

**Land to the rear of 42-100 Tollgate Road & 42
Tollgate Road, Colney Heath – Appeal ref.
APP/B1930/W/23/3323099**

Rebuttal Proof of Evidence of Oliver Bell BSc MSc MRTPI

ON BEHALF OF VISTRY HOMES LTD

September 2023

1. Introduction

- 1.1 My name is Oliver Bell. Full details of my experience and qualifications are set out in my main proof of evidence.
- 1.2 This rebuttal Proof of Evidence has been prepared in response to the evidence of John Clemow for Colney Heath Parish Council (Rule 6 Party), specifically on the comments made regarding the equestrian use of the Site.
- 1.3 This rebuttal responds to specific points raised in evidence where it is considered appropriate to respond in writing prior to the opening of the inquiry.
- 1.4 It should be noted that where I have not addressed a specific point, this does not mean that it is accepted.

2. Rebuttal to CD9.12 Previously Developed Land Proof of Evidence by John Clemow

Duration of Equestrian Use

- 2.1 Through paragraphs 3, 4, 5 and 6 of his evidence, Mr Clemow describes his interpretation on the time periods when the fields (described as Fields A, B and C in his evidence) are utilised throughout the year, culminating in the following conclusion of his analysis:

“6. It can therefore be seen that in the last 10 years the horses have not been on the Appeal site for a total time approximating to between 20 and 30 months (10 years x 2 or 3 months) ie 1 year 8 months to 2 years 6 months. Hence they have not regularly and continuously throughout each of the last 10 years been grazed on the field which is the subject of this Appeal, a fact which would need to be established in order to prove lawful equestrian use.”

- 2.2 In my evidence I have already provided a commentary on the equestrian use of the Site, which the Council agree is lawful¹. I also appended a note from the landowner providing further details in relation to the equestrian activities².
- 2.3 Within my evidence and through reference to the note from the landowner, I was clear that the Appeal Site was utilised for grazing on a rotational basis, indeed this is illustrated at Appendix 2 of my evidence (CD9.6). In response to the evidence of Mr Clemow, I have sought further information from the landowner which can be found at Appendix 1 of this rebuttal and confirms the following:

“2. Rotational grazing is standard practice in the keeping of horses to allow for periods of rest and regrowth of the grass. This practice reduces overgrazing of the most palatable grass species, reduces weed infiltration, and reduces trampling and soil compaction, especially in low-lying ground which might suffer more in winter months. Some horses might be susceptible to medical conditions that require their grazing to be restricted, especially when the grass is rich in spring; in these cases, one might see a smaller paddock fenced off for an individual horse to use.”

- 2.4 Accordingly, I remain of the view that the rotation of the fields is entirely commonplace with the keeping of horses for equestrian purposes and nothing within the evidence of Mr Clemow demonstrates the equestrian use across the Appeal site is not lawful, a point which as detailed earlier is not disputed by the District Council.

Use of the Fields

- 2.5 Mr Clemow in paragraph 7 refers to the judgement *Sykes v Secretary of State for the Environment* (1981). I understand that this judgement established that simply turning out horses onto land and feeding them from that land can amount to grazing, whereas the keeping of horses does not comprise an agricultural use. As detailed earlier, it is agreed with the Council that the Appeal Site is in lawful equestrian use. In line with this, I note that planning application ref. 5/1996/1240 for the erection of stables with associated grooming and storage facilities (see Section 3 of the SoCG) relates to the entire Appeal Site (see Appendix 2) further demonstrating the equestrian use was granted for all of the Site. As such, I do not see this judgment to be wholly relevant to Appeal Site as it dealt with whether a change of use from agricultural to equestrian use has occurred. Nevertheless, I comment further below.

¹ See paragraph 6.10 of the SoCG [CD8.3]

² Appendix 3 of my evidence [CD9.6]

- 2.6 Having regard to the Sykes judgment, Mr Clemow, describes in his view how the Appeal Site has been utilised with regards to grazing:

“8. It has been observed that the horses are rarely fed any extra food in Field A or Field B even during the winter months.... The amount of supplementary food seen to be given on the field is not enough to sustain life on a day to day basis. The horses’ prime source of food would appear to be from the grass provided from the field itself. This would be classed as “grazing” not “keeping” and is therefore agricultural use.”

- 2.7 In this regard, the additional statement from the landowner states:

“6. The horses are given supplemental feed over and above the grass, including hay, hard feed and supplements (see photographs) all year round. Each horse receives different types and frequency of feed depending on its dietary requirements. Receipts could be provided if required and written statements could be obtained from local farmers who have supplied both hay for feeding in the field and bedding for the stables since 2008. Horses are usually brought to the hardstanding or stable to receive any feed from a bucket as it would be dangerous to do this within the field. The additional feeding satisfies Mr Clemow’s test of horses being “kept” at the site.

- 2.8 Given the above, it is my view that Mr Clemow’s assertions are factually incorrect, noting he himself only suggests that it “appears” grazing the field is the horses’ prime source of food.

- 2.9 In relation to the equestrian activities undertaken at the Site, Mr Clemow describes the following:

“10. The history of the ridden use of the site can be seen in the Google Earth images at Appendix 1. It is clear that there is no proof from these that the site was used at any time for riding before 2016. The Appeal site has not been used for riding, training or exercising horses regularly and consistently over the last 10 years.

11. Furthermore the Appeal site was not used for riding, training or exercising of the horses for around 6 months of each year for the last 10 years during the winter months (mid-October to the end of April).

12. No horses were or are seen to be ridden in Field A during the winter. Similarly no horses were seen to be ridden on Field B at this time, as this field (being in Flood Plain 3) is often under water or water logged. During these winter months the horses were seen to be exercised in Field C meaning that there was no continuous and regular use of the site for riding, training or exercising over the last 10 years. This arrangement of using Field C during the winter months continued until the manège was built in June 2018.”

- 2.10 With regards to the utilisation of different fields throughout the year, I have already covered this in my rebuttal and do not propose to repeat such conclusions. In relation to the activities undertaken on Site, this is addressed within the landowner note at Appendix 3 of my Proof of Evidence but further evidence from the landowner is included at Appendix 1 of this rebuttal. In this regard, the landowner states:

“7. Other activities that take place at the site are rugging, grooming, driving with a trap, riding (including jumping) and lunging – the latter two taking place even prior to the construction of the menage (see attached photographs dating back to 2009). Horses are regularly hacked out from the site or taken to shows in horse boxes.”

- 2.11 The landowner has also provided an array of photographs relating to the use of the Appeal Site for equestrian purposes (see Appendix 3), contrary to the evidence of Mr Clemow. Furthermore, the landowner concludes her note by stating:

“9. We agree with Mr Clemow that the horses have been at the appeal site – and more specifically, an equestrian use has been in existence – for over 10 years and provide photographic evidence dating back some 14 years. The appeal site is used for 12 months of the year whether in connection with grazing (either in full or in individual paddocks), exercising, feeding or the use of the stables and hardstanding.”

2.12 Overall, I therefore remain of the view the entire Appeal Site is in lawful equestrian use, which I repeat is not a position disputed by the Council¹.

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Appendix 1 – Landowner Note

1. The landowner along with six other owners keep their horses at the site, and each horse has its own requirements in terms of being cared for. This arrangement is known as “DIY Livery”, and is defined in the DEFRA paper, *Keeping Horses Commercially* (7 February 2023) as where: “*the horse owner is responsible for the care and management of the horse*”. This differs to “grass livery”, which is defined as where “*the livery does not provide housing for your horse*”. There is no scenario whereby the provision of stabling and hardstanding but no access to fields would be an acceptable way to keep a horse.
2. Rotational grazing is standard practice in the keeping of horses to allow for periods of rest and regrowth of the grass. This practice reduces overgrazing of the most palatable grass species, reduces weed infiltration, and reduces trampling and soil compaction, especially in low-lying ground which might suffer more in winter months. Some horses might be susceptible to medical conditions that require their grazing to be restricted, especially when the grass is rich in spring; in these cases, one might see a smaller paddock fenced off for an individual horse to use.
3. It is worth noting that “Field A” and “Field B” as described in Mr Clemow’s evidence, are in fact a single field within the curtilage of the stables, and are only separated by an electric fence for the purpose of resting the grass.
4. The field described by Mr Clemow as “Field C” belongs to the landowner’s neighbour and use is provided to our landowner during summer months. This allows “Field A” and “Field B” to be rested and maintained. During the time that “Field C” is used, the stables along with any individual paddocks within “Field A” are still used daily. “Field C” might be used for up to four months in a year, but this varies; for example, during 2023, due to the amount of rainfall and the quick recovery of the grass in the main field (“A” and “B”), “Field C” was used for only two months.
5. While not being grazed, “Field A” and “Field B” are used for exercising. To aid understanding, horses would not be exercised where others are grazing as this would be dangerous. In the summer, when exercising the horses on “Field A”, neighbours will often stand and watch or come down to the end of their gardens to talk. “Field B” is also used for exercise even when wet as it is always firm enough under foot. Please see photographic evidence attached, dating back to 2009.
6. The horses are given supplemental feed over and above the grass, including hay, hard feed and supplements (see photographs) all year round. Each horse receives different types and frequency of feed depending on its dietary requirements. Receipts could be provided if required and written statements could be obtained from local farmers who have supplied both hay for feeding in the field and bedding for the stables since 2008. Horses are usually brought to the hardstanding or stable to receive any feed from a bucket as it would be dangerous to do this within the field. The additional feeding satisfies Mr Clemow’s test of horses being “kept” at the site.
7. Other activities that take place at the site are rugging, grooming, driving with a trap, riding (including jumping) and lunging – the latter two taking place even prior to the construction of the menage (see attached photographs dating back to 2009). Horses are regularly hacked out from the site or taken to shows in horse boxes.

8. The horses are not part of the food chain, and the grass is there to serve the horse, not the other way round. This is not part of an agri-environment scheme. The horses are pets kept for pleasure and are not farm animals.
9. We agree with Mr Clemow that the horses have been at the appeal site – and more specifically, an equestrian use has been in existence – for over 10 years and provide photographic evidence dating back some 14 years. The appeal site is used for 12 months of the year whether in connection with grazing (either in full or in individual paddocks), exercising, feeding or the use of the stables and hardstanding.

4th September 2023

**Appendix 2 – Site Plan relating to application ref.
5/1996/1240**



TOWN & COUNTRY PLANNING ACT 1990
APPLICATION FOR PLANNING PERMISSION
OR FOR APPROVAL OF RESERVED MATTERS

This form should be submitted in triplicate with 7 copies of the plans (see notes 2 & 3 of the "Notes for the Guidance of Applicants") and the appropriate Article 12A certificate.

I/We hereby apply to St Albans District Council for planning permission/approval of reserved matters in respect of the development specified in this application and the plans accompanying it.

Signed: [Redacted] Date: 22/5/96

On behalf of: M.J. Clark (if acting as agent)

PART I - GENERAL PARTICULARS to be completed in every case

- 1 APPLICANT (Block letters please)**

AGENT
(if any to whom all correspondence will be sent)

Surname: CLARKE Name: TEMPLARS BUILDING SURVEYORS LTD
Other Names: MR J Address: 22 HIGH STREET, BALDOCK,
Address: THE WHITE BARN, HERTS SG7 6AX
COLNEY HEATH, ST ALBANS, HERTS.
Tel No: [Redacted] Tel No: 01462 490350
- 2 For what are you seeking permission or approval?** Erection of stable building for
(Please give a full description of the proposal and purposes for which the land and/or buildings are to be used. If your proposal involves residential development please specify the number and type(s) of residential unit(s))
accommodating horses with associated grooming and storage facilities.
- 3 Address or location of the land or buildings involved in the application.**
LAND TO SOUTH OF COLNEY HEATH FARM, COLNEY HEATH.
- 4 ANSWER THIS QUESTION YES OR NO** YES/NO
Is the application accompanied by a fee? £320.00
(See note 4 of the "Notes for Guidance of Applicants" and the schedule of current fees)
If YES, state amount
If NO, indicate your reason for not doing so
N/A
- 5 What is the area of the whole of the site involved in the application?**
.....sq. metres or 10.8 hectares
- 6 ANSWER THIS QUESTION YES OR NO** YES/NO
Does the applicant own or control any adjoining land?
If yes, identify by colouring blue on the site plans.
- 7 a) What is the applicant's interest in the land or building(s)?** e.g. owner, prospective purchaser, weekly tenant, lessee etc. a) OWNER
b) When was that interest obtained? b) MAY 1995

- c) If the applicant is a lessee, how many years of the lease remain? c) N/A
- 8 ANSWER THIS QUESTION YES OR NO** YES/NO
Does your application involve a change of use? If YES, go straight to question 12. If NO, please answer all of the following questions.
- 9 ANSWER THIS QUESTION YES OR NO** YES/NO
Is the application one for the approval of matters reserved by an earlier outline planning permission? If YES, indicate the date and planning reference of the outline permission.
Date: N/A Ref No: 5/.....
- 10 ANSWER THIS QUESTION YES OR NO** YES/NO
Does this application seek outline planning permission only? If NO, all of the details 1-5 below must be included for the application to be accepted.
- 11 Please indicate which of the following details are included in this application and which are not.**

1 Siting of the building(s)	included/not included
2 Design	included/not included
3 External appearance (including materials)	included/not included
4 Means of access	included/not included/none proposed
5 Landscaping (N.B. includes walls and fences - See Note 1 of the "Notes for the Guidance of Applicants" for definition)	included/not included/none proposed
- 12 ANSWER THIS QUESTION YES OR NO** YES/NO
Is your application one for the renewal of a permission previously granted for a temporary period? If YES, indicate the date and reference of the previous permission.
Date: Ref No: 5/.....
- 13 ANSWER THIS QUESTION YES OR NO** YES/NO
Are you applying for planning permission to retain a building or to continue a use for which planning permission has not been granted, or to do either of these things without complying with a condition imposed on a previous planning permission? If YES, indicate the date number and condition of any relevant previous permission.
Date: Ref No: 5/.....
Condition No:
- 14 a) For what purpose(s) are the land and/or building(s) now used?** a) Land used for horse grazing. No stable buildings exist at present.
(Give details if more than one use and if in residential use, state number of units).
b) What is the total floor area of the existing building(s)? b) N/A
c) If land/building(s) are vacant, what were the last known uses and when did those uses cease? c) N/A
- 15 Do the proposals involve:** YES OR NO Delete as appropriate
a) New buildings? YES/NO If YES state floorspace proposed
(see Note 2 of Notes for the Guidance of Applicants) 150metres²

4. No solid matter shall be deposited so that it passes or is likely to pass into any watercourse.
5. The construction of the stable floor drainage system shall be carried out in accordance with details submitted to and approved in writing by the Planning Authority before the development commences.

Reasons:

1. R14
2. R30
3. To enable the District Planning Authority to exercise control over the development.
4. To prevent pollution of the water environment.
5. To prevent pollution of the water environment.

Decision Notice Code: A1 Plan Nos: T800 and site location plan.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

Report written: 20.9.96

Bibliography

Title of Background Documents

St Albans District Local Plan Review, 1994

Custodian & Tel No

Mrs W Burt
01727 866100
Ext 2347

File Location

Council Offices
Civic Centre
St Peters Street
St Albans, Herts
AL1 3JE

Relevant Previous Planning Decisions

5/96/0787 Erection of stable. Refused 22.7.96

Consultations

Director of Technical Services 20.8.96

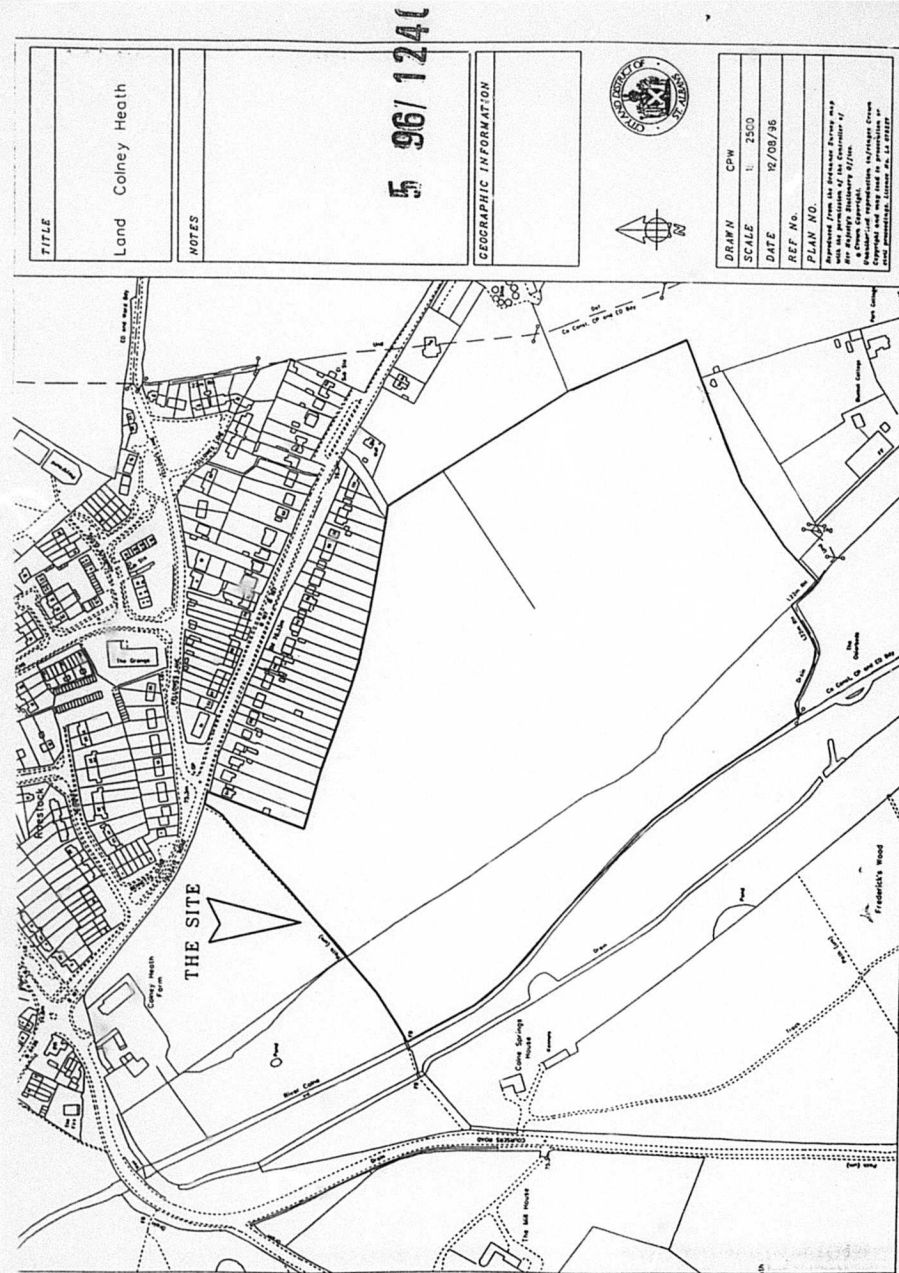
Environment Agency 22.8.96

Environmental Records Centre 18.9.96

Third Party Responses

Lynn D Skelt, 44 Tollgate Road, 5.9.96

Mr N Nichollas, 46 Tollgate Road, 6.9.96



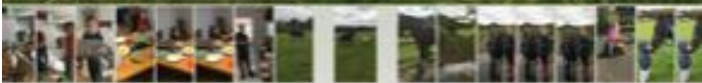
Appendix 3 – Site Photos

09:11



Colney Heath
7 October 2017 15:55

Edit



09:13



Colney Heath
28 February 2020 17:36

Edit



04:18

5G



St Albans
27 May 2021 13:39

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04:16

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St Albans - Colney Heath
22 April 2021 18:01

Edit



04:12

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St Albans - Colney Heath
12 February 2021 10:42

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LIVE



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St Albans - Colney Heath
29 March 2021 15:12

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Colney Heath
4 July 2017 10:45

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Colney Heath
7 October 2017 15:53

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5 of 11



Susie Evans

12 May 2009 · 🧑🏻

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1 of 2



Susie Evans

27 Apr 2009 · 🧑

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Eleanor Lubbock-Shattock at Colney Heath

18 Apr 2010 ·

With Susie Evans and Charlotte Wiener.

2 comments

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09:16



St Albans - Colney Heath
3 October 2020 14:07

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