

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

Construction of two viewing mounds

at

**Malmsbury Estate,
Remenham Hill, Henley-on-Thames,
RG9 3HN**

Prepared by

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Date: September 2024

Client: Rilex Ltd

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■■■■) dated 17 October 2017, 21 December 2017 and 31
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**APPENDIX 3 – Extract from LPA’s Statement of Case (Appeal ref:
APP/X0360/W/19/3224329) submitted to PINS by 30
October 2019**

1.0 **INTRODUCTION**

- 1.1 This supporting statement is prepared by Southern Planning Practice Ltd in support of an application for a Lawful Development Certificate on behalf of Rilex Ltd, the landowner.
- 1.2 The application seeks to certify the lawfulness of two earth viewing mounds, which are located on the Malmsbury Estate where there is a polo facility supporting a high goal polo team.
- 1.3 The polo facility was permitted under 162288 and included various structures and buildings, including a polo pitch, an exercise track (gallops), polo arena and irrigation pond. The construction of these facilities involved earth moving and excavation of soils. Some of the excess / excavated soil was used to create the viewing mounds along the western edge, and to the north east, of the polo field.
- 1.4 The mound along the western edge is approximately 250m long (at its longest point) and 38m wide (at its widest point). At its highest point the mound is 2.41m.



Fig. 1 – Photo of viewing mound along the western edge of polo field (stood on top of the mound looking south east), August 2023

- 1.5 The mound to the north east of the polo pitch is smaller and measures approx. 12m x 10m (and 0.5m high).



Fig. 2 – Photo of viewing mound to the north east of polo field, August 2023

- 1.6 The outlines of both mounds can be seen on the Google Earth aerial photograph dated 09/2019 (shown below, Fig. 3).

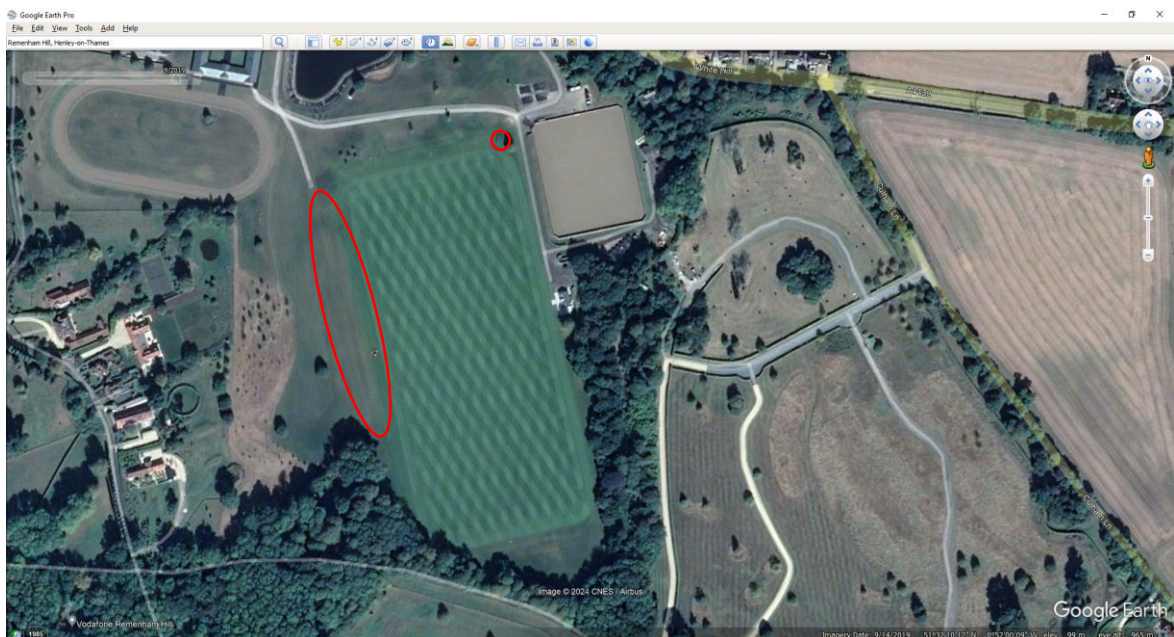


Fig. 3 – Google Earth (09/2019), the outline of the mounds are visible

- I.7 The Google Earth aerial image below (Fig. 4) shows the land in March 2017, before the works on the polo facility commenced.

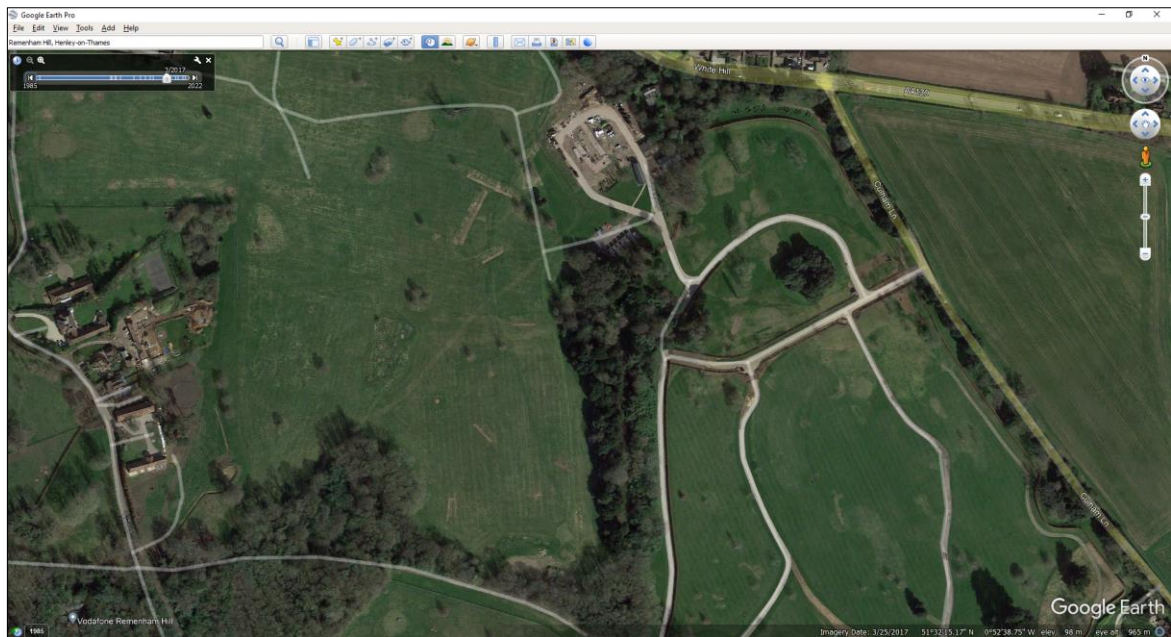


Fig. 4 – Google Earth (03/2017)

- I.8 The Council's Enforcement team are aware of the viewing mounds and the length of time that they have been in situ and have requested the submission of this LDC application so that their lawfulness can be confirmed.
- I.9 This statement sets out the case and the evidence to support the certificate.
- I.10 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan
 - Cross sections AA BB CC DD
 - Cross sections EE FF
 - Cross sections GG HH

2.0 The Site

- 2.1 The site is part of the Malsbury Estate, situated on the south side of the A4130 at Remenham Hill, approximately 1 mile to the west of Henley-on-Thames.
- 2.2 It lies along the northern edge of the estate and forms part of a polo facility permitted under 162288. The mounds are located to the west and north east of the polo field.

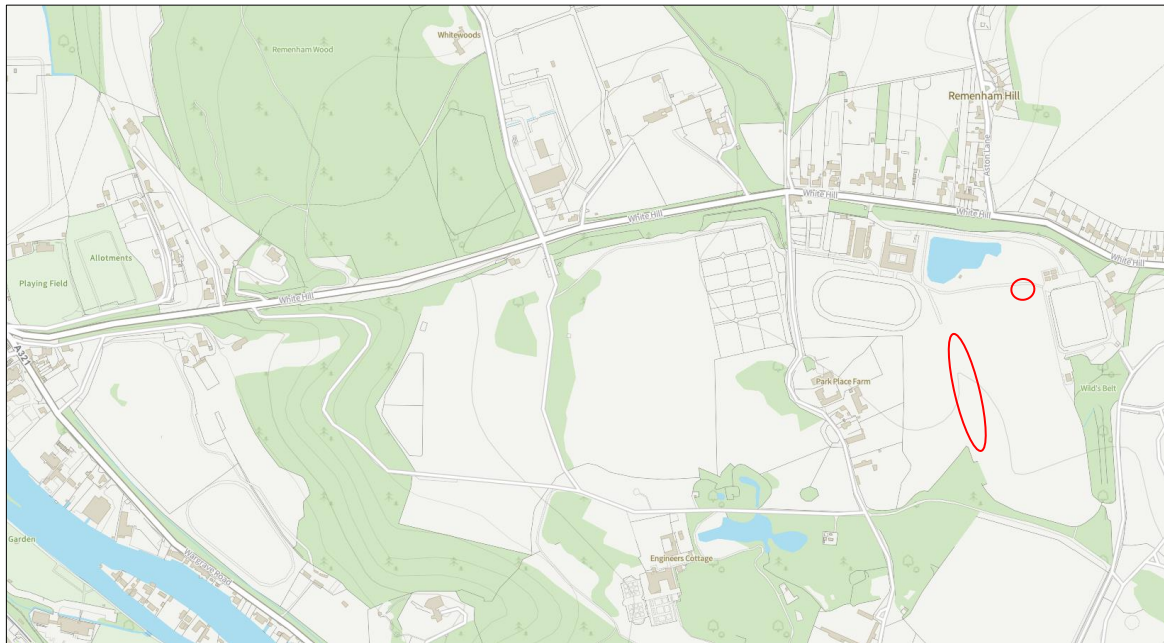


Fig. 5 – Map showing the approx. location of the mounds

- 2.3 The site is accessed via a gated entrance off the A4130, a short distance to the east of Dairy Lane which runs into the estate land and serves a small number of private dwellings.

Relevant Planning History

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	Granted; 8 Dec 2016
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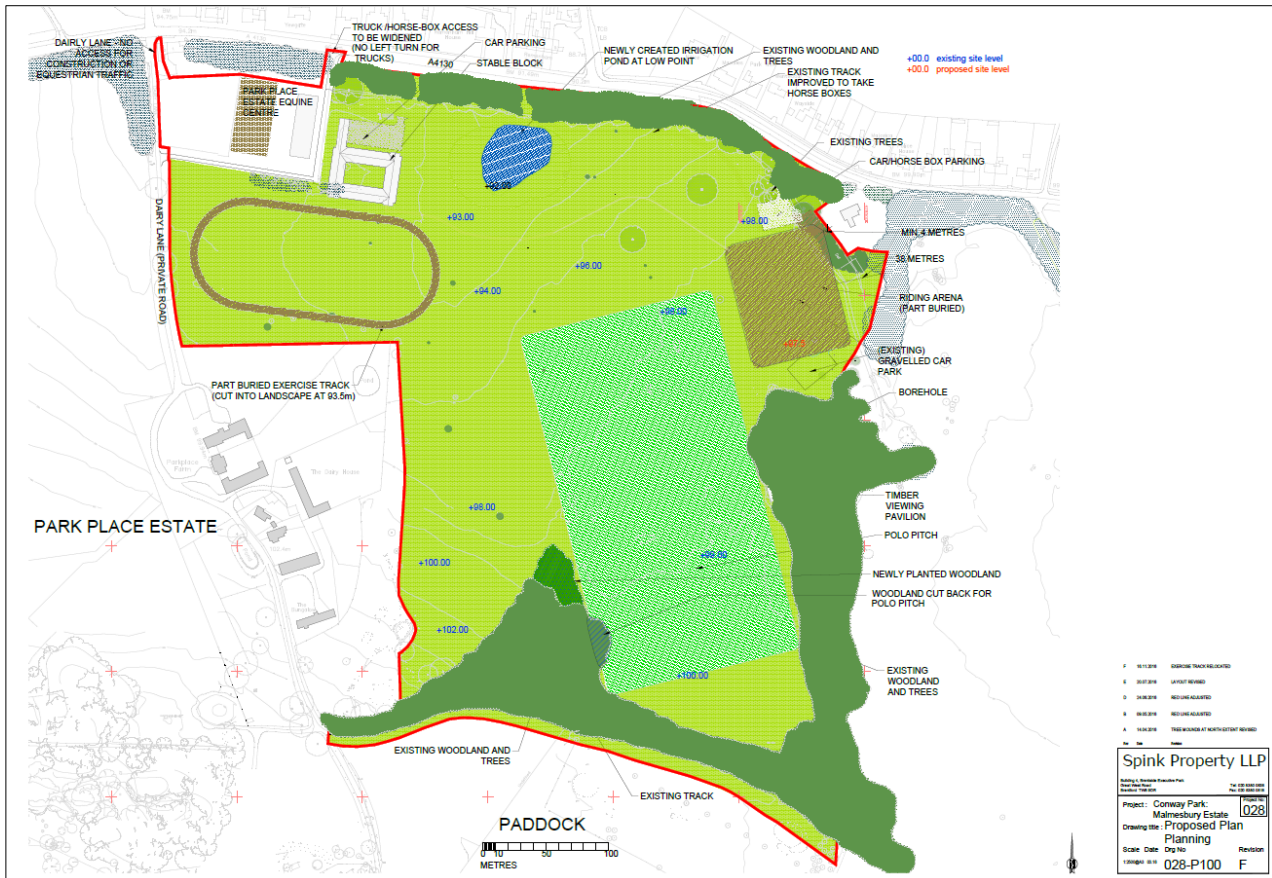


Fig. 6 – Approved site plan (162288)

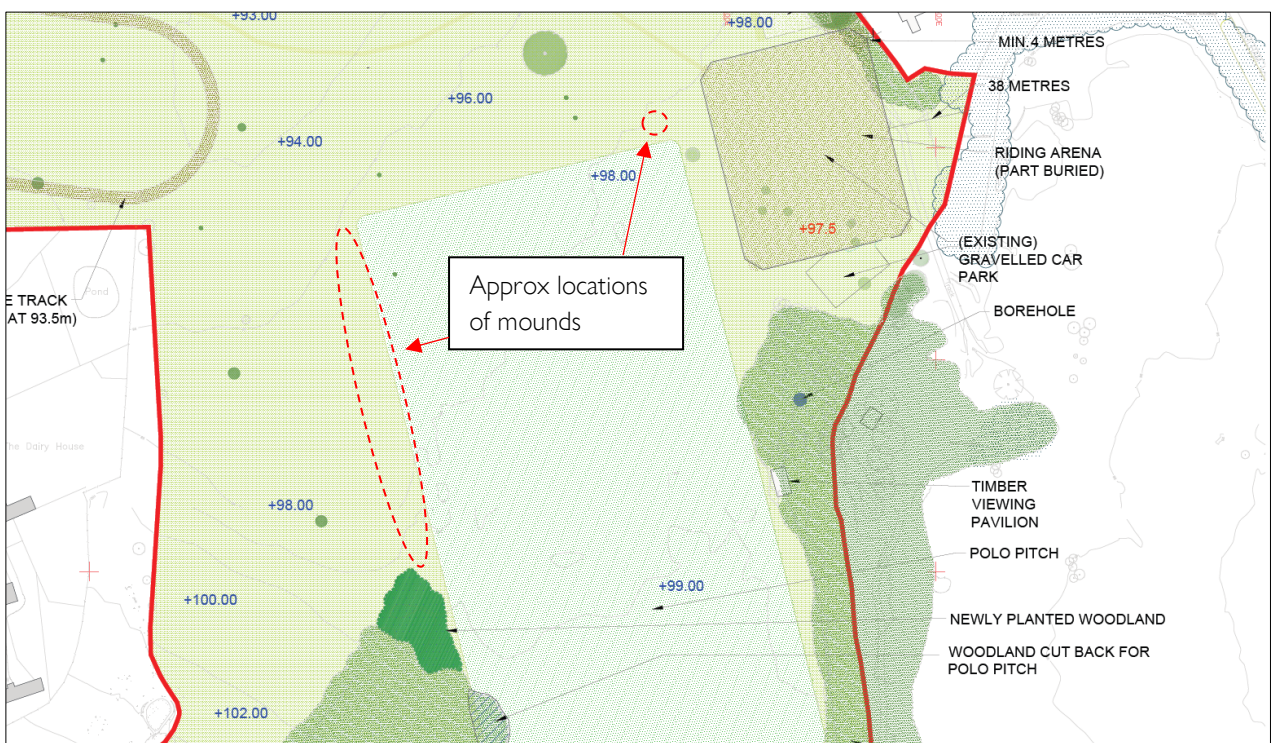


Fig. 7 – Enlargement of Approved site plan (162288)

182327	Demolition of an existing outbuilding and replacement with grooms accommodation with a players gym	Refused; 16 Nov 2018
	Appeal ref: APP/X0360/W/19/3224323	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; 19 Dec 2018
	Appeal ref: APP/X0360/W/19/3224329	Appeal dismissed; 11 March 2020

2.4 APP/X0360/W/19/3224323 and APP/X0360/W/19/3224329 were linked appeals.

2.4 The time frames for the appeals were as follows:

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Reference: APP/X0360/W/19/3224323

Appellant/Applicant
Rilex International
 Agent
Site Address
Malsbury Estate
Remenham Hill
HENLEY-ON-THAMES
Berkshire
RG9 3HN

Case Details	Dates
Case Type Planning Appeal (W)	Start Date 17 Sep 2019
Local Planning Authority Wokingham Borough Council	Questionnaire due 24 Sep 2019
Case Officer Adam Hill	Statement(s) due 22 Oct 2019
Procedure Hearing	Interested Party Comments due 22 Oct 2019
Status Complete: Decision issued	Appellant/LPA Final Comments due N/A
Decision and Outcome Dismissed 3224323 and 3224329 - Decision 3224323 and 3224329 - Costs Decision	Inquiry Evidence due N/A
Case Link Status Not Linked	Event Date Not arranged
Linked Cases 0	Decision Date 11 Mar 2020

Fig. 5 - Time frames for appeal ref: APP/X0360/W/19/3224323

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Reference: APP/X0360/W/19/3224329

Appellant/Applicant
 Durio Limited

Agent
 [REDACTED]

Site Address
 Park Place Stables
 Remenham Hill
 HENLEY ON THAMES
 Berkshire
 RG9 3HN

Case Details		Dates	
Case Type	Planning Appeal (W)	Start Date	18 Sep 2019
Local Planning Authority	Wokingham Borough Council	Questionnaire due	25 Sep 2019
Case Officer	Adam Hill	Statement(s) due	30 Oct 2019
Procedure	Hearing	Interested Party Comments due	23 Oct 2019
Status	Complete: Decision issued	Appellant/LPA Final Comments due	N/A
Decision and Outcome	Dismissed 3224323 and 3224329 - Costs Decision 3224323 and 3224329 - Decision	Inquiry Evidence due	N/A
Case Link Status	Not Linked	Event Date	Not arranged
Linked Cases	0	Decision Date	11 Mar 2020

Fig. 6 - Time frames for appeal ref: APP/X0360/W/19/3224329

- 2.5 The date for the submission of Statements was 22 October 2019 and 30 October 2019 respectively.

3.0 **General principles and grounds under which a certificate is sought**

3.1 This application is made under Section 191 of the Town & Country Planning Act 1990 (as amended) “the Act”, which enables anyone to apply to the local planning authority for a decision whether a specified existing use, operation, or failure to comply with a planning condition or limitation, which has already been carried out on land, is lawful for planning purposes.

3.2 Section 191(2) of the Act states that:

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) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.*

Note: There is no enforcement notice in force.

Time limits

3.3 The time limits when enforcement action can be taken are specified in Section 171B of the Act.

3.4 As of 25th April 2024, Section 171B(1) of the Act states:

- (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 the period of—*

- (a) *in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and*
- (b) *in the case of a breach of planning control in Wales, four years beginning with the date on which the operations were substantially completed.*

3.5 On 25th April 2024, the wording of S171B(1) was amended, by virtue of S115 of the Levelling-up and Regeneration Act 2023 – changing the time period from 4 years to 10 years (in England).

3.6 Prior to 25th April 2024, Section 171B(1) of the Act stated:

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.

3.7 Section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states that:

Transitional provision: time limits for enforcement

5. The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

- (a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (time limits), the operations were substantially completed, or
- (b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

3.8 Building operations that were substantially completed before the change to the time immunity rules took effect on 25th April 2024 are therefore still subject to the **four year rule**.

- 3.9 Section 191(4) of the Act provides that:- *if, on an application under the section, the LPA are provided with information satisfying them of the lawfulness, at the time of the application, of the use, operations or other matters described in the application, they shall issue a certificate to that effect.*
- 3.10 In the case of *F W Grabbitts v SSE and Newham LBC [1985]* it was held that the applicant's own evidence does not have to be corroborated by 'independent' evidence in order to be accepted. If the LPA has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application
- 3.11 The burden of proof in an LDC application lies with the applicant and the relevant test is the "balance of probabilities".

4.0 **Definition of development (Building operations)**

- 4.1 The meaning of development, as set out in Section 55 of the Town and Country Planning Act 1990 (as amended) (“the Act”), includes “... the carrying out of building, engineering, mining or other operations in, on, over or under land”.
- 4.2 For the purposes of the Act “ building operations ” includes—
- (d) other operations normally undertaken by a person carrying on business as a builder.
- 4.3 Engineering operations is not specifically defined in the Act, although has been held to equate to work that is usually undertaken by an engineer and involve operations requiring the use of earth moving plant and machinery (although does not actually need to be undertaken by an engineer).



Fig. 6 – Photo taken by [REDACTED] (Polo Manager) 17 October 2017 showing the earth moving plant and vehicles on the site. The northern end of the viewing mound along the western edge of the polo pitch is visible (in the process of construction).

- 4.4 The construction of the viewing mounds involved the movement of soil and reprofiling of land using earth moving plant and equipment. It therefore involved engineering operations typically undertaken by an engineer.
- 4.5 The construction of the mounds therefore constitutes development, as defined in Section 55 of the Act.

5.0 Evidence

5.1 The evidence submitted in support of the application comprises:

- Photographs taken by [REDACTED] (Polo Manager) on her smartphone dated 17 October 2018, 21 December 2017 and 31 July 2019
- Photographs taken by [REDACTED], SPP Director (29 Jan 2019)
- Council's appeal statement, submitted to PINS by 30 October 2019

5.2 The Polo Manager, [REDACTED], took various photographs of the polo facility during and after construction on her smart phone. They are contemporaneous 'ad-hoc' photos of things that caught her interest, showing the progress of things being built and of the structures in situ. They are therefore a good source of independent evidence. The photographs are dated 17 October 2017, 21 December 2017 and 31 July 2019. The photograph dated 17 October (Fig. 6 above) shows the northern end of the mound (along the western edge of the polo field) in the process of being constructed whilst the excavation and earth moving work was taking place around the site, during the construction of the polo facility. The photos dated 21 December 2017 show the mound to the north east of the polo field under construction.



Fig. 7 – Photos taken by [REDACTED] 21 December 2017 showing the viewing mound to the north east of polo field under construction

- 5.3 The photograph dated 31 July 2019 shows the mound along the western edge of the polo pitch in its completed state.



Fig. 8 – Photo taken by [REDACTED] dated 31 July 2019 showing completed viewing mound along western edge of polo field

- 5.4 The photographs taken by [REDACTED] all dated 29 January 2019, shows the viewing mounds in a completed state and grassed over. Mr [REDACTED] was the expert planning witness in the 2019 appeals. The photographs were of views of the wider site to do with the appeals. They were not of the viewing mounds per se. They just happened to be included in the photographs. They are therefore a good source of evidence.



Fig. 9 – Photo taken by [REDACTED] 29 January 2019 showing completed viewing mound to the north east of the polo field



Fig. 10 – Photo taken by [REDACTED] 29 January 2019 showing completed viewing mound to the west of the polo field



Fig. 11 – Photo taken by [REDACTED] 29 January 2019 showing completed viewing mound to the west of the polo field

- 5.5 The Council’s appeal statement (Appendix 3) lists a number of items that were identified as being non-compliant and against which enforcement action was being considered. The viewing mounds are specifically mentioned as one of the items listed:

“Introduction of viewing mounds to the north-east corner and to the west of the polo pitch”

- 5.6 The reference to the mounds in the Council’s appeal statement is a contemporaneous account of their existence. There is no date on the appeal statement, however, the deadline for the submission of the statements to PINS was by 23 October 2019, so this provides confirmation of its date, which would have been on, or just before 23 October 2019.

6.0 Date that the operations were substantially completed

6.1 The evidence submitted shows that:

- the mound along the western edge of the polo pitch was substantially complete by at least 31 July 2018 (based on the photo of [REDACTED] dated 31 July 2018).
- the mound to the north east of the polo pitch was substantially complete by at least 29 January 2019 (based on the photograph of [REDACTED] taken 29 January 2019).

6.2 In reality / on the balance of probabilities, it is highly likely that the two mounds would have been substantially completed around the same time, as the work was carried out in association with the construction of the polo pitch.

7.0 Assessment / Conclusion

- 7.1 It has been demonstrated that the two viewing mounds are building operations and that they were both substantially complete more than 4 years prior to the submission of this application.
- 7.2 As the building operations were substantially complete before 25th April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 7.3 The submitted evidence comprises dated verified digital photographs and the Council's own appeal statement.
- 7.4 The Council's enforcement records, visits, etc will also confirm the length of time that these structures have been in situ.
- 7.5 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the two earth mounds are lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 7.6 A certificate of existing lawful development should therefore be granted.