



Report of the Chief Planning Officer

PLANS PANEL EAST

Date: 8th September 2011

Subject: APPLICATION: 11/01403/EXT, EXTENSION OF TIME PERIOD FOR PLANNING APPLICATION 30/196/05/FU FOR CHANGE OF USE OF LAND AND BUILDINGS FROM AGRICULTURAL TO EQUESTRIAN PURPOSES, FORMATION OF ARENA AND CROSS-COUNTRY COURSE.

LAND AT WIKEFIELD FARM, HARROGATE ROAD, HAREWOOD, LEEDS, LS17 9JZ.

| APPLICANT | DATE VALID | TARGET DATE |
|--|-------------------|--------------------|
| Trustees of the Earl of Harewood 1959 Settlement | 15 April 2011 | 15 July 2011 |

Electoral Wards Affected: Harewood

Yes Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity
Community Cohesion
Narrowing the Gap

**RECOMMENDATION:
GRANT PERMISSION subject to the specified conditions:**

- 1) The development hereby permitted and not already undertaken shall be begun before the expiration of three years from the date of this permission.
- 2) Approved plans.
- 3) Within the first planting season of any development involving the outdoor arena or the cross-country course the soft landscape works shall be carried out in accordance with the details shown by Drawing S09/101-05C and the landscape management plan dated 14/04/11, unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the commencement of any development involving the outdoor arena or the cross country course the hard landscape works shall be carried out in accordance with the details shown by Drawing S09/101-05C, unless otherwise agreed in writing by the Local Planning Authority.

- 5) No floodlighting shall be erected outside any of the buildings or in association with the outdoor arena or cross country course.
- 6) Prior to the commencement of any development involving the outdoor arena or the cross country course the vehicular access to the site and the visibility splays shall be provided in accordance with the details shown by Drawing NTP-9009-00 Rev A, unless otherwise agreed in writing by the Local Planning Authority.
- 7) Prior to the commencement of any development involving the outdoor arena or the cross country course the southern vehicular access to the site shall be closed in accordance with the details shown by Drawing NTP-9009-00 Rev A, unless otherwise agreed in writing by the Local Planning Authority.
- 8) Prior to the commencement of any development involving the outdoor arena or the cross country course the parking for cars, wagons and horse boxes shall be laid out in accordance with the details shown by Drawing S09/101-05C, unless otherwise agreed in writing by the Local Planning Authority.
- 9) The buildings and land subject to this planning permission shall be used for agricultural and/or equestrian purposes only and for no other purpose within Class D2 of the Town & Country Planning (Use Classes) Order 1987 (as amended).
- 10) Notwithstanding the provisions of the Town & Country Planning (General Permitted Development) Order 1995 (or any order revoking and reacting that Order with or without modification) no further buildings shall be erected.
- 11) The use of each building shall be as detailed on plan SCA3 which show the split between the agricultural and equestrian uses, unless otherwise agreed in writing by the Local Planning Authority.
- 12) All equestrian events shall be conducted in accordance with the "Scheme for Management of Equestrian Events" unless otherwise agreed in writing by the Local Planning Authority.
- 13) Save for the dwellings, the buildings at Wikefield Farm, Harrogate Road shown on approved plan No.SCA3 shall only be used for agricultural or equestrian purposes in association with the land shown edged blue on plan No.SCA1.

Reason for Approval –

In granting permission for this development the City Council has taken into account all material planning considerations including those arising from the comments of any statutory and other consultees, public representations about the application and Government guidance and policy as detailed in the Planning Policy Guidance Notes and Statements, and (as specified below) the content and policies within Supplementary Planning Guidance (SPG), the Regional Spatial Strategy 2008 (RSS) and The Development Plan, the Leeds Unitary Development Plan Review 2006 (UDPR).

GP5, N32, N33, GB13, LD1, BD5.

The proposals raise no policy objections and there have been no changes of significance to either policy or material considerations since the original approval was granted.

It is considered that this development complies with Green Belt policy and that the personal circumstances of the tenant are a material consideration but they do not outweigh the planning policy considerations.

1.0 INTRODUCTION:

- 1.1 This application was deferred at Panel on the 14th July 2011 in order to seek Counsel's opinion on a number of queries raised by Members, namely:

- Had there been a material change in the personal circumstances of the tenant since the previous appeal decision?
- Are the personal circumstances of the tenant a material planning consideration?
- What weight could be attached to the tenant's personal circumstances in the determination of the application?

1.2 Counsel's opinion has now been taken and the opinion is summarised below:

1.3 The previous report to Panel is attached for Members' information.

2.0 LEGAL ISSUES

2.1 Set out below is a summary of Counsel's advice.

A. Have the Personal Circumstances of the Tenant Changed Since the Consent?

2.2 At the Inquiry which led to the planning permission, the tenant's central concern was that the grant of planning permission would lead to the service by the landlord of a notice to quit. Whilst the Inspector concluded that the service of a notice to quit would not be an inevitable consequence of the grant of planning permission, he went on to consider the consequences of such a step for the tenant. The Inspector concluded that "*None of the potential consequences would constitute particularly compelling circumstances, in my view*" and "*...those circumstances are insufficiently compelling or likely to override the planning policies that operate here*".

2.3 There appears to be nothing in the representations from the tenant that would suggest any substantially different personal circumstances from those prevailing at the time when the Inspector reached his determination. Once again, the concern advanced by the tenant is the risk that the service of a notice to quit lies behind the planning application. Even if that was the case, the Inspector has analysed the consequences of such action, and reached the conclusion that they do not justify the refusal of planning permission. The tenant's representations in respect of the current application do not advance evidence to support the view that the consequences (as previously assessed by the Inspector) would be any different if they emerged as a result of allowing the current application.

2.4 Accordingly, Counsel does not believe that there has been any material change in the tenant's personal circumstances so as to justify a departure from the Inspector's conclusions. The Inspector assessed the planning merits of the scheme at appeal on the basis that a notice to quit was served. Accordingly, even if a notice to quit has become more likely in light of the rent review, then the ultimate planning balance is unchanged.

B. Are the Tenant's Personal Circumstances Material?

2.5 Consistent with the Council's case at the Inquiry, the Inspector found that the tenant's personal circumstances were capable of amounting to a material planning factor. His decision demonstrates that, in this case, those personal circumstances did amount to a material planning factor (again, consistent with the Council's case at the Inquiry). However, as set out above, the weight that those circumstances attracted was insufficient to justify refusal of planning permission.

2.6 The position has not changed in terms of the materiality of personal circumstances of the tenant. The important question (and that addressed above), is whether or not they have undergone sufficient change so as to justify a different decision to that reached by the Inspector. In Counsel's view, there is no evidence to that effect.

- 2.7 Counsel also notes that if that is right, then a failure on the part of the landlord to give an undertaking to the Council (or tenant) that it will not serve a notice to quit could not justify a refusal of the current application.

C. The Weight to Attach to Personal Circumstances?

- 2.8 In more common circumstances, the answer to the question which asks what weight should attach to a particular factor is that weight is a matter for the decision-maker subject to the bounds of reasonableness. However, in this case, there are other material factors at play, namely the previous decision of the Inspector who granted the permission and national guidance directed at the determination of applications to extend the life of planning permissions. By reference to those factors, it is clear that the Council should be directing its mind to whether or not there has been any change in circumstances to justify a departure from that previous Inspector's determination. If there is no evidence that the tenant's personal circumstances (or any other factors) have materially changed in the period since the permission was granted, then bearing in mind that relevant national guidance, there is no real justification for departing from the previous Inspector's analysis, including the weight that he attributed to the tenant's personal circumstances.

3.0 PUBLIC/LOCAL RESPONSE

- 3.1 Following the Panel's decision on 14th July 2011, a further 422 letters of objection have been received, the majority of which are of a standard objection format and identical to those which have previously been submitted. One of these letters is from Mrs Harrison who raises objections to the application, raising concerns that the conditions imposed by the previous Inspector have not been complied with and objects to amendments to vary the wording of the conditions set out at the start of the Panel report.
- 3.2 It is considered that these further representations raise no new issues, which have already been addressed and considered in the previous report and do not alter the current recommendation.

4.0 CONCLUSION

- 4.1 Counsel's advice accords with that given by officers; therefore, the proposed extension of time is recommended for approval as there have been no changes to policy, and there are no material planning considerations that would justify coming to a different decision. It is therefore recommended that the application be approved with the suggested conditions set out above.

Background Papers:

Application and history files. – see previous report attached.

Certificate of Ownership: Notice served on Mr and Mrs Harrison, Wikefield Farm, Harewood.



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Reason for Approval –

In granting permission for this development the City Council has taken into account all material planning considerations including those arising from the comments of any statutory and other consultees, public representations about the application and Government guidance and policy as detailed in the Planning Policy Guidance Notes and Statements, and (as specified below) the content and policies within Supplementary Planning Guidance (SPG), the Regional Spatial Strategy 2008 (RSS) and The Development Plan, the Leeds Unitary Development Plan Review 2006 (UDPR).

GP5, N32, N33, GB13, LD1, BD5.

The proposals raise no policy objections and there have been no changes of significance to either policy or material considerations since the original approval was granted.

It is considered that this development complies with Green Belt policy.

2. INTRODUCTION:

- 2.1. Application 11/01403/EXT is brought to Panel at the request of Cllr Anne Castle as Ward Member, due to the history of the site and the fact that previous applications have been determined at Panel.

- 2.2. The application seeks permission to extend the time limits for implementation on an application previously granted by an Inspector.
- 2.3. The circumstances of this case are unusual in that planning permission is sought for, in part, uses which that have been ongoing at the site for some considerable time. The uses applied for fit with the relevant planning policies including those that deal with the Green Belt. However, the longstanding tenants at Wikefield Farm strongly object to the planning application. This is because they consider that the grant of planning permission may be used by the landowner as a reason to serve them with a notice to quit the farm. These matters were before the Inspector when he granted planning permission in allowing the appeal.
- 2.4. The following legal advice has been given. The only issues which can be considered in the determination of this planning application are whether there have been any changes in planning policy or other material considerations since the previous decision. In light of this previous decision, and planning policy guidance, matters relating to the personal circumstances of the tenants can be given little weight in the determination of the application. It is not considered that the personal circumstances of the tenant have changed significantly since planning permission was granted and therefore these arguments should not be revisited by the Panel.

3. PROPOSAL:

- 3.1. 11/01403/EXT seeks an extension of time for the original planning permission 30/196/FU which was granted on appeal on 16.04.08. The application was validated just before the time limit on this permission expired on 15/04/11.
- 3.2. The original permission granted approval for a change of use of land and buildings from agricultural to equestrian purposes and formation of arena and cross country course.
- 3.3. The application relates to an area of land at Wikefield Farm which has been used for both agricultural and equestrian purposes for some time now (40+ years). The original application sought to regularise the uses, and also to create an outdoor arena and a cross country course. Part of the application (i.e. the change of use) was retrospective in nature.

4. SITE AND SURROUNDINGS:

- 4.1. The application site is a working farm located off the Harrogate Road, just south of the Harewood Estate. An access road leads up to a grouping of the farmhouse and barns, stables and other structures, including the large arena building. Fields surround the farm. The farm is used for both grazing livestock and equestrian uses.
- 4.2. The farm is owned by The Trustees of the Earl of Harewood 1959 Settlement but is tenanted by Mr and Mrs Harrison. Mr Harrison's family have been tenant farmers at this site for several generations.

5. RELEVANT PLANNING HISTORY:

- 5.1. 11/00735/FU – Variation of conditions 2, 8, 9, 10, 13 and 14 of permission reference 30/196/05/FU. Withdrawn 17/06/11.
- 5.2. 08/00333/CLE – Certificate of Lawfulness for use as agricultural and equine use. Approved 03/07/08.
- 5.3. 09/01552/COND – Application to discharge conditions. Conditions 9 and 10 were discharged, with the others applied for remained outstanding due to unsatisfactory details being submitted. Discussions have continued on overcoming the issues raised.

- 5.4. 30/196/05/FU – Application for change of use, outdoor arena and cross country course. This application was originally recommended for approval to Panel Members on 09/02/06 and was deferred for a site visit. The application was subsequently brought back to Panel on the following dates, 09/03/06 (deferred for further information regarding a viability report), 15/06/06 (deferred to await outcome of rent review arbitration), 03/08/06 and 31/08/06. At the meeting on 03/08/06 Members resolved not to accept the Officers recommendation of approval, and the application was taken back on 28/09/06 with the following suggested refusal reason - *“The Local Planning Authority considers that the existing uses undertaken at Wikefield Farm are of value to the character of the community and that the grant of planning permission is likely to undermine the viability of the existing commercial enterprise operating at the application site causing significant personal hardship to the existing tenants at Wikefield Farm. As such it is considered that the personal circumstances of the tenant are sufficiently exceptional to justify a departure from adopted planning policy and national planning policy guidance”*. At the final Panel meeting Members decided to accept the reason for refusal however an appeal against non-determination was then submitted on 23/11/06.
- 5.5. The decision to allow the appeal was issued on 16.04.08. In a lengthy decision notice the Inspector considered the main issues to be firstly whether the proposal complied with Green Belt and landscape policies and secondly whether the proposal warranted a departure from the policies due to the personal circumstances of the tenant and the value of the existing use to the community.
- 5.6. With regard to Green Belt policies it was considered that the proposed equestrian use was appropriate for Green Belt as it provided for outdoor recreation, and that it fitted in well with the farming use and rural diversification. The Inspector noted that the equestrian use had operated alongside agricultural uses at the site for the last 40 years. The Inspector did consider that the large timber arena did affect openness but that this had existed for at least 10 years and that conditions could provide a means to overcome problems associated with the existing use, and to safeguard the future openness of the Green Belt and landscape character.
- 5.7. With regard to the personal circumstances these were judged to be material considerations and the Inspector weighed these up in the context of the grant or refusal of permission and the consequences of either on the tenant farmers. The main consequence of granting permission was that the Estate could then serve a Notice to Quit on the tenant farmers, Mr & Mrs Harrison for part of the holding, which would have an impact on their personal income and on the wider use by the community. These circumstances were however held to be insufficiently compelling or likely to override the relevant planning policies.
- 5.8. To refuse permission was considered to result in an undermining of the planning system whilst it would close off a path to serving a Notice to Quit, it would mean labelling the uses as unacceptable in planning terms regardless of the fact that the scheme accorded with planning policy and government advice, and in spite of the fact that the equestrian uses have existed in some form for 40+ years. The Inspector also believed that a refusal would condone the continued unauthorised activity and prevent the opportunity to rectify the harm that has already been done to openness.
- 5.9. In conclusion the Inspector found that the proposal complied with Green Belt and landscape policies and that the personal circumstances of the tenants were not sufficient to override planning policy. Furthermore a refusal would create serious inconsistencies and prevent the realisation of tangible benefits, and therefore the appeal was allowed.
- 5.10. In applying conditions the Inspector imposed time limits on several conditions due to the fact that the uses had existed for many years. The conditions and their time limits

were imposed in the main to ameliorate deficiencies with the existing unauthorised use as well as safeguarding the future openness of the Green Belt and the character of the landscape.

6. HISTORY OF NEGOTIATIONS

- 6.1. Discussions with the agents have been on-going since an application to discharge the conditions was lodged on 08/04/09. Through these discussions it was decided that the best course of action would be to apply to extend the time limit for the permission.

7. PUBLIC/LOCAL RESPONSE:

- 7.1. The application was advertised by means of site notices. Publicity expired on the extension of time on 13th May 2011.
- 7.2. Ward Member – Cllr Castle has requested a Panel determination due to the history of the site (similar comments made for both applications).
- 7.3. Harewood Parish Council – Do not object to the proposal but have concerns about ingress and egress of large volumes of traffic (similar comments made for both applications).
- 7.4. The Tenant Farmers, Mr & Mrs Harrison, raise the following concerns:
- The appeal Inspector applied conditions to overcome and make better the deficiencies associated with the existing use as well as safeguarding the future openness of the Green Belt and the character of the landscape. Strict time limits were applied to these conditions which have not been complied with. This begs the question as to why the applicant wishes to re-activate a planning permission – this would enable them to serve a Notice to Quit.
 - The applicants have not been able to fulfil the stipulations of the planning conditions as presented by the Inspector, and unless they are invited onto Wikefield Farm by ourselves they cannot comply with the conditions they seek to alter.
 - As the conditions have not been complied with the permission should lapse.
 - During the rent review a substantial rent demand was received, although the Arbitrator set the rent at a lower amount. This request now by the Landlord to extend the life of the planning permission would be used as a basis for a Notice to Quit now that the Landlord is not going to receive the demanded rent.
 - Is the local planning authority allowed to vary conditions set by a planning Inspector?
 - We, the tenants, have taken note of the observations stated by the Inspector and have implemented improvements. We have encouraged the growth of the hedge in front of the timber clad arena building and have closed the southern access.
- 7.5. A further 51 objection letters were received raising the following issues:
- The Landlords have not complied with the conditions laid down.
 - The planning permission is not needed as there is a Certificate of Lawful Use for the land.
 - The tenants have instigated landscaping improvements themselves.

- Allowing permission would enable the landlords to serve a Notice to Quit.
- A change of use would take the site out of Green Belt protection and enable further development in this area.
- The current use of the land is agricultural and this will continue under the terms of the Agricultural Tenancy. Granting planning permission would impose a change of use that the tenants cannot comply with under their tenancy.
- Wikefield Farm must be protected and remain in agricultural use.
- The application is a waste of public funds.

7.6. Of all the objection letters received 19 were addressed and of these 11 came from residents within Leeds but not within Harewood Ward, and 6 came from outside the district, 2 came from the local Ward area.

8. CONSULTATIONS RESPONSES:

Statutory:

8.1. None required.

Non-statutory:

8.2. None required.

9. PLANNING POLICIES:

Development Plan –

- 9.1. The Development Plan for the area consists of the Regional Spatial Strategy and the adopted Unitary Development Plan Review, along with relevant supplementary planning guidance and documents. The Local Development Framework will eventually replace the UDP but at the moment this is still undergoing production with the Core Strategy still being at the draft stage.
- 9.2. The Regional Spatial Strategy contains no specific policies of relevance in this particular case.
- 9.3. Under the UDP the application site lies within designated Green Belt and a Special Landscape Area. The following policies are relevant for consideration of this application;
- GP5 – General planning considerations.
 - N32 – Green Belt.
 - N33 – Appropriate uses within Green Belt.
 - N35 – Development not permitted if it conflicts with interests of protecting best agricultural land.
 - N37A – All new development in the countryside should have regard to character of the landscape and contribute positively to it.
 - T2 – Highway issues.
 - T24 – Parking provision.
 - GB13 – Stables and other equestrian development will only be permitted where: i) the development is essential to outdoor equestrian activity, ii) serious harm does not arise to the highway and bridleway network, visual

amenity, the operation of neighbouring land uses or the living conditions of adjacent occupiers.

Government Planning Policy Guidance/Statements

- 9.4. PPS1 – “Local planning authorities must determine planning applications in accordance with the statutory Development Plan, unless material planning considerations indicate otherwise”. “The planning system does not exist to protect the private interests of one person against the activities of another, although private interest may coincide with the public interest in some cases” (paragraphs 10 and 29 The Planning System: General Principles)
- 9.5. PPG2 Green Belt – Equestrian uses can be appropriate as they provide opportunities for outdoor leisure and recreation. All new development must be of a size appropriate to the use.
- 9.6. PPS7 – Sustainable Development in Rural Areas – encourages diversification where this helps to achieve sustainable development objectives.
- 9.7. Circular 11/95 – Provides advice on conditions and sets out how conditions can be used to enhance the quality of a development and to enable development that may otherwise be refused. Conditions should be fair, reasonable and practicable. A section 73 application can be made to vary or remove conditions and a Local Planning Authority can decide to grant permission unconditionally, subject to different conditions, or they can refuse permission if they decide the original conditions should continue.
- 9.8. Greater Flexibility for Planning Permissions. Guidance, October 2010. The provision for extending time limits on permissions was brought into force on 1 October 2009 via the Town and Country Planning (General Development Procedure) (Amendment No. 3) (England) Order 2009 (SI 2009 No. 2261) and the Planning (Listed Buildings and Conservation Areas) (Amendment) (England) Regulations 2009 (SI 2009 No. 2262). The outcome of any application made under this procedure is a new permission with a new time limit.
- 9.9. The guidance states “In current circumstances, local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for extension will by definition have been judged to be acceptable in principle at an earlier date. While these applications should, of course, be determined in accordance with s.38(6) of the Planning and Compulsory Purchase Act 2004, local planning authorities should, in making their decisions, focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of permission.”

10. MAIN ISSUES

- 10.1. The extension of time application is not an application for a completely new development and accordingly the main issues which should be considered are not the same as would normally be expected. In particular, the guidance note which accompanies these type of applications states that:
 - *“Local Planning Authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly. The development proposed in an application for extension will by definition have been judged to be acceptable in principle at an earlier date.”*
- 10.2. The guidance goes on to state that whilst applications should still be determined in accordance with the statutory development plan:

- *“Local Planning Authorities should, in making their decisions, focus their attention on development plan policies and other material considerations which may have changed significantly since the original grant of permission.”*

10.3. In the light of the above, the issues to be considered as part of the extension of time application are limited and should concentrate on the implications of any changes to development plan policies and other material considerations since the original scheme was granted. The main changes to planning policy/material considerations as they relate to this application are summarised as follows:

10.4. National planning policy/guidance:

10.4.1. PPS1 – “The Planning System: General Principles” remains in place and has not been changed since the issue of the appeal decision.

10.4.2. PPG2 – There have been no changes to this guidance since the original permission was granted.

10.4.3. PPS7 – Sustainable Development in Rural Areas – this was issued in 2004 so prior to the original application and there have been no changes to this guidance since.

10.5. Local planning policy/guidance:

10.5.1. There are no local planning policies that have changed since the original permission was granted. The UDP Review was issued in July 2006, which was before the Inspectors decision was released in April 2008 and the decision would have been based on the policies in that document.

10.6. Other material considerations:

10.6.1. Third party comments: Extension of time applications are subject to normal publicity requirements and accordingly any representations received still need to be considered - where relevant.

10.7. The planning policy/guidance and other material considerations as outlined above are considered to represent the main areas where change has taken place since the original scheme was considered. On this basis, these are the only matters which need to be taken into account in determining if it is appropriate to grant the extension of time application.

11. APPRAISAL

11.1. As outlined above there has been no change in either national or local planning policy that would indicate that the principle of development needs to be re-considered. The proposal for equestrian uses would comply with advice and guidance in both PPG2 and PPS7, as well as with UDP policies N33, and GB13. The principle of development is therefore still considered acceptable.

11.2. One of the issues raised by the Inspector at appeal was the impact on openness of the Green Belt caused by the large timber clad structure that lies to the west of the farm buildings. This structure does not benefit from planning permission but is likely to be immune from enforcement action due to the length of time it has stood for (over 10 years). The Inspector considered that granting planning permission would enable conditions to be applied to provide landscaping to screen and soften the impact of this structure. The tenant farmers, Mr & Mrs Harrison have stated that they have implemented this by allowing the hedge in front of the building to grow.

11.3. The applicants have sought to discharge the original condition by submitting a proposed landscape scheme which encompasses not just the building, but also areas of parking around the complex. The initial submission was not considered satisfactory

however further negotiations have taken place and the Councils Landscape Officer is now satisfied that an appropriate scheme can be achieved which includes a 10m deep area of tree planting to the front of the timber building and the arena, a 10m deep area of tree planting to the front of parking by the main building complex, and new hedge planting to the rear of the whole built area. This would provide significant benefits both visually and ecologically. Granting a conditional approval would enable these benefits to be realised.

Other Material Considerations

- 11.4. One of the main issues still raised is the impact that granting the permission would have on the tenant farmers, the main change in this argument is that the outcome of the rent review is now known and has been settled at arbitration. Mr & Mrs Harrison, along with numerous other objectors, still raise the concern that they will be served with a Notice to Quit if planning permission is granted.
- 11.5. This issue of whether the personal circumstances of the tenants were a material consideration that would merit setting aside planning policy was fully explored at the previous appeal. The Inspector then concluded that such circumstances were insufficient justification to do this.
- 11.6. Today the situation is unchanged; it is not considered that the financial and personal circumstances of the tenants are such that planning policy should be set aside. Furthermore it is by no means clear that the Estate would want to serve a Notice to Quit, particularly as the tenants have proven themselves to be very capable and successful farmers and business entrepreneurs
- 11.7. Another issue raised by objectors is the fact that this permission is not necessary as there has been a Certificate of Lawful Use (CLU) granted for agricultural and equine uses at the site. The CLU was under consideration during the prior appeal and the Inspector at the time commented that "*a Certificate does not allow the reinstatement of features that have been removed or abandoned and it does not necessarily legitimise every unspecified element of a particular use*". The current application goes further than simply specifying a mixed agricultural and equine use, and specifies which buildings would be used for equestrian purposes, requests an outdoor manege and a cross country course, items which are commensurate with a more intense and slightly different equestrian use than the CLU allows for. The landlord is entitled to apply for such permission and the Council has to consider the application.
- 11.8. Some objectors have raised concerns that approving the permission would take the site out of Green Belt protection, this is not so. Approving the application would have no impact at all on the designation of the site. Any further development proposed at the site would be controlled by Green Belt policies.
- 11.9. Other objections raised are that the site should stay in agricultural use. The CLU granted already allows for mixed agricultural and equine uses, and this application seeks to retain agricultural uses as well as more intensive equestrian uses. This form of diversification is encouraged in planning policy and is unlikely to be harmful to long term agricultural policies.
- 11.10. In conclusion there have been no changes in national or local planning policies, nor any new material considerations that have not been considered before. Following legal advice it is considered that Members should not revisit the arguments relating to the personal circumstances of the tenants since these have not changed since the previous appeal decision. It is therefore considered that the extension of time should be granted for a further 3 years. It is now necessary to consider the conditions to be applied to such a permission.
- 11.11. In applying the original conditions the Inspector attached time limits to some of them requiring details of e.g. landscaping etc. to be submitted and approved within one year

of the decision. This was done as some of the uses were already in existence and as such the conditions could not be couched in terms of “prior to commencement of use”.

11.12. An application to discharge some of the conditions was made within the one year time limit specified in the conditions on 08/04/09, but it was not possible to determine them within the specified year (the conditions required both submission and approval of details). Legal opinion was therefore sought on whether or not the permission as a whole should fail. The opinion was that the time limits did not go to the heart of the permission itself and that the permission was still valid. Enforcement proceedings could be commenced against breach of conditions, however the first course of action here would be to seek to have the conditions discharged.

11.13. In considering this extension of time the Local Planning Authority can seek to amend conditions where it is appropriate, the applicants have requested that the time limits of the original conditions are omitted such that the details would be submitted prior to the commencement of any development involving the outdoor arena or cross country course. There would appear to be two main arguments for agreeing to this course of action:

- Firstly it is obvious that relationships between the landlord and the tenants are strained, and if the landlord is to carry out the development then permission would have to be obtained from the tenants. It is considered unlikely that such a resolution would be achieved within the limited time scale of a single year. Circular 11/95 requires that conditions be reasonable and in such circumstances to impose a time restriction could be deemed unreasonable.
- Secondly the granting of the CLU authorises some of the uses which these conditions relate to, and hence it would again be unreasonable to insist on such timescales. The permission itself would be valid for a further 3 years and if this expires then a full new permission would need to be applied for.

11.14. Furthermore negotiations on a suitable landscaping scheme have continued and an appropriate scheme for screening the arena, the timber barn and the parking areas has now been submitted. It is therefore considered appropriate to alter the conditions to ensure that this scheme is implemented, rather than requiring details still to be submitted. Other conditions have also been amended where details to discharge them have been submitted so that they are implemented in accordance with these appropriate details.

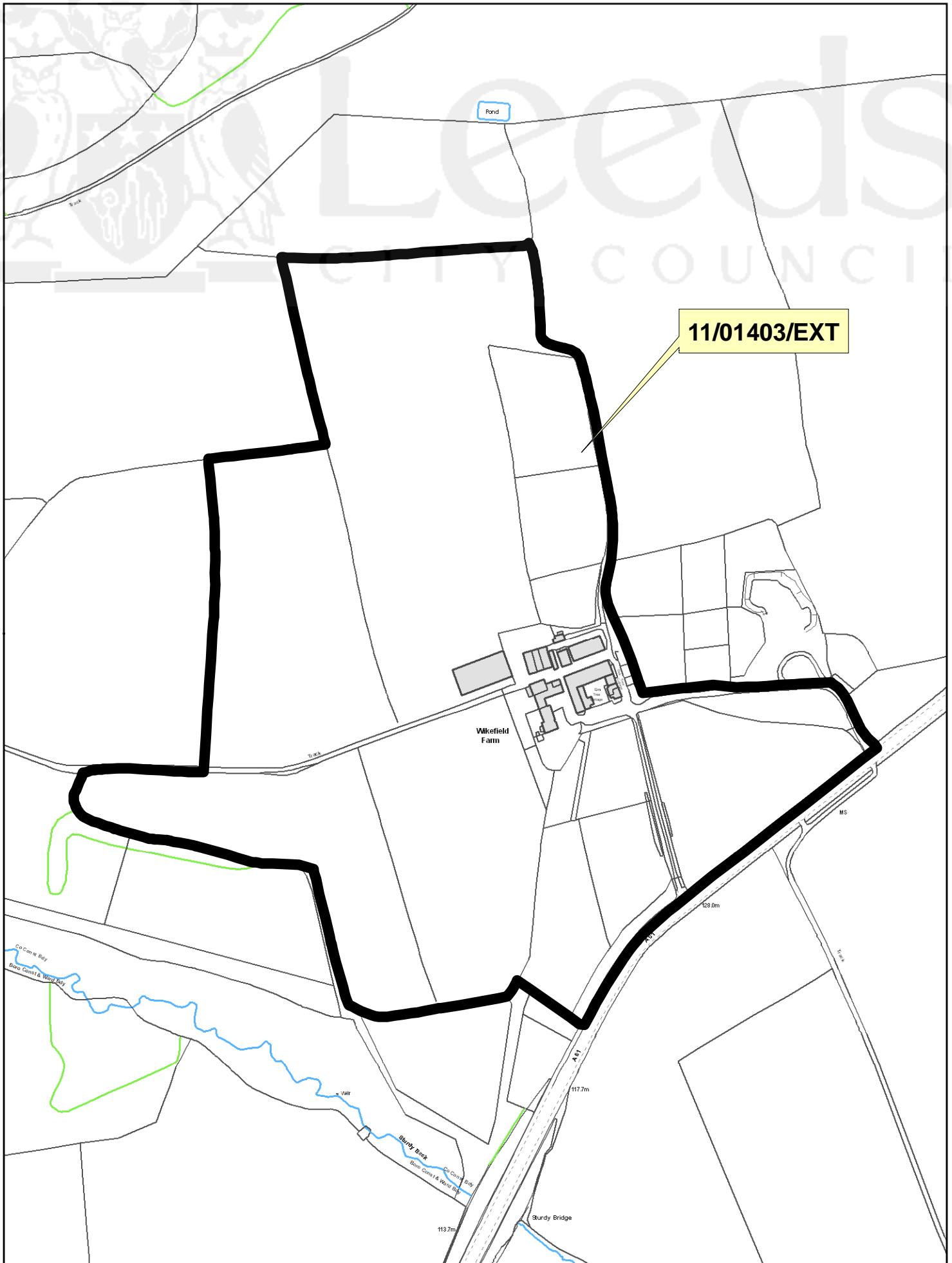
11 CONCLUSION

11.1 The proposed extension of time is recommended for approval as there have been no changes to policy, and there are no material planning considerations that would justify coming to a different decision. It is therefore recommended that the application be approved with the amended conditions as suggested.

Background Papers:

Application and history files. – see history above.

Certificate of Ownership: Notice served on Mr and Mrs Harrison, Wikefield Farm, Harewood.



EAST PLANS PANEL

