

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

**Erection of pavilion building, raised paved
terrace and area of hard paving**

at

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

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Client: Rilex Ltd

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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 a Lawful Development Certificate on behalf of Rilex Ltd, the landowner.
- 1.2 The application seeks to certify the lawfulness of a pavilion building, which is situated 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 summer pavilion building. The pavilion was located along the eastern edge of the polo pitch – providing a covered viewing area for family members and guests during practice matches.
- 1.4 The pavilion building that has been built is in a different position, and in terms of its design and appearance, is significantly and materially different to what was permitted. The paved raised terrace surrounding the front and sides of the building is also different in size and appearance to what was shown on the approved plans. At the front of the terrace there are steps leading down to an area of hard paving.



Fig. 1 – Pavilion building (May 2024) – Front (west) elevation



Fig. 2 – Pavilion building (May 2024) – South west elevation



Fig. 3 – Pavilion building (May 2024) – Side (south) elevation



Fig. 4 – Pavilion building (May 2024) – side (north) elevation

- I.5 In its entirety, the structure is materially different to what was approved and therefore constitutes a new building operation for which planning permission was not granted.
- I.6 As the development was substantially completed more than 4 years ago, it is lawful due to the passage of time.
- I.7 The pavilion building can be seen on the Google Earth aerial photograph dated 06/2018 (shown below, Fig. 5) although was not fully complete at this point.

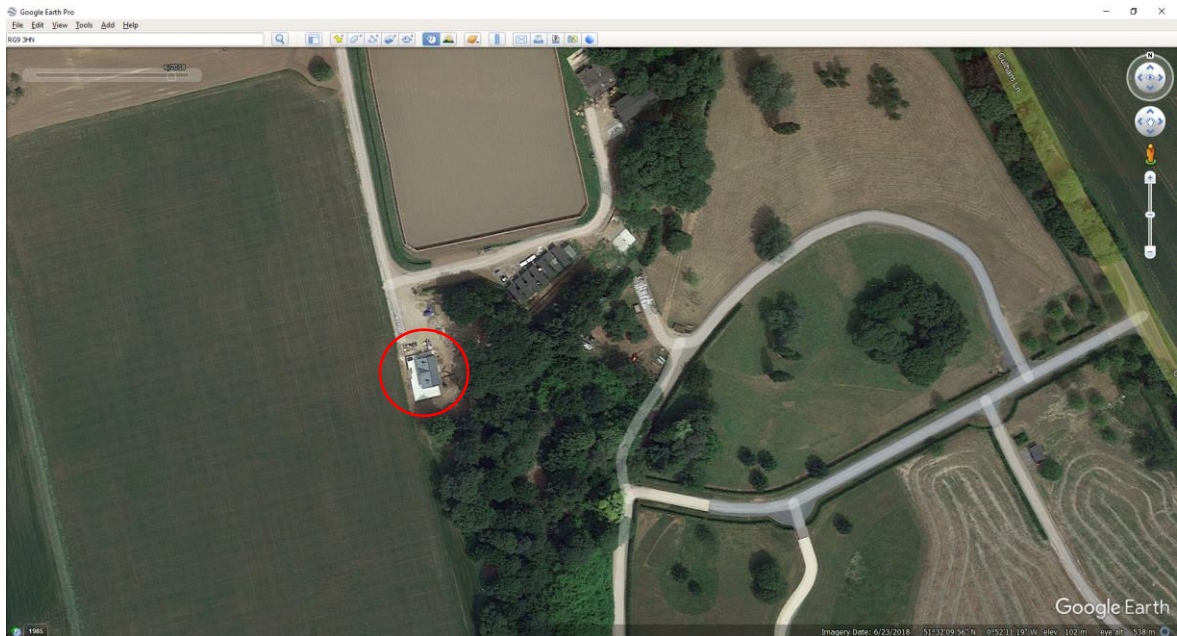


Fig. 5 – Google Earth (06/2018), showing the pavilion building mostly completed

- 1.8 The Google Earth aerial photograph dated 09/2019 (shown below, Fig. 3) shows it in its completed state, with the hard paved area at the front.

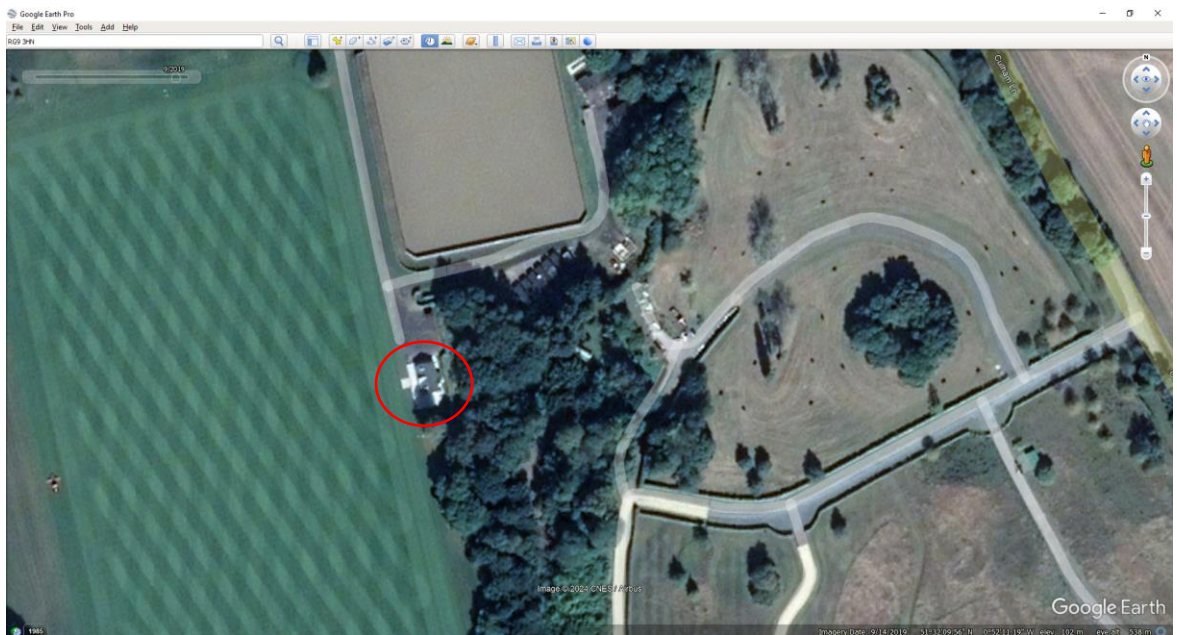


Fig. 6 – Google Earth (09/2019), showing the completed pavilion building

- 1.9 The completed structure building can be seen in every Google Earth aerial photograph since (4/2020, 07/2021 and 02/2022).

1.10 The Council's Enforcement team are aware of the building and the length of time that it has been in situ and have requested the submission of this LDC application so that its lawfulness can be confirmed.

1.11 This statement sets out the case and the evidence to support the certificate.

1.12 The following plans have been provided with the application:

- Site Location Plan
- Block Plan
- Plan and elevations of pavilion building
- Plan showing the difference in locations between the Approved location and the As-Built location

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.

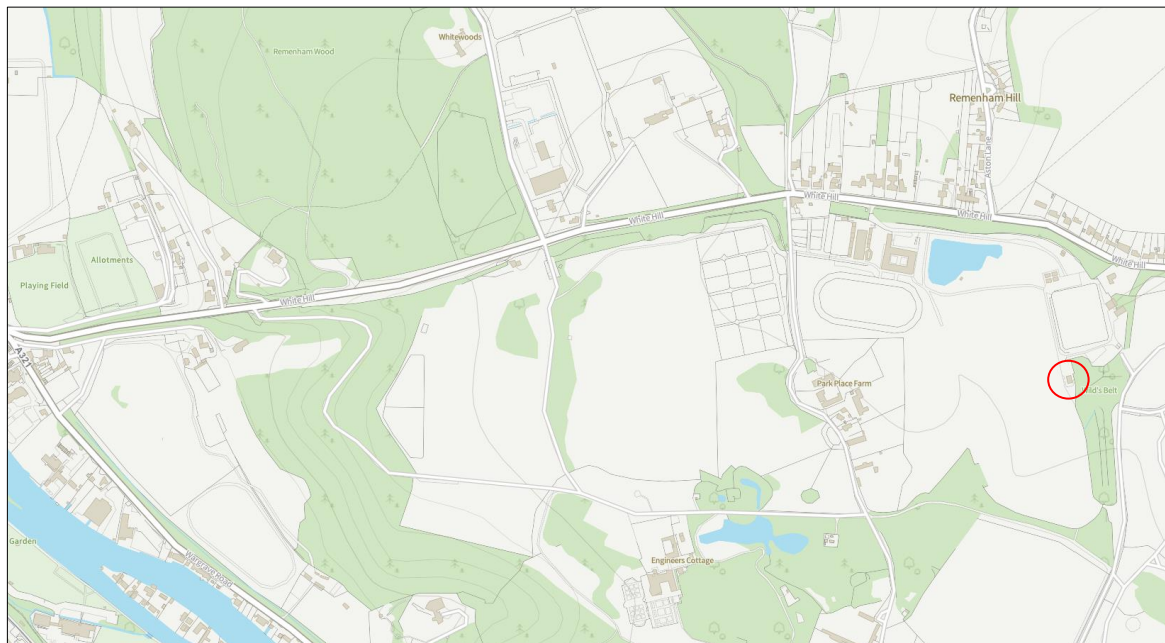


Fig. 7 – Map showing the location of the site

- 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

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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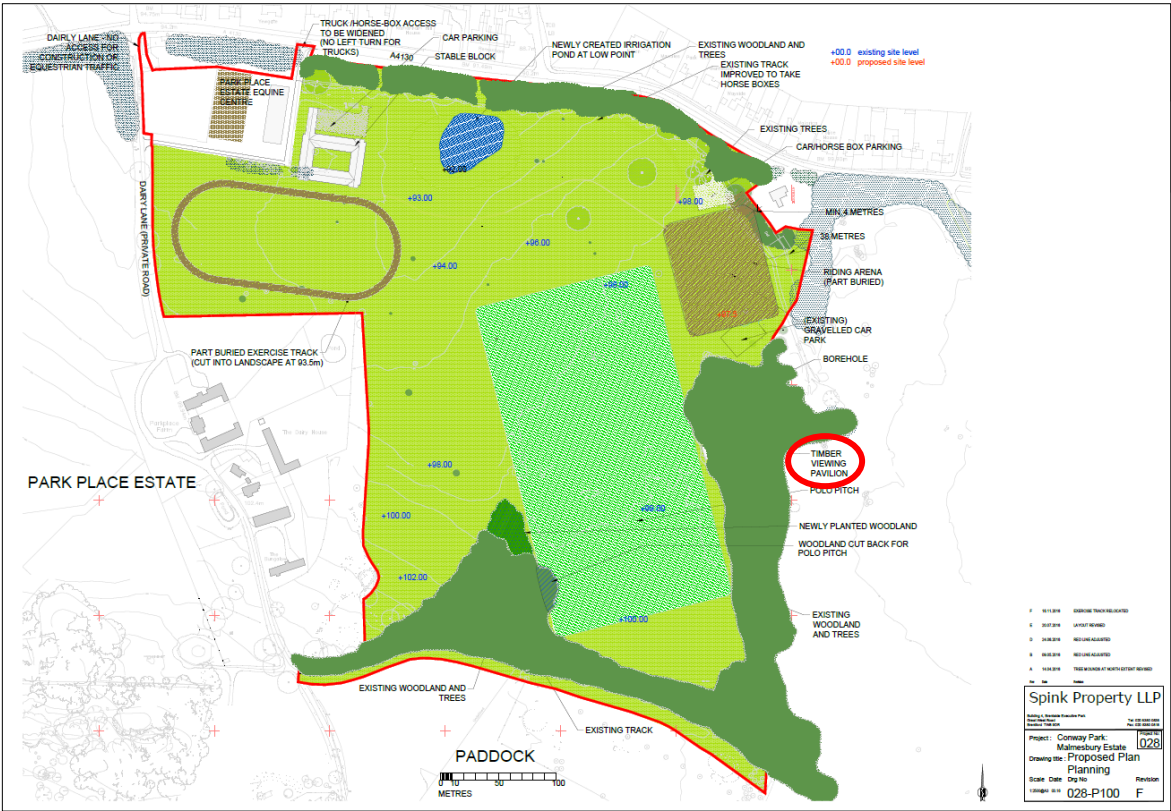


Fig. 5 – Approved site plan (162288)

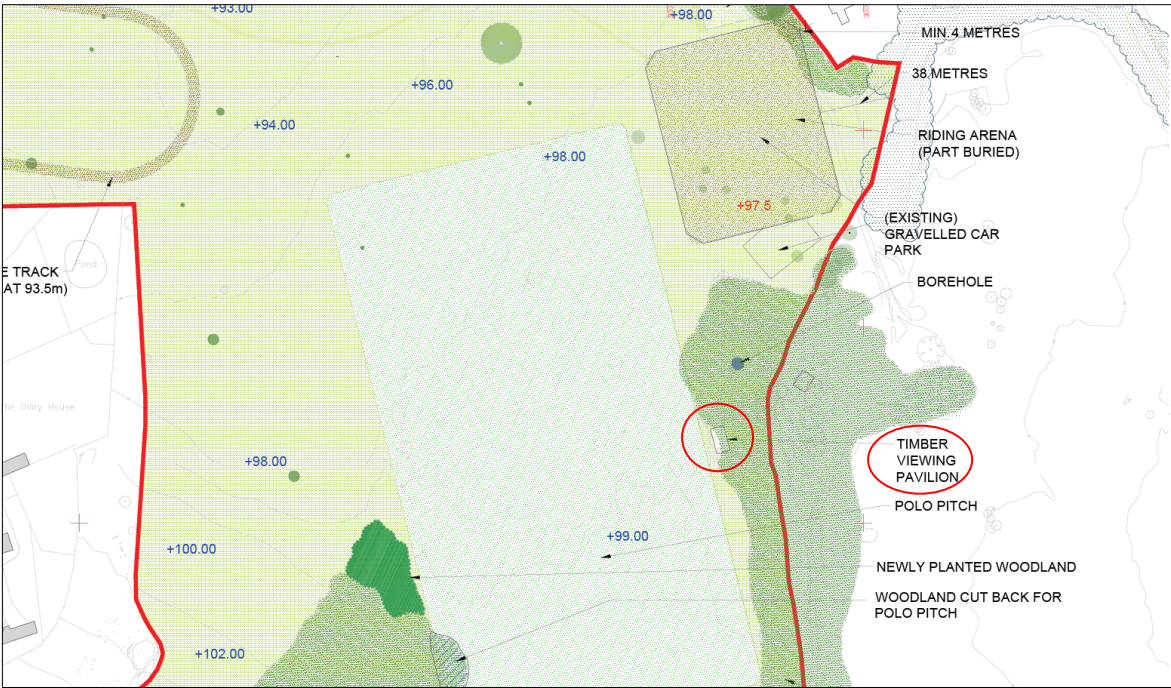


Fig. 6 – Enlargement of Approved site plan (162288)



Fig. 7 – Approved plans

182524	Full planning permission for the erection of a stable (consisting of 24 boxes, tack room, feed room and storage) with outdoor area Appeal against refusal of planning permission – ref: Ref: APP/X0360/W/19/3224329	Refused; 19 Dec 2018 Appeal dismissed; 11 March 2020
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2.4 The appeal against the refusal of 182524 is relevant as the Council's appeal statement makes reference to a number of items that are cited as 'Non-compliance, against which enforcement action is being considered'. This includes the as built pavilion.

2.5 The deadlines for the appeal are shown overleaf. The deadline for the submission of statements(s) was 30 October 2019.

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
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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
		Event Date	Not arranged
Case Link Status	Not Linked	Decision Date	11 Mar 2020
Linked Cases	0		

Fig. 8 – The timeframes for appeal ref: APP/X0360/W/19/3224329

3.0 **COMPARISON OF AS BUILT AND APPROVED**

3.1 The approved pavilion was proposed to be a modest, timber design.



Fig. 9 – Pavilion Approved elevations

3.2 The pavilion, as built, has a colonial appearance. It has an oversailing apex roof with rounded dormer windows, larger soffits and supporting posts. Window details are different. Materials and colour of materials are different. The raised terrace is larger (wider) and different in appearance / materials, with no balustrade.



Fig.10 – Photograph taken May 2024 showing Pavilion as built

- 3.3 The location of the as built pavilion building was plotted as part of a topographical survey undertaken in October 2019 (a copy of the survey has been included as part of the evidence for this application – **Appendix 4**).

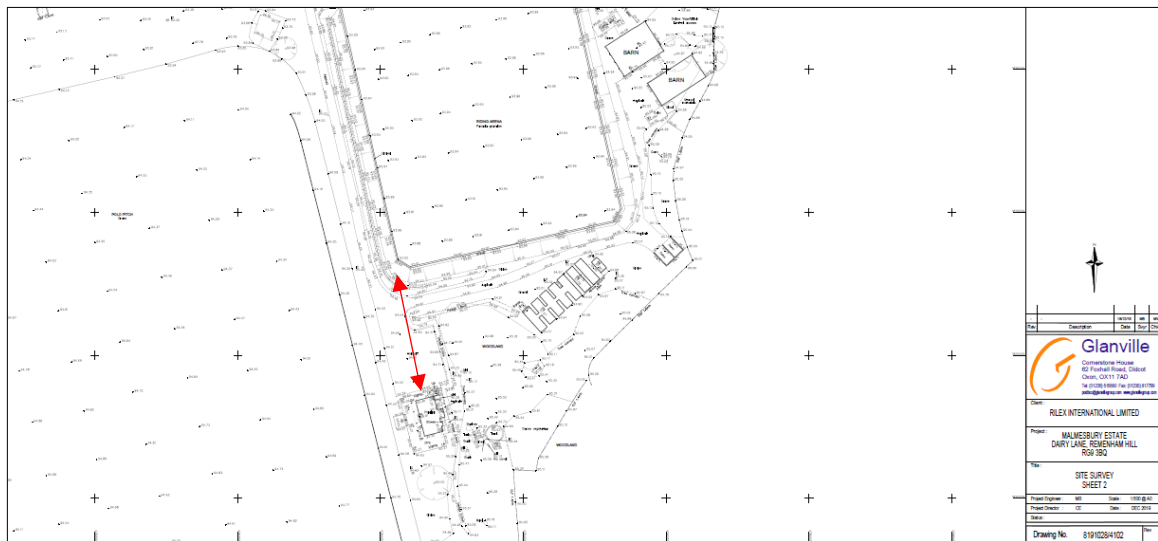


Fig. 11 – Extract of 2019 Topo (showing location of as built pavilion in relation to arena)

- 3.4 When compared to the approved site plan (below), it is evident that the pavilion building has been built further north (closer to the arena) than shown on the approved plans.

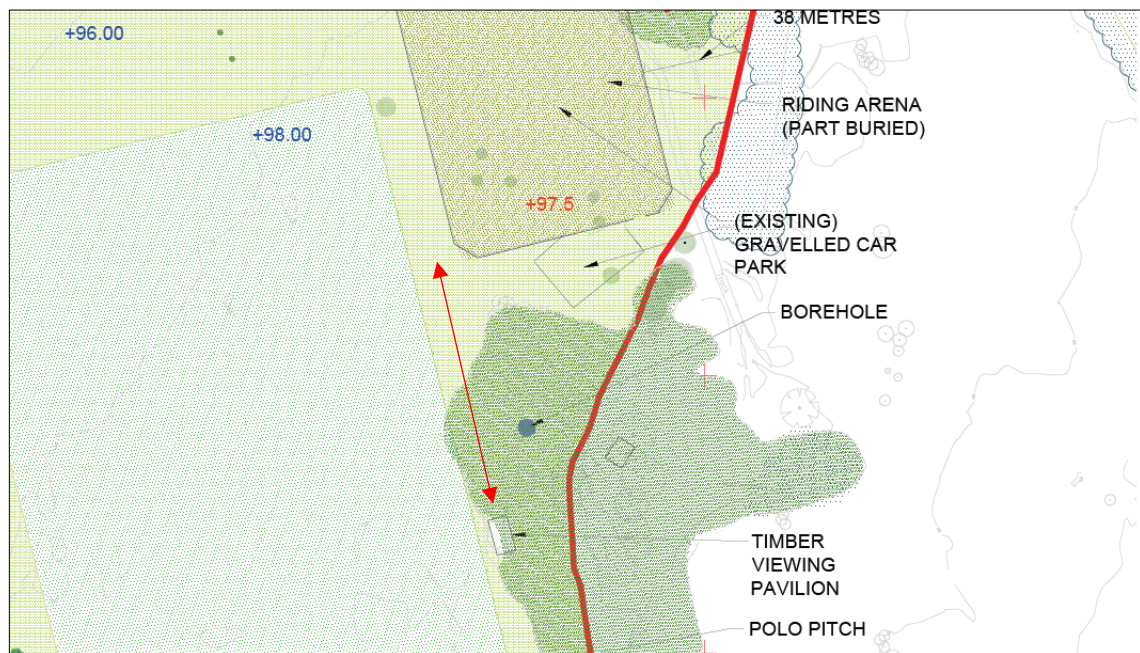


Fig. 12 – Extract of approved site plan (showing location of pavilion in relation to arena)

- 3.5 A plan showing the difference between the approved location and the as-built location – by overlaying the approved site plan onto the OS survey plan, has been provided as part of the application (see exert below). This shows a difference in location of 47m.

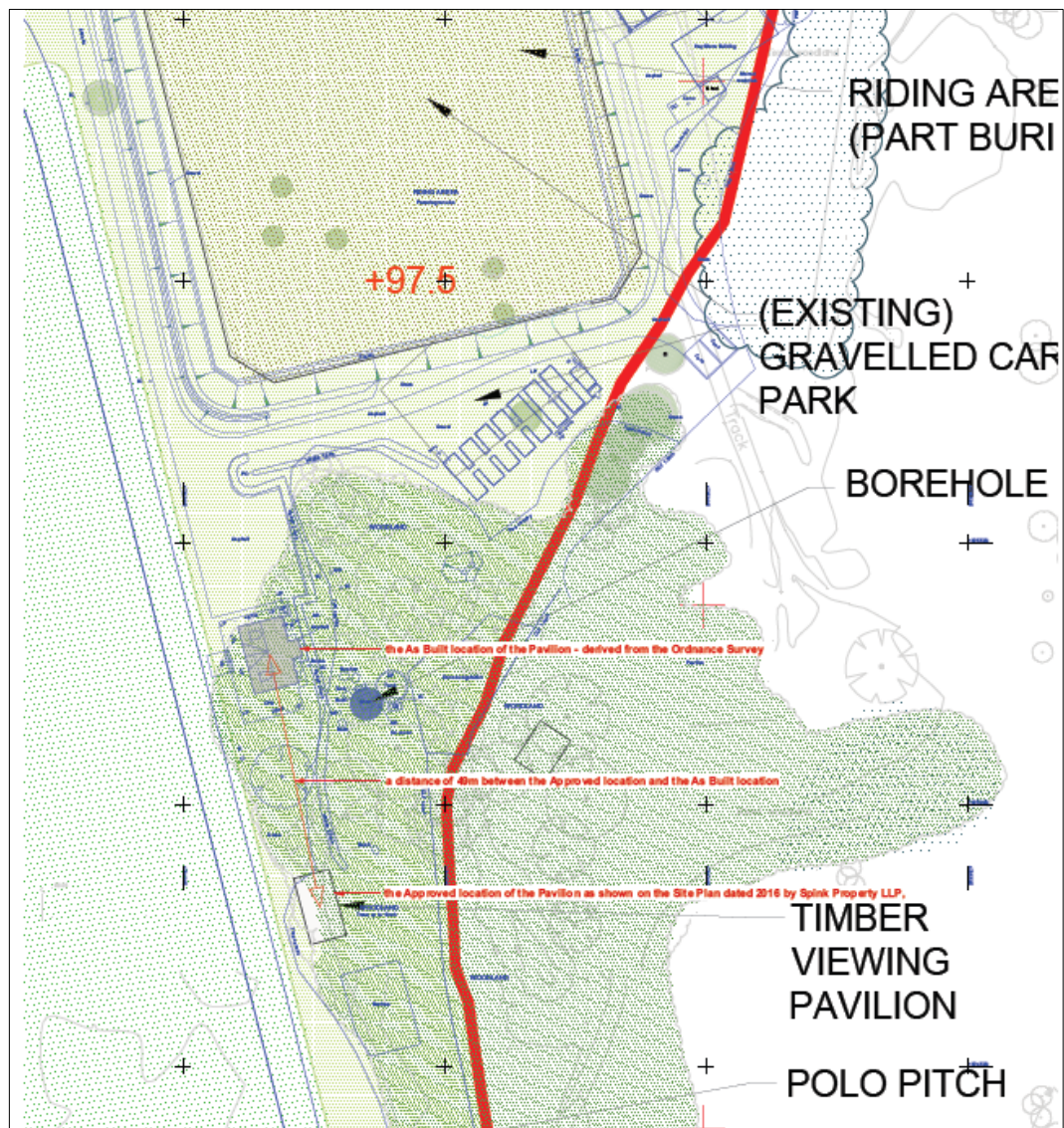


Fig. 13 - Plan showing the difference in locations between the approved location and the as-built location of the pavilion

- 3.6 As a result of the extent of changes to what was approved in terms of design, form, appearance and materials, and the relocation of the building (approximately 47m from the position shown on the approved plan), the pavilion building that has been built is not the same building that was approved. It is a completely different building and so constitutes a new form of development, for which planning permission has not been granted.

4.0 GENERAL PRINCIPLES AND GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT

4.1 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.

4.2 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

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

4.4 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.*

4.5 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).

4.6 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.

4.7 Any buildings or building operations that were substantially complete by 25th April 2024, will not therefore be subject to ten year period. The previous period of **four** years will continue to apply.

4.8 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.*

4.9 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

4.10 The burden of proof in an LDC application lies with the applicant and the relevant test is the "balance of probabilities".

5.0 **EVIDENCE**

5.1 The evidence submitted in support of the application comprises:

- Photograph taken by [REDACTED], SPP Director (29 Jan 2019)
- Photographs taken by [REDACTED] (Polo Manager) on her smart phone, dated 11 March 2019 and 3 May 2019
- Extract from LPA's Appeal Statement (submitted to PINS by 30 October 2019)
- Topographical survey by Glanville, Dec 2019
- Date verified aerial photograph (obtained from Gettmapping.co.uk), dated 05/04/2020

5.2 The photograph taken by [REDACTED], dated 29 January 2019 (**Appendix 1**), shows the pavilion building and decking in an advanced state. The ground level hard paved area in front has not yet been laid, although the piles of slabs can be seen, as can a large pile of sand and a water bowser. There is a security motion sensor on the terrace.

5.3 The Polo Manager took various photographs of the polo facility during and after construction – following the grant of planning permission 162288 in December 2016 and the discharge of conditions in Sept 2017 (application ref: 170791). 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 attached at **Appendix 2**.

5.4 Photos 1 & 2 were taken on 11 March 2019 and show the pavilion building and terrace largely completed. There is a skip and some building works in operation, which look to be associated with paving work, possibly the hard surfaced (ground level) area in front of the terrace. There is security motion sensor on the terrace.

5.5 Photo 3 is dated 3 May 2019 (see Fig. 14 overleaf). It is a distance shot looking across the polo pitch towards the pavilion. When enlarged (see Fig. 15 overleaf) the pavilion, raised terrace and ground level paved area in front are all completed.



Fig. 14 – Photo taken by [REDACTED] (Polo Manager) on 3 May 2019



Fig 15. – Enlargement of photo taken by [REDACTED] (Polo Manager) on 3 May 2019, showing the completed pavilion building, raised terrace and (ground level) hard paved area in front

- 5.6 The pavilion is mentioned in the Council's own appeal statement, which was submitted to PINS by 30 October 2019 (appeal ref: APP/X0360/W/19/3224329) in relation to a number of items which were listed as non-compliance against which enforcement action was being considered. It states:

"Pavilion design and location not as approved; proposed without windows in the roof and as a traditional structure in cedar shingles and oak cladding, to be left untreated to silver naturally over time"

The relevant extract is attached at **Appendix 3**.

- 5.7 In December 2019, a topographical survey was undertaken by Glanville Consultants Ltd, to survey the entire site to confirm the location of the various buildings and other structures that had been built as part of 162288, as well as those items built without planning permission, that the LPA had referred to in their appeal submission. A copy of the topographical survey covering the north eastern part of the site has been provided as part of the evidence submission (**Appendix 4**). The pavilion, raised terrace and ground level paving in front are all shown on the survey – see enlarged extract of the survey below (Fig. 16).

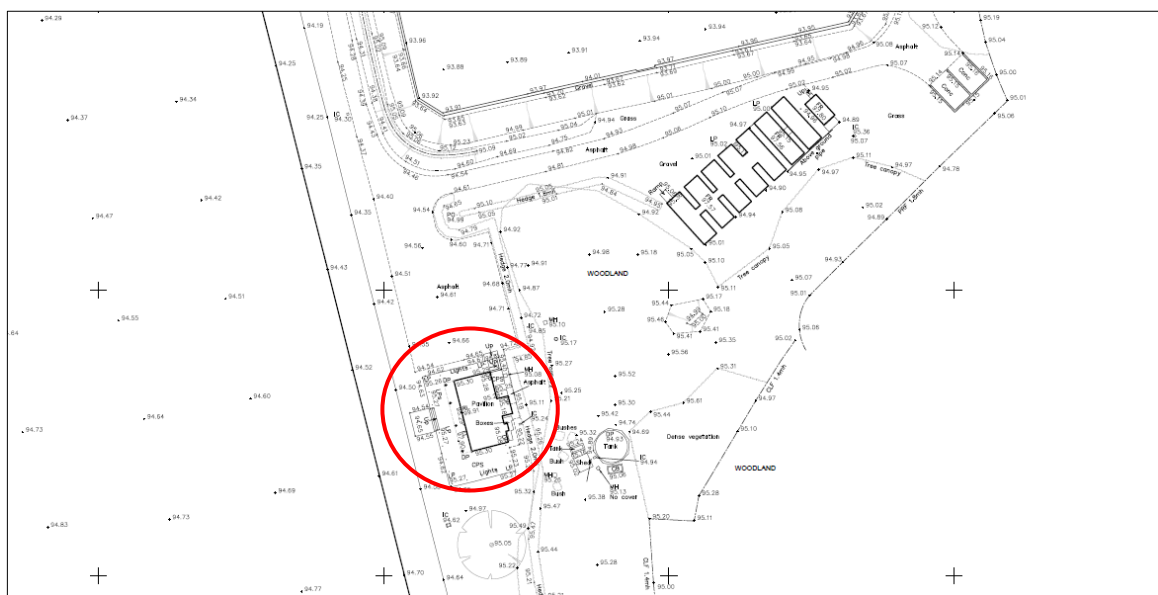


Fig 16. – Enlarged extract of topographical survey undertaken by Glanville in Dec 2019

- 5.8 The dated verified aerial photograph from Getmapping.co.uk, dated 05/04/2020 (**Appendix 5**) shows the pavilion building, terrace and hard paved area in front completed and in situ on this date. All building work paraphernalia has been removed.



Fig 17 – Date verified aerial photo from Getmapping.co.uk (dated 05/04/2020) showing the pavilion, terrace and paved hard area complete

6.0 ASSESSMENT / CONCLUSION

- 6.1 The pavilion, as built, is significantly different to what was approved under 162288 in terms of its overall appearance and materials, as well as the size, appearance and materials of the raised terrace and the inclusion of a hard paved entrance.
- 6.2 It has also been shown that the structure has been built approximately 47m out of position.
- 6.3 It therefore constitutes an unauthorised development for which planning permission has not been granted.
- 6.4 The submitted evidence comprises dated (and time stamped) digital photographs taken in January and March 2019 showing the structure almost completed, and in May 2019 showing the structure completed.
- 6.5 The structure was also specifically mentioned in the Council's appeal statement in October 2019 and is shown on a topographical survey carried out in December 2019.
- 6.6 As the operations were substantially completed before 25th April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 6.7 As the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the pavilion building, raised paved terrace and hard paved area in front are therefore lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 6.8 A certificate of existing lawful development should therefore be granted.