

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

**10 WOODEN STABLE BUILDINGS,
CONCRETE MUCK HEAP ENCLOSURE AND
TIMBER EQUIPMENT SHED**

at

**Park Place Stables
Remenham Hill, Henley-on-Thames,
RG9 3HN**

Prepared by

Neil March
BSc (Hons) DiP TP MRTPI



Date: September 2024

Client: Durio Ltd

Southern Planning Practice Ltd

Registered Office: Youngs Yard, Churchfields, Twyford, Winchester SO21 1NN
Tel: 01962 715770 E-mail: info@southernplanning.co.uk Website: www.southernplanning.co.uk
Registered in England and Wales No. 3862030

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1.0 INTRODUCTION

- 1.1 This supporting statement is prepared by Southern Planning Practice Ltd in support of an application for Lawful Development Certificate on behalf of the landowner, Durio Ltd.
- 1.2 The application seeks to certify the lawfulness of building operations comprising:
- The installation of 10 wooden stable buildings
 - Concrete muck heap enclosure
 - Timber storage shed (used for the storage of equestrian equipment).
- 1.3 The structures are used by the residents of Park Place for equine purposes. This includes training facilities and stabling to support a high goal polo team.
- 1.4 The wooden stable buildings are a mixture of triple and double stall units constructed on a metal base (on skids). They are arranged in two linear rows either side of an American Barn. They were brought onto the land in stages, beginning in 2017, in order to provide additional capacity for polo horses, in association with the construction of a polo facility permitted under 162288 in December 2016.



Fig. 1 – Row of stable buildings on western side of American barn (January 2024)



Fig. 2 - Row of stable buildings on the western side of American barn (May 2024)



Fig. 3 – Stable buildings on the eastern side of American Barn; triple unit shown (May 2023)



Fig. 4 – Stable buildings on the eastern side of the American barn; double unit shown

- 1.5 The stables are sited on a paved hardstanding with rubberised matting in front. They are supplied with electric for lighting, with a continuous electric cable running between the units, along each of the rows.
- 1.6 All of the 10 stables been in situ since at least September 2019, as confirmed by the Google Earth aerial photograph dated 09/2019 – shown below



Fig. 5 – Google Earth (09/2019), showing the two rows of stables in situ

- 1.7 The 3 sided muck heap enclosure is located at the northern end of the row of stables to the eastern side of the American Barn. It is a concrete block construction.



Fig. 6 - Muck heap enclosure (May 2024)



Fig. 7 – Muck heap enclosure (May 2024)

- 1.8 The muck heap structure has been in situ since at least June 2018, as confirmed by the Google Earth aerial photograph dated 06/2018 (see Fig. 8 below). It can also be seen on the 09/2019 aerial photograph on the previous page (Fig. 5).

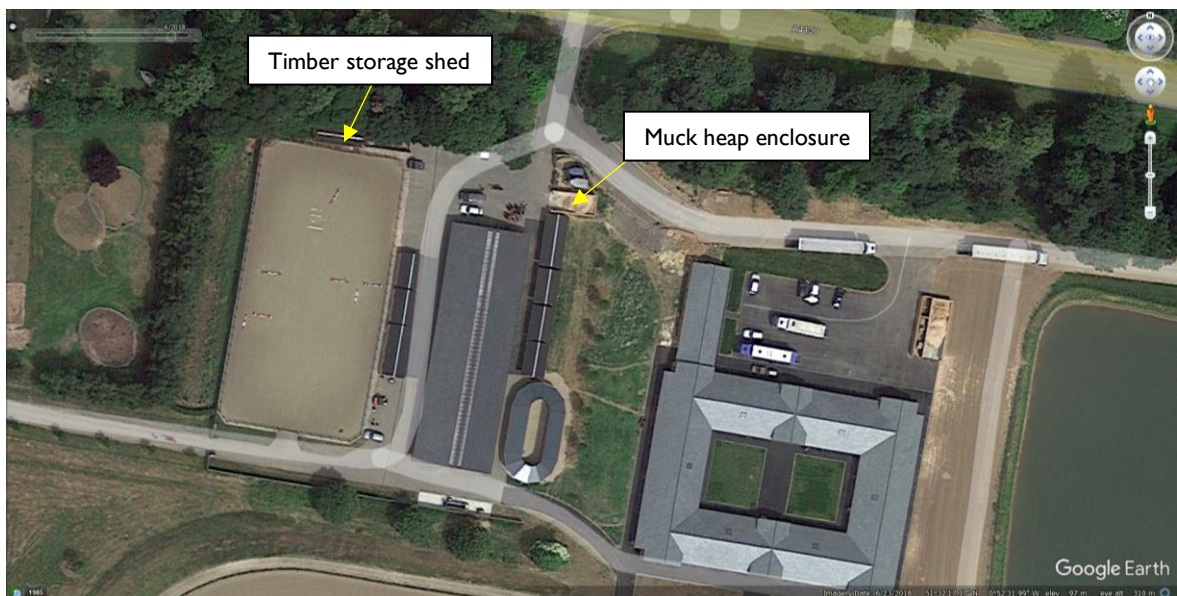


Fig. 8 – Google Earth (08/2018), showing the muck heap enclosure and storage shed in situ

- 1.9 The timber shed is used to store the jumps and other equipment used in the show jumping arena. It arrived on site in panels and was constructed on site.



Fig 9 – Equestrian storage shed (north of the showjumping arena)

- 1.10 The timber shed has also been in situ since at least 06/2018, as confirmed by the Google Earth aerial photograph dated 06/2018 (see Fig. 8).
- 1.11 The Council's Enforcement team are aware of these structures and the length of time that they have been in situ. They have requested the submission of the LDC application in order that their lawfulness can be confirmed.
- 1.12 This statement sets out the case and the evidence to support the certificate.
- 1.13 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan
 - Plan and elevations of stable buildings
 - Plan and elevation of muck heap enclosure
 - Plan and elevations of timber storage shed

2.0 **THE SITE**

- 2.1 The site is part of the Park Place (and Malmsbury) Estate, situated on the south side of the A4130 at Remenham Hill, approximately 1 mile to the west of Henley-on-Thames.
- 2.2 The stables, muck heap and storage shed are located along the northern edge of the estate, close to other equestrian buildings and the polo facility permitted under 162288.

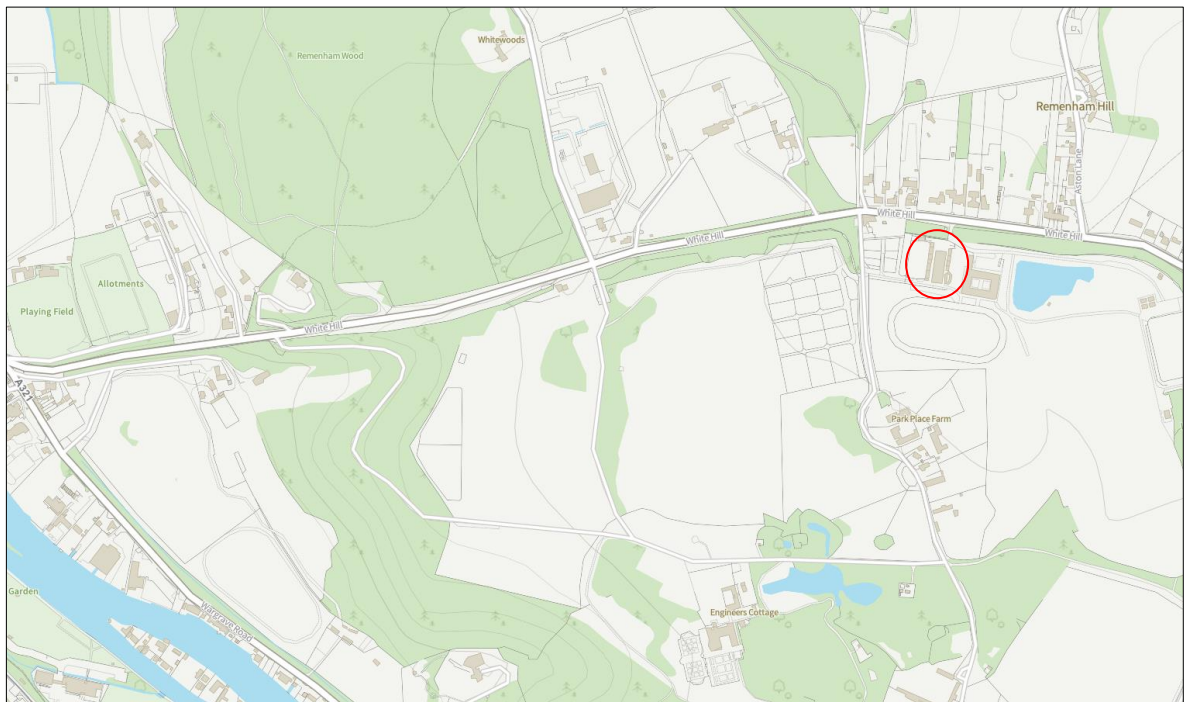


Fig. 10 – Map showing the location of the site

- 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

- 2.4 There are a number of planning applications of relevance to this application:

Application ref:	Description	Decision / date
141560	Proposed erection of a new barn to include equestrian use	Granted; 21 Nov 2014
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
172271	Full application for the construction of an oval horse walker	Granted; 23 Nov 2017
182327	Full planning application for the proposed erection of grooms accommodation with a players gym following the demolition of existing outbuilding.	Refused; 16 Nov 2018 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 Appeal ref: APP/X0360/W/19/3224329	Refused; 19 Dec 2018 Appeal dismissed; 11 March 2020

- 2.5 The barn approved under 141560 is the American barn referred to throughout this statement and in other evidence.
- 2.6 The stable buildings subject of this application were installed on the site following the implementation of the polo facility approved under 162288, as additional stables were required to house the large number of polo horses that are kept on site. They were originally only intended to be temporary, subject to obtaining planning permission for an additional 24 box stable building (proposed under 182524). However, this application was refused in December 2018 and the subsequent appeal dismissed in March 2020.
- 2.7 The stables are therefore still needed to accommodate the large number polo horses accommodated on site and are a necessary part of the polo facility. They will therefore continue to remain in situ on the site in the same position and will not be moved.

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 SI 15 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.
- 3.12 The relevant test is the "balance of probabilities".

4.0 **WHAT CONSTITUTES A BUILDING**

4.1 The meaning of development, as set out in Section 55 of the Town and Country Planning Act 1990 (as amended), 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—

- (a) demolition of buildings;
- (b) rebuilding;
- (c) structural alterations of or additions to buildings; and
- (d) other operations normally undertaken by a person carrying on business as a builder.

4.3 The term "building" is defined at section 336(1) of the 1990 Act and includes "any structure or erection."

In the case of *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin), Mrs Justice Lang ruled that the term "building" in section 336(1) has a wide definition which includes "any structure or erection".

This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings:

- in *Skerritts*, an Inspector held that the erection of a 40 metre by 17 metre by 5 metre high marquee for an eight month period was the erection of a building; and
- in *Hall Hunter v First Secretary of State* [2007] 2 P. & C.R. 5 the erection of polytunnels was also the erection of a building.

Both decisions were upheld by the Courts.

- 4.4 The established tests as to whether a building operation has taken place (as determined by the courts in the cases of *Cardiff Rating* and *Skerritts*) relate to size, permanence and physical attachment to the ground; although physical attachment is not an over-riding or determinative factor.
- 4.5 A number of appeal decisions have been enclosed with this application (see Section 4.0 below) where inspectors have adjudged mobile field shelters and mobile stables to be buildings. The structures subject of these appeals are typically constructed of timber and metal, with pitched metal roofs, on a metal base which incorporates skids. Some have tow bar attachments, enabling them to be pulled or dragged (with the right size vehicle) and are often marketed by the manufactures as being 'mobile'. However, in most instances they are often left in the same position for convenience.
- 4.6 Despite not being attached to the ground and only resting on the ground under their own weight, all of the mobile units in the appeals cited were judged to be buildings due to their size and degree of permanence. In many cases the structures were sat on a hard surface and remained in the same position, causing them to have a high degree of permanence.

5.0 **SUPPORTING APPEAL DECISIONS**

5.1 Wigan appeal decision (03 July 2017) – **Appendix 4**

Appeal Ref: APP/V4250/X/16/3162115

Site: Land off Higher Lane, Aspull WN2 1EA

Appeal under Section 195 (against a refusal to grant a Certificate of Lawful Existing Use or Development).

Relevant paragraphs:

Background

1. The appeal concerns a pitched-roof wooden building measuring about 6m in length, 4.5m in width and 3.35m in height to the ridge. It has no floor and is largely open on one side. It is not fixed to the ground, being mounted on a framework of metal skids with attached towing rings. At the time of my inspection, the building was sited close to the south-eastern boundary of the appeal site, within a grass paddock. The overall site is of about 2.2ha and comprises, in the main, a number of paddocks, separated by either post and rail or post and wire fencing. Access is from Higher Lane at the eastern corner of the site, with a yard area, surfaced with stone and hardcore, and a manege alongside the north-eastern roadside boundary. A row of four stables is located to the south, next to the south-eastern boundary, to accommodate the four horses kept on the land.

The Case for the Appellant

2. The appellant contends that, contrary to the view of the Council, the building in question has been specifically designed to be, and is, truly mobile. It has been purchased from a reputable firm who specialise in the construction of mobile equestrian buildings, for which there is a demand that reflects the need for flexibility in managing the welfare requirements of animals, and for ancillary storage and maintenance. Therefore it does not amount to development under Section 55 of the Town and Country Planning Act 1990 (The Act).
3. The building has no degree of permanence in its traditional interpretation by way of attachment to the ground and is easily moved. The Council's case appears to be based upon the likelihood of the building remaining in its original position in the stable yard, on a stone/hardcore base, but surrounding fencing is easily dismantled and the building has been moved to a new position within a paddock without difficulty. It may well be moved around that paddock in the future to prevent the field becoming puddled. In all of these circumstances, therefore, development requiring planning permission has not taken place and a CLEUD should be issued.

The Case for the Council

4. The Council have assessed the appellant's case in relation to the statutory framework¹ and pertinent case law², specifically the three factors of size, permanence and physical attachment. In this context, it is considered that the building is not as easily moveable as suggested given its size and siting on a stone/hardcore base, and it appears to have been restricted to a position within

the yard area for the duration of its presence on the site, limited only to a movement of about 2.4m for demonstration purposes. In this yard setting the structure is of a size to be of significance in the planning context.

5. It is noted that the appellant only intends to use the building as a field shelter but it is considered that it has a significant degree of permanence in planning terms. It is also noted that the building could not be moved onto adjoining fields without being dismantled, at least in part, due to the width of the adjoining field gate. Therefore, given its size and current operations at the site it is a building and its siting is a breach of planning control. A CLEUD should not be granted

Appraisal

1. The main issue in this appeal is the question of whether or not the wooden structure is a building, and therefore development in terms of Section 55 of The Act, or whether it is a chattel because of lack of attachment and mobility ...
2. In this appeal, the Council have correctly identified the pertinent case law applicable to a consideration of the question of whether or not the structure placed on the appeal site is a building, and I concur with the view that it is necessary to consider three principal factors – size, permanence and physical attachment. I also consider that no one factor is decisive.
3. In terms of size, the wooden structure is very similar to many typical stable buildings found on equestrian and agricultural sites. It is of a size comparable to a pair of the permanent stables already built on the overall site. It is also substantial enough to rest on the ground without the need for fixation, notwithstanding that the towing rings could be used to help tie it to the ground and provide additional stability.
4. With regard to permanence, the structure has been in its current position for some time, judging by the degree to which the surface of the paddock within the shelter has been trampled and the fact that it has started to sink slowly into the ground through its own weight, albeit only by a few millimetres. Additionally the marks left on the field from the act of dragging it into position, as shown in the appellant's photographs, are no longer visible. It has the appearance of a building that would be in position for some time or, at best, only moved on a limited number of occasions and then to another position within the same enclosure.
5. As for physical attachment, the structure is not currently tethered to the ground, but merely rests on it through its own weight, albeit that it has started to sink as noted above.
6. **It has been held, in *Save Woolley Valley*, that the question of whether or not a structure is a building is an evaluative one, and that the term building in Section 336(1) of The Act has a wide definition which includes any structure or erection. It was further held that the issue of permanence has to be construed in terms of significance in the planning context. The structure in this case is intended to be a sizeable feature of the overall equestrian enterprise, used either for storage purposes or as an animal shelter. It has a significant presence in planning terms and this would not be altered by any repositioning within either the current enclosure or the wider unit. Wherever located it would be of visual significance and appear as a solid, sizeable wooden building.**
12. The appellant relies heavily on the ease of movement of the structure, and I do not doubt that it can be so moved without undue difficulty, albeit that damage to

the land may now occur given the time it has obviously been in its current position. I was not, however, given a demonstration of the ease of movement at my inspection, because there are currently two swallow nests within it, but that further illustrates the degree to which it has permanence. I was shown the simplicity of removal of fence posts and rails so as to facilitate transfer between yard and paddock but this is of no great consequence in the overall assessment as to whether or not the structure is a building.

13. As a matter of fact and degree I consider that the wooden building is a building for the purposes of Section 55 and that its placement on the appeal site is an act of development for which planning permission is required.

5.2 A photo of the mobile unit in the Wigan appeal (obtained from the LPA website) is attached at **Appendix 4A**.

5.3 Eden District appeal decision (09 January 2017) – **Appendix 5**

Appeal Ref: APP/H0928/X/16/3141604

Land at Blencathra View, Gamblesby CA10 1HR

Appeal under Section 174 (against an Enforcement Notice)

Relevant paragraphs:

The enforcement appeal on ground (c)

17. This ground is that there has not been a breach of planning control, and it is argued solely in respect to the recently erected stable block. The appellant maintains that the stable cannot be regarded as a building, and therefore its siting on the land cannot be regarded as development when looked at in terms of its size, the nature and degree of its attachment to the ground, and its degree of permanence. The Council say that irrespective of the stable block being moved to a new position it is a building for which planning permission is required.
18. The stable block has stalls for 2 horses. It is timber framed, clad in weatherboard, with a corrugated sheet roof, and stands on steel skids. The plan dimensions are approximately 7.3 metres wide by 3.5 metres deep, and the overall height is 3.1 metres.
19. The stable block is of substantial size, built of durable materials, and has all the appearance of being a building. While it is not actually attached to the ground, and remains in position by virtue of its own weight, it is not a structure that can readily be moved except by towing by tractor, and even then it must effectively remain within the fields within which it is located. It is effectively a permanent feature of the site, and this will presumably remain the case for as long as a significant number of horses are kept there.
20. The stable block has in fact been moved since issue of the enforcement notice, and now stands at some distance from Brackenbank close to the northern field boundary, but outside the area covered by the enforcement notice. Nevertheless, as a prominent and effectively permanent feature of the site its presence has planning consequences that need to be properly considered, and on the balance of probabilities I consider it should be regarded as a building requiring planning

permission. This has not been obtained, and a breach of planning control has therefore occurred. The appeal on ground (c) therefore fails.

5.4 Dartmoor National Park appeal decision (09 January 2017) – Appendix 6

Appeal A Ref: APP/J9497/18/3216327

Lower Hole, Bridford, Devon, EX6 7HU

- 1. Appeal under Section 174 (against an Enforcement Notice)**
- 2. Appeal under Section 195 (against a refusal to grant a Certificate of Lawful Existing Use or Development).**

Relevant paragraphs:

1. The appeal site is a small field in open countryside that slopes towards a watercourse to the north. It is used by the appellant for the grazing of Shetland ponies. Within the site are two structures of about 3.6m x 3m x 3m in height. These are constructed of timber and metal with pitched metal roofs that overhang the front and the two-section lockable stable doors. They appear to be constructed on a metal base which incorporates skids. They are sited on previously sloping land that has been excavated and stoned to provide two level areas. The floors consist of rubber mats. At the time of my site inspection, one shelter appeared to be used as a stable and the other as a store for hay, tools and other items.

Appeal A: The appeal on ground (c)

8. An appeal on this ground is that there has not been a breach of planning control.
9. The main issue is whether the structures are ancillary to the agricultural use of the land or whether they are permanent structures constituting development under s55 requiring planning permission. The Council has referred to relevant caselaw and to a recent appeal decision in their submissions.
10. The appellant considers that as the structures are on skids and not connected to services, they represent moveable structures. However, the established tests as to whether a building operation has taken place relate to size, permanence and physical attachment to the ground. Although the size of the structures is relatively modest and they have been brought to the site from elsewhere, they have been in position since before the Case Officer's site visit in February 2018. No evidence has been submitted to indicate that the structures have been regularly moved around the site and in view of the engineering operations necessary to provide level bases for the structures, it appears unlikely that this could be achieved without similar engineering operations.
11. The placing of the structures has resulted in a modest physical change to the characteristics of the land by reducing openness and consequently fail to conserve or enhance the character or appearance of this part of the Dartmoor National Park.
12. The Authority has not misdirected itself in their interpretation of planning law as claimed by the appellant.
13. The facts lead me to conclude as a matter of fact and degree that the structures represent operational development within the meaning of s55, for which planning permission is necessary, and not mobile structures ancillary to an agricultural use.

6.0 **EVIDENCE**

6.1 The evidence submitted confirming the length of time that the stable buildings, muck heap enclosure and timber storage shed have been in situ comprises:

- Various digital photographs taken on a smart phone (provided by A Price, the Polo Manager at the Park Place Estate).
- Extract from Council's appeal statement (submitted to PINS by 30 October 2019)
- Date verified aerial photograph (obtained from Getmapping.co.uk), dated 05/04/2020

6.2 The Polo Manager, A Price, took various photographs of the polo facility during and after construction on her smart phone. The digital photographs 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 photos (**Appendix I**) show:

- that the row of stable buildings to the eastern side of the American Barn were complete and in situ by December 2017.
- The row of stables to the west of the American barn were installed at the beginning of 2018 and the row was complete and situ by November 2018.
- The muck heap was completed by March 2018
- The timber shed was complete and in situ by September 2018

6.3 The stables are mentioned in the Council's appeal statement in appeal ref: APP/X0360/W/19/3224329 (**Appendix 2**), which states:

"... the stables applied for are on site, albeit in a smaller form and in two locations, ..."

6.4 The time frames for the appeal are show overleaf at Fig. 11. The deadline for the submission of statements was 30 October 2019.

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Reference: APP/X0360/W/19/3224329

Appellant/Applicant
Durio Limited

Agent
Mr Ian Ellis

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
		Statement(s) due	30 Oct 2019
Case Officer	Adam Hill	Interested Party Comments due	23 Oct 2019
Procedure	Hearing	Appellant/LPA Final Comments due	N/A
Status	Complete: Decision issued	Inquiry Evidence due	N/A
Decision and Outcome	Dismissed 3224323 and 3224329 - Costs Decision 3224323 and 3224329 - Decision	Event Date	Not arranged
Case Link Status	Not Linked	Decision Date	11 Mar 2020
Linked Cases	0		

Fig. 11 – Appeal time frames

- 6.5 A date verified aerial photograph (taken on 05/04/2020) has been obtained from Getmapping.co.uk (**Appendix 3** and Fig. 12 overleaf). This confirms that the structures were all in situ on this date – 4 years prior to the date of this application.

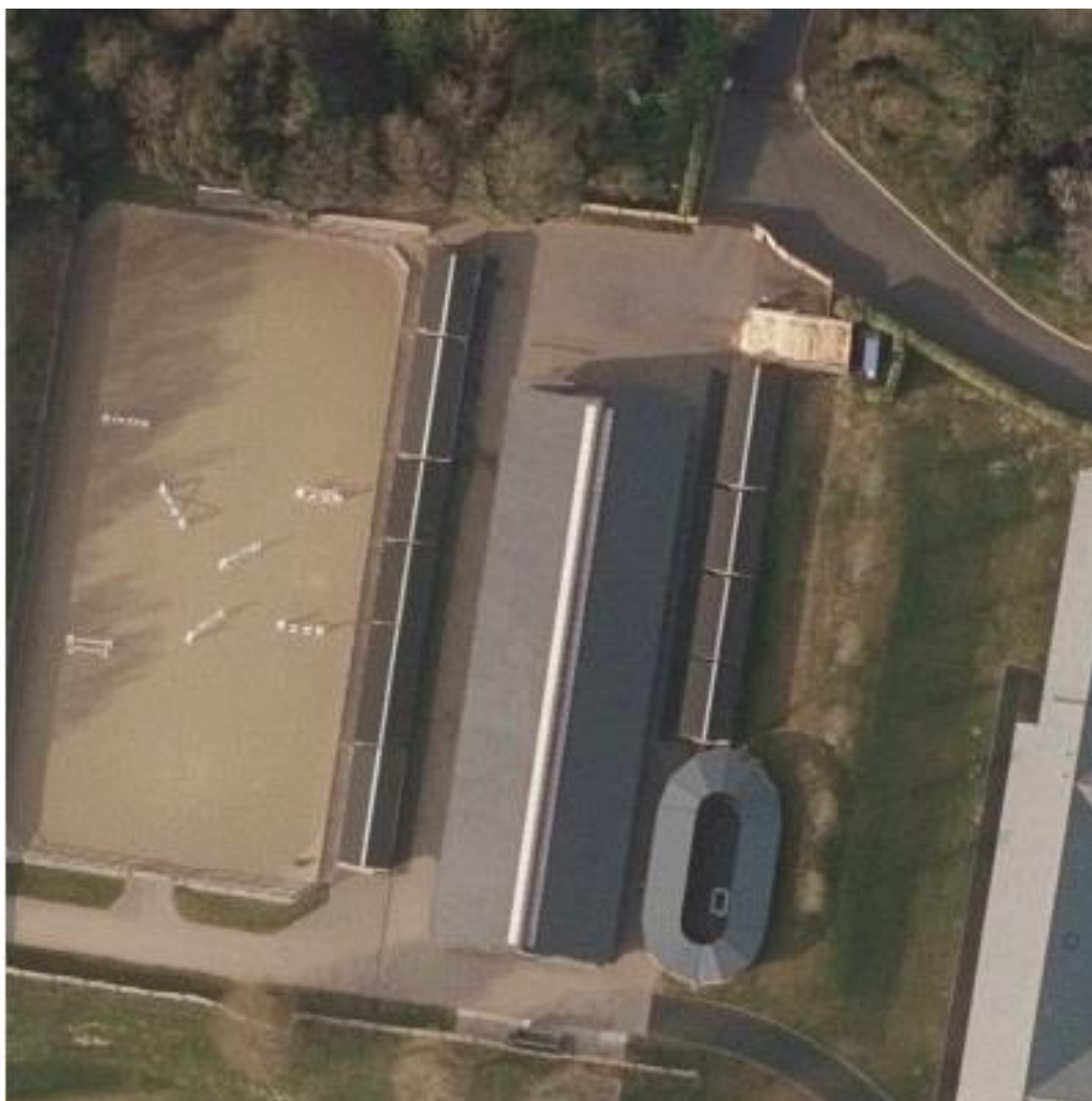


Fig. 12 – Date verified aerial photograph (05/04/2020) showing the 10 stables in situ

7.0 ASSESSMENT / CONCLUSION

- 7.1 With reference to the relevant legislation, established case law and 3 highly relevant and considered appeal decisions, it has been demonstrated that the stable units are buildings – due their size and significant presence (in planning terms) – and therefore constitute operational development within the meaning of Section 55 of the Town and Country Planning Act 1990 (as amended).
- 7.2 The evidence submitted, in the form of digital (date and time verified) smart phone photographs and also a date verified aerial photograph (April 2020), as well as reference to the stables in the Council's own appeal statement in October 2019, confirms that the stable buildings, muck heap enclosure and timber store were all substantially complete / have been in situ for a period in excess of 4 years prior to the submission of this application.
- 7.3 The evidence submitted can be corroborated by publicly available aerial photographs (e.g. Google Earth), which clearly shows the structures in situ. The Council's own enforcement records will also show that these items have been referred to in various correspondence and have been subject to inspection and discussion by officers from as far back as 2018/ 2019 when applications 182524 and 182327 were submitted and refused and during the subsequent appeals, which were dismissed on 11 March 2020.
- 7.4 As the buildings were all substantially complete before 25th April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 7.5 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force the buildings are therefore 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.