



PLANNING STATEMENT

TO SUPPORT

APPLICATION FOR A CERTIFICATE  
OF EXISTING LAWFUL  
DEVELOPMENT

COMMERCIAL EQUINE AND RIDING SCHOOL

PINFOLD PADDOCKS

RECTORY LANE

CAPENHURST

CHESHIRE

CH1 6HN

MAY 2022



## APPLICATION FOR CERTIFICATE OF LAWFUL USE

### 1. INTRODUCTION

- 1.1. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application for a Certificate of Lawfulness and how it must be submitted. Any application for a Certificate of Lawfulness must be accompanied by sufficient factual/evidence for a Local Planning Authority to decide the application.
- 1.2. This Evidence Statement has been prepared by OS Planning on behalf of Mr and Mrs Francis to confirm the Lawful Development of existing land, buildings and facilities at the Rectory Lane as an established commercial equine yard and riding school.
- 1.3. This Evidence Statement outlines that the existing development and its' is lawful for planning purposes under section 191 (4) of the Town and Country Planning Act 1990. This further confirms that the site is considered to be previously developed land as defined in Annex 2 of the NPPF (2019) which states:

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

### 2. BACKGROUND TO THE LAWFUL USE APPLICATION

- 2.1. Within the 2017 (17/05393/OUT) and 2018 (18/03300/OUT) applications for “key workers dwelling” extensive detail was provided to support the established use of the site, elements have been reiterated as part of this submission to support the use of the land as “Brownfield”.
- 2.2. We however highlight from the key workers dwelling application, the case officer in both instances confirmed “None of the existing development on the site has the benefit of planning permission; however, most of it appears to be lawful given that the livery (and the former use of the land as a small stud) has been in existence for around 15 years, according to information supplied with the application”.
- 2.3. We accept that this existing use has not be lawfulised or subject to a Certificate of Lawfulness application (existing use) therefore, the subject application has been prepared to confirm the lawful use of the site in line with Section 171B of the Town and Country Planning Act 1990 states that:  
“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of, building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of four years beginning with the date when the operations were substantially completed.”



“(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of 4 years beginning with the date of the breach.”

“(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach.”

2.4. Section 171B.17 confirms that breaches of conditions fall within sub-section 3, as “any other breach”.

2.5. Section 191(1) refers to Certificates of Lawfulness of Existing Use or Development and states; - “If any person wishes to ascertain whether:

- Any existing use of buildings or other land is lawful;
- Any other operations which have been carried out in, on, over, or under land are lawful; or
- 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.”

2.6. Section 191 (2) states: - “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) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.”

2.7. Section 191(3) states: - “For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

- (a) the time for taking enforcement action in respect of the failure has then expired; and
- (b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

2.8. Section 191 (4) states: - “If, on application under this section, the local planning authority 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.”

2.9. Based on the above legal test, case office comments and evidence provided below, we believe, it is clear that the commercial use of this site has been in existence and it is no longer possible to take enforcement action in respect of the breach as a result of which the activity in breach of the condition becomes lawful with the passage of time. This lawful use confirms that the site is designated as a brownfield site



## 2. EVIDENCE

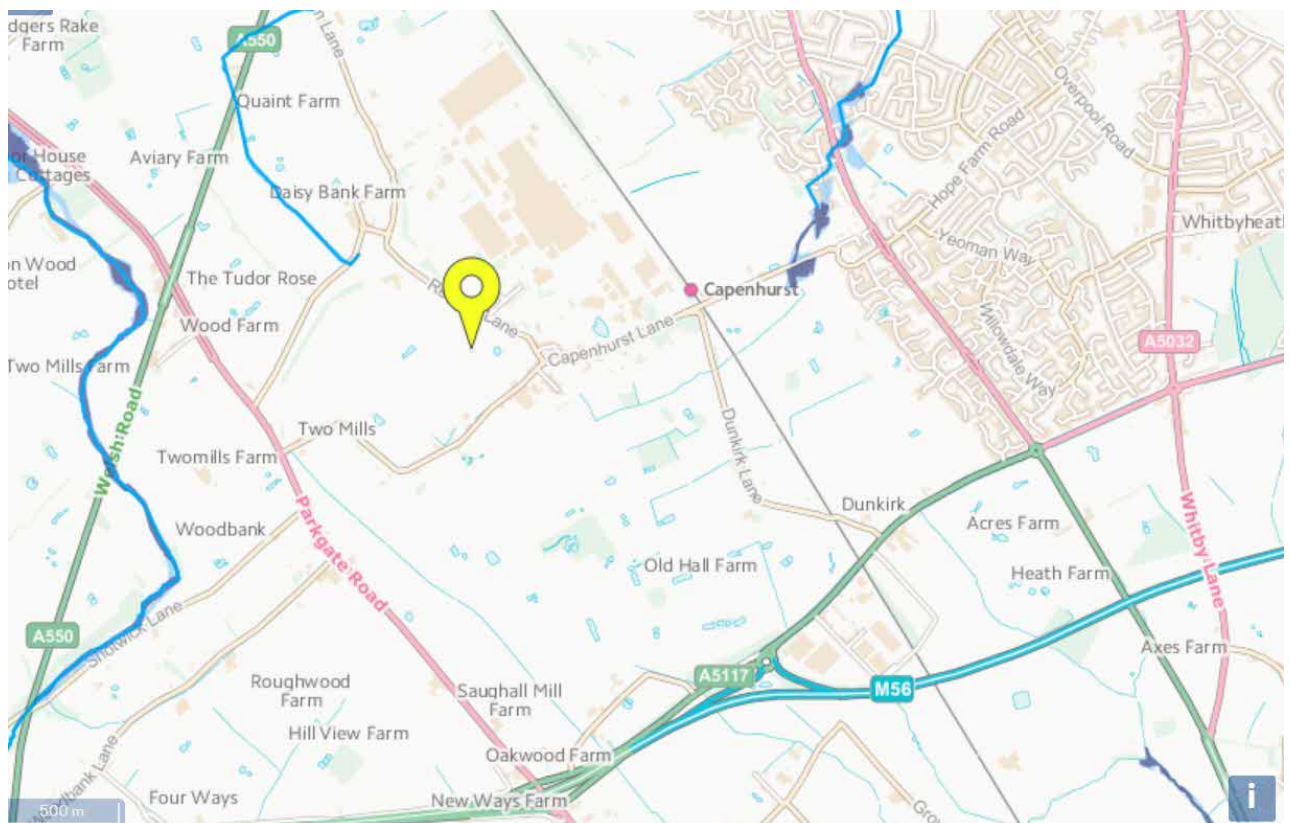
2.1. This section discusses the evidence provided which demonstrates that the land in question has been used for commercial purposes for a continuous period of at least 10 years.

2.2. The evidence demonstrates that the existing use of the land is lawful under Section 191 (a) of the Town and Country Planning Act (1990). The evidence presented as part of this application comprises:

- Signed statement from Mr Francis
- Signed statement from Mrs Francis
- Signed statement from [REDACTED] (Current Manager)
- Signed statement from June 2012 to 2018 [REDACTED] (Former Manager)
- Letter from Accountant
- Copy of Livery Contract
- Copy of council tax invoice (2005/06 – 2021/22)

## 3. LOCATION

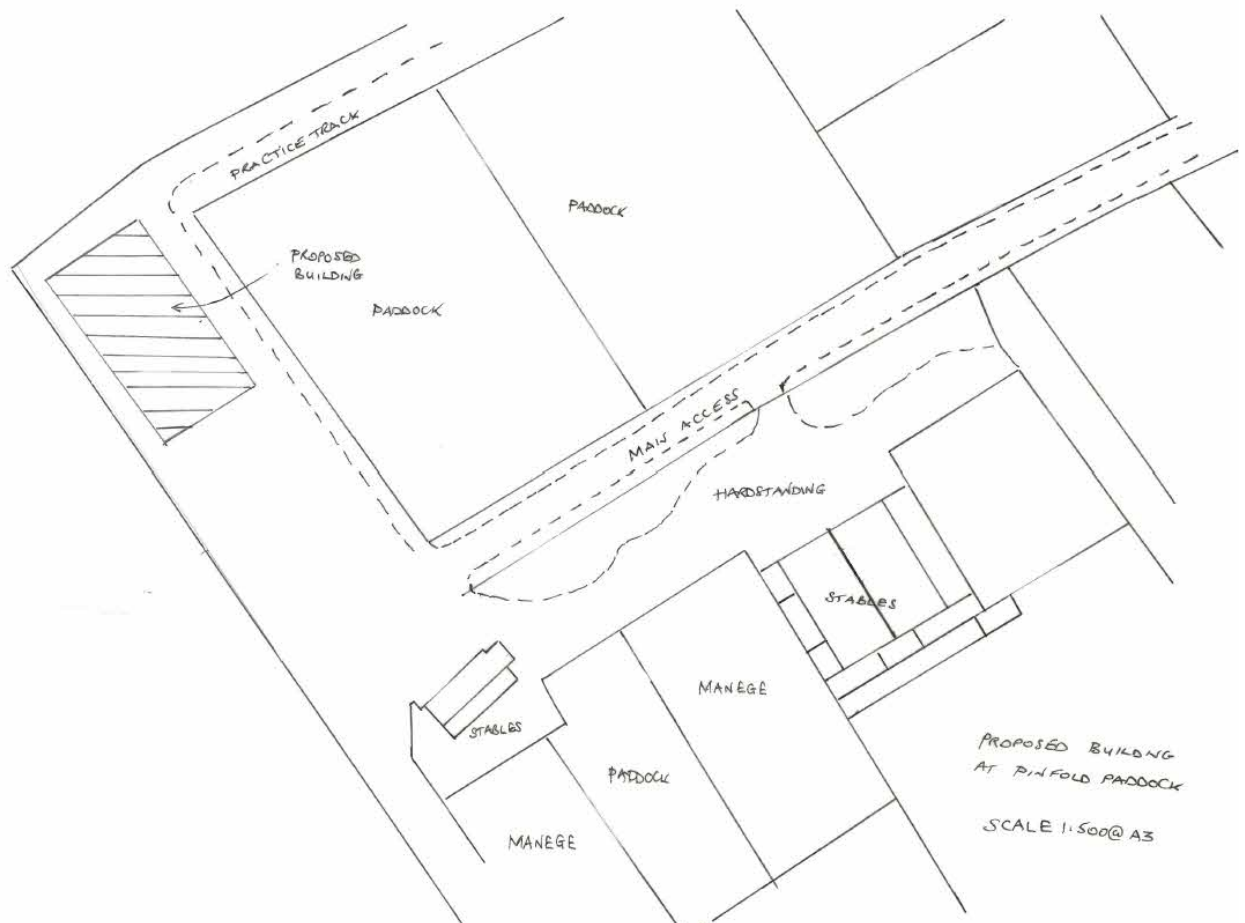
3.1. The application site is known as Pinfold Paddock accessed via an existing access drive off Rectory Lane. The site is a mixed equine and agricultural unit extending to 8.75 hectares located outside of the village of Capenhurst within the designated Green Belt. The following image shows the location of the site in a wider context:





#### 4. THE ENTERPRISE

- 4.1. The site comprises approximately 8.75 hectares of land on the edge of the village of Capenhurst. A well-established commercial livery yard within in an area designated as countryside and the North Cheshire Green Belt. Site plan contained in appendix 1
- 4.2. The site is accessed through large security gates, a private drive which leads to the subject building, large barn containing stables, two exercise/turnout areas, a separate block of stables in addition to a number of containers and loose horse boxes scattered across the rear of the site. The surrounding land is fenced paddocks with gallops around the very perimeter of the site.
- 4.3. The site is a mixed site as part is used for agricultural and horticultural operations, as annotated below:

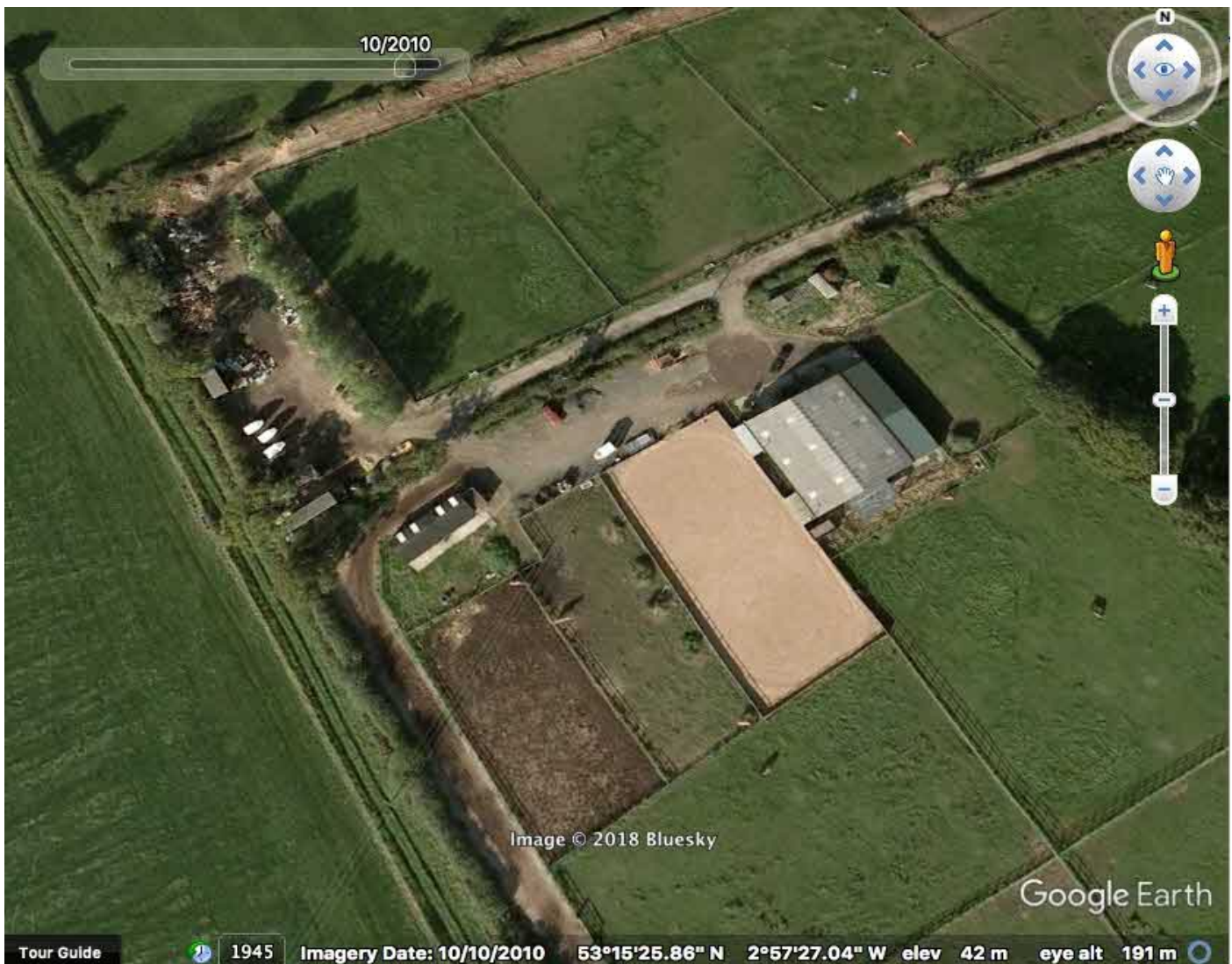


- 4.4. The applicant has been involved with equine and horses for over 40 years and the livery caters for circa 30 horses established since 2002. The applicants purchased the site in April 2002. The Initial operations were on a small-scale basis, a stud farm and show ponies known as Willowlands.





4.5. The access, barn and stables were constructed in 2002/2003 and manege was completed by 2009. All facilities have been on site since 2011. This is confirmed by the following google earth extract.



4.6. Permission was granted for the building in 2002, copy of decision letter attached in appendix 2. The subject application is to lawful the facilities as well as the use.

4.7. Management of the unit is covered by the applicant; however, every day management is shared with a yard manager. Previously the site was tenanted, this was between the period of 2012 to 2017

4.8. Services provided are Full Livery (over 5 or 7 days) and DIY or Part DIY Livery. At present there are 20 horses on DIY/Part. The remainder are on Full. Full livery can range between [REDACTED] per week to DIY being between [REDACTED] per week (subject to extra charges for shavings or holiday cover. Each livery signs terms and conditions, copy of contract contained within appendix 3.



4.9. The business has full accounts completed by the applicant's accountant, Robert S Boys Chartered Accountants 28-30 Grange Road west, Birkenhead, Wirral CH41 4DA. Letter of confirmation attached to appendix 4. The applicant pays council tax and has done so since 2011.

5. SITE PHOTOGRAPH







## 5. JUSTIFICATION

- 5.1. Article 39 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 specifies the contents of an application for a Certificate of Lawfulness and how it must be submitted. Any application for a Certificate of Lawfulness must be accompanied by sufficient factual/evidence for a Local Planning Authority to decide the application.
- 5.2. The 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 on the balance of probability test.
- 5.3. In respect of an existing use the relevant regulations indicate that to claim a lawful use certificate, the use of any land or building must have been existing for 10 years.
- 5.4. Section 191 of the Town and Country Planning Act requires applications for Certificates of Lawfulness to 'give the reasons for determining the operation to be lawful.' This section of the statement identifies the evidence provided as part of the application.
- 5.5. The commercial use of the site commenced in 2002 as outlined and confirmed by the signed statutory declaration by the applicant and third parties together with the detail documented above.





## 6. PLANNING AND LEGAL ASSESSMENT

- 6.1. The applicant is giving consideration to the future of the site which comprises previously developed land located within the open countryside. This application will obtain legal confirmation of the commercial uses that have been carried out at the site for more than 10 years. This application seeks a Certificate of Lawfulness for the use of the land as commercial use to establish the site is brownfield land.
- 6.2. The Statutory Test outlines that the evidential test is a lower standard than proof beyond reasonable doubt being one on the balance of probabilities which is a standard of proof that the preponderance of the evidence shows a 51% likelihood that the events as submitted occurred.
- 6.3. The evidence provided within this statement and the appendices is unarguable and should be seen to far exceed the 51% likelihood that these submitted events occurred and therefore the development and the site's use is lawful.

## 7. CONCLUSION

It is therefore requested that a CLEUD is granted confirming that the development is now lawful due to the period for undertaking enforcement action expiring.

On the balance of probability with no evidence to the contrary, it has been demonstrated that the site at Rectory Lane has been in use for more than 10 years prior to the date of this application, similarly the buildings and associated equine facilities have been constructed over 4 years prior therefore as such has become lawful by reason of immunity to enforcement action.