

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242596
Site Address:	Malmesbury Estate, Remenham Hill, Remenham, Berkshire, RG9 3HN
Expiry Date:	9 December 2024
Site Visit Date:	20 November 2024
Proposal: Application for a certificate of existing lawful development for the construction of 2 no. earth mounds.	

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	Withdrawn 10 August 2016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	Withdrawn 22 February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
F/2014/1637	Proposed erection of a new barn to include equestrian use	Approved 21 November 2014
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.	Approve 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.	Approve 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).	Approve 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	Approve 03 December

	buildings at Combe Dairy.	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/samples 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 Matters to be considered for the siting, design (including floorspace, height massing, internal layout & external appearance), access and landscaping.	Approve 04 August 2010
101749	Reserved Matters application on Outline Consent O/2008/1353 for the erection of one dwelling (Kenton's House). Reserved matters for approval are siting, design (including floorspace, height & massing, internal layout, external appearance), means of access and landscaping.	Approve 04 August 2010
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
041618	Application for a screening opinion prior to an application for restoration and redevelopment of Park Place.	EIA Development 14 January 2005
101743	Application for listed building consent for the conversion of barn to ancillary residential accommodation with general refurbishment and modernisation.	Withdrawn 04 August 2010

INFORMATION PROVIDED

By the applicant:

- Photos dated 29 January 2019 by Southern Planning Practice Director
- Photos taken by Polo Manager dated 17 October 2017; 21 December 2017 & 31 July 2018
- Supporting Statement by Southern Planning Practice dated September 2024
- Application Form dated 11 October 2024
- Site Location Plan
- Block Plan
- Sections AA BB CC WOKNM2111903B
- Sections EE FF WOKNM2111904A
- Section GG HH WOKNM2111905A
- LPA Appeal Statement 182524 pages 4 & 9

By the Council:

- Planning History
- Enforcement History
- Aerial imagery

By third parties:

- **Remenham Parish Council** notes that they believe the facility may not be used for private use. However, do not provide any evidence to support this. They advise that they have concerns regarding the Grade II* Registered Park and Gardens and the disregard of its significance. They further state that there should be consistency with a site in Crazies Hill where a 1m mound was required to be removed and similar action should be taken here. They request that the Officers visit the site before determining the application.

(Officer Note: The main issues raised by the Parish Council are not relevant to the determination of this Certificate application. The LPA can only consider evidence as to whether or not the mounds have been substantially completed for at least 4 years prior to the application. A site visit has been undertaken).

APPRAISAL

Location:

The site is part of the Malmsbury Estate on the South side of the A4130. The site is part of an approved private polo complex for the residents of the Park Place Estate.

Proposal:

This certificate relates to two earth mounds which re-used excavated earth from constructing the polo facility which was permitted under 162288.

The mound along the western edge of the polo pitch is approximately 250m long (at its longest point) and 38m wide (at its widest point). At its highest point the mound is 2.41m.

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

The application is for a Certificate of Lawful Existing Use to regularise the engineering operation forming the earth viewing mounds. 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 development had been substantially completed for at least four years prior to the application i.e. 14 October 2020.

In other words, the breach of planning control relied upon must have been continuous throughout that period: *Thurrock BC v Secretary of State for the Environment* [2002] JPL 1278. The same case confirms that “continuity” for these purposes does not necessarily mean that the land must have been used for the activity in question on every single day during the relevant period.

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. Changed to ten years post 25 April 2025.

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. Changed to ten years post 25 April 2025.

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 development which occurred.

Appraisal:

The legal test of the evidence is 'on the balance of probabilities' that the use is 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 application form states the following:

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

The use or activity begun or the building works were substantially completed on 29 January 2019.

No material change of use of Land.

Site Location Plan:

This plan shows the location of the earth mounds in the context of the wider area.

Block Plan:

This shows the location of the earth mounds and includes topographical survey information.

Sections:

The sections show the heights and sizes of the viewing mounds.

Photos dated 29 January 2019 by SPP Director:

These photos not dated however metadata has been provided. The photos indicate the location of the mounds but two of the photos are unclear due to the distances at which they are taken from the mounds and the intervening vegetation.

Photos taken by Polo Manager dated 17 October 2017; 21 December 2017 & 31 July 2018

These photos are all dated prior to the relevant period. They show the larger mound only during construction and it does not appear to be substantially completed.

The Council's Evidence**Application/Appeal Application/Appeal 182327**

Site visit 10.2.2020



This photos shows the larger mound from the area near the blue pavilion.

Landscape Officer Statement

This statement references the unauthorised mounds at 4.29; 5.11; 7.28

LPA Appeal Statement

This statement references the mounds at page 8 within a list of groundworks.

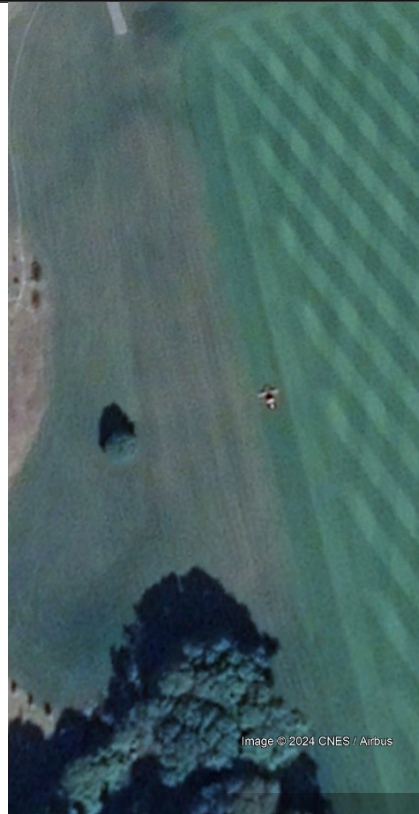
Aerial Imagery:

March 2017



Intentionally left blank

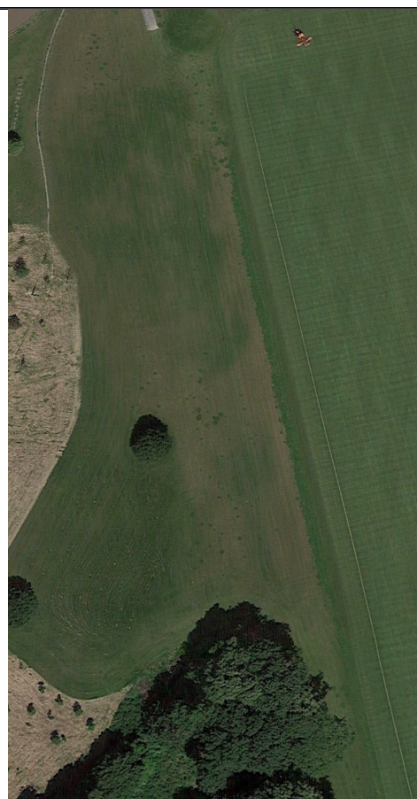
		
June 2018	September 2019	
		



April 2020

July 2021





The aerial imagery provides a snapshot in time. Given the nature of the works, aerial imagery is relatively inconclusive given the works relate to changes in levels, however the imagery from 2018 onwards does show a marginally different colour and/or shading and a differing mowing regime of the pitch and adjoining 'mound' indicating that there may be a change in ground levels.

Does the proposal constitute development?

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".

Engineering operations include works which change the physical nature of the land and "other operations" set out in s.55(1) can include formation of earthworks, the tipping of soil or material to raise or lower land levels or for the purposes of waste disposal. In this case the regular earth mounds seen on the site have an obvious degree of permanence.

The raising of the levels is considered to be an 'engineering operation' for the purposes of S55 of the TCPA, as set out in *Fayrewood Fish Farms Ltd v Secretary of State for the Environment and Hampshire County Council* [1984] JPL 267 in which the Judge stated that the term 'engineering operations' should be given its ordinary meaning in the English language, so the engineering skills required were not necessarily those of a civil engineer.

Notwithstanding this, the changing of levels of land does not fall within the definition of an 'engineering operation' it would fall within the category of 'other operations'.

On this basis, the proposed development comprises building operations within the

meaning of Section 55 of the Act and therefore constitute “development” as defined by the Act.. The four year period from date of substantial completion is therefore required to be assessed.

Conclusion:

The LPA aerial imagery is not wholly clear nor are the photographs. There are no statutory declarations submitted with the application, however, Officers viewed the mounds and referred to them in the appeal statement for application 182327 and 182524. The evidence is not wholly definitive however, the test is the balance of probabilities. It is more likely than not that the mounds were substantially completed prior to 10 October 2020. The Council has no contradictory evidence and some of the planning history corroborates the Applicant’s limited evidence.

Having considered the evidence, the Local Planning Authority is satisfied on the balance of probabilities that the viewing mounds have been substantially completed for least four years prior to the application and are therefore immune from enforcement action.

The Public Sector Equality Duty (Equality Act 2010):

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

RECOMMENDATION

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

Date:	29 November 2024
Earliest date for decision:	5 November 2024
Recommendation agreed by: (Authorised Officer)	DAV
Date:	29.11.24

