

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	250370
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 building operations comprising the permanent siting of 7 no. portacabins, a WC unit and shed on the land.	

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	Withdrawn 10 August 2016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	Withdrawn 22 February 2017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 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	Split Decision 19 October 2011
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	Approved 04 August 2010

	Matters to be considered for the siting, design (including floorspace, height massing, internal 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

INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan
- Floorplans & Elevations
- Photos 201124
- Decision Notice 162288
- 162288 Approved Plans
- 170791 Condition Discharge Letter
- 170791 Approved Landscaping Plans
- East Hertfordshire District Council Appeal Decision 19 May 2011
- Rushcliffe Borough Council Appeal Decision 7 March 2014
- Selby District Council Appeal Decision 24 August 2023
- Wiltshire Council Appeal Decision 18 May 2020
- Extract LPAs Statement of Case
- Dated photographs
- Supporting Statement by Southern Planning Practice dated January 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 equestrian polo complex.

Proposal:

The proposal is for building operations comprising the permanent siting of 7 no. portacabins, a WC unit and shed on the land.

The application is for a Certificate of Lawful Existing Use to regularise for the operational development. 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 buildings have been substantially completed for at least four years prior to the application i.e. 13 February 2021.

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 s 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:

The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.

The building works were substantially completed on 29 January 2019.

No change of use of land.

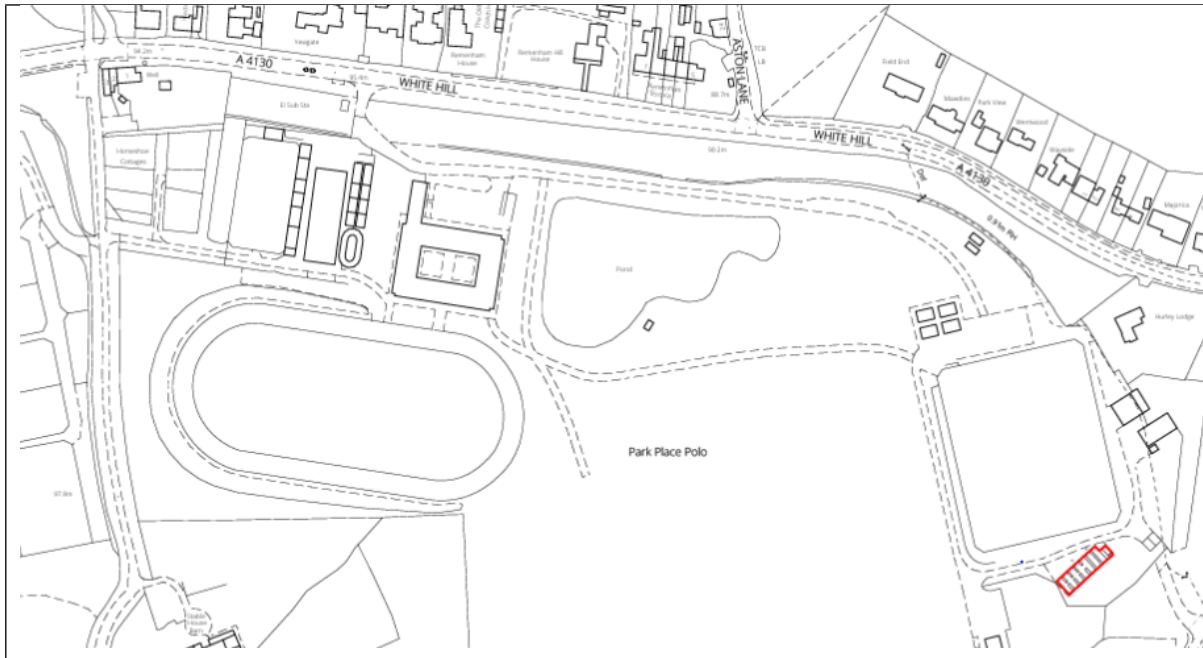
Supporting Statement:

The supporting statement comprises the background to a Certificate application, defines development and summarises the evidence submitted and discusses appeal

decisions relating to whether portacabins are considered buildings and how the portacabins relates to planning permission 162288.

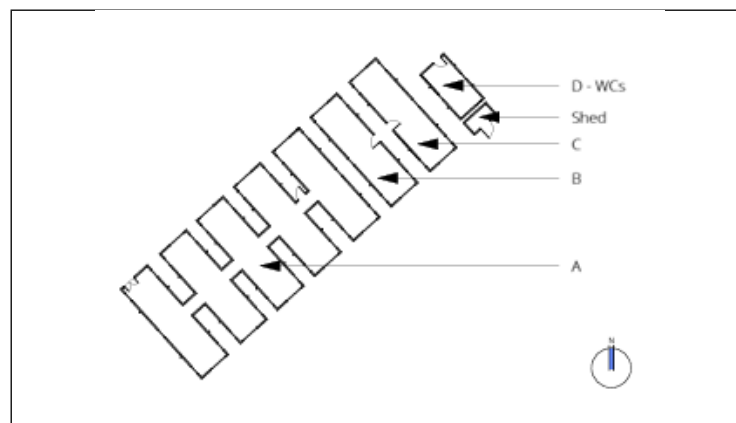
Site Location Plan & Block Plan:

This plan shows the location of the portacabins in the context of the wider area.



Floorplans & elevations:

This plan shows the dimensions and the materials of the portacabins. The development comprises 'Portacabin A' 'Portacabin B' 'Portacabin C' 'Shed' and 'WC'.



Photos 201124:

These photos are dated 20 November 2024 and show all the structures including the interior of such structures. These photos are dated within the last 4 years and show a snapshot in time.

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 states that the portacabins were within the red line of application 162288 and in situ at the time of this application.

The Officer's report does not refer to any portacabins. The portacabins are not shown on any approved plan. There is no evidence within this application that indicates whether the portacabins were in situ or not at this time.

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

Requiring the portacabins WC or shed to be removed would not be necessary or relevant to the proposed development applied for. The lack of reference to the portacabins, shed and WC in application 162288 does not indicate lawfulness of any of the development. This would be dealt with separately through the enforcement process if a breach of planning control was observed at that time.

On this basis, application 162288 does not provide any relevant evidence of lawfulness of the portacabins/shed & WC].

The Council's Evidence

Application/Appeal Application/Appeal 182327

Site visit 10.2.2020



The site visit photo show the WC

Site visit 7.10.2019



The site visit photo shows seven portacabins

Site visit 17.10.2018



LPA Appeal Statement 182327 dated December 2019

Seven portacabins are referenced in the LPA statement.

The Shed and WC are not mentioned.

Aerial Imagery:

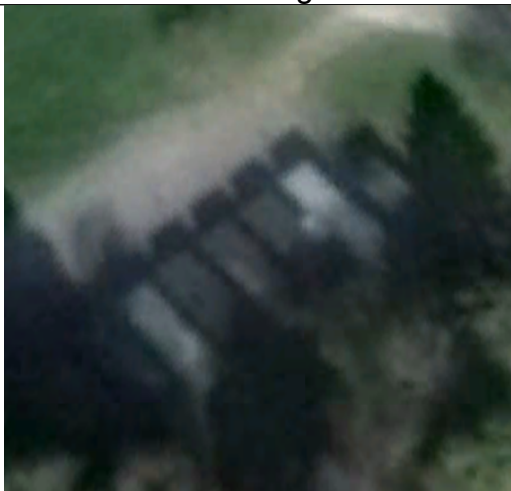
6 June 2013 – Google Earth Pro



20 April 2015



9 March 2014 – 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 structures can be seen on the 2013 aerial imagery however the 5 portacabins forming “Portacabin A” do not appear to be attached at this time by a corridor.

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, the all the development was observed.

A further visit was undertaken on 20 November 2024, again the development was observed during this visit.

The relevant photographs are below:





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Assessment:

Before assessing the time limit for any development it is necessary to establish whether development has taken place.

Building operations are works undertaken to erect or alter a building, which is defined in s336(1) of the Town and Country Planning Act as including “*any structure or erection, and any part of a building, as so defined*”.

For the purposes of the 1990 Act, building operations therefore include

- (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.

Whether something is considered a building is a matter of fact and degree. The appeal decisions submitted with the application have limited relevance to the facts of this case. No comparisons have been drawn by the Applicant to how these cases are similar, or not, to this case and limited reference has been made to these appeals. Furthermore, appeals are not legally binding but past appeal decisions but can be a material consideration in similar cases. The assessment of whether a structure is a building nor not alone does not evidence lawfulness.

Limited evidence to covering 4 year period has been submitted by the Applicant.

No evidence has been submitted between 2021 and 11 November 2024. The application form states that the development was substantially completed on 29 January 2019.

Portacabin A***Does this matter constitute development?***

The applicant's submission states that this is a building.

The siting of shipping containers and portacabins are often classified as use of land rather than permanent building operations.

The primary factors for assessing structures against the provisions of S55 arose within Cardiff Rating Authority and Cardiff Assessment Committee V Guest Kenn and Balwin's Iron and Steel Co.Ltd (1949) 1 KB 385. Further, its pertinence to planning decisions and assessment were confirmed in Barvis Ltd v Secretary of State for the environment (1971) 22 P&CR 710 and Skerritts of Nottingham v SSETR and Harrow BC (2000) EWCA Civ 5569. Whilst it should be noted that no one factor is decisive, these are:

- (a) That it is of a size to be constructed on site, rather than brought onto the land.
- (b) Permanence; and
- (c) Physical attachment.

No one factor for determining whether development is considered a building operation is decisive.

The high court case *Skerritts of Nottingham Limited v SSETR* [2000] 2 P.L.R. 102 established that a structure as simple as a marquee was considered a building given its nature and degree of attachment to the ground and that permanence is a matter of fact and degree when assessed against the criterion for permanence.

This point was further supported within *R v Swansea City Council ex p Elitestone* (1993) 66 P. & C.R. 422, where Lord Justice Mann considered wooden chalets as buildings, having regard to the degree of permanence of the chalets and the effect on the physical quality of the land. He ruled that it was common sense that the chalets were buildings for the purposes of planning law.

Portacabin A has been located on the land for a significant period of time. It cannot be moved due to its size because each individual 'cabin' is attached via a permanent corridor (constructed prior to 13.02.21). Portacabin A is not physically attached to the ground via foundations but given its size it has substantial weight and would be too heavy to be moved without significant damage to the structure therefore this is considered a physical attachment to the ground.

On this basis, the LPA consider Portacabin A to be a building and therefore it must comply with the four-year period from the date of substantial completion.

Portacabin B

Does this matter constitute development?

The applicant's submission states that this is a building.

The same tests set out in *Skerritts* above, are applied to Portacabin B. The relevant caselaw has not been repeated.

Portacabin B has also been located on the land for a significant period of time, however it is a single unit of approximately 3m x 9.6m. It is not physically attached to the ground but placed on concrete blocks and it is possible to move the unit in a single piece.

On this basis, the LPA do not consider Portacabin B to be a building and therefore its siting on the land constitutes a material change of use of land and must comply with the ten year period from the date the use commenced (i.e. prior to 13 February 2015).

Portacabin C

The applicant's submission states that this is a building.

The same tests set out in *Skerritts* above, are applied to Portacabin B. The relevant case has not been repeated.

Portacabin C has also been located on the land for a significant period of time, however it is a single unit of approximately 3m x 9.6m. It is not physically attached to the ground.

On this basis, the LPA do not consider Portacabin C to be a building and therefore its siting on the land constitutes a material change of use of land and must comply with the ten year period from the date the use commenced ((i.e. prior to 13 February 2015).

Portacabin D (WC)

The applicant's submission states that this is a building.

The same tests set out in Skerritts above, are applied to Portacabin B. The relevant case has not been repeated.

Portacabin D has also been located on the land for a significant period of time, however it is a single unit of approximately 4.8m x 2.6m. It is not physically attached to the ground, although it contains WC facilities and utilities may be integral to the building, it is unlikely to be plumbed into mains drainage due to its location and any pipework can be easily detached.

On this basis, the LPA do not consider Portacabin D to be a building and therefore its siting on the land constitutes a material change of use of land and must comply with the ten year period from the date the use commenced (i.e. prior to 13/17 February 2015).

Shed

The applicant's submission states that this is a building.

The shed has also been located on the land for a significant period of time. It is a single unit of approximately 1.3x2.5m and it is not physically attached to the ground. The shed appears to be related to the WC and has remained on the site since 2013, although it may be moveable, it has not been moved throughout the time it has been on the land. It has a similar appearance an construction to a domestic garden shed which usually are considered to be buildings.

On this basis, the LPA consider the shed to be a building and therefore it must comply with the four-year period from the date of substantial completion.

Notwithstanding the above, it appears that the portacabins, WC and shed were brought onto the land to facilitate the development that was taking place at the time i.e. around 2012. The site immediately adjacent to the portacabins in 2012 was a "temporary site compound" (see reserved matters planning applications relating to Aspect East and West relating to O/2008/1353). Furthermore the photographs indicate that the structures were office/welfare accommodation due to the furniture, design and facilities that can be seen. It is likely that these related to the compound. This would have been permitted development at that time.

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.

1.1.2010	30.3.2012
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6.6.2013



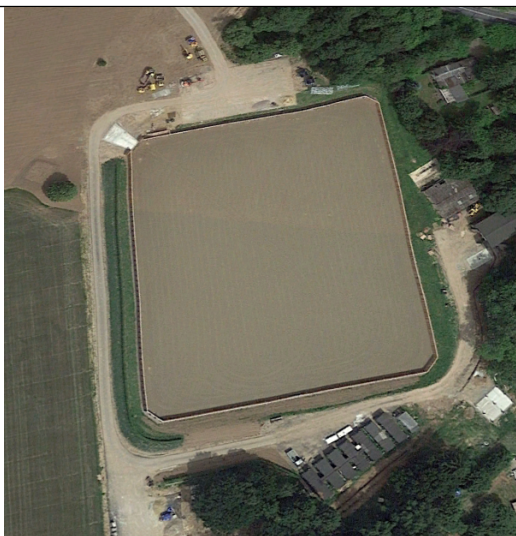
25.2.2017



23.6.2018



14.9.2019



Site visit photos dated 18/10/2018



Photograph from Landscape Appeal Statement 182327 dated December 2019

LPA References: 182327 & 182524 PINS Reference: APPX0360/W/19/3224323 & APPX0360/W/19/3224329 - Jointed Planning Appeals at Park Place, Remenham Hill, Henley RC9 3HN
Appendix 7 – Panoramic Photographs

December 2019

Shade features and parkland boundary planting

Panorama 11



adjacent principal polo pitch



Plate 9 – Line of seven former site cabins positioned behind polo practice ground with hard standing to their front.



Plate 10 – Closer view of site cabins with their former usage clearly signed.

Extract of Appendix 3 of the Appellant's Landscape Officer's Appeal Statement photo dated 26.4.2019



The stationing of a temporary portacabins 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 portacabins WC and shed were originally sited during a construction period.

During the construction period, the LPA could not take enforcement action against the structures as the development fell within the permitted development rights. The structures could not therefore accrue lawfulness during that time because they were sited on the Land in connection with construction. The 'clock for lawfulness' could only start once the development was practically completed. The aerial images indicate that construction work appears to have ceased between 23.6.2018 and 14.9.2019. The works were completed by December 2019 as the completed hardstanding in the same location as the diggers can be seen in the Landscape Officer's photos.

Diggers can be seen on the site in 23.6.2018 and the track/road had not yet been surfaced nor had the area to the north of the manege been created with pony lines, a marquee framework and hardstanding which are all visible in the 14.9.2019 imagery. The clock for lawfulness can therefore only have commenced after 23.6.2018 at the earliest.

The Officer's photographs also show construction works still taking place on the land as a cement mixer, scaffolding and builder's van are seen adjacent to the pavilion as well as a tractor, diggers and a cherry picker. In photos dated December 2019 taken by the LPA Landscape Officer, the cabins are connected to electricity, labelled as "canteen" and a site fire safety box can be seen. In the photos taken by the Appellant's landscape Officer in April 2019, construction materials such as cable reels and stored fence panels can be seen. These all indicate that construction work is still taking place and that the use of the cabins would be temporary during such operations.

Conclusion:

Portacabin A

Taking the date given on the application form for 'substantial completion' i.e. 29 January 2019. The operational development comprising the erection of a building is considered to have been substantially completed 4 years prior to the date of this application. No lawful use is sought for this building. On this basis, the burden of proof has been discharged by the applicant and the Council is satisfied, on the balance of probabilities, that the operational development relating to Portacabin A is lawful.

Portacabin B

Based on the facts, this is not a building and was originally sited on the land under Part 4 Class A of the GPDO. Construction works are likely to have been completed after June 2018. The clock for lawfulness therefore can only start on this date and the material change of use of land for the siting of a portacabin attracts a 10 year period for lawfulness. On the basis of the above, it is concluded that, on the balance of probability, it has not been demonstrated that the use of the land for the siting of a portacabin for has occurred for a consecutive period of 10 years.

Portacabin C

Based on the facts, this is not a building and was originally sited on the land under Part 4 Class A of the GPDO. Construction works are likely to have been completed after June 2018. The clock for lawfulness therefore can only start on this date and the material change of use of land for the siting of a portacabin attracts a 10 year period for lawfulness. On the basis of the above, it is concluded that, on the balance of probability, it has not been demonstrated that the use of the land for the siting of a portacabin has occurred for a consecutive period of 10 years.

Portacabin D

Based on the facts, this is not a building and was sited on the land under Part 4 Class A of the GPDO. Construction works are likely to have been completed after June 2018. The clock for lawfulness therefore can only start on this date and the material change of use of land for the siting of a portacabin attracts a 10 year period for lawfulness. On the basis of the above, it is concluded that, on the balance of probability, it has not been demonstrated that the use of the land for the siting of a portacabin has occurred for a consecutive period of 10 years.

Shed

Taking the date given on the application form for 'substantial completion' i.e. 29 January 2019. The operational development comprising the erection of a building is considered to have been substantially completed 4 years prior to the date of this application. No lawful use is sought for this building. On this basis, the burden of proof has been discharged by the applicant and the Council is satisfied, on the balance of probabilities, that the operational development relating to the shed is lawful.

On this basis, the burden of proof has not been discharged by the applicant and the Council is not satisfied, on the balance of probabilities, that the operational development in its entirety is lawful. A Certificate can be issued for building operations comprising the building structure referred to as 'Portacabin A' and shed but not for the permanent siting of Portacabins B, C, D and the WC unit.

Therefore, a Certificate can be issued for Portacabin A and the Shed only.

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 considered to have been demonstrated that the building, shown as "Portacabin A" and "Shed", 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 for this alone.

Date:	8 April 2025
Earliest date for decision:	11 March 2025
Recommendation agreed by: (Authorised Officer)	
Date:	09.04.25