

HUGHJAMES

LEGAL OPINION

1. INTRODUCTION

- 1.1 We have been asked to advise Mrs Julia Norman ("the Applicant") on the merits of securing a Certificate of Lawfulness of Existing Use or Development ("CLEUD") under section 191 of the Town and Country Planning Act 1990 ("1990 Act") ("the Application") in respect of works carried out from 23 March 2020 to 2 April 2021 to implement planning permission (ref. 20/05019/FUL) dated 15 July 2020 ("the 2020 Permission") at Windmill Stud, Uffcott Farm, Uffcott, SN4 9NB ("the Application Site").
- 1.2 The local planning authority is Wiltshire Council ("the LPA/Council").
- 1.3 We note for completeness that a detached garage was also constructed at the Application Site during the same period. The garage falls outside the red line boundary of the 2020 Permission and is the subject of a separate application for a CLEUD. Accordingly, save where the garage is referenced for planning history context, this Opinion does not address the lawfulness of the garage.
- 1.4 In preparing this Opinion we have had regard to the documents submitted with the planning application in respect of the 2020 Permission, together with contemporaneous evidence including photographs, invoices and statutory declarations relating to the works undertaken at the Application Site during the period 23 March 2020 to 2 April 2021 (see the Statutory Declaration of Julia Norman, exhibits "JN3", "JN4" and "JN5"; the Statutory Declaration of James Gaiger, exhibit "JG1"; and the PKA Architects letter dated 13 August 2026, ref: 2132-L1).

- 1.5 This Opinion considers the extent of the works undertaken across this period and the relevant case law, assesses the evidence, and draws a considered conclusion on whether the nature of the works was sufficient to lawfully implement the 2020 Permission and whether, in turn, a CLEUD ought to be granted.

2. PLANNING HISTORY

- 2.1 In terms of the relevant planning history of the Application Site, the following applications are noted:

Reference	Description of development	Status	Date
18/00045/OUT	Manager's dwelling and home office	Approved	26/10/2018
20/00900/FUL	Garage with room above for storage and self-contained home office	Approved	22/04/20
20/05019/FUL	Erection of an equestrian workers dwelling	Approved	16/09/2020
PL/2023/10965	Essential worker accommodation for equestrian grooms with critical overnight observation stable (Outline application with all matters reserved)	Approved	31/05/2024
PL/2024/06584	Reserved matters application for essential worker accommodation for equestrian grooms with critical overnight observation stable (access, appearance, landscaping, layout & scale) following Outline approval PL/2023/10965	Approved	25/10/2024
PL/2025/00339	Variation of condition 2 (Approved plans) relating to PL/2024/06584	Approved	30/06/2025
PL/2025/05671	Single storey rear extension	Withdrawn	29/01/2026
PL/2025/07001	Residential dwelling & garage	Withdrawn	27/01/2026

- 2.2 It is noted from the above table that planning permission on the Application Site was first obtained for a *“Manager’s dwelling and home office”* on 26 October 2018 under ref: 18/00045/OUT (“the 2018 Permission”) before the 2020 Permission was subsequently approved to incorporate a revision to the approved scheme. The Officer’s Report (“OR”) in respect of the 2020 Permission succinctly covers this under the Principle of Development section within the OR as follows:
- 2.3 *“The application proposes the erection of an equestrian workers dwelling. This application, although for full planning permission, is an amendment to an earlier outline permission for an equestrian worker dwelling (18/00045/OUT) and accompanying REM app that is currently under construction at the site. The primary revision to this application is the provision of a dedicated shoot facility attached to the dwelling.”*
- 2.4 It is therefore clear that the 2020 Permission was intended to supersede the 2018 Permission with the addition of the dedicated shoot facility being attached to the dwelling that was already under construction at the Application Site.
- 2.5 The description of development in respect of the 2020 Permission is *“Erection of an equestrian workers dwelling”* and it is noted that the 2020 Permission is subject to 7 conditions, as set out in Figure 1 below:
- 1 The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON: To comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004.
 - 2 The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Application Form
 - Drg No. P1_1753 - PLANNING 2.dwg - Proposed Extension
 - Drg No. UBH002 - Location Plan
REASON: For the avoidance of doubt and in the interests of proper planning.
 - 3 All soft landscaping comprised in the approved details of landscaping (approved under 18/07990/REM on drawing no. Proposals _ 1753 PLANNING.dwg) shall be carried out in the first planting and seeding season following the first occupation of the building(s) or the completion of the development whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years,

die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless otherwise agreed in writing by the local planning authority. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority.

REASON: To ensure a satisfactory landscaped setting for the development and the protection of existing important landscape features.

- 4 No part of the development hereby permitted shall be first occupied until the turning area and parking spaces have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.

REASON: In the interests of highway safety.

- 5 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), there shall be no additions/extensions or external alterations to any building forming part of the development hereby permitted.

REASON: In the interests of preserving the landscape character and scenic quality of the AONB and to enable the Local Planning Authority to consider individually whether planning permission should be granted for additions/extensions or external alterations.

- 6 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting or amending that Order with or without modification), no buildings or structures, or gate, wall, fence or other means of enclosure, other than those shown on the approved plans, shall be erected or placed anywhere on the site on the approved plans.

REASON: In the interests of preserving the landscape character and scenic quality of the AONB.

- 7 No external lighting shall be installed on site until plans showing the type of light appliance, the height and position of fitting, illumination levels and light spillage spillage in accordance with the appropriate Environmental Zone standards set out by the Institute of Lighting Engineers in their publication "Guidance Notes for the Reduction of Obtrusive Light" (ILE, 2005)", have been submitted to and approved in writing by the Local Planning Authority. The approved lighting shall be installed and shall be maintained in accordance with the approved details and no additional external lighting shall be installed.

REASON: In the interests of the amenities of nearby residential properties and to minimise unnecessary light spillage above and outside the development site in the interests of maintaining the dark skies of the AONB.

Figure 1

- 2.6 It is noted that the 2020 Permission does not contain any pre-commencement conditions. Furthermore, condition 1 of the 2020 Permission provides that *"the development hereby permitted shall be begun before the expiration of three years*

from the date of this permission.” The reason being to comply with the provisions of Section 91 of the Town and Country Planning Act 1990 as amended by the Planning and Compulsory Purchase Act 2004. It follows that the 2020 Permission is required to be implemented by 16 September 2023.

3. STATUTORY FRAMEWORK AND PLANNING PRACTICE GUIDANCE

3.1 Section 191 of the 1990 Act states as follows:

“(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful;
or

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—

(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. ...”

3.2 If, on an application under this section, the LPA are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

3.3 It is clear, therefore, that there is no discretion for the LPA. It is a pure question of fact. If, in the case of applications for existing use, a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application,

provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.

- 3.4 Planning Practice Guidance offers the following commentary on lawful development certificates:

How is a lawful development certificate obtained and what does it mean?

Anyone can apply to the local planning authority to obtain a decision on whether an existing use or development, or a proposed use or development, is lawful for planning purposes or not. If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Paragraph: 002 Reference ID: 17c-002-20140306 Revision date: 06 03 2014

Who is responsible for providing sufficient information to support an application?

The applicant is responsible for providing sufficient information to support an application... In the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved. Paragraph: 006 Reference ID: 17c-006-20140306 Revision date: 06 03 2014.

How is an application for a lawful development certificate determined?

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this particular application or appeal process. In determining an application for a prospective development under section 192 a local planning authority needs to ask "if this proposed change of use had occurred, or if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?" Paragraph: 009 Reference ID: 17c-009-20140306 Revision date: 06 03 2014"

- 3.5 This guidance clearly sets out the test the LPA must apply and the limits on the information that they are required to consider. Importantly, it confirms that planning merits are irrelevant for the purposes of their determination. The Council will be aware that *Gabbittas v Secretary of State for the Environment* [1985] JPL 630 provides that the relevant test of the evidence in assessing an application for a certificate of lawfulness is on the balance of probability. Phrased simply, the question before the

Council is whether it is more likely than not that a material start has been made on the Application Site within 3 years from the date of the 2020 Permission.

- 3.6 *Gabbittas* case also concludes that an Applicant's evidence does not need to be corroborated by independent evidence in order to be accepted.

4. **TIME WHEN DEVELOPMENT BEGUN AND CASE LAW**

- 4.1 Section 56 of the 1990 Act provides as follows:

(1) Subject to the following provisions of this section, for the purposes of this Act development of land shall be taken to be initiated—

(a) if the development consists of the carrying out of operations, at the time when those operations are begun;

(b) if the development consists of a change in use, at the time when the new use is instituted;

(c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b).

(2) For the purposes of the provisions of this Part mentioned in subsection (3) development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out.

...

4) In subsection (2) "material operation" means—

(a) any work of construction in the course of the erection of a building; (aa) any work of demolition of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in paragraph (b);

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land which constitutes material development.

(5) In subsection (4)(e) “material development” means any development other than—

(a) development for which planning permission is granted by a general development order [, a local development order or a Mayoral development order] for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted;

...

(6) In subsection (5) “general development order” means a development order (within the meaning of section 59) made as a general order applicable (subject to such exceptions as may be specified in it) to all land in England and Wales.”

4.2 The nature of the works undertaken at the Application Site in respect of the equestrian worker’s dwelling are set out in further detail in the supporting statutory declarations submitted with the Application and the overlay plan included within the supporting material - an excerpt from which is set out in Figure 2 below - identifies the as-built location of the equestrian worker’s dwelling as below:

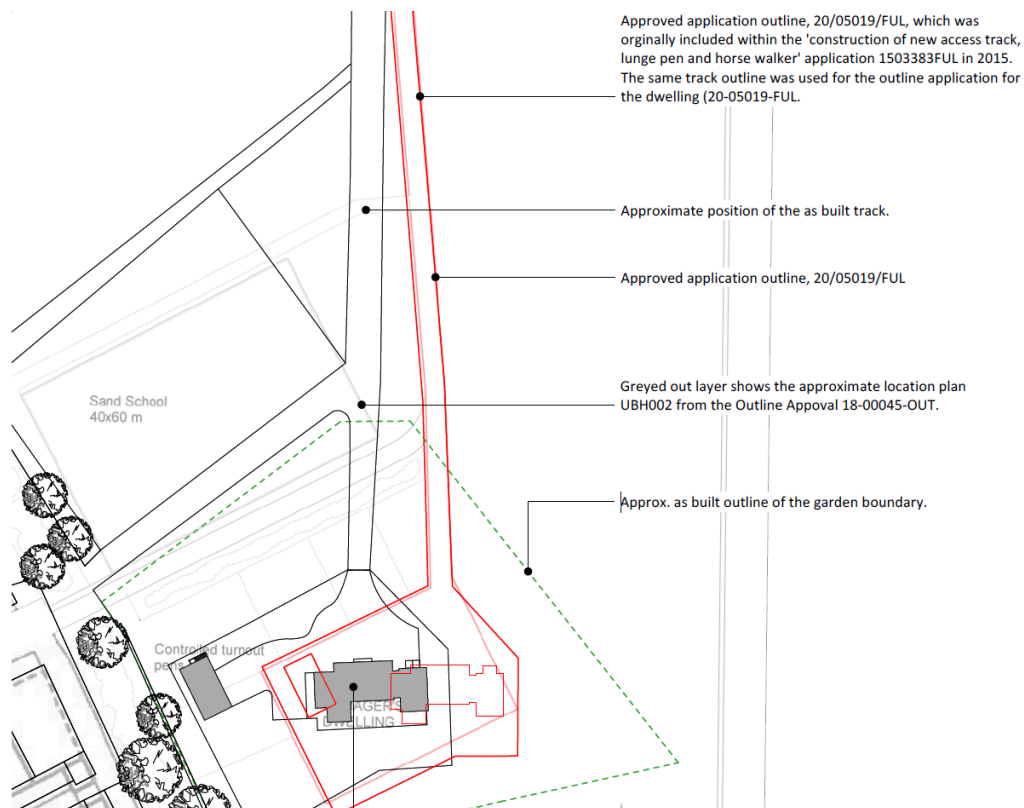


Figure 2

- 4.3 It is noted that the equestrian worker's dwelling as built is not strictly in accordance with the approved plans. The dwelling has been built some 15 metres east of its approved location. In any event, the siting of the said dwelling does not materially alter the character, nature or planning impact of the development authorised by the 2020 Permission.
- 4.4 Furthermore, the difference in positioning in respect of the equestrian worker's dwelling remains within the approved red line, does not render the dwelling more prominent in visual or landscape terms, and if anything, places it closer to the existing built form at the Application Site. Therefore, it can be properly characterised as a non-material deviation from the approved permission, rather than a departure so substantial that it would prevent the 2020 Permission from having been lawfully implemented.
- 4.5 Of note here is the High Court decision in *Commercial Land Ltd v SSTLGR* [2002] EWHC 1264 (Admin) which held that the question of whether certain material operations were comprised in the development (see s.56(2) of the 1990 Act above) could not necessarily be answered simply by comparing them with the approved plans. Differences between the approved plans and the operations relied on will not automatically be fatal to the capability of the operations to be effective in commencing the development. It is necessary to consider the significance of the differences and to assess their materiality in the context of the development as a whole.
- 4.6 It follows that differences between the approved plans and the development relied on as "material operations" are not necessarily fatal to a conclusion that the operations properly implemented the permission. What matters is whether the works are complete and, if so, whether they are distinctly referable to the approved development, which on any view they plainly are having regard to the nature of the works undertaken at the Application Site.
- 4.7 It is an established principle is that if all the works carried out in pursuance of a planning permission are not in accordance with the submitted and approved plans then those works are unlawful and could be the subject of enforcement action. That is not the position here, where the works in terms of design and layout accord with the approved plans but either by accident or design, they do not in terms of the approved location.
- 4.8 Case law supports the proposition that the correct approach is to consider (i) the differences between the approved plans and the building operations carried out and

(ii) the significance of those differences. By following this approach, the Council is able to determine whether there has been a material impact.

5. **ANALYSIS OF EVIDENCE**

- 5.1 The evidence base in support of the Application, namely contemporaneous evidence such as invoices, photographs and statutory declarations (see the Statutory Declaration of Julia Norman, exhibits “JN3”, “JN4” and “JN5”, and the Statutory Declaration of James Gaiger, exhibit “JG1”), clearly demonstrates that the 2020 Permission has been lawfully implemented in respect of the equestrian worker’s dwelling.
- 5.2 In particular, material operations were undertaken in the form of the construction of the equestrian worker’s dwelling over the period 23 March 2020 to 2 April 2021 (see the Statutory Declaration of James Gaiger, confirming works commenced on 23 March 2020 and construction was completed on or around 2 April 2021, exhibit “JG1”). As aforementioned, this constitutes (a) any work of construction in the course of the erection of a building and is thus a material operation for the purposes of section 56(4) of the 1990 Act. It follows that the 2020 Permission has thus been lawfully implemented.
- 5.3 As aforementioned and having considered (i) the differences between the approved plans and the building operations carried out and (ii) the significance of the differences, it is apparent on an assessment of the differences (being limited to the location of the dwelling) that they are, on any view, minor in nature and there is nothing that can reasonably be considered to amount to a material impact.
- 5.4 Furthermore, whilst materiality is a matter for the decision maker, it is clear, in support of the Applicant’s position, that the “as built” dwelling has the same external appearance as the plans approved in the 2020 Permission, and is capable of use (indeed is in use) for the described purpose on the decision notice. Internally, the dwelling has been built in accordance with the approved plans. On any assessment, therefore, despite the location of the dwelling, it still appears as approved and has been put to its intended use.
- 5.5 Furthermore, the location of the dwelling does not serve to change the relationship between the “as built” development and neighbouring properties such that it can be said to have made any discernible difference to the assessment of amenity. There are

also no other land use planning concerns arising from the change of location, such as highways, landscape or noise.

- 5.6 It can, therefore, be concluded that the works in respect of the construction of the equestrian worker's dwelling, which have taken place at the Application Site during the aforementioned period, clearly fall within the ambit of section 56(2) of the 1990 Act, are comprised in the development, and are sufficient to lawfully implement the 2020 Permission. In addition, the works are now immune from enforcement by the passage of time.
- 5.7 It is further submitted that the Applicant has plainly satisfied the evidential burden found in *Gabbitas* – that is to say, it is more likely than not that the erection of the equestrian worker's dwelling occurred more than 4 years ago and, as such, the 2020 Permission has been lawfully implemented as required by condition 1 of the same.
- 5.8 As the equestrian dwelling was substantially complete on or around 2 April 2021 (see the Statutory Declaration of Julia Norman, exhibit "JN4" (aerial photographs dated 2 April 2021), and the Supporting Statement, which records that construction commenced in March 2020 and was substantially completed by 2 April 2021), the lawfulness of the same is to be assessed under the 4 year time period for immunity as set out in the Planning Practice Guidance Paragraph: 004 Reference ID: 17b-004-20180222; and The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 which is considered in further detail below.

6. **EFFECT OF THE LEVELLING-UP AND REGENERATION ACT 2023**

- 6.1 The Levelling-up and Regeneration Act 2023 ("LURA") makes material changes to the time limits for enforcement under section 171B of the 1990 Act. Prior to LURA, section 171B(1) provided that no enforcement action could be taken in respect of a breach of planning control consisting of operational development after the end of a period of 4 years beginning with the date on which the operations were substantially completed.
- 6.2 Section 115 of LURA amends section 171B(1) of the 1990 Act so that, in relation to a breach of planning control in England, no enforcement action may be taken after the end of a period of 10 years (rather than 4 years) beginning with the date on which the operations were substantially completed. Section 115 of LURA came into force on 25 April 2024, pursuant to regulation 3(b) of the Planning Act 2008 (Commencement No.

8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 (“the 2024 Regulations”).

6.3 Critically, however, regulation 5 of the 2024 Regulations makes transitional provision preserving the pre-LURA position in certain cases. It provides that the amendments made to the 1990 Act by section 115 of LURA “*do not apply where... in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act, the operations were substantially completed*” before 25 April 2024. In such cases, the previous 4-year time limit for enforcement continues to apply, notwithstanding the general extension to 10 years.

6.4 Applying the above to the current Application, the equestrian worker’s dwelling was substantially complete on or around 2 April 2021, which is well before the 25 April 2024 commencement date for section 115 of LURA. Accordingly, the transitional provision in regulation 5 of the 2024 Regulations applies, and the correct time limit for enforcement action is the previous 4 year period under section 171B(1) of the 1990 Act, and not the extended 10-year period that would otherwise apply to breaches occurring or substantially completed on or after 25 April 2024. As the dwelling was substantially completed more than 4 years ago, it is accordingly immune from enforcement action, and the Application falls to be determined by reference to that 4-year period.

7. **CONCLUSION**

7.1 The 2020 Permission was required to be implemented by 16 September 2023, as per the wording of condition 1. A planning permission can be lawfully implemented where a material start is made within the requisite time period of 3 years, provided any pre-commencement condition has been complied with. For the avoidance of doubt, there are no such conditions attached to the 2020 Permission.

7.2 Section 56(1)(a) of the 1990 Act provides that development of land shall be taken to be initiated, where the development consists of the carrying out of operations, at the time when those operations are begun. Moreover, under section 56, “material operation” is defined, amongst others, as “(a) any work of construction in the course of the erection of a building” and “(e) any change in the use of any land which constitutes material development”. Under section 56(2) of the 1990 Act, the material operations must be comprised in the development.

- 7.3 The evidence submitted in support of the Application, namely the Statutory Declaration of Julia Norman (exhibits JN3, JN4 and JN5), the Statutory Declaration of James Gaiger (exhibit JG1), and the PKA Architects letter dated 13 August 2026 (ref: 2132-L1), shows, on the balance of probabilities, that material operations in the form of the construction of the equestrian worker's dwelling took place during the period 23 March 2020 to 2 April 2021, and thus that the 2020 Permission has been lawfully implemented.
- 7.4 Moreover, following an assessment of the differences between the approved plans and the building operations carried out, together with the significance of the differences, it is apparent that they are, on any view, minor, and there is nothing that can reasonably be considered to amount to a material impact. The works undertaken can therefore be said to be comprised in the development and to accord with section 56(2) of the 1990 Act.
- 7.5 It is also clear that the "as built" dwelling has the same external appearance and internal layout as the approved dwelling and is capable of use (indeed is in use) for the described purpose. Despite the location of the dwelling, it still appears, on any analysis, as approved and has been put to its intended use. In addition, it does not serve to change the relationship between the "as built" development and neighbouring properties such that the assessment of amenity is affected. There is also no other material land use consequence arising from the change in location.
- 7.6 It can, therefore, be concluded that the works in respect of the construction of the equestrian worker's dwelling, which have taken place at the Application Site during the aforementioned period, clearly fall within the ambit of section 56(2) of the 1990 Act and are sufficient to lawfully implement the 2020 Permission. In addition, the works are now immune from enforcement by the passage of time.
- 7.7 It follows that the Application ought to be granted in the terms sought, as the evidence base is comprehensive and the Applicant has discharged the evidential burden provided for in *Gabbitas* on any view.

Alex Madden

HUGH JAMES

20th August 2026