

## **DELEGATED OFFICER REPORT**



**WOKINGHAM**  
**BOROUGH COUNCIL**

|                                                                                                             |                                                            |
|-------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| <b>Application Number:</b>                                                                                  | 250526                                                     |
| <b>Site Address:</b>                                                                                        | Malmsbury Estate, Remenham Hill, Henley-On Thames, RG9 3HN |
| <b>Expiry Date:</b>                                                                                         | 30 April 2025                                              |
| <b>Site Visit Date:</b>                                                                                     | 20 November 2024                                           |
| <b>Proposal:</b> Application for a certificate of existing lawful development for an agricultural building. |                                                            |

### **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<br>Appeal dismissed<br>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<br>Appeal dismissed<br>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<br>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<br>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<br>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<br>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<br><br>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<br><br>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<br><br>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<br><br>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/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<br><br>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<br><br>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<br><br>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<br><br>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<br><br>24 July 2013          |
| 122391 | Erection of one dwelling. Demolition of existing dwelling.                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Withdrawn<br><br>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                                                                                                                                                                                                                                                                                                                               | Approved<br><br>04 August 2010        |

|        |                                                                                                                                                                                                                               |                                 |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------|
|        | (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<br>29 November<br>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<br>05 December<br>2024 |
| 242603 | Application for a certificate of existing lawful development for the installation of a sewage treatment plant and power unit.                                                                                                 | Approved<br>05 December<br>2024 |
| 242607 | Application for a certificate of existing lawful development for the erection of 2 no. pony lines.                                                                                                                            | Approved<br>29 November<br>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<br>09 December<br>2024 |
| 242605 | Application for a certificate of existing lawful development for an open fronted shed.                                                                                                                                        | Approved<br>31 March 2025       |
| 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<br>20 December<br>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<br>09 December<br>2024 |
| 242628 | Application for a certificate of existing lawful development for the erection of 4no. marquee frames and associated hardstanding                                                                                              | Approved<br>11 December<br>2024 |
| 242629 | Application for a certificate of existing lawful development for the erection of a building, raised paved terrace and hard paving.                                                                                            | Approved<br>18 December<br>2024 |

|        |                                                                                                                                                                 |                           |
|--------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------|
| 250527 | Application for a certificate of existing lawful development for a metal framed barn clad with green profile sheeting, used to store hay and feed.              | Approved<br>29 April 2025 |
| 250370 | Application for a certificate of existing lawful development for building operations comprising 5 no. linked portacabins (Portacabin A) and a shed on the land. | Approved<br>9 April 2025  |

#### INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan
- Floorplans & Elevations
- Dated Aerial imagery
- Supporting Statement by Southern Planning Practice dated February 2025
- Documents from planning applications 152288 and 170791

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 polo complex.

##### Proposal:

The certificate is for an agricultural building. The building currently has no roof covering. It is 12m x 12m. It also has a 3.8m wide lean-to on the north east elevation.

The application is for a Certificate of Lawful Existing Use to regularise 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 building has been substantially completed for at least four years prior to the application i.e. 28 February 2021.

The use sought is agricultural which would not be considered development under Section 55(2)(e) of the Town and Country Planning Act 1990.

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 *Gabbitts 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 operational development 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 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 1 January 1975.

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.

**Site Location Plan & Block Plan:**

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

**Floorplans & elevations:**

This plan shows the dimensions and the materials of the building.

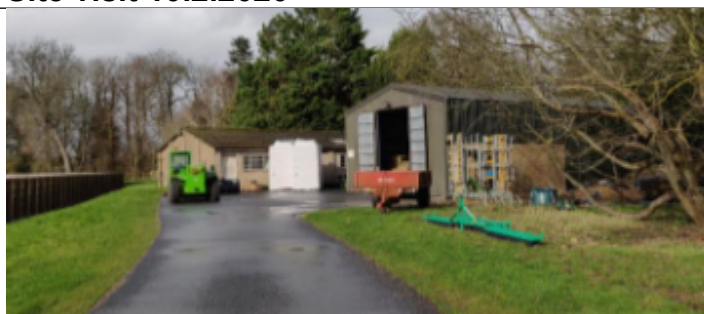
**Aerial Imagery:**

Dated aerial imagery has been submitted with the application from 4/9/1999 showing the building in situ.

**Public documents from applications 170791 and 162288**

The description of development, plans, Officer Report and decision notice do not reference this building. There is no evidence within these applications that indicates whether the building was in situ or not at the time of these applications.

The lack of reference to the buildings in these applications 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.

**The Council's Evidence****Application/Appeal Application/Appeal 182327****Site visit 10.2.2020**

The site visit photos shows the building in the distance. At this time, it had a roof.

**Site visit 7.10.2019****Site visit 17.10.2018**





**LPA Appeal Statement 182327 dated December 2019**

**Aerial Imagery:**

16 July 2021 – Google Earth Pro

14 September 2019



15 April 2020 – Google Earth Pro



23 June 2018 – Google Earth Pro



The aerial imagery provides a snapshot in time. The building is seen on aerial imagery since 2018 (and prior to this – not included in this report as it is outside the 4 year requisite period).

#### Officer Site Visit:

An Officer visited the site on 4 July 2023 in relation to enforcement investigation RFS/2019/085351 and again on 20 November 2024 for this application. The building was substantially completed on these dates, although it did not have a roof.



**Assessment:**

The building is considered to fall within the definition of development within Section 55 of the Town and Country Planning Act and within the definition at 336(1) of a building and therefore constitutes development.

**Conclusion:**

The operational development comprising the erection of a building is considered to have been in situ for 4 years prior to the date of this application.

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 development outlined is lawful.

**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 building has been substantially completed for at least 4 years prior to the submission of the application. It is therefore considered that the application of a certificate of existing lawful use should be granted.

|                                                           |               |
|-----------------------------------------------------------|---------------|
| <b>Date:</b>                                              | 9 May 2025    |
| <b>Earliest date for decision:</b>                        | 28 March 2025 |
| <b>Recommendation agreed by:<br/>(Authorised Officer)</b> | DAV           |
| <b>Date:</b>                                              | 09.05.25      |