence showing such a need I consider that little weight can be attached to this factor.

122. Coming back to the policy framework, I find that the economic and social arguments are not strong and have to be considered in the context of the degree of environmental harm that I have identified. I therefore turn to the balancing exercise.

Overall conclusions

123. I have found that the development that has taken place has not conserved the landscape and scenic beauty of the SDNP but introduced a form of development which has marred this beauty, contrary to the requirements of paragraph 115 of the Framework and criterion (1)(ii) of Policy R6 and criteria (1) and (4) of Policy BE11 of the CDLP. I have also concluded that the siting and layout of the buildings is detrimental to the amenity value of the adjacent PRoW and this is contrary to Policy R4 and criterion (2) of Policy R6 of the

CDLP. The design of the 'temporary' stables building is also out of keeping with the rural surroundings. The cumulative adverse visual impact is significant and at odds with criteria (1) and (2) of Policy BE11 of the CDLP. Additionally I find that it is likely that the development has caused a reduction in the level of tranquillity in this remoter part of the SDNP and is in conflict with national and local policies on this matter.

124. In terms of tree cover there is no clear evidence that any valuable mature trees have been removed to facilitate the development but it is has caused demonstrable harm to the root systems and canopies of a number on the western boundary of the site contrary to the requirements of Policy BE14 of the CDLP. This damage has already taken place and I accept that removing the buildings could cause further damage. However I do not consider that this is sufficient to outweigh the cumulative harm I have identified on the other issues. Moreover, the removal of the buildings could be preferable in the interests of the health of these trees, especially if some mitigation work was undertaken. I appreciate that the requirements of the enforcement notice would not assure that this is so but it is at least possible. I consider it would be wrong to sanction and condone what has taken place simply because some further damage to the trees root systems and their health may occur.

125. I have taken into consideration the economic and social arguments but consider these to be of limited weight. When set against the combined harm that has arisen and the conflict with a number of national and local planning policies, I conclude that these limited benefits do not outweigh this harm. I have had regard to the list of conditions put forward which would impose various restrictions on the use and the form of development permitted but I do not consider that they would overcome the harm or be such as to render the development acceptable. On this basis, and having regard to s38(6) of the Act 2004, I conclude that planning permission should not be given.

126. I have regard to the argument that Mr Clarke is a 'high goal' polo player and his desire to retain the wide range of buildings and infrastructure that have been created that facilitate that private interest. However, his 'needs' have to be considered in the context of the piece of land he has chosen to develop without planning permission and the constraints that apply. He proceeded at his own risk and there was no guarantee that permission would be granted.

127. It was submitted for the appellants that if the operational development was found to be unacceptable that instead a split decision could be issued for the use of the land and possibly for some of the stabling which would serve the dressage use for which the arena has been permitted. Given the integrated nature of the development I am not persuaded that this course of action is appropriate. The test when considering whether a split decision can be issued is whether the uses and development are functionally and physically separable into parts. From what is before me I do not consider that this is so. It has been stressed by Mr Clarke and advocated on his behalf that he needs all the facilities he has created as a 'high goal' player and that they are modest compared to some. I have no clear evidence that as an alternative he would be willing to accept lesser facilities and nothing to this effect has been put forward. I also do not consider that it would be appropriate to permit the use of the land for the training and exercising of polo ponies as such a use is evidently dependent upon the range of facilities constructed.

128. His daughter may need some stabling for her dressage horses but it is not clear which. The appellants are still in a position to approach the SDNPA about what may be considered acceptable as a lesser scheme and an application could be made for this. Should it be successful, having regard to s180 of the 1990 Act, any enforcement notice would cease to have effect in so far as it is inconsistent with the permission granted. I will return to this point under ground (g) below.

129. My overall conclusion is that planning permission should not be granted and that the appeal should be dismissed.

Ground (g) – Appeals A-D

130. The planning authorities represented have made a concession on this ground and indicated their acceptance to the extension of the compliance period to 6 months for both notices. The appellants however still seek an extension to 12 months. Two primary reasons were argued for the extension.

131. The first concerns the potential clash of the works necessary to achieve compliance with the access improvements on King's Drive associated with the redevelopment of the King Edward VII Hospital site. It is argued that there is uncertainty about the timing and duration of these improvements and that this may lead to a road closure or difficulties of getting vehicles and machinery to the appeal site to carry out the required works. I find this a weak argument as I have no details showing the extent of the highway works or whether they would lead to any road closure. I also consider a complete closure is highly unlikely as there are a number of residential properties, not just Brackenwood, which are dependent on this access. In any event this argument was not pursued any further on the basis that 6 months should be sufficient in terms of the relationship to the hospital scheme.

132. The second argument is that 6 months is too short a period to find alternative accommodation for Mr Clarke's horses. It is submitted that proper stabling and facilities are needed to replace what would be lost for these valuable animals. I consider that it is not a question of whether equivalent stabling and facilities can be replicated within the six months but rather is there anywhere else that could be used or rented to move the horses to. This may only be an interim measure pending Mr Clarke's search for comparable premises or another site where they could be located with planning permission. In this respect, I am told that although there is a considerable area of land at Mr Clarke's Blackdown home property that this is not suitable due to the topography. However, Mr Clarke, in answer to questioning said at the time of the inquiry that most of horses were currently kept at the Blackdown property and I see no reason why this could not continue if only as an interim measure. Mr Ellis explained that there was an agricultural barn there which could be adapted to incorporate 'boxes' for stabling. There would also be the possibility of renting stabling as a temporary measure.

133. There is a further point in terms of the possibility that the appellants may wish to apply for planning permission for some lesser scheme which seeks to retain some of the facilities, such as stabling for the dressage horses. This would be a matter for the SDNPA in the first instance. Extending the compliance period to 6 months should give sufficient time for this to be pursued should it be considered desirable. For all of these reasons I consider that 6 months is a reasonable period of time and I will vary the two notices to this effect.

FORMAL DECISIONS:

Appeals A & B: APP/Y9507/C/13/2195150 & 2195151 (Notice A)

134. Notice A is corrected by the deletion of the words at Paragraph 3 - THE BREACH OF PLANNING CONTROL ALLEGED and the substitution of the following words instead "Without planning permission, change of use of the Land to a mixed use for agriculture and equestrian purposes, namely the keeping and training of polo ponies". The notice is varied by the deletion of the words at Paragraph 5 – WHAT YOU ARE REQUIRED TO DO and the substitution of the following words instead:

    (i) Discontinue the use of the Land for the keeping and training of polo ponies;

    (ii) Remove the surface material forming the exercise track shown coloured dark grey on the attached plan from the Land and in-fill the depression in the ground to match the profile of the existing land on either side and reseed with grass.

135. The notice is also varied at Paragraph 6 – TIME FOR COMPLIANCE by the deletion of the word "Three" and the substitution of the word "Six" instead. These corrections and variations amount to partial success on grounds (f) and (g). Subject to these corrections and variations the appeals are dismissed and the notice is upheld.

Appeals C & D: APP/Y9507/C/13/2197046 & 2197047 (Notice B)

136. Notice B is varied by the substitution of Plan A attached to this decision for the one attached to the notice and the deletion of the words at Paragraph 5 – WHAT YOU ARE REQUIRED TO DO and the substitution of the following words instead:

    (i) Remove the large stable building shown coloured blue on Plan A from the Land;

    (ii) Break up and remove the associated tarmac surface shown dotted on Plan A from the Land;

    (iii) Remove the metal-framed stable building shown coloured brown on Plan A from the Land;

    (iv) Remove the hardsurface area shown hatched on Plan A from the Land;

    (v) Remove the horsewalker and its base shown coloured yellow on Plan A from the Land;

    (vi) Remove the fencing and compacted material forming the horse tethering area shown coloured purple on Plan A from the Land;

    (vii) Remove the timber structures with concrete bases and fixtures and fittings forming the two wash bays shown coloured pink on Plan A from the Land;

    (viii) Remove the timber hay store building shown coloured red on Plan A from the Land;

(ix) Remove the timber stable block shown coloured orange on Plan A from the Land;

(x) Remove the timber walls and concrete base of the trailer ramp and wheelbarrow ramp shown coloured black on Plan A from the Land;

(xi) Break up and remove the access track and parking area shown coloured green on Plan A from the Land and reseed the exposed area with grass;

(xii) Remove the surface area forming the exercise track shown coloured dark grey on Plan A from the Land and infill the depression in the ground to match the profile of the existing land on either side and reseed with grass;

(xiii) Remove all debris and rubble resulting from compliance with steps (i) to (xii) from the Land.

137. The appeals are allowed in part on ground (g) and the notice is varied at Paragraph 6 – TIME FOR COMPLIANCE by the deletion of the word “Three” and the substitution of the word “Six” instead. Subject to these variations the notice is upheld.

Appeal E: APP/Y9507/A/13/2200208

138. The appeal is dismissed.

N P Freeman

INSPECTOR

Plan A

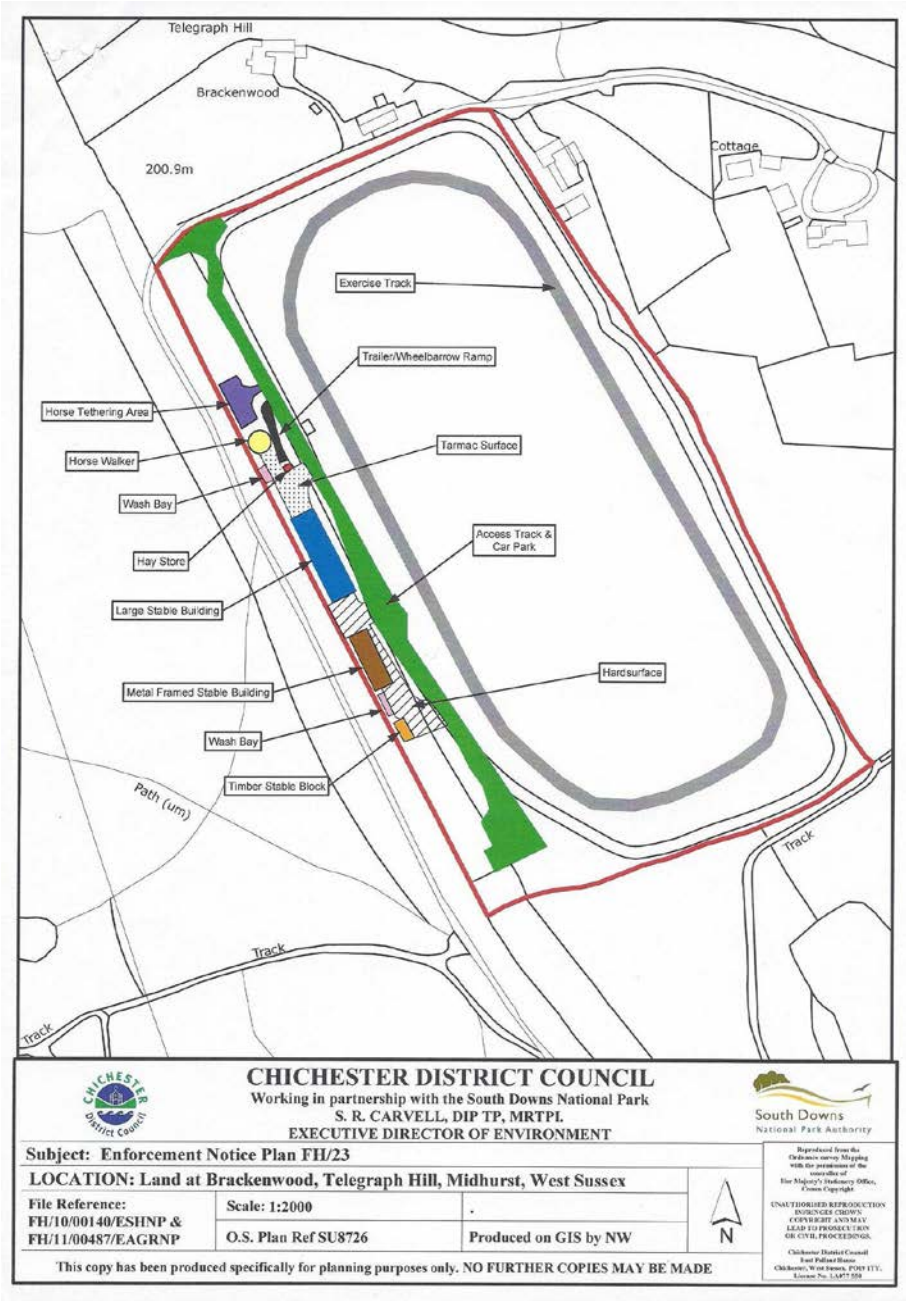
This is the plan referred to in my decision dated: 07.01.2014

by N P Freeman BA(Hons) DipTP MRTPI DMS

Land at: Brackenwood, Telegraph Hill, Midhurst, West Sussex, GU29 0BN

Reference: APP/Y9507/C/13/2197046 & 2197047

Do not Scale:



APPEARANCES

FOR THE APPELLANTS:

Paul Brown QC	Instructed by the appellants
He called:	
Mr N Clarke	Co-appellant
Mrs J Johnson	Supporter and employee of Mr Clarke
Mr D Spragg	Supporter – polo and equestrian specialist
Mr I Ellis BA MRTPI	Director of Southern Planning Practice Ltd
Mrs C Brockhurst BSc(Hons) DipLA FLI	Partner of Tyler Grange LLP

FOR CHICHESTER DISTRICT COUNCIL:

Gwion Lewis of Counsel	Instructed by the Solicitor to CDC
He called:	
Mr R Hawks BA MA MRTPI	Assistant Manager (Enforcement)
Mr D Price BSc BA MRTPI	Principal Planning Officer

FOR SOUTH DOWNS NATIONAL PARK AUTHORITY:

Gwion Lewis of Counsel

He called:

Mr T Bettany-Simmons BA(Hons) MSc MRTPI	Development Management Officer
Miss V Craddock BA(Hons) DipLA CMLI	Landscape Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Opening Statement on behalf of the appellants
2 Bundle of judgments, decisions and guidance on equestrian uses put in for the appellants[40]
3 Letter dated 08/09/05 from Douglas Briggs Partnership to Mr Price

[40] Includes APP/L2250/V/10/2131934/36 – London Ashford Airport, Lydd – SoS Decision and Inspector's report, *Sykes v SSE [1981] 42 P&CR 19, Fox v FSS [2003] EWHC 887 (Admin)* and *Basingstoke & Deane BC v SSCLG [2009] EWHC 1012 (Admin)*

4 Letter dated 25/07/11 from Chris Wilmhurst, Vail Williams to Mr Hawks (addendum to Mr Hawks - Appendix H)
5 Miss Craddock's rebuttal proof
6 Mrs Brockhurst's rebuttal proof
7 Landscape and Visual Impact Assessment (LVIA) - 5 March 2013
8 Revised draft enforcement notice (Notice A – MCU) put in by CDC & SDNPA for substitution
9 Revised draft enforcement notice (Notice B – Ops) put in by CDC & SDNPA for substitution
10 Revised suggested planning conditions - schedule
11 Closing Submissions on behalf of the local planning authorities
12 Closing Submissions on behalf of the appellants

PLANS SUBMITTED AT THE INQUIRY

Ground and first floor plans of the American Barn – 00X/P & 003/PA

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

Nos. 1 - 8 CDC photos taken on 14/09/05 – inserted at Appendix E of Mr Hawks appendices
Nos. 1 - 4 CDC photos (enlargements) taken on 02/09/08 – inserted at Appendix L of Mr Hawks appendices