

Statement of Case on behalf of the Appellant

Woodfold Park Stud, Woodfold Park, Mellor, BB2 7QA

Town and Country Planning Act 1990
(Section 78) Planning Appeal against
refusal of Certificate of Lawfulness for a
Proposed Use or Development

App'n Ref: 3/2023/0944

Job No: 21/L/061

Version: 0.1

Prepared by: Stuart Booth MRTPI

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1. Introduction

- 1.1 This statement of case is prepared by JWPC Ltd in support of an appeal by Mr Shokat Dalal against the refusal of a Certificate Lawfulness for a Proposed Use or Development at the residential property known as Woodfold Park Stud, Woodfold Park, Mellor, BB2 7QA.
- 1.2 The Certificate of Lawfulness application was made under Section 192 of the Town and Country Planning Act 1990 in relation to a proposed rear extension under Class A of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) order 2015 and was refused by the Local Planning Authority (LPA) on 16th January 2024. The appellant is appealing the refusal and this document forms their Statement of Case.
- 1.3 This Statement of Case will set out the details of the Certificate of Lawfulness application and the reasons why we consider the appeal should be allowed. The appeal is based on the application as presented in the Supporting Letter, Plans, Legal Opinion and Statutory Declarations. The appeal is supported further by an additional Statutory Declaration from Mr. Paul Tunstall and evidence in response to the contention made in the council's Reason for Refusal and Delegated Report that the land on which the extensions are proposed is not the curtilage of the property, which is rebutted in detail this statement.
- 1.4 The only issue on which the Certificate of Lawfulness was refused was that the Local Planning Authority (LPA) does not accept that the submissions of evidence and facts on the ground demonstrate that at the very least, the land upon which the extensions are proposed to be built is part of the curtilage of the dwelling. The LPA therefore considers the proposal does not meet the criteria at Class A.1(b) ¹ as Permitted Development. The LPA accepts the submissions as consistent with the requirements of a Class A extension in all other regards.
- 1.5 The application was therefore refused for a single reason –

The proposed extensions would extend beyond the existing dwelling footprint at the rear on land which is not considered to be established residential curtilage, therefore the permitted development rights under the Town and Country Planning (General

¹ GPDO Schedule 2 Part 1 Class A.1(b) - as a result of the works, the total area of ground covered by buildings within the curtilage of the dwellinghouse (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)

Permitted Development) Order 2015 (as amended) Schedule 2, Part 1, Class A do not apply.

2. Appeal Context

- 2.1 The appeal site is an existing residential dwelling and former stud farm that lies to the northern edge of Woodfold Park, to the south west of the village of Mellor. The property and stables were built together following the grant of planning consent in 2006 for “1no. new build dwelling, new build stud farm to house 16 stables, new build hay store” (Ref:3/2006/0302).
- 2.2 The property, made up of the dwelling and two former stable buildings that flank the house to the rear, is directly linked to the management of the adjacent land (plan shown in Appendix), and the appellant now owns and manages this land and buildings and lives at the property with his family. The owner has no plans to incorporate a stud, livery or any associated use within the former stable buildings to the rear of the dwelling.
- 2.3 The dwelling and stable buildings were owned and managed by Mr Graham Gough from completion of the property until they were sold to the appellant, with the stud farm operation in the stables having ceased in 2020 due to being unviable. The former stable buildings, hay store and the dwelling have been in a connected ownership since construction of the whole property and remain so.
- 2.4 The appeal includes the submissions made with the planning application of a Legal Opinion provided by Killian Garvey from Kings Chambers, brochures from the initial sale in 2007 describing the rear area as an amenity garden and Statutory Declarations from the appellant Mr Shokat Dalal (the Appellant and Site Owner) and Mr Reilly, who constructed the property and set out the dwelling, stables and garden. This evidence considers the curtilage of the property to be formed by the front and rear areas around the premises as detailed in the application submission, with specific references made to the grassed area to the rear on which the extensions would be actually located, forming the residential garden of the dwelling. The area of the proposed extensions clearly takes up much less than the 50% of the curtilage as set out in Class A.1(b), even if one considered the curtilage to be limited to the grassed area of the garden alone.
- 2.5 The LPAs position is that the grassed area to the rear of the property, which connects directly from the rear patio doors and contains a footpath, fountain, shrubbery and is separated from

the former stable blocks by hardstanding, does not form part of what it considers to be “established residential curtilage” as detailed in the reason for refusal and the delegated report. However, there is no requirement in assessing Class A.1(b) for there to be an ‘established residential curtilage’ and indeed as set out in the submitted legal opinion there is no strict definition of curtilage. It is a matter of planning judgment determined by the matters of fact and degree considering relevant factors such as physical layout of the buildings and the structure, their ownership past and present, and the use or function past or present.

- 2.6 The dwelling was built in 2007 and evidence has been provided to the application in the submissions, also presented to this appeal, showing the original planning consent, marketing brochures, pictures and aerial photographs dating from original construction to now and at all times showing the grassed area in its current state as garden area to the rear of the property. It has clearly been in this use for more than ten years. This position is supported by the now three signed statutory declarations confirming that the rear grassed area was initially formed as a garden, was used as garden, and continues to be used as a garden. It is abundantly clear from visiting the site that the grassed area to the rear of the property is the garden of the dwellinghouse and has never formed a part of the function of the stables, and is therefore clearly the curtilage of the dwellinghouse.
- 2.7 The evidence onsite, the evidence submitted and the statutory declarations provide a comprehensive case that the land upon which the extensions are proposed was in use as a domestic garden since construction and remains so today and wholly within what we would consider the curtilage of the dwelling house for the purposes of the permitted development rights under Class A.
- 2.8 The grassed area to the rear of the property has been in place as a defined mown grassed area since construction, as evidenced by the full range (9 dates) of available Google Earth aerial images from 2009 – 2023 shown in the Appendix to the Supporting Letter submitted with the planning application and as shown on the photographs from the Sales Particulars in the same Appendix.
- 2.9 This rear grassed area has always been separated from the stables, and the hardstanding to the front of the stables and to the rear of the garden, where the garden is stepped up from the hardstanding area due to the slope of the land, creating further separation. A water

feature is in place in the centre of the grassed area and there are footpaths connecting the grassed area directly to the rear patio doors of the house. The grassed area extends around the house and between the garages, and also extends to the front of the house, which is an area the LPA considers is part of the curtilage.

2.10 Statutory Declarations were submitted from the builder stating that the property was built with a garden and from the current owner explaining they use the area as a garden and that it was in use as a garden by the former owner when he previously visited the site.

2.11 A further signed Statutory Declaration has been submitted to this appeal from Paul Tunstall of JWPC, who was on site when the former owner was in the property and saw the area in use as a garden and has provided a site photograph of Mr Gough's property with garden paraphernalia, including planters, shrubs, outdoor table and chair, barbeque and a sun lounger. A photograph taken on the day is included in this appeal and the Statutory Declaration. The former owner, Mr Gough, had confirmed via conversation with the appellant that he used the grassed area as the garden of the dwelling whilst he lived at the property, but would only sign a Statutory Declaration if the appellant paid him a fee to do so. This has therefore not been submitted, but the evidence of the Statutory Declarations from the Developer, the appellant and the Planning Agent submitted should provide sufficient evidence that it does form the garden of the dwelling.

2.12 Further photographs have been provided in this documents Appendix showing horses when the stud farm was in operation (from the old Facebook page of the business). These photographs show horses on the hardstanding around the stables and the yard area to the rear of the garden, with the house and grassed garden area in the background with planters, plant pots etc in view. A review of all of the photographs from the stud farm available on their now defunct facebook page shows no instance of horses on the grassed garden area. Parading horses on the grassed area would have churned up the grass and made it not suitable for garden use, aerial photographs show no change over time. The LPA have provided no evidence or reasoning as to why they think this grassed mown area was part of the stables and stud farm operation, other than that the stables could be viewed from the garden, which is not, in the appellant's opinion, sufficient evidence to define the grassed area as part of the stables when it clearly has always been in garden use.

3. Proposed Development

- 3.1 The appeal relates to rear elevations of one and two storey heights across the rear of the length of the dwelling, varying in height and distance from the existing elevation as it corresponds to the varying positions of the existing rear elevation, such that the proposals are consistent with the heights and depths permitted under Class A of the GPDO. The LPA has confirmed this in its Delegated Report.
- 3.2 The rear walls at single storey do not extend beyond 6 metres, neither do the double storey portions extend beyond 3 metres from the existing part of rear elevation. The height and eaves of the part of the dwelling altered does not exceed the height and eaves of the highest part of the roof of the existing dwelling. The materials proposed would match the existing materials of stone, render and slate roof tiles. The LPA has confirmed this in the Delegated Report.
- 3.3 The LPA considers that the proposed extensions do meet the relevant design criteria for a Class A permitted development proposal.

4. Grounds of Appeal

- 4.1 The appellant considers the proposals fall within Class A – enlargement, improvement or other alteration of a dwellinghouse, of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.
- 4.2 The LPA considered the proposals against Class A in the Delegated Report and concludes that if Class A did apply to the rear extensions because they were deemed to be within the curtilage of the dwelling (the issue subject of this appeal) then the single and two-storey rear extensions would meet the criteria of permitted development.
- 4.3 The Delegated Report makes clear that should the area to the rear of the dwelling be deemed to be within the curtilage of the dwelling, then Class A would apply and the Certificate of Lawfulness would have been issued, ergo it is common ground that the appeal should be allowed if the Inspector agrees with the appellant that the area to the rear of the dwelling is part of the curtilage of the dwellinghouse and the extensions take up less than 50% of that curtilage. As outlined in the legal opinion, there is no requirement to agree to a defined curtilage plan, just to be satisfied that Class A.1(b) is met.
- 4.4 The Delegated Report stated that the LPA does not agree with the curtilage put forward by the applicant. It then sets out the officer's position in the terms of three considerations, which are those the courts held to be relevant factors for determining curtilage (referenced in the submitted Legal Opinion), namely –
- The physical layout of the building and structure
 - The ownership past and present
 - The use or function
- 4.5 The Delegated Report sets out the LPAs considerations of these factors which they determined were not satisfactory to confirm the grassed area on which the proposed extensions are to be located as being the curtilage of the dwellinghouse, which was the only reason they refused the application. Their considerations are detailed and rebutted below.

Ownership

4.6 In terms of the ownership past and present, the appellant has confirmed that they purchased the appeal site including the house, garden and stables from the original owner, who purchased the same following the original construction of the property in 2007. Mr. Reilly who built the property has provided a Statutory Declaration detailing the extent of the build and laying out of the garden area. The LPA opines in the Delegated Report, based on the submitted evidence, that the grassed area having been in the same ownership as the house and stables neither proves nor disproves that it is established curtilage. It's statement ignores the entire point of considering the ownership past and present as a way to understand the curtilage of a property, which is to establish whether there is a connection between the areas of the site. The evidence presented in the application and appeal clearly shows the connection of the garden area to the dwelling in relation to the ownership since built, which weighs positively in the consideration of the area to which the proposed extensions are located as being curtilage to the dwellinghouse.

Layout

4.7 In terms of the physical layout of the building and structure the Delegated Report makes three points:

- that there was no approved curtilage plan nor any reference to garden on the approved plans.
- that there is no physical distinction between the grassed area, the yard, the stables and the house. Noting the grassed area and yard are enclosed by – and laid out against – the stables equally as much as the house.
- that there is no evidence of domestic paraphernalia which has been sited on the grassed area.

4.8 These points are rebutted in turn below.

4.9 The dwelling and stables were built in accordance with the approved plans and evidence submitted in the form of aerial photographs and the Statutory Declaration from Mr. Reilly confirm the current layout of the dwelling, its garden and the stables, as having been in place

in their current form since being built in 2007. The approved plan for the dwelling (3/2007/0252 at Appendix A) shows a demarked area to the immediate rear of the property laid out in the form of a garden, and which a normal reading of the plan would be considered the garden of the dwelling. This is consistent with the site and aerial photographs as built.

- 4.10 The LPA appear to rely on the position that as there is no approved curtilage plan per se and this means the garden is not part of the curtilage of the dwelling. However, one could argue that the plan at Appendix A is a curtilage plan and shows garden and yard to the rear of that. This however implies that there needs to be an approved curtilage plan to be satisfied that an area forms part of the curtilage of a dwellinghouse, which is not the case. This is not how curtilages are assessed, as set out in the Legal Opinion and indeed the assessment of fact and degree of the three relevant factors being considered here by the LPA. There is no need for there to be or to rely on an approved curtilage plan, so the LPA has erred in its assessment. The layout is as evidenced on the ground and shown in the aerial photographs of the property and submitted photographs of the site in the appendix to this statement.
- 4.11 Further, it is extremely unlikely that Woodfold Park Stud, built as a large 5 bedroom family country house, would have been consciously designed so as to have no rear or private amenity space. Given two sets of patio doors and a further single door exit onto the space to the rear, to assert otherwise would be nonsensical.
- 4.12 In relation to the LPAs position that there is no physical distinction between the grassed area and the yard and stables, we assume this means there is no fences or physical barriers. It is established by the Courts, detailed in the Legal Opinion, that physical enclosure is not necessary for land to be considered within the curtilage of a dwelling, with it being enough that serves the purpose of a building in some reasonable way even though it need not be marked off or enclosed in any way. In addition, the grassed area is immediately adjacent the house, connected directly via the rear doors of the property onto a patio and is also delineated from the stables by the hardstanding running along the length of both stables and the shrub/hedge planting to these boundaries, detailed on the photographs submitted with the appeal and the physical layout on site. In essence, the garden is in fact physically distinct from the area around the stables, even though it doesn't need to be to be considered part of the curtilage of the dwelling.

- 4.13 The LPA notes that the grassed area is laid out against the stables equally as much as the house. This is incorrect as can be seen on the ground. The rear garden area is directly connected to the house, whereas the area is separated from the stables at either end by the plants and shrub boundary and hardstanding to the front of the stables that connects each stable block to the southern end of the stables and garden, where the hardstanding and menage are located, and where submitted photographs show horses present. At the southern portion of the garden area, this hardstanding is set down from the grassed garden area, which is essentially elevated at this point due to the slope of the land, with the garden area being level across its area, which makes a further physical distinction between the two areas.
- 4.14 The LPAs argues that the grassed area is equally part of the dwelling as the stables. Whilst they are clearly not in terms of their use, detailed below, in terms of the consideration of the physical layout of the building and structures, the LPA is actually acknowledging that they are part of the curtilage of the dwelling equally as the stables. In which case they are part of the curtilage of both. The counter argument would be that they are neither, which is clearly nonsensical.
- 4.15 Finally on this factor of physical layout the LPA have noted there is no evidence of domestic paraphernalia on the grassed area. This is untrue, as the Statutory Declaration from the builder notes the dwelling garden was constructed with a fountain, shrubs and flowers. The Statutory Declaration from the appellant also confirms that when he visited the site prior to purchase, domestic paraphernalia was in place such as sun loungers and outdoor table and chairs. Further to this, a Statutory Declaration has now been submitted by Mr Paul Tunstall, the Director of JWPC who visited the site with Mr Dalal and saw the garden similarly in use by the owner as a garden, with photographic evidence showing domestic paraphernalia was in place such as sun loungers and outdoor table and chairs. Photographs have also been submitted from the Facebook page of the stud farm showing horses on the hardstanding areas around the stables, which show in the background domestic paraphernalia on the garden area such as plant pots.
- 4.16 The above all point to clear evidence that on the factor of the physical layout of the building, the garden area forms part of the curtilage of the dwellinghouse.

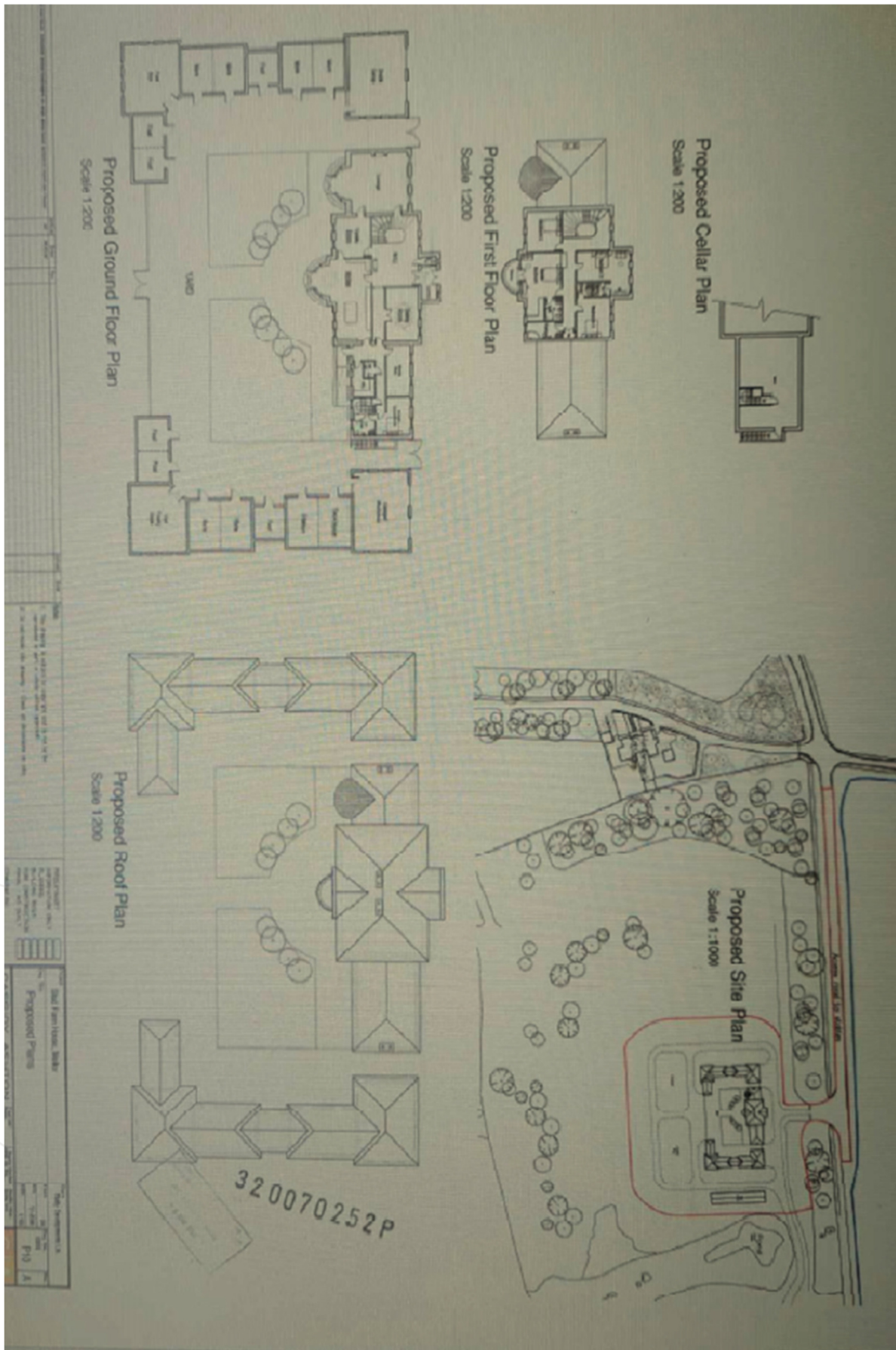
Use or Function

- 4.17 In terms of use or function the Delegated Report provides a description of the site from the website for the former stud farm that occupied the stables, arguing that this shows the scale of the development which was constructed as one entity and not as a house with stables in its curtilage. The description of development for the approved consent on the site to build the property (3/2006/0302) was '1no. new building dwelling, new build stud farm to house 16 stables, new build hay store.'. By the LPA logic, this demonstrates the opposite, with the dwelling being listed first and separately.
- 4.18 The LPA argument here is weak and relies on a description of the former business that makes no reference to the dwelling, and does not consider the use or function of the garden area to which the proposed extensions are located. The current use of the dwellinghouse and garden is of a house and garden, with stables flanking the rear garden. Whilst the property was built together with the stables and they were connected by a condition on occupation, this condition has been amended such that no stud farm or commercial operation now exists at the site. The appellant notes that the Delegated Report considers land to the front of the dwelling to be part of the curtilage. As this area was also have been used for the former stud farm, as the only access to the stables, this runs counter to their argument that the connection to the stables means the area is not part of the curtilage of the dwellinghouse.
- 4.19 In addition, the use of the grassed garden area has been detailed in the submission as functioning as the garden of the property and not in any way as part of the former stud farm operation. An assessment of the photographs on the facebook page of the former business of horses at the stud farm at no point shows horses on the grassed area.
- 4.20 In summary, the evidence on the ground and the evidence submitted to the application and appeal demonstrate that the dwellinghouse and rear garden are connected by their physical layout, their use and their ownership, since construction of the dwelling. The evidence submitted is more than sufficient to confirm that the proposed extensions would not cover more than 50% of the total area of the curtilage of the dwelling.

5. Conclusion

- 5.1 The appellants grounds of appeal are that the LPA has incorrectly considered the rear grassed area to the property to not form part of the curtilage of the dwellinghouse. We invite the Inspector to make an assessment of this area based on; the evidence on site; the submitted aerial photographs; the submitted sales particulars; and the signed Statutory Declarations and to consider this in the context of the previous legal positions as regard to assessing the curtilage of residential properties by matter of fact and degree.
- 5.2 The proposed extensions are located on the grassed rear garden to the dwelling and the appellant presents that the area of the extensions is clearly less than 50% of the rear lawned garden area and the proposals would therefore be considered permitted development under Class A.
- 5.3 We respectfully request that the Inspector allow the appeal.

Appendix – Layout Plan from Planning Consent



Appendix – Conditions Consent and Related Plan

RIBBLE VALLEY BOROUGH COUNCIL

Department of Development

Council Offices, Church Walk, Clitheroe, Lancashire, BB7 2RA

Telephone: 01200 425111 www.ribblevalley.gov.uk planning@ribblevalley.gov.uk

Town and Country Planning Act 1990

PLANNING PERMISSION

APPLICATION NO: 3/2022/0267

DECISION DATE: 14 April 2022

DATE RECEIVED: 14/03/2022

APPLICANT:

Mr Graham Gough
c/o Agent

AGENT:

Mr Stuart Booth
JWPC Ltd
1B Waterview
White Cross
Lancaster
LA1 4XS

DEVELOPMENT PROPOSED: Removal of Condition 5 (Occupancy) and 6 (Residency) of planning permission 3/2007/0252. Resubmission of application 3/2021/1086.

AT: Woodfold Park Stud Woodfold Park Mellor BB2 7QA

Ribble Valley Borough Council hereby give notice that **permission has been granted** for the carrying out of the above development in accordance with the application plans and documents submitted subject to the following condition(s):

1. The detached dwelling known as Woodfold Park Stud approved under consent 3/2007/0252 shall be occupied only by the manager/proprietor and family members whilst the associated buildings or land as shown on plan reference 3/2022/0267 received on 5/04/22 are in agricultural or equine use.

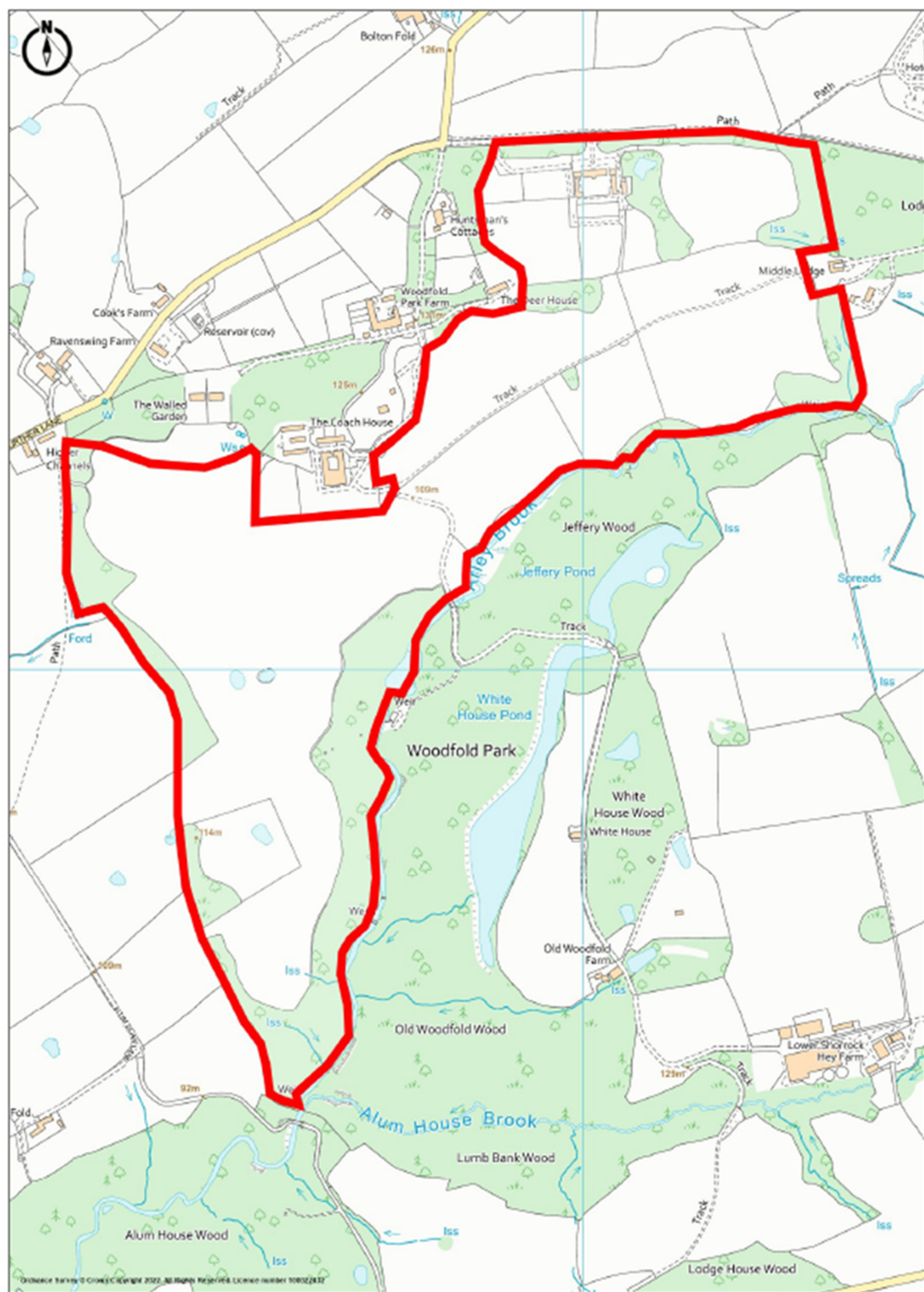
Note(s)

1. For rights of appeal in respect of any condition(s)/or reason(s) attached to the permission see the attached notes.
2. The applicant is advised that should there be any deviation from the approved plan the Local Planning Authority must be informed. It is therefore vital that any future Building Regulation application must comply with the approved planning application.
3. The Local Planning Authority has endeavoured to work proactively and positively to resolve issues and considered the imposition of appropriate conditions and amendments to the application to deliver a sustainable form of development.

John Machole

pp NICOLA HOPKINS

DIRECTOR OF ECONOMIC DEVELOPMENT AND PLANNING



Promap
 LANDMARK INFORMATION

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Plotted Scale - 1:10000. Paper Size - A4

Plan WF01

Appendix – Site Photographs and Facebook Photographs

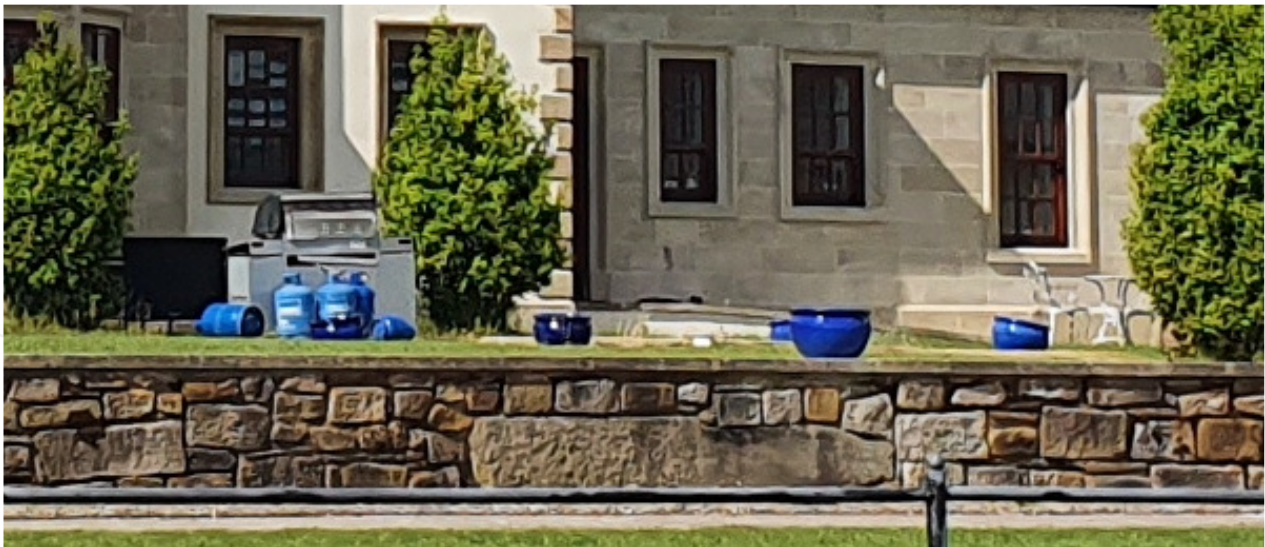


Photo of property from Mr Paul Tunstall's Statutory Declaration (zoomed in to show barbeque range and outdoor table and chairs)



Photograph of front of house, showing grass area to the front extending around the side and to the rear grassed area



Photograph showing direct connection of rear of house to grassed garden area, including footpath



Photo showing steps down from garden, dwarf wall to the rear hardstanding of stables



Photo showing dwarf wall, garden and boundary hedges/shrubs to stables, providing boundary to stable hardstanding



Photo showing garden footpath and shrubs to rear of dwelling



Photo showing garden footpath and delineated boundary shrubs to stables (west side)



Photo showing garden footpath and delineated boundary shrubs to stables (east side)

Photos from Facebook page of former Woodfold Park Stud Business



Photo (2015) showing horse on menage area, with house and garden in rear, showing boundary bushes and dwarf wall edge of garden



Photo (2015) showing horse on menage and house with boundary bushes and pot plants and dwarf wall of garden



JWPC Ltd

1B Waterview, White Cross
Lancaster, Lancashire, LA1 4XS

Tel: 01524 599980

enquiries@jwpc.co.uk www.jwpc.co.uk

