

SUPPORTING STATEMENT

for

**A CERTIFICATE OF EXISTING LAWFUL
DEVELOPMENT FOR:**

**PONY LINES MARQUEE FRAMEWORK
AND ADDITIONAL HARDSTANDING**

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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<u>Contents:</u>	Page
1.0 INTRODUCTION	1
2.0 THE SITE	3
3.0 GENERAL PRINCIPLES AND GROUNDS UNDER WHICH A CERTIFICATE IS SOUGHT	6
4.0 WHAT CONSTITUTES A BUILDING	9
5.0 EVIDENCE	10
6.0 ASSESSMENT / CONCLUSION.....	15

Appendices:

- APPENDIX 1 – Photographs taken on smart phone by Polo Manager (██████) dated 21 February 2019, 3 May 2019, 10 May 2019 and 29 May 2019**
- APPENDIX 2 – Extract from LPA’s Statement of Case (Appeal ref: APP/X0360/W/19/3224329)**
- APPENDIX 3 – Topographical survey undertaken by Glanville, dated December 2019 (Drawing ref: 8191028/4101 – Sheet 2)**
- APPENDIX 4 – Date verified aerial photograph (obtained from Gettmapping.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 Lawful Development Certificate on behalf of the landowner, Rilex Ltd.
- 1.2 The application seeks to certify the lawfulness of the construction of a pony lines marquee framework and additional hardstanding, situated on the Malmsbury Estate where there is a polo facility supporting a high goal polo team.
- 1.3 The pony lines marquee framework is located to the north of the polo arena adjacent to a parking area for horseboxes. It is used for practice matches. Polo horses are tethered to the lines whilst waiting to be used during practice matches and the marquee framework allows a covering to be draped over. The hardstanding where the pony lines and marquee framework are located comprises an additional area of hardstanding to what is shown on the approved site plan for application re: 162288.



Fig. 1 – Pony lines marquee framework and additional area of hardstanding (Aug 2023)

- 1.4 The pony lines, framework and additional area of hardstanding have all been in situ since at least September 2019, as confirmed by the Google Earth aerial photograph dated 09/2019

(shown at Fig. 2 below) and can be seen in every aerial photograph since – 04/2020, 07/2021, 02/2022.

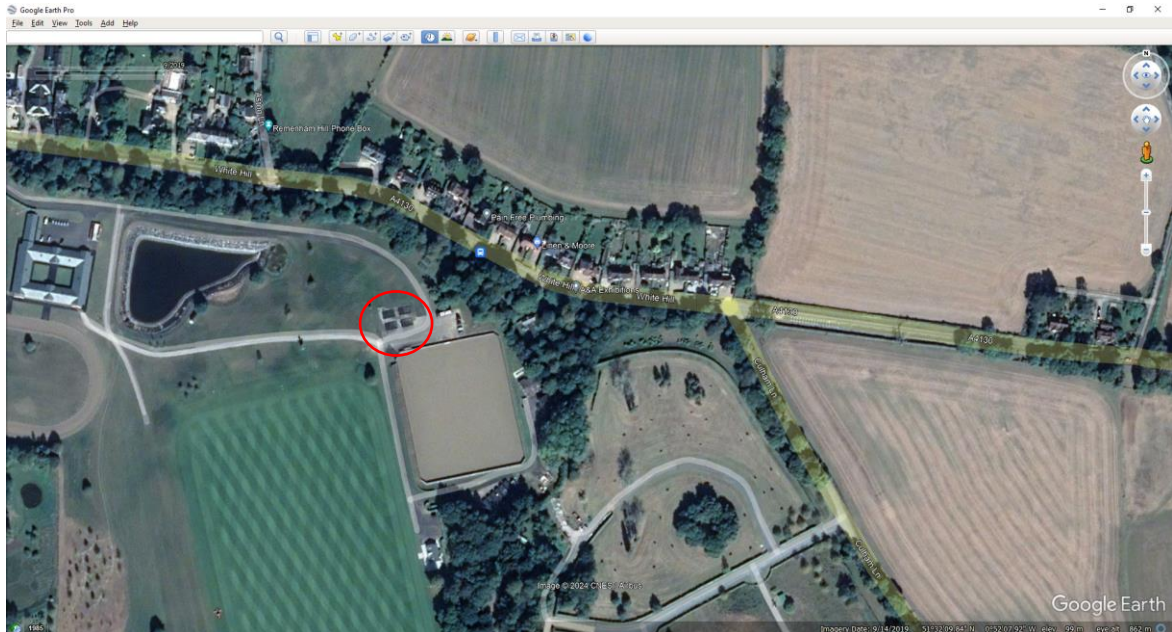


Fig. 2 – Google Earth (09/2019), showing the pony lines / marquee and additional hardstanding

- 1.5 The Council's Enforcement team are aware of the structure and additional hardstanding and the length of time that they have been in situ and have requested the submission of this LDC application so that its lawfulness can be confirmed.
- 1.6 This statement sets out the case and the evidence to support the certificate.
- 1.7 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan
 - Plan and elevations of pony lines and marquee framework

2.0 **THE SITE**

- 2.1 The site is part of the Malmsbury 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. The pony lines marquee framework and extended area of hardstanding are situated to the north of the polo arena.

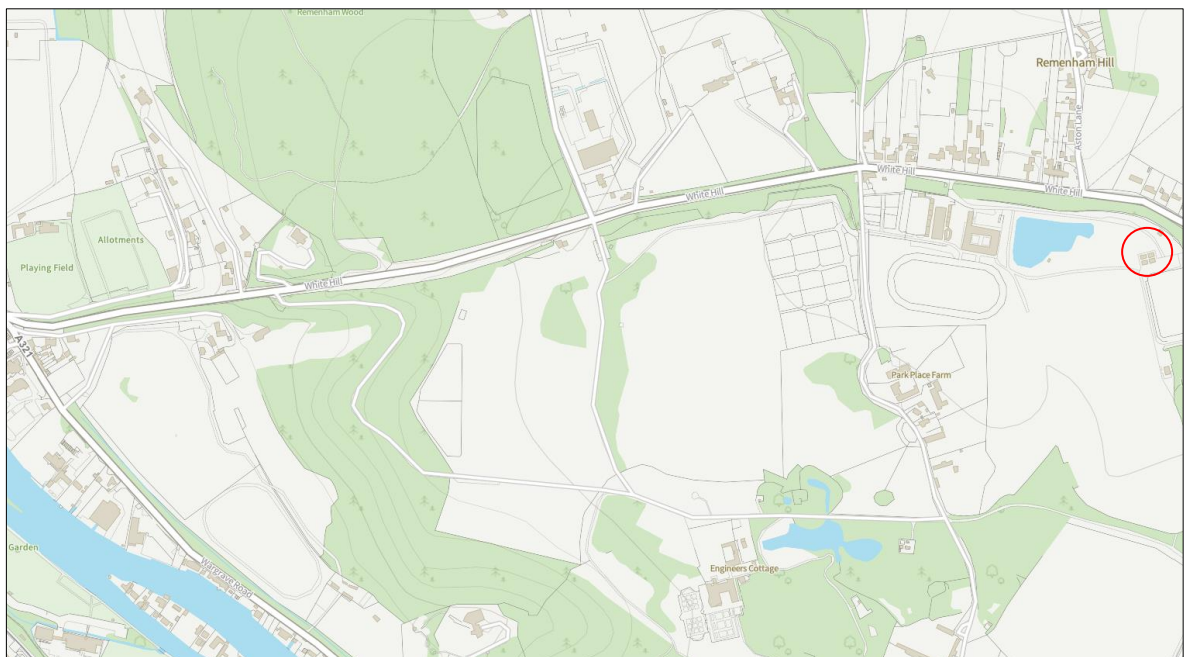
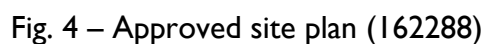


Fig. 3 – Map showing the location of the site

- 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
[REDACTED]

Site Address
Malsbury 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
[REDACTED]

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 WHAT CONSTITUTES A BUILDING

- 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 established tests as to whether a building operation has taken place (as determined by the courts in the cases of *Cardiff Rating* and *Skerritts*) relate to size, permanence and physical attachment to the ground, although physical attachment is not an over-riding or determinative factor.
- 4.5 The pony lines and marquee framework were constructed on site, are fixed to the ground and have remained in situ since it was first constructed, so is a permanent feature. It is also a sizeable structure, with visual impact.
- 4.6 It therefore constitutes a building under Section 336(1) and therefore comprises a building operation Section 55 of the Act.

5.0 **EVIDENCE**

5.1 The submitted evidence comprises:

- 4 x photographs taken on a smart phone (provided by Polo Manager, [REDACTED]) between February – May 2019
- Council's appeal statement (Oct 2019)
- Topographical survey by Glanville, Dec 2019
- Date verified aerial photograph (obtained from Gettmapping.co.uk), dated 05/04/2020

5.2 The Polo Manager, [REDACTED], 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 and of the structures in situ. They are therefore a good source of independent evidence. The photos attached at **Appendix I** show:

- Photo 1, taken 21 February 2019, shows the recently constructed hardstanding, surfaced with asphalt and 4 concrete pads (which will become the base of the marquee framework).
- Photo 2, taken 3 May 2019, shows the constructed marquee framework bolted into the 4 concrete pads.
- Photo 3, taken 10 May 2019, shows the marquee framework bolted to the concrete pads with the marquee covering over.
- Photo 4, taken 29 May 2019, shows the north eastern marquee section with rubber matting laid over the concrete base and with a water hose installed on a post.

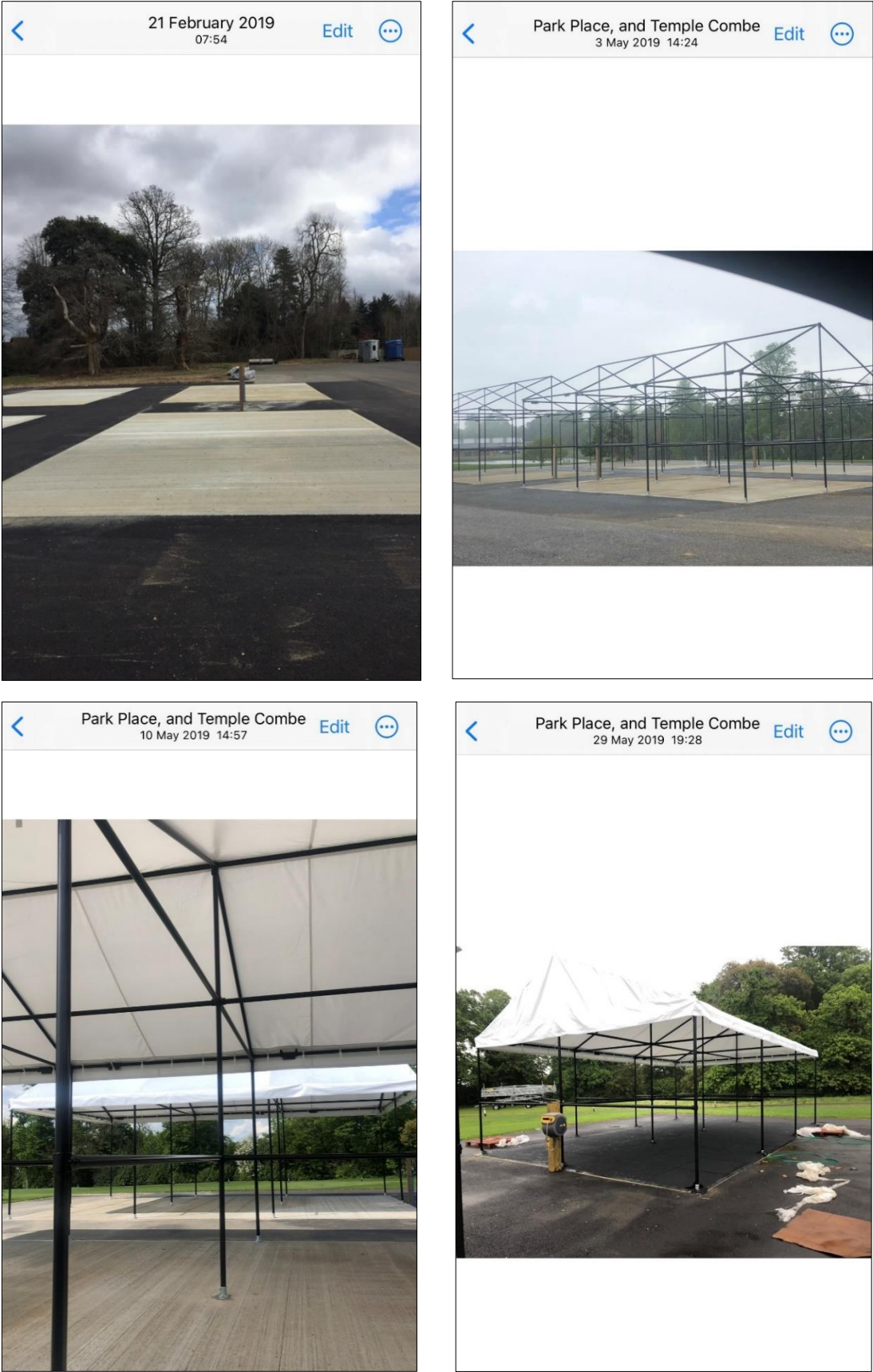


Fig. 6 – The photos taken by [REDACTED] of the pony lines marquee framework

- 5.3 The Council's appeal statement (**Appendix 2**) 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 the marquee framework, which it states is "bolted to the ground, therefore having a degree of permanence ... to the north of the polo arena".
- 5.4 The reference to the structure in the Council's appeal statement is a contemporaneous account of its 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 its date, which would have been on, or just before 30 October 2019.
- 5.5 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 I62288, as well as those items built without planning permission, that the LPA had referred to in their appeal submission. A copy of the topographical survey covering the north-eastern part of the site has been provided as part of the evidence submission (**Appendix 3**). The pony lines marquee framework and the additional area of hardstanding on which it situated is clearly visible – see enlarged extract of the survey overleaf (Fig. 8)



Fig 7 – Extract of Topographical survey, Dec 2019

- 5.6 The dated aerial photograph from Getmapping.co.uk (**Appendix 4**) is date verified as 05/04/2020 and clearly shows the pony lines marquee framework structure in situ, as well as the additional area of hardstanding on which is situated (see Fig. 9 overleaf). So is further evidence that it was in situ by this date.



Fig. 8 – Date verified aerial photograph (05/04/202) from Getmapping.co.uk, showing the pony lines marquee framework and additional area of hardstanding

6.0 ASSESSMENT / CONCLUSION

- 6.1 The submitted evidence confirms that the pony lines marquee framework structure is a building / building operation under Section 55 of the Act, and along with the additional area of hardstanding on which it is situated, were substantially completed more than 4 years prior to the submission of this application.
- 6.2 The submitted evidence comprises dated (and time stamped) digital photographs taken in February 2019 showing the newly created hardsurfaced area and in May 2019 showing the marquee framework constructed, bolted to the ground, and the structure complete with marquee covering. Rubber matting and water were also added.
- 6.3 The marquee structure was specifically referenced in the Council's appeal statement (mentioned as being "bolted to the ground" and therefore "having a degree of permanence") in October 2019 and is also clearly shown on a topographical survey carried out in December 2019.
- 6.4 It is also clearly shown on a date verified aerial photograph dated 05/04/2020.
- 6.5 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).
- 6.6 As the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the pony lines marquee framework and hardstanding on which it is situated are therefore lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 6.7 A certificate of existing lawful development should therefore be granted