

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

**ADDITIONAL GRAVEL TRACKS,
ASPHALT DRIVEWAY, PAVILION
PARKING AREA AND RUBBERISED
MATTING LINK WAY**

at

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

Prepared by

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Date: September 2024

Client: Rilex Ltd

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(A Price) dated 8 February 2018, 11 March 2019, 3 May
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- Appendix 3 – Extract from LPA’s Statement of Case (Appeal ref:
APP/X0360/W/19/3224329)**
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December 2019 (Drawing ref: 8191028/4101 – Sheet 1)**
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December 2019 (Drawing ref: 8191028/4101 – Sheet 2)**
- Appendix 6 – Date verified aerial photograph (obtained from
Getmapping.co.uk) dated 05/04/2020**

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 the landowner, Rilex Ltd.
- 1.2 The application seeks to certify the lawfulness of additional gravel tracks, asphalt driveway, pavilion parking area and a linked way (surfaced with rubberised matting) situated on the Malmsbury Estate where there is a polo facility supporting a high goal polo team.
- 1.3 Planning permission was granted in December 2016 for the construction of a polo facility on the land, which included a polo field, exercise track, stable block, all weather practice area and summer pavilion (application ref: 162288). The approved plans included areas for horsebox parking and gravel tracks.
- 1.4 Additional sections of gravel tracks have been constructed on the land – to provide access to a viewing mound.



Fig. 1 – The additional sections of gravel track (May 2024)

- 1.5 An additional asphalt driveway runs along the western edge of the polo arena to the pavilion building, and a parking area adjacent to the pavilion building, has also been constructed.



Fig. 2 – The asphalt driveway and pavilion parking area (May 2024)

- 1.6 The asphalt drive spurs off at the south western corner of the arena, where it runs eastwards along the southern edge of the Polo arena to a maintenance / service area (used to park and store grounds maintenance and estate management equipment).



Fig. 3 – The asphalt driveway that spurs off eastwards (at the SE corner of the polo arena), along the southern edge of the Polo arena (Jan 2019)

- 1.7 A link way (surfaced with rubberised matting) connecting the polo stable block to the Park Place Stables complex and also providing access to the exercise track has also been constructed.



Fig. 4 – The rubberised matting link way (May 2024)

- 1.8 These infrastructure items have all been in situ since at least September 2019, as confirmed by the Google Earth aerial photograph dated 09/2019 (shown at Fig. 5 overleaf) and can be seen in every Google Earth aerial photograph since – 04/2020, 07/2021, 02/2022.



Fig. 5 – Google Earth (09/2019), showing the additional gravel tracks, asphalt driveway and spur, pavilion parking area and link way

- 1.9 The Council's Enforcement team are aware of these items and the length of time that they have been in situ and have requested the submission of this LDC application so that their lawfulness can be confirmed.
- 1.10 This statement sets out the case and the evidence to support the certificate.
- 1.11 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan (1)
 - Block Plan (2)

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.

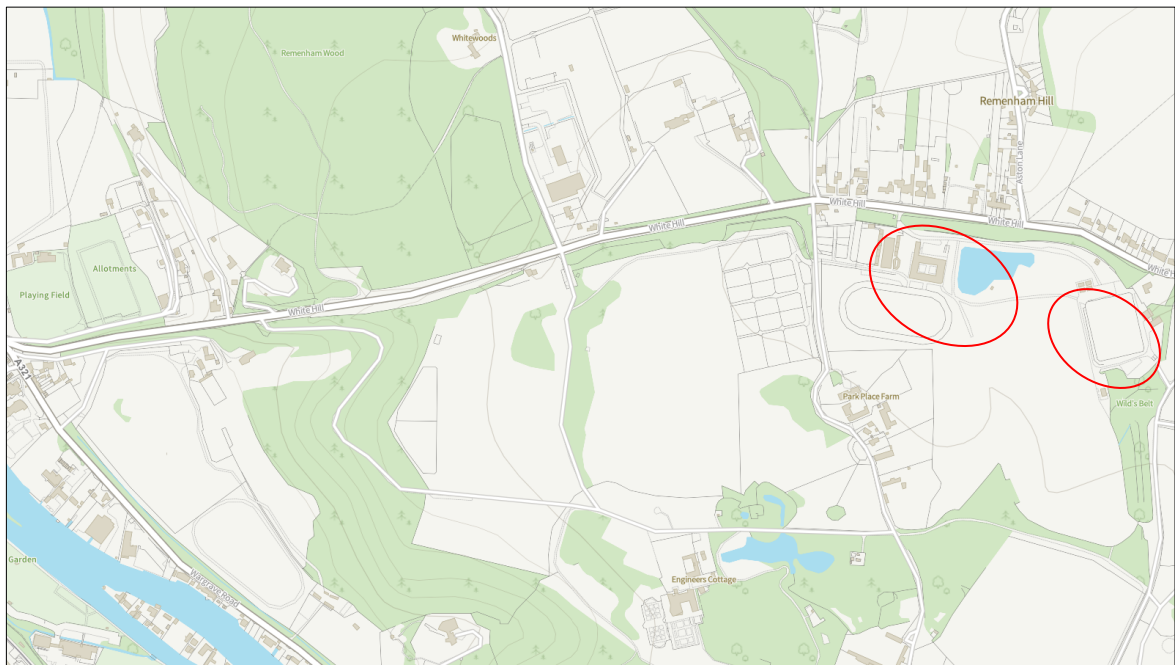
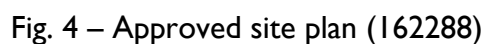


Fig. 3 – Map showing the location of the site

- 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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2.4 APP/X0360/W/19/3224323 and APP/X0360/W/19/3224329 were linked appeals.

2.5 The time frames for the appeals were as follows:

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Reference: APP/X0360/W/19/3224323

Appellant/Applicant
Rilex International

Agent
Mr Ian Ellis

Site Address
Malmesbury Estate
Remenham Hill
HENLEY-ON-THAMES
Berkshire
RG9 3HN

Case Details		Dates	
Case Type	Planning Appeal (W)	Start Date	17 Sep 2019
Local Planning Authority	Wokingham Borough Council	Questionnaire due	24 Sep 2019
Case Officer	Adam Hill	Statement(s) due	22 Oct 2019
Procedure	Hearing	Interested Party Comments due	22 Oct 2019
Status	Complete: Decision issued	Appellant/LPA Final Comments due	N/A
Decision and Outcome	Dismissed 3224323 and 3224329 - Decision 3224323 and 3224329 - Costs Decision	Inquiry Evidence due	N/A
Case Link Status	Not Linked	Event Date	Not arranged
Linked Cases	0	Decision Date	11 Mar 2020

Fig. 5 - Time frames for appeal ref: APP/X0360/W/19/3224323

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Reference: APP/X0360/W/19/3224329

Appellant/Applicant
Durio Limited

Agent
Mr Ian Ellis

Site Address
Park Place Stables
Remenham Hill
HENLEY ON THAMES
Berkshire
RG9 3HN

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

Fig. 6 - Time frames for appeal ref: APP/X0360/W/19/3224329

2.6 The date for the submission of Statements was 22 October 2019 and 30 October 2019 respectively.

3.0 GENERAL PRINCIPLES AND GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT

3.1 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.

3.2 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

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

3.4 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.*

3.5 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).

3.6 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.

3.7 Section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 states that:

Transitional provision: time limits for enforcement

5. The amendments made to the 1990 Act by section 115 of the 2023 Act (time limits for enforcement) do not apply where—

- (a) in respect of a breach of planning control referred to in section 171B(1) of the 1990 Act (time limits), the operations were substantially completed, or
- (b) in respect of a breach of planning control referred to in section 171B(2) of the 1990 Act (time limits), the breach occurred,

before the day on which that section comes into force.

3.8 Building operations that were substantially completed before the change to the time immunity rules took effect on 25th April 2024 are therefore still subject to the **four year rule**.

- 3.9 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.*
- 3.10 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
- 3.11 The burden of proof in an LDC application lies with the applicant.
- 3.12 The relevant test is the "balance of probabilities".

4.0 DEFINITION OF DEVELOPMENT

- 4.1 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”.
- 4.2 For the purposes of the Act “ building operations ” includes—
- (a) demolition of buildings;
 - (b) rebuilding;
 - (c) structural alterations of or additions to buildings; and
 - (d) other operations normally undertaken by a person carrying on business as a builder.
- 4.3 The term “building” is defined at section 336(1) of the 1990 Act and includes “any structure or erection.”
- 4.4 The construction of tracks, driveways and parking areas are building and engineering operations involving ground works (using heavy plant and machinery) and resulting in permanent physical works to the land with hardsurfacing, and therefore falls within the definition of development under Section 55 of the Act.

5.0 **EVIDENCE**

5.1 The submitted evidence comprises:

- 4 x Photos taken by Polo Manager (A Price) on a smartphone camera dated 8 February 2018, 3 March 2019, 3 May 2019 and 18 September 2019
- 2 x photos taken by Ian Ellis (ex SPP Director) dated 29 January 2019
- Council's appeal statement (submitted to PINS by 30 Oct 2019)
- Topographical survey by Glanville, Dec 2019 (Sheet 1 and Sheet 2)
- Date verified aerial photograph (obtained from Gettmapping.co.uk), dated 05/04/2020

5.2 The Polo Manager, A Price, took various photographs of the polo facility during and after construction on her smart phone. They are contemporaneous 'ad-hoc' photos of things that caught her interest, showing the progress of things being built, during construction and when completed. They are therefore a good source of independent evidence. The photos attached at **Appendix I** show:

- 5.3 Photo 1, taken 8 February 2018, shows the construction of the concrete link way between Park Place stable buildings (shown) and the polo stable block.



Fig. 7 – Smartphone photo taken by A Price showing construction of the concrete link way

- 5.4 Photo 2, taken 18 September 2019, shows the additional gravel track (leading to the viewing mound) and also part of the gravel track running between the polo stable block and the irrigation pond. It also shows the link way (surfaced with rubberised matting) between the polo stable block and the Park Place stables

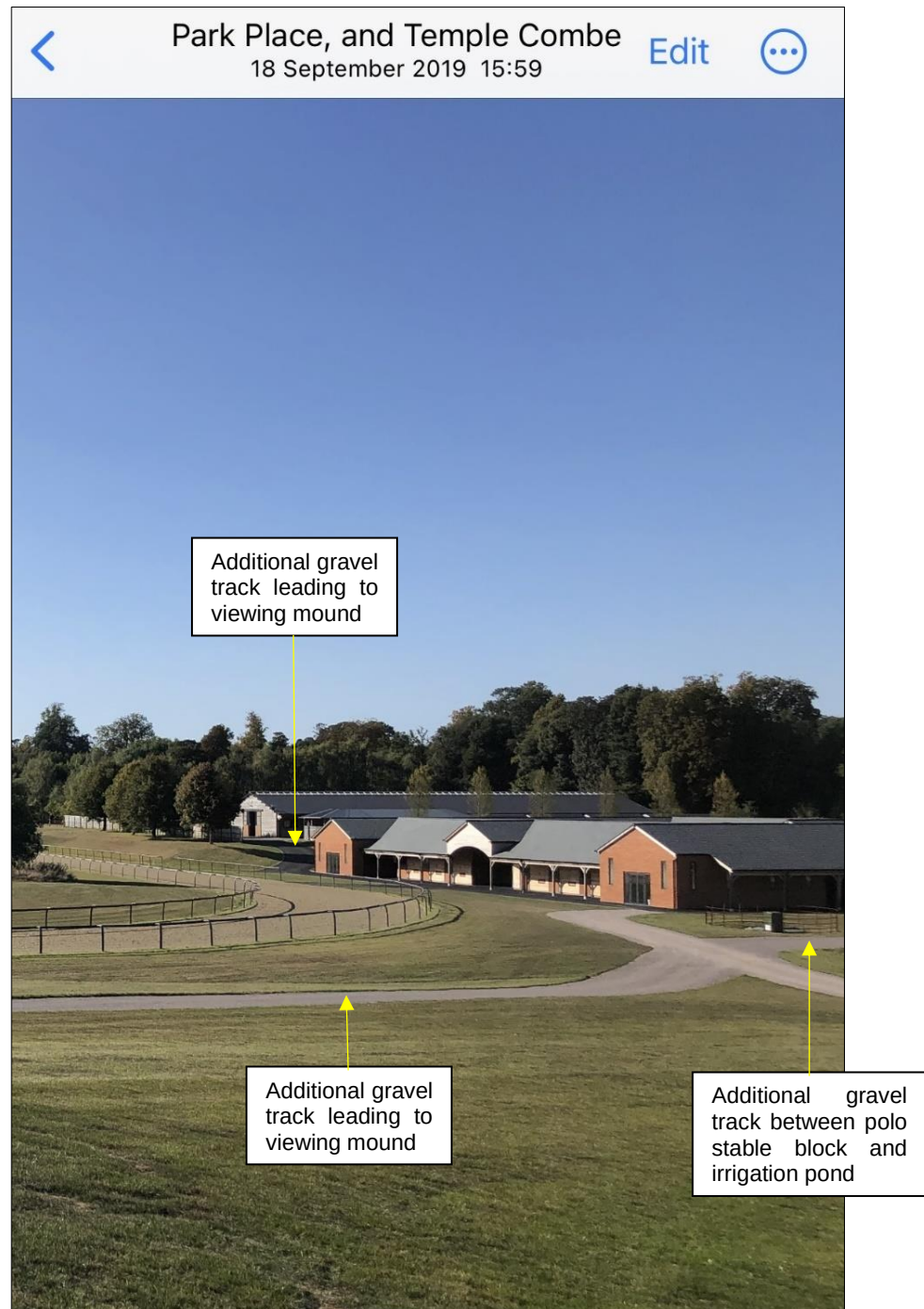


Fig. 8 – Smartphone photo taken by A Price showing additional gravel tracks and linked way

- 5.5 Photos 3 and 4 are dated 3 May 2019 and 19 September 2019 and show the completed parking area next to the pavilion.
- 5.6 The photos taken by Ian Ellis (ex SPP Director) on 29 January 2019 (**Appendix 2**) can be date verified by the meta data files provided. They show the asphalt driveway spur extending eastwards (running along the south of the arena) – top photo below – and also the pavilion parking area – bottom photo below.



Fig. 9 – Photos taken by Ian Ellis on 29 January 2019

- 5.7 The Council's appeal statement (**Appendix 3**) lists a number of items that were identified as being non-compliant and against which enforcement action was being considered at that time. It includes reference to "Gravel access track to the western viewing mounds" and the "Extent of tarmac and gravel".
- 5.8 The reference to these items in the Council's appeal statement is a contemporaneous account of their existence. There is no date on the appeal statement. However, the deadline for the submission of the statements to PINS was 30 October 2019 (Fig. 5), so this provides confirmation of the date of its origin, which would have been on, or just before 30 October 2019.
- 5.9 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. Copies of the topographical survey covering the north-eastern part (Sheet 1) and north-western part (Sheet 2) of the site have been provided as part of the evidence submission (**Appendices 4 and 5**). The additional gravel tracks, asphalt drive and pavilion parking area and link way are clearly visible – see enlarged extracts of the survey below

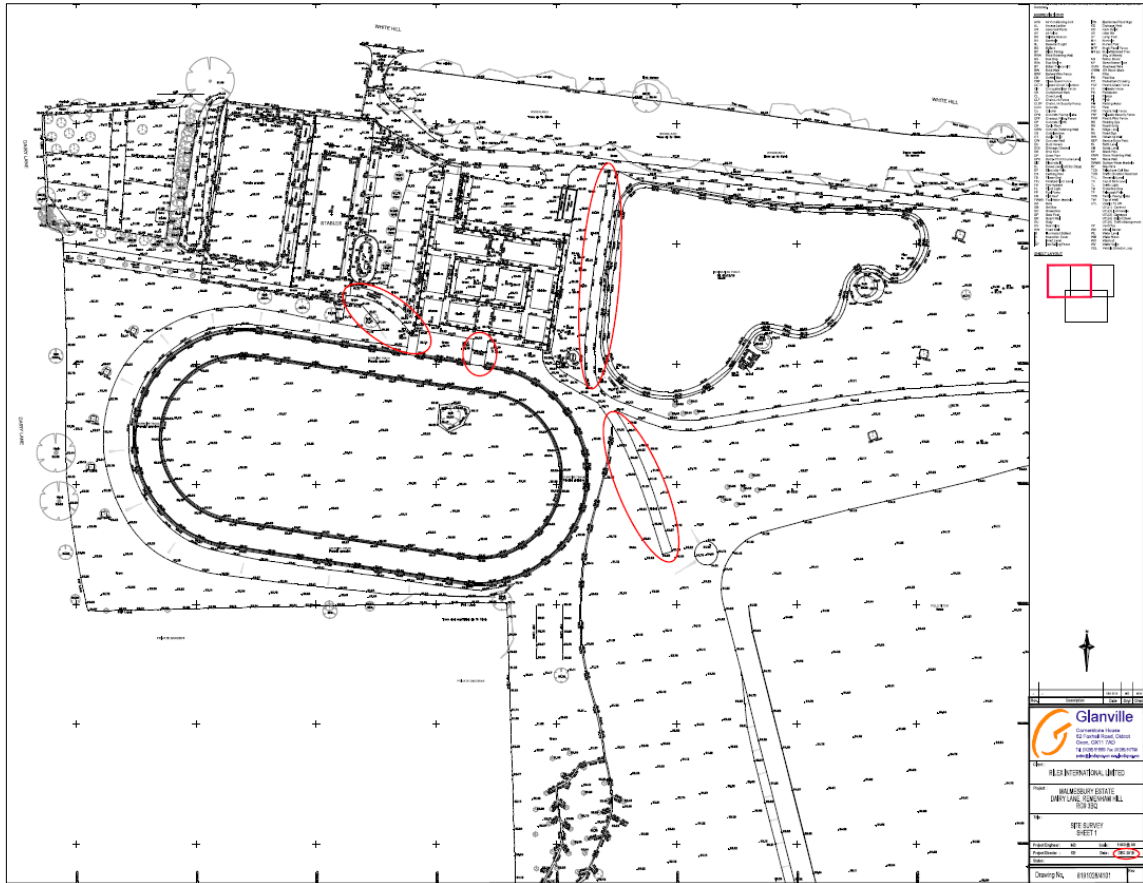


Fig. 10 - Extract of Topographical survey, Dec 2019 (Sheet 1)

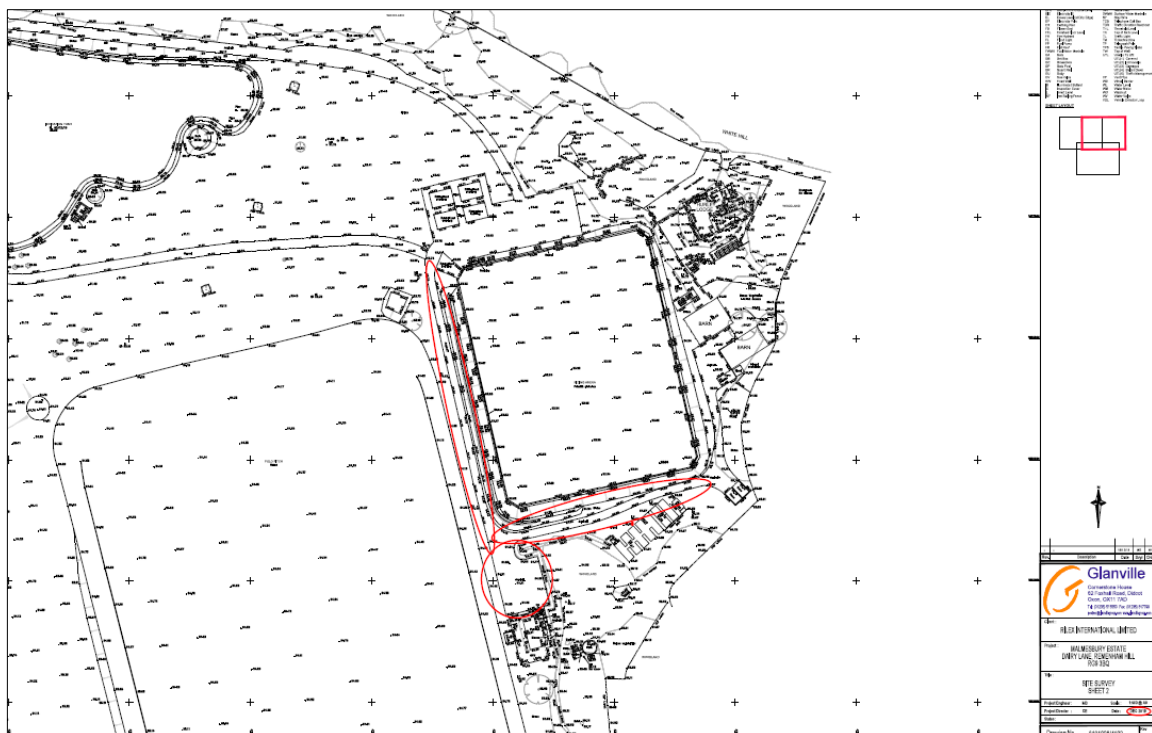


Fig. 11 - Extract of Topographical survey, Dec 2019 (Sheet 2)

- 5.10 The dated aerial photograph from Getmapping.co.uk (**Appendix 6**) is date verified as 05/04/2020 and clearly shows the additional gravel tracks, asphalt drive, pavilion parking area and link way in situ. So is further evidence they were all completed and in situ by this date.



Fig. 11 – Date verified aerial photograph (dated 05/04/2020) showing additional gravel tracks, asphalt driveway, pavilion parking area and linked way

6.0 ASSESSMENT / CONCLUSION

- 6.1 The submitted evidence confirms that the additional tracks, asphalt drive, pavilion parking area and link way were all substantially completed more than 4 years prior to the submission of this application.
- 6.2 The evidence comprises dated (and time stamped) digital photographs taken by the Polo Manager and an ex-Director of SPP in February 2018, January 2019, May 2019 and September 2019; the Council's own appeal statement (Oct 2019), a topographical survey carried out in December 2019; and a date verified aerial photograph (dated 05/04/2020).
- 6.3 They confirm, as a matter of fact, and on the balance of probabilities, that the items have been in situ, in a completed state, for more than 4 years prior to the submission of this application.
- 6.4 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).
- 6.5 As the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the additional tracks, asphalt drive, pavilion parking area and link way are therefore lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 6.6 A certificate of existing lawful development should therefore be granted.