

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242607
Site Address:	Malmesbury Estate, Remenham Hill, Remenham, Berkshire, RG9 3HN
Expiry Date:	10 December 2024
Site Visit Date:	20 November 2024
Proposal: Application for a certificate of existing lawful development for the erection of 2 no. pony lines.	

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	Withdrawn 10 August 2016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	Withdrawn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.	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.	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
	Application for submission of details to comply	Approve

100459	with the following condition of planning consent RM/2010/1237: 15. Record of the existing brick buildings at Combe Dairy.	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 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:

- Application Form dated 14 October 2024
- Block Plan
- Site Location Plan
- Smart Phone Photo by A Price (Polo Manager) dated 7 April 2019
- Topographic Plan dated December 2019 by Glanville Group
- Aerial Imagery dated 05/04/2020 from Getmapping
- Appeal Statement of the LPA 182327
- LDC Supporting Statement Southern Planning Practice dated September 2024.

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 private polo complex for the residents of the Park Place Estate.

Proposal:

This certificate is for two pony lines. These are used for the tethering of polo ponies within the existing polo complex approved under 162288. These are adjacent to the polo arena and used for the temporary tying up of ponies during a polo match which involves a number of substitutions of horses during the match.

The application is for a Certificate of Lawful Existing Use to regularise the operational development of two pony lines. 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 *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 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 Activity/Use was begun or the building works substantially completed on 07-04-

2019.

No material change of use of Land.

Site Location Plan:

This plan shows the location of the pony lines in the context of the wider area.

Block Plan:

The plan shows 2 parallel pony lines (approximately 22.5m long).

Elevations:

These plans show the height and materials of the pony lines (approximately 2m in height) with metal wire & Metal poles. The lines are approximately 11m apart.

Smart Phone Photo by A Price (Polo Manager) dated 7 April 2019:

The photograph shows the pony lines in situ. In the background there are buildings and telecoms mast. A plan showing the location the photograph was taken is appended.

LPA's Appeal Statement ref 182327

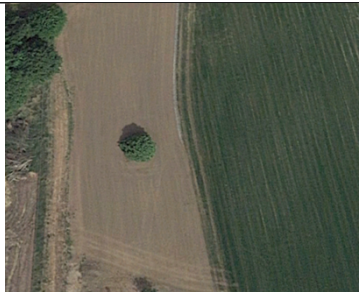
This Statement refers to pony lines to the west of the pony arena on page 8.

LDC Supporting Statement:

The supporting statement summarises the above evidence.

The Council's Evidence:

Aerial Imagery:

June 2018	September 2019
	
April 2020	July 2021
	
The aerial imagery provides a snapshot in time. The pony lines are not present in the 2018 aerial imagery. These images show that there may be something in this location from 2019 but they are not wholly conclusive given the nature of the	

development and aerial image.

Application/Appeal 182327

Site visit 07.10.2019



The pony lines were installed at the time of this site visit

Appeal Statement dated December 2019

The pony lines are referenced in the Case Officer's Appeal Statement (as above)

Landscape Officer's Statement

Referenced by the Landscape Officer "Tethering poles" at 4.56.

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".

"building" is defined at section 336(1) of the 1990 Act and includes "any structure or erection." . *None of these factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgment.*

Case law [footnote: Cardiff Rating Authority v Guest Keens [1949] 1 KB 385 & Skerrits of Nottingham Ltd v SSTER (No 2) [2000] 2 PLR 102] states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment. Case law [footnote: Cardiff Rating Authority v Guest Keens [1949] 1 KB 385 & Skerrits of Nottingham Ltd v SSTER (No 2) [2000] 2 PLR 102] states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment.

Size:

There are two lines, 11m apart, each is 22.5m long and 2m in height.

Permanence:

They are similar to a section of post and wire fencing. although they do not form a means of enclosure. They have a physical presence in this location and have a degree of permanence and have not been moved from the site since their inception.

Physical attachment:

The polo lines are fixed structures – the metal posts are driven deep into the ground to ensure that they are secure (in order to withstand being pulled by the tethered horses).

On this basis, the 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.

Having concluded that the pony lines are development, there is a requirement to assess whether these fall within “permitted development”. The pony lines could be considered as a “means of enclosure” under The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) Schedule 2, Part 2, Class A. The courts have held that to be permitted by Class A, development must ‘enclose’ and whether or not a wall or fence does in fact do so in any particular case continues to be a matter for debate. In this case, the pony lines do not enclose any land or perform any enclosing function and therefore do not meet the description required by this part.

Conclusion:

The aerial imagery reviewed by the Council aligns with that submitted by the Applicant. Although there are no statutory declarations submitted with the application, the evidence provided is clear and unambiguous. The Council has no contradictory evidence and some of the Council’s planning history documents corroborates the Applicant’s evidence.

Having considered the evidence submitted any and contradictory evidence, the Local Planning Authority is satisfied on the balance of probabilities that the pony lines have been substantially completed for a continuous period of at 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, pony lines have been substantially completed for at least four years. It is therefore considered that the application of a certificate of existing lawful use should be approved.

Date:	
Earliest date for decision:	6 November 2024
Recommendation agreed by: (Authorised Officer)	Approval JAV
Date:	29 November 2024



