

Item Number: 8
Application No: 20/00563/FUL
Parish: Lillings Ambo Parish Council
Appn. Type: Full Application
Applicant: DHI Eventing Ltd And Peter Simmons
Proposal: Erection of an Isolation Stable Barn for 12no. horses with ancillary areas for tack, feed and storage and associated landscaping, installation of 2.5m high acoustic fencing to eastern boundary of the site, installation of a section of new hardstanding to provide partially separated vehicular access for equestrian traffic, widening of the existing access, amendments to existing parking arrangements, installation of new vehicular passing place within main driveway and retention of a section of existing hardstanding, together with the temporary retention of temporary stabling and 1no.storage container. (Part retrospective)
Location: East Lilling Grange Farm New Road West Lilling North Yorkshire YO60 6RW

Registration Date: 25 June 2020
8/13 Wk Expiry Date: 20 August 2020
Overall Expiry Date: 26 November 2021
Case Officer: Niamh Bonner Ext: 43325

CONSULTATIONS:

Environmental Health	No objection recommend condition
Foss Internal Drainage Board	No objection recommend condition
Highways North Yorkshire	No objection recommend condition
Tree & Landscape Officer	No response received
Lillings Ambo Parish Council	As detailed below concerns/objection
Building Conservation Officer	No objection
NYCC Natural Services	No concerns on ecology - recommendations

Representations: Mr Roy Lewis obo Mr and Mrs Crawford, Ms Laura Collett, Mr James Avery, Ms Laura De Wesselow, Mr James Crawford, , Major (Retd) Richard Waygood MBE British Equestrian, Mrs Carrie Pillow

Update Report

Introduction:

This application seeks permission for: *Erection of an Isolation Stable Barn for 12no. horses with ancillary areas for tack, feed and storage and associated landscaping, installation of 2.5m high acoustic fencing to eastern boundary of the site, installation of a section of new hardstanding to provide partially separated vehicular access for equestrian traffic, widening of the existing access, amendments to existing parking arrangements, installation of new vehicular passing place within main driveway and retention of a section of existing hardstanding, together with the temporary retention of temporary stabling and 1no.storage container. (Part retrospective)*

This application was included on the Planning Committee Agenda on the 21st December 2021 with a report that included an Officer's recommendation for approval. This original report is appended to this current update report. This application was deferred and was subsequently included on the Planning Committee Agenda on the 27th September 2022. An update report was provided which is also appended to the current update report.

Both previous reports should be read in conjunction with this current report.

Prior to the Planning Committee meeting in September 2022 Members were advised that a further letter of objection was received on Friday 23rd September from Roy Lewis, the Planning Agent writing on behalf of the occupier of the neighbouring property East Lilling Grange, together with a legal opinion from a Barrister on their behalf. Both of these documents raise concerns about the Officer Report and the Local Planning Authority's (LPAs) analysis of the lawful use of the site for commercial equestrian purposes and whether a material change of use, or potential material intensification of use of the site has occurred.

These documents were provided to Members in hard copy form on their desks at that meeting. A further written response had been received from the Parish Council on the 26th September 2022 to be read out on behalf of the Parish Council at the Committee Meeting as they could not send a representative, a hard copy of this was also provided to Members.

In light of this, Officer's requested that Members vote to defer the item to allow for further review the incoming representations and seek legal review on these, Members voted in favour of taking this approach.

A further site visit to the site was arranged and occurred on the 13th October 2022. Members visited both the application site and the adjoining property East Lilling Grange. Cllr Potter, Cllr Goodrick, Cllr Mason and Cllr Cleary were in attendance. For information Cllr Andrews, Cllr Potter and Cllr Cleary attended a previous site visit on the 11th January 2022.

The 'Representation' section of this report summarises further responses from the Parish Council, Mr Lewis Planning Agent on behalf of Mr and Mrs Crawford of East Lilling Grange, their Counsel, Ben Fullbrook of Landmark Chambers and the Planning Agent Jim Burns received from the 23rd September 2022 onwards. Members are advised that these responses are appended in full to the report and all other previous responses have been summarised in the earlier report.

It is noted that further advice was sought from Counsel on this matter which was received on the 9th February 2023. This is the fourth set of advice received from Counsel and will be made available to Members in full. Officers strongly request that this is not shared or disseminated with any third parties as this is legally privileged information and to do so could be potentially harmful. Members will have access to the earlier legal advice.

Members will be aware that many issues have been previously considered at this site including the proposed operational development and consideration on the certain elements of the existing operational development on the site. It is considered that the vast majority of these issues have been addressed within the previous reports. It is noted that the remaining outstanding points to be addressed in this further update report are much more limited than the wider material planning considerations assessed in the original Committee Report and previous update report (September 2022). The issues to be considered within this report relate to limited clarifications from the previous report, further assessment/discussion on the lawful planning use of the site and the submitted base of evidence. There was a point made within this latest response from Counsel for the LPA which suggested a further response from the Applicants and Mr Burns would be helpful and the additional incoming evidence will be addressed below.

A final conclusion will be made with an updated list of conditions will provided. This is considered to be the most effective way of presenting this information.

REPRESENTATIONS:

For the avoidance of doubt, all formal representations made by Mr Lewis on behalf of Mr and Mrs Crawford and from the Planning Agent Jim Burns from the 23rd September 2022 onwards are appended to this report.

These formal representations are outlined and summarised below. Members are however advised to review the original documents in full.

1. [An additional submission was made by Mr Roy Lewis \(Planning Agent\) on behalf of Mr and Mrs Crawford dated 23rd September 2022.](#)
 - Concerned to see limited analysis of their evidence provided in relation to the lawfulness of the existing equestrian training use in the Officer's report. The Agent has provided erroneous comments in an email dated 3rd September 2022.
 - Sought independent legal advice which is appended from Mr Fullbrook of Landmark Chambers
 - Acknowledge the work spent in relation to the determination of this application, however remain of the opinion that a material change of use has taken place within the last ten years and that the existing use is unlawful and this is relevant in the determination of the current application.
 - Trust the Council will give full regard to the submitted Counsel opinion and consider it would be inappropriate for Planning Committee to determine the application based on the published Officer's report.
 - Mr and Mrs Crawford are not seeking to extinguish the business but are asking the Council to act with fairness given the unsatisfactory planning history and uncontrolled development of the existing use. This could be achieved by requiring a retrospective application in order to control the scale and operation of the use.
 - In the circumstances it would not be appropriate to grant planning permission for a development that would provide essential support for an unauthorized and potentially undesirable development.

This response also included a copy of the 2010 Officer's report (10/00315/FUL), the Design and Access Statement associated with that application and a detailed response from Counsel, Mr Fullbrook of Landmark Chambers which noted the following summarised points.

- Although the Application is for operational development, it is essential that the Council fully engages with the lawful use of the site. (Case Law cited.) It was noted that a Local Planning Authority will act unlawfully if it fails to consider whether an application for operational development is providing essential support for an unauthorized and potentially undesirable development.
- Note that the Officer report has attempted to engage with this issue, but have several concerns with the analysis in the report.
- Consider that the LPA has taken an overly simplistic approach to the question of when land may undergo a material change of use. Council appear to have put great reliance on the "suggestion" that the site has been used for equestrian use for over 10 years, largely based on the various statutory declarations. Commercial equestrian use has the potential to cover a range of different activities with different characters and different effects. "in my view... a site could remain in commercial use for 10 years but nevertheless undergo a material change of use during that time, either as a result of intensification or otherwise. I consider the report has failed to engage properly with this issue."
- Acknowledge the Council has sought advice from Counsel who have advised that there is unlikely to have been a material change of use by way of intensification. However consider that there are grounds for arguing that a material change of use has occurred.
- Highlights the 2010 application for a horse walker was accompanied by a Design and Access Statement noting it was for personal/private use, which was then controlled by condition. The

Officer report noted that the site was operated on a private basis and therefore it would appear that any commercial use of the site at that point was not so substantial as to be noticeable.

- This is in contrast with the Applicant's business as now described with 5 staff and training a considerable amount of horses and riders. This would appear to amount to a clear change in the character of any earlier equestrian use with obvious additional impacts.
- Planning Committee will have to specifically address this evidence and the question whether the change in character of the use amounts to a material change of use and when this change occurred. Such analysis does not appear in the report. Significant uplift in business and additional permissions were sought between 2015 and 2017, with commercial rates assessment from 2017 onwards. If this is the case and the change has taken place within the last 10 years there are good grounds for concluding that the current use of the site is unlawful.
- LPA must adopt the approach set out in the Planning Practice Guide regarding evidence. The principle evidence which the Council is relying on appears to be the various statutory declarations which attest that "the land at East Lilling Farm has irrefutably been used solely for commercial equestrian purposes associated with the business (DHI Event Horses Ltd) since the company formed in 2005." The LPA has its own evidence to contradict this in the form of the 2010 officers report that shows that the site was not solely or mainly used for commercial purposes. The report briefly addresses this but it is difficult to understand. The evidence is contradictory.
- The statement that the site has been used for commercial equestrian purposes is not sufficiently precise to make the case on the balance of probabilities. In my view, the applicants will need to provide much more detailed evidence on the nature of the commercial equestrian use.
- The statutory declarations do not specify "the whole of the site" has been used for commercial equestrian purposes for the entire site. This would be necessary to establish a lawful change of use of the entire site, to counter this Mr Burns has stated in an email that the whole of the site has been used so this is not sufficiently precise.

2. [An email from Lilling Ambo Parish Council \(received on the 26th September 2022\) in the form of a written report to be read out at the September 2022 Planning Committee meeting:](#)

"In response to the planning committee report for the above application, LPC has become aware of further submissions made on behalf of the neighbour in response to the said report. As a consequence please can we make the following request:

In view of the continued items of legal contention, Lillings Ambo Parish Council believes that until these are satisfactorily resolved then the above application should be deferred from discussion at the planning meeting on Tuesday 27th September.

As stated previously; to not do so we feel would be unfair to those immediately concerned nor the wider public.

N.B. This does not in any way change our stance at this stage, nor the content of the statement submitted to be read out on our behalf at the planning meeting."

3. [An email from Mr Jim Burns \(Planning Agent for Applicants\) dated 15th October 2022 was submitted to the Case Officer. This related to the precise location of the Boundary and included a land registry deed.](#)

"I understand from Peter Simmons that you would like to see the land registry plan with regard to ownership of the boundary where the 2.5m acoustic fence is to be erected.

Please find the land registry deed plan attached.

The boundary is the western line, with the red line ownership for The Listed building drawn and indicated on the listed building side of the fence. The listed building being East Lilling Grange. Demonstrating that the fence belongs to Peter Simmons of East Lilling Grange Farm, the equestrian unit."

4. An additional submission was made by Mr Roy Lewis (Planning Agent) on behalf of Mr and Mrs Crawford dated 2nd November 2022, together with a summary sheet of Companies House Information.
- Trust the site visit was useful for Members of the Committee and that the Committee will understand that the site factors are not the primary issue. The Counsel’s opinion refers to case law which identifies that the primary planning issue is the lawful use of the site. The commercial training activity has operated at a significantly lower level this year and was very low key at the time of the visit but it could rise to the same levels if approved.
 - Mr Fullbrook states that the lawfulness issue should be determined by evidence as to whether the primary use of the site was a commercial equestrian training centre prior to 2012 (ie. 10 years ago) in our view the evidence provided is inadequate to demonstrate the case. Any commercial equestrian training at that time was low key and ancillary to residential and agricultural use, equestrian use being limited to personal use in all planning permissions up to and including 2010.
 - Review of the published accounts of the business draws the following conclusions: shareholder funds were modest in the early years and started to grow from the year to February 2015 and were materially greater from 2016 onwards. This is a clear indicator that the scale of the business was much smaller ten years ago and materially different to the scale of the business in early 2022 and a clear sign of the greatly increased activity. Fixed assets grew in the year to February 2018, presumably reflecting the stable development permitted in 2017 and external debt was introduced, reflecting the company could now support external borrowing. This is another indicator of continued growth.
 - Modest business activity less than ten years ago and substantial growth in the accounting years between 2015 and 2021, reinforced by business rates assessment.
 - The statutory declarations are not sufficiently precise or unambiguous as required by the #OOG.
 - It would be inappropriate to grant planning permission for a development that would substantially enlarge and provide support for unauthorised and uncontrolled use that causes amenity problems for residential neighbours.
5. A letter of response from Mr Jim Burns (Planning Agent for Applicants) dated 4th January 2023 was received. This was partly in response to a query from Cllr Goodrick.

Cllr Goodrick’s query was the following, received on the 19th October 2022: *“I have reflected on the information clarification that the application is now not for isolation boxes but relates to the quarantine periods for horses into/out of the country. My question is about scale, how likely is there to be a need for a unit of 12 boxes for this? Can the applicants provide evidence that they are ‘exchanging’ on this scale. I remain concerned about the scale and necessity for this large a unit.”*

The response from the Agent noted “Further to your request to respond to Councillor Goodrick concern on the new stable size.

1. Clarification on Horse numbers

- *Presently the Equestrian Business has between 15 and 20 horse on site, numbers vary as horses are sold or purchased. Horses are also stabled during extended teaching or training. Horses are also owned and kept outside the UK, from 10 to 20 horses at any one time.*
- *The increase of international teaching and training together with the need to isolate before competitions is the requirement for the new isolation stabling.*
- *It is anticipated that the new isolation stable barn will have around 60% occupancy as riders and teams come and go using the facility and the facility is cleaned between each occupancy.*
- *So in general terms an increase on average of around 7 to 8 additional horses can be expected on the premises.*

2. Further Response

- The training provided by Ian & Heidi Woodhead is of the highest level, and professional and amateur riders have attended in preparation for National and International competitions
- When competition riders have visited for training in previous years, there have often been up to 10 horses requiring stabling.
- It is common for professional riders to travel long distances, to train and compete with a lorry carrying up to 5 or 6 horses.
- If two or three riders, or an international team, are attending a clinic during an extended period of training, the horses need accommodating in the most effective, safe and appropriate way. Horses that we are hoping to accommodate on a short term basis (i.e: 1 or 2 night stop over), travel frequently to competitions and mix with various other equine athletes.
- This increases the chance of infection being carried between venues and therefore the risk of spreading to equines living on site.
- We would expect around a 60% occupancy might be the norm but there might be times when the stables would be full.
- A unit of 12 boxes was requested in order to facilitate the ongoing business demand in the most practical and environmentally friendly way.
- Previously this was provided by temporary tented stabling, which has now been removed as requested.
- It is intended that the barn is going to be used to enable the separation of horses living on site from horses that are visiting for training purposes.
- The barn is not intended as a quarantine facility - it is to enable the safe separation of horses to minimise the potential spread of infection.
- It is important to endeavour to ensure the biosecurity of all equines on the premises at all times.”

This response was forwarded to Cllr Goodrick on the 11th January 2023, with no further specific response received.

6. [An additional submission was made by Mr Roy Lewis \(Planning Agent\) on behalf of Mr and Mrs Crawford dated 20th January 2023](#)

- Now into third year of the application, teaching has commenced this year together with advertisements, seeking indication of likely planning committee date.
- Noted letter previously submitted which was dated 20th November was not uploaded online.
- Commentary on response by Mr Burns where he “seeks to downplay” the number of horses that would be on site at any one time” and claims that only 7 or 8 of the stables within the proposed unit would be used at any one time. This could not be monitored or controlled therefore my previous statement that the proposed would increase the stable capacity from 19 to 31 remains valid.
- Handwritten part of an application showing the applicant as Peter and Pauline Simmons, company DHIO Eventing Ltd. Pointing out that there is no company registered with Companies House as DHI Eventing Ltd, have previously pointed out this inaccuracy and expect it to be corrected

7. [A letter of response from Mr Jim Burns \(Planning Agent for Applicants\) dated 14th March 2023 was received.](#)

- Item 1. The accounts and business operations of our client are understandably confidential with regards to the details of income and expenditure. However as with many businesses, the level

of profit can fluctuate yearly, particularly in the early years of a business when significant investment is required to grow a business. There is nothing unusual about this and nothing about the accounts of the business should be considered to disprove the evidence we have submitted with regards the operational use of the site. If you require more information we will need a little time to arrange this through my clients Accountants.

- Item2. We have provided the additional Statutory Declarations required.
- Item3. Please find attached the planning form with the correct applicant's details. DHI Event Horses Ltd.

Appraisal

Administrative Clarifications from previous reports/site visit.

Name of the business

Previously it came to the attention of the Case Officer that the site is under the joint ownership of Mr and Mrs Peter and Pauline Simmons and this was updated.

It had been further raised that the name of the business which is noted as 'DHI Eventing Ltd' in the application form within correspondence from Mr Lewis. This is noted and it does differ from the Companies House name of the registered business which is 'DHI Event Horses Ltd.' A revised section of the application form has been provided and this has been amended in the system.

This is a procedural matter and following review with our Legal Team, would not require any readvertisement.

Boundary

Clarification from the Agent on the precise location of the boundary between East Lilling Grange Farm and East Lilling Grange was provided, which concluded the boundary fence belonged to the Applicant. However, the fundamental reason why this was sought was to confirm that there would be sufficient room to construct the proposed acoustic fence on/ in close proximity to the boundary, which from a visit on site appears possible. Land ownership remains a civil matter within which the LPA cannot become involved. Critically the proposed condition pertaining to this fence seeks its installation and inspection/sign off by the LPA prior to any construction works associated with the proposed new stable building commencing.

Aspects of the Report for further review

Lawful use of the site and evidence

An issue highlighted at various points within the previous summarised representations and those more recent objections above, including within the Objector's Counsel's response continue to be the lawful use of the site for commercial equestrian use and the evidence upon which this is based.

The conclusion made in the previous Officer's Update Report for the September 2022 Committee concluded "*Therefore, following careful review of all documentation including all submitted information and on the balance of probabilities, Officers are of the view that no retrospective change of use application is necessary as the commercial equestrian use is considered to have been operational for more than 10 years.*"

The time limits for immunity from enforcement action are set out at s.171B of the Town and Country

Planning Act 1990. Changes of use (other than to a single dwelling house) become immune from enforcement action after 10 years and operational development immune after 4 years.”

As Members will be aware, a detailed supporting statement including a timeline of the business was provided by the Planning Agent dated 3rd October 2020 which sets out the history of the use of the Land. This describes how there has been commercial equestrian use of the Land since 1989. Statutory Declarations have also been submitted signed by Peter Simmons, Pauline Simmons, Heidi Woodhead and Ian Woodhead which confirm the commercial use by DHI Event Horses Ltd of the land since 2005 up to the present day including a supporting map. A letter from the accountants who have worked with DHI Event Horses Ltd since their formation in 2005 was also provided. This details the company’s date of formation and its sole use of the land at East Lilling Grange Farm since that formation date in 2005.

Legal advice was received from Counsel on the 31st May 2022 which suggested a single point where clarification should be sought from the Agent. This related to the wording of the Statutory Declarations where it was noted that *“the statutory declarations do not explicitly state that the various areas were used as claimed by the business and instead refer to them being used since the business was formed.”* It was recommended that this could be simply clarified in writing. The Agent was asked to comment on this point and on the 21st July 2022 noted *“I can confirm that the various areas referred to and described in the statutory declarations were used by the business as described.”* This element was considered satisfactory by Officers at the time of the publication of the previous Update Report (September 2022.)

Careful analysis of into the lawful use of the site has been undertaken and this report will not repeat all the points previously made in detail. It is however clear that the proposed equestrian business did not benefit from a specific planning permission for a commercial operation prior to 2016 when a planning permission was specifically approved with a description that explicitly referenced the commercial equestrian business. (16/01520/FUL *“Erection of 2no. detached stable blocks each comprising 3no. stables in association with existing equestrian business.”*

A detailed supporting statement was provided dated September 2016 which outlined the nature of the commercial equestrian business at that time and how it had grown over the years. It noted *“The site is currently used for equestrian purposes which includes the training of event and dressage horses which includes the coaching of the British and Irish International Team...The equestrian business typically comprises of buying horses, breaking them in and training them. Horses are then sold on but riders and teams also come to the site to be trained or have their horses broken in.”* It was also noted that there were 5 employees in the business at that point..

This will be attached for Members as an appendix and it clearly highlights the commercial activity at that time. No objection was made in relation to this application by any neighbouring properties at the time (including East Lilling Grange House and East Lilling Grange who were consulted by neighbour letter.) The Parish Council confirmed no objection in a letter dated 30th September 2016 and the proposal was subsequently approved. An application was then submitted in 2017 for an alternative scheme for commercial stables (17/0003/FUL) which similarly garnered no objection from neighbours or the Parish Council which was then approved.

The inconsistency in the planning history of the horse walker approved in 2010 is however noted, which was not described or applied for on a commercial basis and this was conditioned for private use in 2010. This however has been confirmed as having been used for commercial equestrian purposes via the submission of the sworn Statutory Declarations.

In light of the further more recent representations received, the application was deferred during the September 2022 Planning Committee Meeting to fully consider the points raised by Mr Fullbrook and Mr Lewis received on the 23rd September 2022 and in the subsequent letters from Mr Lewis and Mr Burns.

Members will be aware that previous legal advice was provided to the LPA by Counsel from Kings Chambers on the 6th August 2021, 9th December 2021, 31st May 2022. Further advice was sought from Counsel and the incoming representations dated 23rd September 2022, 2nd November 2022 and 20th January 2023 were provided to Counsel for their review.

As can be appreciated from the summarised responses in the Representation Section above, it is considered by the Objectors that the current equestrian training facility has developed/materially intensified within the last 10 years and the information within the original Statutory Declarations is not sufficiently precise and unambiguous. The Companies House documentation has also again been highlighted as indicating the business was much smaller ten years ago and materially different to the scale of the business in early 2022 which is taken to be a sign of clear sign of the greatly increased activity and overall intensification.

The response from Kings Chambers, Counsel to the LPA has been received on the 9th February 2023. This has but must not be shared or disseminated with any third parties as this is legally privileged information and to do so could be potentially harmful.

Counsel for the LPA is in agreement that the issue of the existing lawfulness of the site is something that needs to be considered and it is noted that the Objector's Opinion expressly acknowledges this this aspect has been considered. Counsel for the LPA noted *"At [6] the Objector's Opinion sets out grounds for arguing that a material change of use could have occurred as a result of a number of factors. Whether or not those factors, and any other relevant onsite changes, result in a change of use by intensification is a matter of planning judgment not a matter of law. The Objector's Opinion does not assert that the conclusion must be reached that a change of use has occurred and instead the phrase used is "However, I consider that there are grounds for arguing that a material change of use has taken place..."". Further, I note that the argument that a change of use could have occurred is based on an argument that it has occurred through intensification not that there has been no commercial activity on the Site prior to 2010"*

The second issue highlighted in the Objector's Opinion relates to the Update Report (September 2022) and its approach to evidence. It was noted by Counsel for the LPA that the application before the Council is not one for a certificate of lawfulness, but that when considering the issue of what the existing lawful use is, the relevant standard of proof is the balance of probabilities.

Counsel for the LPA notes that the Objector's opinion "does not allege that the Update Report (September 2022) falls into legal error but it points to pieces of evidence upon which it could be argued that the totality of evidence is not sufficient to establish the relevant standard of proof that the whole site has been used for commercial equestrian purposes since 2005."

Counsel for the LPA continues to note "It is right that there are pieces of evidence which could support differing conclusions and that there are inconsistencies in the evidential picture. This does not mean that a decision cannot be made on the Application, what it requires is that the Council considers these pieces of evidence and issues and come to a reasoned conclusion on whether they think the existing commercial use on the Site is lawful as it has been ongoing for in excess of 10 years. That is a matter of planning judgment for the Council."

Advice was given in relation to the criticism the Objector's Opinion levels at the evidential value of the

email from the Applicant's agent dated 21st July 2022 which clarified the wording of the Statutory Declarations. Counsel for the LPA noted "it is right that such an email does not carry the same weight as a statutory declaration but that does not mean it is of no weight. The Council are entitled to consider it and place appropriate weight on it when reviewing the totality of the evidence before them and coming to a conclusion on the issue of lawful use. If the Council consider it necessary to ask the Applicant's themselves to confirm the information contained in that email then they can do so but there is no specific legal obligation on them to do so." For the avoidance of any doubt the LPA raised this with the Applicants/Agent and further statutory declarations were submitted in this regard dated 10th March 2023. The responses of Mr and Mrs Simmons noted:

"I can confirm that the Statutory Declaration made by myself on the 14th day of October 2021 referred to all the land in my ownership at East Lilling Grange Farm.

As at the date of this my Statutory Declaration, the whole of the land at East Lilling Grange Farm has irrefutably been used solely for commercial equestrian purposes associated with the business (DHI Event Horses Ltd) since the company formed in 2005. I make this statement having been the owner of the property with an intimate knowledge of both the property and the business since 2005."

Heidi Woodhead and Ian Woodhead's responses varied slightly to reflect their respective roles within the business and family, whilst not being property owners.

It is considered that these additional secondary sworn Statutory Declarations are another piece of evidential supporting information to which significant weight can be attributed in considering the balance of probabilities, which is the relevant standard of proof. Furthermore, the previously submitted letter from the Accountant, also confirms by a professional third party familiar with the business the formation date of DHI Event Horses Ltd and that East Lilling Grange Farm is its sole operational location.

Counsel for the LPA also noted that as the Objectors' have submitted further material in relation to financial records it would be appropriate to allow the Applicant's to comment on these.

In an email dated 14th March 2023, the Agent responded to note: "*The accounts and business operations of our client are understandably confidential with regards to the details of income and expenditure. However as with many businesses, the level of profit can fluctuate yearly, particularly in the early years of a business when significant investment is required to grow a business. There is nothing unusual about this and nothing about the accounts of the business should be considered to disprove the evidence we have submitted with regards the operational use of the site. If you require more information we will need a little time to arrange this through my clients Accountants.*"

This point is acknowledged. Counsel for the LPA in their response dated 31st May 2022 that the identified uplift (through the Companies House information) in the business operations from 2015 onwards was concluded to be of limited utility as it does not specifically relate to any direct evidence about the use of the land.

It is the view of the LPA that the interpretation of the financial information and conclusions drawn by Mr Lewis would not form robust evidential proof of "very modest business activity" or disprove that the use of the land was not solely for commercial equestrian purposes.

These financial figures do indicate an overall trend for consistent growth within the business that could reasonably demonstrate investment financially and in time when building the business, presenting

groundwork for the future years greater figures. In their own right the earlier figures from the years to Feb 2013 and prior do not appear to present inconsequential levels of assets and cash reserves in the business.

The points made by Mr Burns in relation to the quantitative figures highlights that this not disprove the evidence submitted with regards to the operational use of the site and this is agreed by the LPA.

Previously in relation to intensification, Counsel for the LPA noted in their response dated 9th November 2021 “Whether a material change in use by intensification has occurred is a matter of planning judgment. The exercise of that judgment should be taken in accordance with the legal principles set out in this advice above. The history of the site provided with the Application shows some changes in level of use, however, these are relatively minor and in my view would not justify a conclusion that there has been a change of use by intensification.” The Barrister then considered the supporting material to the 2016 application outlined above, including the detailed descriptions of the on site activities. It was concluded that in comparison to what is proposed “would in my opinion, be unlikely to justify a conclusion that it would amount to a change of use when it is compared to the previous and existing levels of use that have been described.”

As has been highlighted previously, the 2016 application publicly identified the commercial use of the site openly, both within the supporting documentation and indeed, within the description of the application which was used for neighbour consultation and wider publicity. There were no objections to this application at the time. Nor was there any objection to the subsequent 2017 application. It is also considered pertinent to note that at no time, prior to the consideration of this application has there been any planning enforcement file opened on the Land at East Lilling Grange Farm, nor any written complaint received in relation to the business operations within the site. It is therefore the view of the Local Planning Authority that prior to 2020 this business operated without raising material concerns from the occupiers of neighbouring properties or the Parish Council.

The Counsel for the LPA continues in their December 2021 response to note “Here, whilst the Council are not considering a certificate application they are considering the same issues that would be raised by such an application. The Council do not have in their possession any material that meaningfully calls into question the evidence provided by the applicants and it is my understanding that Officers consider that the evidence in the Council’s possession is consistent with that of the applicants. The Council therefore, in my opinion, have sufficient material to conclude that the commercial equestrian business is immune from enforcement due to the passage of time. However, ultimately this is a matter for the Council.” It is noted that there was no contravening view put forward by Counsel for the LPA in their most recent response dated 9th February 2023 and it is considered that this has been strengthened by the submission of the additional sworn Statutory Declaration and further commentary on the Companies House information.

The Counsel for the LPA continues: “*The more meaningful issue raised by objectors to the Application is whether there has been a change of use in recent years by way of intensification. I have set out in my previous opinion the relevant legal guidance on this and it is for Officer’s to apply this to the facts of this case. If Officer’s were to conclude that there had been a change of use by way of intensification, this would in my opinion be a difficult position to defend on an appeal.*”

Following careful review, whilst careful consideration has been given to the review of the additional incoming responses, the LPA maintain the position that no retrospective permission for a change of use should be requested as it is considered that on the balance of probabilities the commercial equestrian business is lawful and immune from enforcement due to the passage of time.

The clear supporting evidence for a well-established commercial equestrian business in the 2016 planning submission is available, at the time this confirms that the business was of a scale that national Olympic Teams were in training on site and the business supported 5 members of staff. This is in contrast to the horse walker application from 2010 which is also acknowledged. Whilst the application before the Council is not one for a certificate of lawfulness, when considering the issue of what the existing lawful use is, the relevant standard of proof is the balance of probabilities. This would therefore be informed by how the site was operational in March 2013. Specific information on this individual year of 2013 is not available, but going back to the ‘Time line for commercial equestrian use’ letter from the Agent dated October 2020, it notes that from 2006, 20 horses were present on site, under the umbrella of DHI eventing, with young horses being brought on for sale or competition by Heidi and Ian, with Ian training international riders and international event teams with Peter also working alongside, totalling 3 staff members. The 2010 year was described as “*DHI Event Horses continuing with the same format and horse numbers*” although it was confirmed that the “*facility has greater use by international riders.*” The next year commented on was 2016, where it was noted that “*DHI Event horses continue with the same format and similar horse numbers around 20, but additional horses up to 20 owned and kept outside the UK. The training of international riders and International Teams continues.*”

It has been noted that at the time of the application there are between 15 and 20 horses on site at any one time and consequently on this evidence it is not considered that the levels of horses have varied greatly on site, with an acknowledgement that horses kept outside of the UK have increased significantly. It is also considered that the increase in staff from 3 in 2006 to 5 in 2016, which remained the number at the time of the submission of the application does represent a modest increase in growth over the time period. It is considered that the areas of work as described, generally consisted of the same level of horses on the site and staff numbers, supporting that a material change of use by way of intensification has not occurred on this site within the last 10 year period.

This is further supported by the submission of the Statutory Declarations and additional Statutory Declarations which provide sworn Statements on the lawful use of the site.

To conclude, a full and careful review of all the submitted representations has been undertaken and the contents noted. On the basis of the more detailed appraisal undertaken above, the LPA has identified the following summarised aspects of evidence which collectively ‘tip the balance’ in terms of the planning judgement, which must be undertaken on the balance of probabilities:

- The planning history available to the Local Planning Authority, including:
 - ❖ The 2016 application which clearly describes the equestrian business and confirms the “existing equestrian” business which garnered no objection from neighbouring residents or the Parish
 - ❖ The 2017 application which also clearly describes the equestrian business and also garnered no objection from neighbouring residents or the Parish
 - ❖ Absence of any enforcement written reports/requests/complaints prior to the 2020 submission of this pending application
- Companies House information which indicates the active nature of the business and indicates the longevity of the business which has become more profitable
- Evidence from the third party accountant.
- Statutory declarations and additional statutory declarations as outlined above
- Supporting documentation including letter from October 2020 providing a narrative on the business.

The planning history, Companies House information, statutory declarations and evidence from the third

party accountant, together with the significant volume of incoming representations are all noted and on the balance of probabilities, it is considered that no retrospective change of use application for a commercial equestrian use is necessary.

Number of horses.

As noted, further clarification was sought by Councillor Goodrick in terms of the likely number of horses that would be accommodated within the new stable building. This was provided by the Planning Agent who amongst other information, noted that of the 12 stables “We would expect around a 60% occupancy might be the norm but there might be times when the stables would be full. “

It is not considered that even if this were used at full capacity that this would result in further unacceptable impacts when considering material planning considerations, such as impact upon access and highway safety nor neighbouring amenity points which have been addressed within the previous reports.

When relevant statutory consultees were consulted they would have been fully aware of the proposed maximum capacity and have provided their responses on that basis. With the exception of the Parish Council, all Statutory Consultees have confirmed no objection, some subject to relevant planning considerations and it is considered that this proposed operational development is acceptable in planning terms.

Conclusions

Therefore following careful further review of the proposed development and investigation into the planning history of the site, with detailed analysis of the submitted evidence from both the Applicant and the Agent and Counsel on behalf of the occupiers of East Lilling Grange, on the balance of probabilities and in light of the incoming supporting information, Officers are of the view that the existing use of the site is lawful and that a retrospective change of use is not required.

The Local Planning Authority will be closely monitoring the situation on site and it is considered that the proposed planning conditions are reasonable in meeting the tests of soundness of planning conditions.

It is considered that the retrospective and proposed operational development would not result in a material level of harm to the occupiers of residential dwellings nor would it result in harm to the character of the locality or wider landscape, nor to the setting of the Grade II Listed Building. It is also considered that this presents an enhancement in terms of access and highway safety.

Subject to these identified conditions we can be satisfied that this proposal conforms with Policies SP1, SP9, SP12, SP13, SP16, SP17, SP19 and SP20 of the Ryedale Local Plan, Local Plan Strategy and the recommendation is for approval – subject to the following conditions:

RECOMMENDATION: Approval

- 1** The non-retrospective elements of the development hereby permitted (the stable building and associated works, the amendment to the entrance and passing place, proposed additional hardstanding and the acoustic fencing) shall be begun on or before .

Reason:- To ensure compliance with Section 51 of the Planning and Compulsory Purchase Act 2004

- 2** The development hereby permitted shall be carried out in accordance with the following approved plan(s):

Proposed Use at Hardcore Areas Plan (DHL 7A/1 Nov 20 Amended to include wide access Oct 21)

Proposed Use at Hardcore Areas Plan (DHL 6 a/b/c Nov 20 revised stable barn position)

Proposed Boundary Treatment Plan Evergreen Planting and Acoustic Fence C-D on Plan (Drawing no. DHL 3A a/b Nov 20)

Isolation Stable Barn DHL Eventing Ltd East Lilling Grange (Drawing no DHL 2A a/b/c November 2020)

Isolation Stable Barn DHL Eventing Ltd East Lilling Grange (Drawing no DHL 1A a/b/c November 2020)

Site Block Plan and Site Location Plan (DHL 4a/b/c November 2020 Amended Jan 21/A to indicate proposed isolation Stable barn repositioned, location of acoustic fence and to indicate temporary and permanent storage containers.

Temporary tended Stabling (No Drawing no. 1:100 Oct 2020)

Temporary Stabling Location Plan (No Drawing no - Blackwells.)

Plan showing existing hardcore areas, tarmac areas and recent hardcore areas proposed for retention. (Yellow) (DHL 5A November 2020 1:2500 - Blackwells.)

Reason: For the avoidance of doubt and in the interests of proper planning.

- 3** Unless otherwise approved in writing by the Local Planning Authority, the temporary stabling and shipping container must be removed from the site prior to the occupation of the stable building hereby approved. Details and photographs must be provided to the Local Planning Authority following their removal and this will be recorded on the Planning Enforcement File.

Reason: In the interest of proper planning and to prevent the retention of unlawful development.

- 4** Unless otherwise approved in writing by the Local Planning Authority, prior to the above ground construction of the isolation stable building hereby approved, the proposed 2.5m high acoustic fencing to be located as per the approved plans and in accordance with the submitted details (Drawing no. DHL 3A a/b Nov 20, DHL 4a/b/c November 2020 Amended Jan 21/A and JCW Reflective Sound Screen Details)
Once installed, this shall be visited by the Local Planning Authority to ensure that this has been installed to the correct specification. Following written approval of this and any other relevant precommencement conditions, the Applicant may then proceed with the erection of the stable block hereby proposed.

Reason: in the interests of proper planning to ensure that the proposed acoustic fencing can be properly sited and in the interests of protecting neighbouring residential amenity in accordance with Policies SP16 and SP20 of the Ryedale Plan, Local Plan Strategy.

- 5** Unless otherwise approved in writing by the Local Planning Authority, no lighting shall be installed at externally to serve the developments hereby approved unless first agreed in writing with the Local Planning Authority.
Informative: Any unauthorised lighting within the site will be separately reviewed by Officers.

Reason: In the interests of the character of the Area of High Landscape Value in accordance with Policy SP13 of the Ryedale Plan, Local Plan Strategy.

- 6 All manure waste on the site shall be managed in line with the agreed details contained within the Manure Management Plan (Robert Burns Designs - Amended 16th November 2020) Any variation from this agreed scheme shall require the written approval of the Local Planning Authority.

Notwithstanding the details of this Manure Management Plan, the manure heap contained within the concrete bund shall not exceed the height level of the concrete walls.

Informative: the proximity of the adjoining residential property East Lilling Grange is noted and the Applicant is advised to be mindful of their residential amenity. Ryedale District Council will investigate potential instances of statutory nuisance.

Reason: In the interests of the residential amenity, in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

- 7 No development approved by this permission shall be commenced until the Local Planning Authority in consultation with Foss (2008) Internal Drainage Board has approved a Scheme for the provision of surface water drainage works.

Any such Scheme shall be implemented to the reasonable satisfaction of the Local Planning Authority before the development is brought into use.

The following criteria should be considered:

- o The suitability of soakaways, as a means of surface water disposal, should first be ascertained in accordance with BRE Digest 365 or other approved methodology.
- o If soakaways are not feasible, then the Board may consider a proposal to discharge surface water to a watercourse (directly or indirectly).
- o For the redevelopment of a brownfield site, the applicant should first establish the extent of any existing discharge to that watercourse.
- o Peak run-off from a brownfield site should be attenuated to 70% of any existing discharge rate (existing rate taken as 140lit/sec/ha or the established rate whichever is the lesser for the connected impermeable area).
- o Discharge from "greenfield sites" taken as 1.4 lit/sec/ha (1:1yr storm).
- o Storage volume should accommodate a 1:30 yr event with no surface flooding and no overland discharge off the site in a 1:100yr event.
- o A 30% allowance for climate change should be included in all calculations.
- o A range of durations should be used to establish the worst-case scenario.

Reason: To ensure the development is provided with satisfactory means of drainage and to reduce the risk of flooding in accordance with Policy SP17 of the Ryedale Plan, Local Plan Strategy.

- 8 Unless otherwise agreed in writing with the Local Planning Authority, prior to any above ground construction of the isolation stables hereby approved, plans showing details of a landscaping and planting scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of any trees/shrubs and show any areas to be grass seeded or turfed and indicate the accurate positioning and canopy spread of all existing landscaping to be retained. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and shrubs. All planting seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such

longer period as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of five years from being planted, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar sizes and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To enhance the appearance of the development hereby approved in accordance with policy SP20 of of the Ryedale Plan - Local Plan Strategy.

- 9 The widening of the highway verge and/or footway must be constructed in accordance with the approved details on drawing number dhl.7A/1, Nov 20 (wide access added Oct 21) and construction cross section to Standard Detail number E50 Rev A and the following requirements.
- o Any gates or barriers must be erected a minimum distance of 5 metres back from the carriageway of the existing highway and must not be able to swing over the existing or proposed highway.
 - o The final surfacing of any private access within 5 metres of the public highway must not contain any loose material that is capable of being drawn on to the existing or proposed public highway.
 - o Measures to enable vehicles to enter and leave the site in a forward gear.
- All works must accord with the approved details.

Reason: To ensure a satisfactory means of access to the site from the public highway in the interests of highway safety and the convenience of all highway users in accordance with Policy SP20 of the Ryedale Plan, Local Plan Strategy.

MHi-C New and altered Private Access or Verge Crossing -(MHC-03)

Notwithstanding any valid planning permission for works to amend the existing highway, you are advised that a separate licence will be required from North Yorkshire County Council as the Local Highway Authority in order to allow any works in the existing public highway to be carried out. The 'Specification for Housing and Industrial Estate Roads and Private Street Works' published by North Yorkshire County Council as the Local Highway Authority, is available to download from the County Council's web site:

https://www.northyorks.gov.uk/sites/default/files/fileroot/Transport%20and%20streets/Roads%2C%20highways%20and%20pavements/Specification_for_housing___ind_est_roads___street_works_2nd_edition.pdf .

The Local Highway Authority will also be pleased to provide the detailed constructional specifications referred to in this condition.