

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242606
Site Address:	Malmsbury Estate, Remenham Hill, Henley-On Thames, RG9 3HN
Expiry Date:	10 December 2024
Site Visit Date:	20 November 2024
Proposal: Application for a certificate of existing lawful development for gravel tracks, asphalt driveway, asphalt hardstanding and concrete linkway with rubber paved surfacing	

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	Withdrawn 10 August 2016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	Withdrawn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	Approve

	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

INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan
- Block Plan – Gravel Trak & rubberised matting
- Block Plan – Asphalt Track
- Photographs by Polo Manger (A Price)
- Photographs by SSP Direction (Ian Ellis)
- Topographical Survey dated December 2019 Sheet 1 & Sheet 2
- LPA Hearing Statement
- Dated Aerial imagery
- Supporting Statement by Southern Planning Practice dated September 2024

By the Council:

- Planning History
- Enforcement History
- Aerial Imagery

By third parties:

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 the tarmac areas were previously green grass and are now less permeable to water which is major infrastructure in the Registered Park and Garden.

(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 polo complex.

Proposal:

The certificate relates to:

1. Gravel tracks;
2. Asphalt driveway;
3. Pavilion parking area and;
4. Rubberised surfacing.

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

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”.

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 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 building works were substantially completed on 30 September 2019

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:

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

Block Plan:

This shows the location of the development and is split into two separate plans

Photos by SSP Director dated 29 January 2019

Two photos are provided. One is of an asphalt roadway and the second is of asphalt near the pavilion (2 and 3 of the proposal only) they are dated prior to the relevant 4 year period. The photographs are not dated but the metadata has been provided.

Photos by A Price dated 8 February 2018

Photo 1 shows a concrete link way between the stables and the polo stables before the rubber paving was installed.

Photo 2 shows an asphalt area by the pavilion dated 11 March 2019.

Photograph 3 is inconclusive, it shows a parked vehicle but the hardstanding cannot be seen due to the distance. It is dated 3 May 2019.

Photo 4 shows a gravel track leading to the viewing mound, part of a gravel track between the polo stable and irrigation pond. And the rubberised matting between the polo stable block and stables. The photo is dated 18 September 2019.

All photos are dated prior to the relevant 4 year period.

Topographical Survey

The topographical survey dated December 2019 includes an indication of the tracks/surfacing in situ.

The Council's Evidence

Application/Appeal Application/Appeal 182327

Site visit 10.2.2020



Site visit 7.10.2019





Landscape Officer Statement dated December 2019

- Other access tracks in looser aggregate through the parkland

LPA Appeal Statement dated December 2019

- Gravel access track to the western viewing mounds
- Enlarged tarmacked area to the north of the polo arena

Aerial Imagery:

27 February 2022 Google Earth Pro



16 July 2021 – Google Earth Pro



15 April 2020 – Google Earth Pro	23 June 2018 – Google Earth Pro
	

The aerial imagery provides a snapshot in time. Given the nature of the works, aerial imagery is relatively conclusive that the surfacing has been in situ since at least 2019 and remains there to this date.

Officer Site Visit:

An Officer visited the site on 3 July 2023 in relation to enforcement investigation RFS/2019/085351. At the time of the visit, the all the development 1-4 was substantially completed.

A further site visit on 20 November 2024 confirms that the development remains unchanged in the same location

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" .

The laying down of a hardstanding is normally held to be an engineering operation, but in many cases it is permitted development, by reason of Part 1 Class F at dwellinghouses, Part 6 at farms and Part 7 Class E, G and J at shops, offices and industrial/warehouse premises.

The hardstandings (1-4) are associated with a lawful equestrian (polo) use and do not fall within any category within the Town and Country Planning (General Permitted Development) (England) Order 2015. The proposal constitutes development requiring planning permission.

Conclusion:

The operational development comprising the various tracks and hardstanding set out in Points 1-4 in the description of the Certificate 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 operational development outlined Points 1-4 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, harstandings have been substantially completed for at least 4 years. It is therefore considered that the application of a certificate of existing lawful use should be approved and a draft certificate is set out below.

Date:	15 November 2024
Earliest date for decision:	6 November 2024
Recommendation agreed by: (Authorised Officer)	DAV
Date:	06.12.24