

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	250527
Site Address:	Malmsbury Estate, Remenham Hill, Henley-On Thames, RG9 3HN
Expiry Date:	14 April 2025
Site Visit Date:	20 November 2024
Proposal: Application for a certificate of existing lawful development for a metal framed barn clad with green profile sheeting, used to store hay and feed.	

PLANNING HISTORY

Application No.	Description	Decision & Date
182327	Full planning application for the proposed erection of grooms accommodation with a players gym following the demolition of existing outbuilding.	Refused Appeal dismissed 11 March 2020
182524	Full planning permission for the erection of a stable (consisting of 24 boxes, tack room, feed room and storage) with outdoor area.	Refused Appeal dismissed 11 March 2020
162288	Full application for the proposed creation of a polo facility for private use, comprising of a polo field, exercise track, stable block, all weather practice area, summer pavilion and widening of existing access onto A4130.	Approved 08 December 2016
170791	Application for submission of details to comply with the following conditions of planning consent 162288 (8/12/2016). 3. Ground and building levels. 4. External materials. 5. Details of boundary walls and fences. 6. Landscaping. 7. Lighting Scheme. 8. Programme of Archaeological work. 9. Parking details. 14. Construction Method statement.	Approved 14 September 2017
160871	Full application for the proposed creation of a private polo facility, including polo field, practice area, exercise track, stable block and summer pavilion.	Withdrawn 10 August 2016
161849	Full application for the proposed erection of a new dwelling.	Withdrawn 22 February 2017

122056	Application for submission of details to comply with the following conditions of planning consents RM/2010/1243 & RM/2010/1240: 4. (On both consents) Submission and approval of details of hard and soft landscaping proposals.	Split decision 29 March 2012
101748	Reserved Matters application on outline consent O/2008/1353 for the erection of one dwelling (Aspect West- New Dairy Farm) Reserved Matters to be considered for the siting, design (including floorspace, height massing, internal layout & external appearance), access and landscaping.	
101723	Application for Reserved Matters on Outline Consent O/2008/1353 for the erection of one dwelling (Aspect Park East) Reserved matters to be considered is Siting, Design, (Including floorspace, height, massing, internal layout and external appearance), access and landscaping.	Approved 04 August 2010
101512	Application for Reserved Matters on Outline consent O/2008/1353 for the erection of one Dwelling (Conway Park House). Matters to be considered are Access, Appearance, Landscaping, Layout and Scale.	Approved 04 August 2010
112582	Application for submission of details to comply with the following conditions of planning consents RM/2010/1237 & RM/2010/1245: 5. Landscaping proposals (RM/2010/1237). 6. Landscape management plan (RM/2010/1237). 9a - d. Arboricultural works (RM/2010/1237). 10. Plan of residential curtilage at 1:500. (RM/2010/1237). 4. Landscaping proposals (RM/2010/1245). 5. Landscape management plan (RM/2010/1245). 6. Work to trees (RM/2010/1245). 7a-d. Arboricultural works (RM/2010/1245). 8. Plan of residential curtilage at 1:500 (RM/2010/1245).	Approved 03 August 2011
100459	Application for submission of details to comply with the following condition of planning consent RM/2010/1237: 15. Record of the existing brick buildings at Combe Dairy.	Approved 03 December 2010
110781	Application for submission of details to comply with the following conditions of Reserved Matters planning consent RM/2010/1237 (for	Split Decision 19 October 2011

	Templecombe Farm): 1. Removal of agreed volume of built form 3. Details/s amples of external materials 4. Demolition and removal of barns 5. Landscape and planting scheme 6. Landscape management plan 7. Details of earthworks 9. Arboricultural works scheme 10. Plan showing residential curtilage 13. Detailed drawings of new external joinery 14.Details of brickwork	
110885	Application for submission of details to comply with the following conditions of planning consents RM/2010/1240 & RM/2010/1243: 4. Details of hard and soft landscaping (both applications)	Refused 13 December 2011
112581	Application for submission of details to comply with the following conditions of planning consent RM/2010/1243: 4. Landscaping scheme. 5. Landscape management plan. 7. Arboricultural works. 8. Plan of residential curtilage at 1:500.	Approved 03 August 2011
112580	Application for submission of details to comply with the following conditions of planning consent RM/2010/1240: 4. Landscaping scheme. 5. Landscape management plan. 7. Arboricultural works scheme. 8. Plan of residential curtilage at 1:500.	Approved 03 August 2011
130981	Application to extend implementation date for planning consent RM/2010/1243 for a further 3 years (Reserved Matters application on outline consent O/2008/1353 for the erection of one dwelling (Aspect West- New Dairy Farm) Reserved Matters to be considered for the siting, design (including floorspace, height massing, internal layout & external appearance), access and landscaping.)	Approved 24 July 2013
122391	Erection of one dwelling. Demolition of existing dwelling.	Withdrawn 12 March 2013
101748	Reserved Matters application on outline consent O/2008/1353 for the erection of one dwelling (Aspect West- New Dairy Farm) Reserved Matters to be considered for the siting, design (including floorspace, height massing, internal	Approved 04 August 2010

	layout & external appearance), access and landscaping.	
242596	Application for a certificate of existing lawful development for the construction of 2 no. earth mounds.	Approved 29 November 2024
242602	Application for a certificate of existing lawful development for the erection of a building, concrete base and gravel hardstanding to the front of the building	Approved 05 December 2024
242603	Application for a certificate of existing lawful development for the installation of a sewage treatment plant and power unit.	Approved 05 December 2024
242607	Application for a certificate of existing lawful development for the erection of 2 no. pony lines.	Approved 29 November 2024
242606	Application for a certificate of existing lawful development for gravel tracks, asphalt driveway, asphalt hardstanding and concrete linkway with rubber paved surfacing.	Approved 09 December 2024
242612	Application for a certificate of existing lawful development for a change of use from staff day area to a self-contained dwelling occupied by staff employed at Park Place Stables (shown edged in red on the plan attached).	Approved 20 December 2024
242597	Application for a certificate of existing lawful development for the erection of 10no. wooden stable buildings (comprising a total of 24no. individual stables), concrete enclosure and timber shed.	Approved 09 December 2024
242628	Application for a certificate of existing lawful development for the erection of 4no. marquee frames and associated hardstanding	Approved 11 December 2024
242629	Application for a certificate of existing lawful development for the erection of a building, raised paved terrace and hard paving.	Approved 18 December 2024

250526	Application for a certificate of existing lawful development for an agricultural building.	Pending consideration
250370	Application for a certificate of existing lawful development for building operations comprising 5 no. linked portacabins (Portacabin A) and a shed on the land.	Approved 09 April 2025

INFORMATION PROVIDED

By the applicant:

- Application Form dated 28 February 2025.
- Site Location Plan dated June 2024
- Block Plan dated June 2024.
- Floorplans & Elevations
- Decision Notice 162288
- 162288 Approved Plans
- 170791 Condition Discharge Letter
- 170791 Approved Landscaping Plans
- Extract LPAs Statement of Case
- Dated aerial photographs
- Supporting Statement by Southern Planning Practice dated February 2025

By the Council:

- Planning History
- Enforcement History
- Aerial Imagery

By third parties:

- None

APPRAISAL

Location:

The site is part of the Malmsbury Estate on the South side of the A4130. The site is part of an approved polo complex.

Proposal:

The proposal is for building operations comprising the erection of a metal framed barn clad with green profile sheeting building and its use as a hay and feed store.

The application is for a Certificate of Lawful Existing Use to regularise the operational development and Use. In determining a Certificate of Lawful Existing Use a Local Planning Authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is lawful. Lawful development is development against which no enforcement action may be taken and where no enforcement notice is in force, or, for which planning permission is not required.

In the case of this Certificate, it must be demonstrated that the building has been substantially completed for at least four years prior to the application i.e. 28 February 2021 **and** that the building has been in use for hay and feed for at least 10 years prior to the application i.e. 28 February 2015

Planning merits are not relevant at any stage in the process however evidence from third parties, including neighbours, can be obtained should the Local Planning Authority consider it necessary to do so. The National Planning Policy Guidance (NPPG) sets out that the onus of proof is on the applicant, not the Local Planning Authority in submitting a Certificate of Lawfulness. However, the NPPG also states that “if Local Planning Authorities have no evidence of their own to contradict or undermine the applicant’s version of events, there is no good reason to refuse the application provided that the applicant’s evidence is clear and unambiguous to justify the grant of a certificate”.

Relevant Legislation:

Town and Country Planning Act 1990 (as amended) (TCPA) -

Section 57 requires that planning permission is needed for development of land.

Section 55 provides that development includes any operational development and material change of use of land.

Section 171B sets out the time limits for a breach of planning control.

Section 191 sets out the requirements for a Certificate of lawfulness of existing use or development.

Timescale:

In most cases, development becomes immune from enforcement if no action is taken:

- within 10 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place on or after 25 April 2024
- within 10 years for an unauthorised change of use to a single dwellinghouse where the change of use took place on or after 25 April 2024
- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place before 25 April 2024;
- within 4 years for an unauthorised change of use to a single dwellinghouse where the change of use took place before 25 April 2024

Section 171B(1) states 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 the period of four years beginning with the date on which the operations were substantially completed.

Section 171B(2) provides that where there has been a breach of planning control consisting of the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

Section 171B(3) in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of that breach.

Section 171B(4)(b) does not prevent the taking of further enforcement action within 4 years if the local planning authority have taken or purported to take enforcement action in respect of that breach.

Section 191 deals with applications for Certificates of Lawfulness of existing development, and the authority's duty to determine them.

Section 191(1)(a) provides that if any person wishes to ascertain whether any existing use of a building or other land is lawful he may make an application for that purpose to the local planning authority specifying the land and describing the use, operations or other matter. As Section 191(1)(a) is written in the present tense, it is plain that the use must exist at the time of the application.

For the purpose of the 1990 Act s.191(2) defines operations as 'lawful' if:

- (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

Caselaw:

The Courts have held in *Gabbittas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630 that the relevant test of the evidence on such matters is "the balance of probability". The Courts have also held that the applicant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the LPA have no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

Panton sets out guidance for a decision maker to follow in considering an application and from that case three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

The Panton case was considered further by the Courts in *Secretary of State for the Environment, Transport and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten year period of unlawful use the LPA, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example, the unauthorised use had temporarily ceased) then any such period could not count towards the ten year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

Appraisal:

The legal test of the evidence is 'on the balance of probabilities' that the building operation and use are lawful.

The evidence submitted in support of the application and the evidence held by the Council is set out below.

Applicant's Evidence:

Application Form:

Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

The building was constructed in 2011. It was therefore a pre-existing building, prior to the grant of 162288 and there was no requirement for it to be removed under the terms of that permission granted

The building works were substantially completed on 01 December 2011.

No change of use of land.

No information has been provided as to when the use commenced.

Supporting Statement:

The supporting statement comprises the background to a Certificate application, defines development and summarises the evidence submitted and discusses how the development relates to planning permission 162288.

A photograph annotated May 2024 is provided within the Statement.

It states that the building was erected in 2011/2012 by the previous owner.

The statement does not take the form of a Statutory Declaration therefore holds limited weight.

Site Location Plan & Block Plan:

This plan shows the location of the building the context of the wider area.



Floorplans & elevations:

This plan shows the dimensions and the materials of the building.

Plan E16-002-003 D2 dated *Draft/not for issue* dated 6.3.2017

This plan indicates that the building is in situ as it is shown on the plan.

Discharge of condition letter 170791 dated 14 September 2017

This letter indicates that the plan noted above (E16-002-003 D2 dated *Draft/not for issue* dated 6.3.2017) is acceptable in discharging condition 6 (landscaping).

Decision Notice 162288

This decision is for the polo facility. The proposed development does not relate to this Certificate.

[Officer note: The Supporting Statement by Southern Planning Practice details application 162288. The building subject of this Certificate is partially in the red line of this application site.

The Officer report does not refer to this building. The building is not shown on approved plan 16/1997-30 Rev C, 028-P100 Rev F. There is limited evidence within this application that indicates the building was in situ at this time.

SPP continues to state that the description does not include the removal of the building. This only evidences that the applicant did not apply to remove the building at this time.

Requiring the building to be removed would not be necessary or relevant to the proposed development applied for and does not evidence lawfulness of any of the development in this Certificate. This would be dealt with through the enforcement process if a breach of planning control was observed at that time.

This application does not provide any evidence of lawfulness of the building or its continuous use].

Planning application reference 160871 (withdrawn)

The plans attached to this permission indicate that the area is an existing car park/former Golf Club building. No buildings are shown on the plan.

The Council's Evidence

Application/Appeal Application/Appeal 182327

Site visit 17.10.2018



The site visit photos show the building substantially completed. This does not provide any evidence of the use of the building.

Site visit 7.10.2019



The site visit photos show the building substantially completed. This does not provide any evidence of the use of the building.

10.2.2020



The site visit photos show the building substantially completed. The building is being used for feed storage at this time.

LPA Appeal Hearing Statement 182327:

Unauthorised development is identified on page 8:
Two existing agricultural sheds and a third shed under construction to the east of the polo arena

Aerial Imagery:

1 January 2010



30 March 2012



6 June 2013 – Google Earth Pro



25 March 2017– Google Earth Pro



23 June 2018 – Google Earth Pro



15 April 2020 – Google Earth Pro



16 July 2021 – Google Earth Pro



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The aerial imagery provides a snapshot in time. The building can be seen on the 2010 aerial imagery onwards. It remains on site in the 2021 aerial image.

Officer Site Visit:

An Officer visited the site on 4 July 2023 in relation to enforcement investigation RFS/2019/085351. At the time of the visit, all the development was observed.

A further visit was undertaken on 20 November 2024, again the development was observed. The building contained hay at that time.

Assessment:

Operational Development:

The building is considered to fall within the definition of development within Section 55 of the Town and Country Planning Act and within the definition at 336(1) of a building and therefore constitutes development.

Evidence by way of aerial images to cover a 4-year period since substantial completion has been submitted by the Applicant. No evidence to cover a 10-year period relating to the use of the building has been submitted.

The aerial imagery; Council site photographs; and evidence from the applicants as to the substantial completion of the building are sufficiently precise and unambiguous. The Council is satisfied that, on the balance of probabilities, that it was substantially completed before 28 February 2021 (4 years prior to the application).

Use of building:

Notwithstanding the above, it appears that the building was erected to facilitate the development that was taking place at the time i.e. around 2012. At this time, the site was a former golf course. There was no permission for a polo facility at the site nor was the site being used for agriculture, therefore no need or justification to store hay and feed. The site immediately adjacent to the building in 2012 was a “temporary site compound” (see reserved matters planning applications relating to Aspect East and West relating to O/2008/1353).

Under Part 4 Class A of the Town and Country Planning (General Permitted Development Order)(England) 2015 (as amended) (“GPDO) you can station a building or structure temporarily in connection with and for the duration of operations being or to be carried out on the land.

The stationing of a temporary building during the operations being carried out is considered to be permitted development under the provisions of the GPDO providing the structure is removed as soon as practicable following completion of development and on this basis, the LPA cannot take action against it.

As identified in the Council's evidence above, the building was erected during the construction period. Utilising this permitted development right does not indicate that the structures can be retained permanently after a period of four years.

During the construction period, the LPA could not take enforcement action against the structures as the development fell within the permitted development rights. During this period, the structures could not therefore accrue lawfulness as they were only on the Land in connection with the construction works. The clock for lawfulness only started once the development was practically completed which appears to have occurred around 23.6.2018 and 14.9.2019.

Conclusion:

On this basis, the burden of proof has not been discharged by the applicant in relation the use of the building, however the Council is satisfied, on the balance of probabilities, that the operational development comprising the metal framed barn clad with green profile sheeting is lawful.

The Public Sector Equality Duty (Equality Act 2010):

In determining this application the Council is required to have due regard to its obligations under the Equality Act 2010. The key equalities protected characteristics include age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief. There is no indication or evidence (including from consultation on the application) that persons with protected characteristics as identified by the Act have or will have different needs, experiences, issues and priorities in relation to this particular planning application and there would be no significant adverse impacts as a result of the development.

RECOMMENDATION

The relevant test for Lawful Use is the 'balance of probability'. Based on the evidence provided and the Local Planning Authority's own information, it is considered to have been demonstrated that the building has been substantially completed for at least 4 years. It is therefore considered that the application of a certificate of existing lawful use should be approved.

Date:	15 November 2024
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Earliest date for decision:	6 November 2024
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Recommendation agreed by: (Authorised Officer)	DAV
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Date:	25.04.25
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