

SUPPORTING STATEMENT

for

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

ERECTION OF PUMP HOUSE BUILDING

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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■■■■) dated 28 April 2019**
- APPENDIX 2 – Extract from LPA's Statement of Case (Appeal ref:
APP/X0360/W/19/3224329) submitted to PINS by 30
October 2019**
- APPENDIX 3 – Topographical survey undertaken by Glanville, dated
December 2019 (Drawing ref: 8191028/4101 – Sheet 1)**
- APPENDIX 4 – 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 Lawful Development Certificate on behalf of the landowner, Rilex Ltd.
- 1.2 The application seeks to certify the lawfulness of a pump house building, which is situated on the Malmsbury Estate where there is a polo facility supporting a high goal polo team.
- 1.3 The pump house is sited next to an irrigation pond and is used to pump water from the pond to irrigate the land. It measures 5.25m (long), 3.1m (wide) and 4m (to ridge).
- 1.4 The polo facility was permitted under 162288 and included various structures and buildings, including the irrigation pond. None of the approved plans show a pump house building, so is an additional structure that has been constructed on the land without planning permission.



Fig. 1 – Pump house building (May 2024)

- 1.5 The pump house building has been in situ since at least June 2018, as confirmed by the Google Earth aerial photograph dated 06/2018 (shown overleaf) and can be seen in every aerial photograph since – 09/2019, 04/2020, 07/2021, 02/2022.

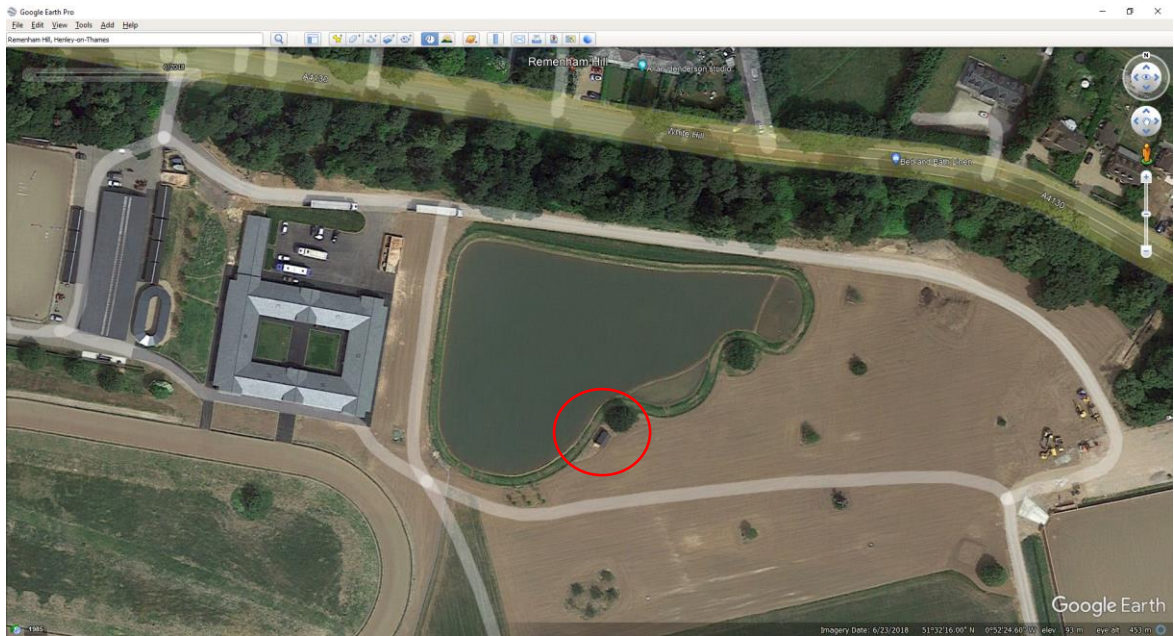


Fig. 2 – Google Earth (06/2018), showing the pump house building in situ

- 1.6 The Council's Enforcement team are aware of the building and the length of time that it has been in situ and have requested the submission of this LDC application so that its lawfulness can be confirmed.
- 1.7 This statement sets out the case and the evidence to support the certificate.
- 1.8 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan
 - Plan and elevations of pump house building

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.

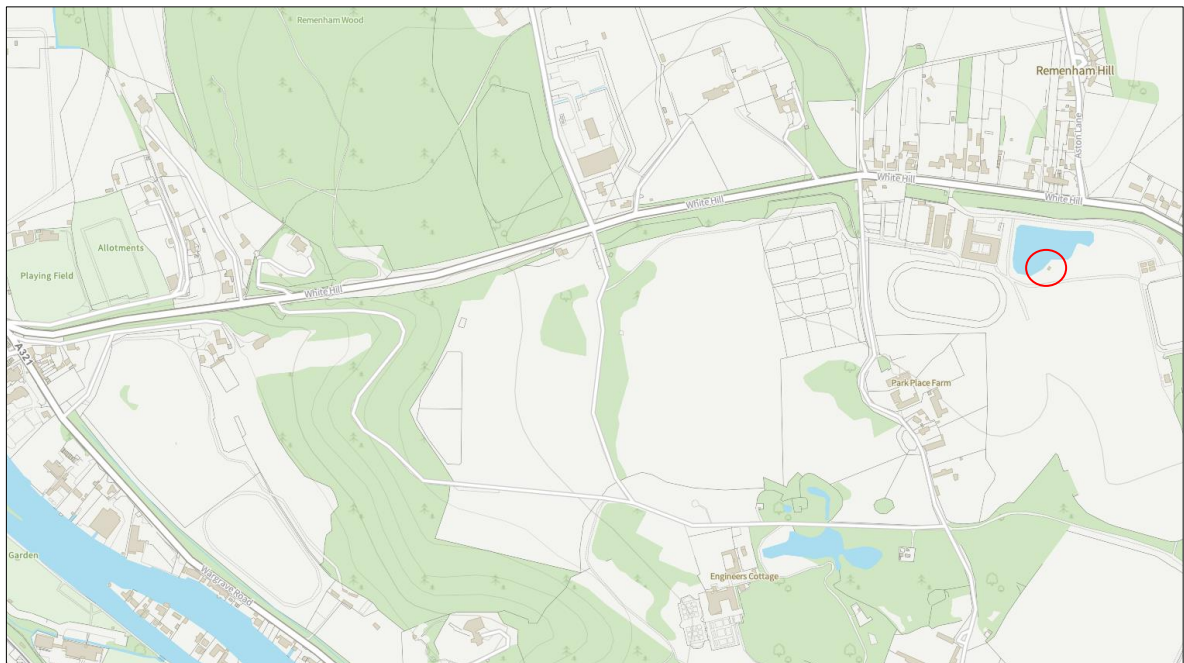


Fig. 3 – Map showing the location of the site

- 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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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. 15. Accommodation of construction vehicles and deliveries. 20. Site specific Great Crested Newt method statement. 21. Landscape and ecological management plan (LEMP).	Approved; 14 Sept 2017
182524	Full planning permission for the erection of a stable (consisting of 24 boxes, tack room, feed room and storage) with outdoor area	Refused; 19 Dec 2018 Appeal dismissed; 11 March 2020

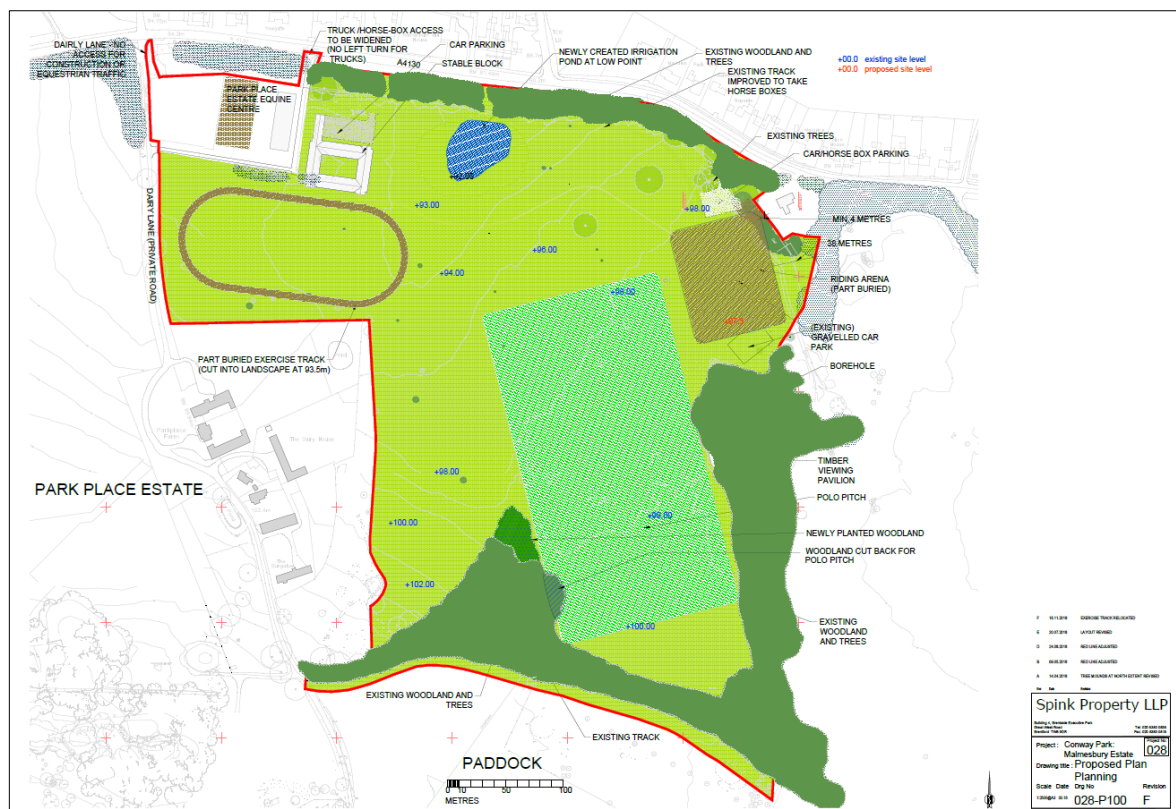


Fig. 4 – Approved site plan (162288)

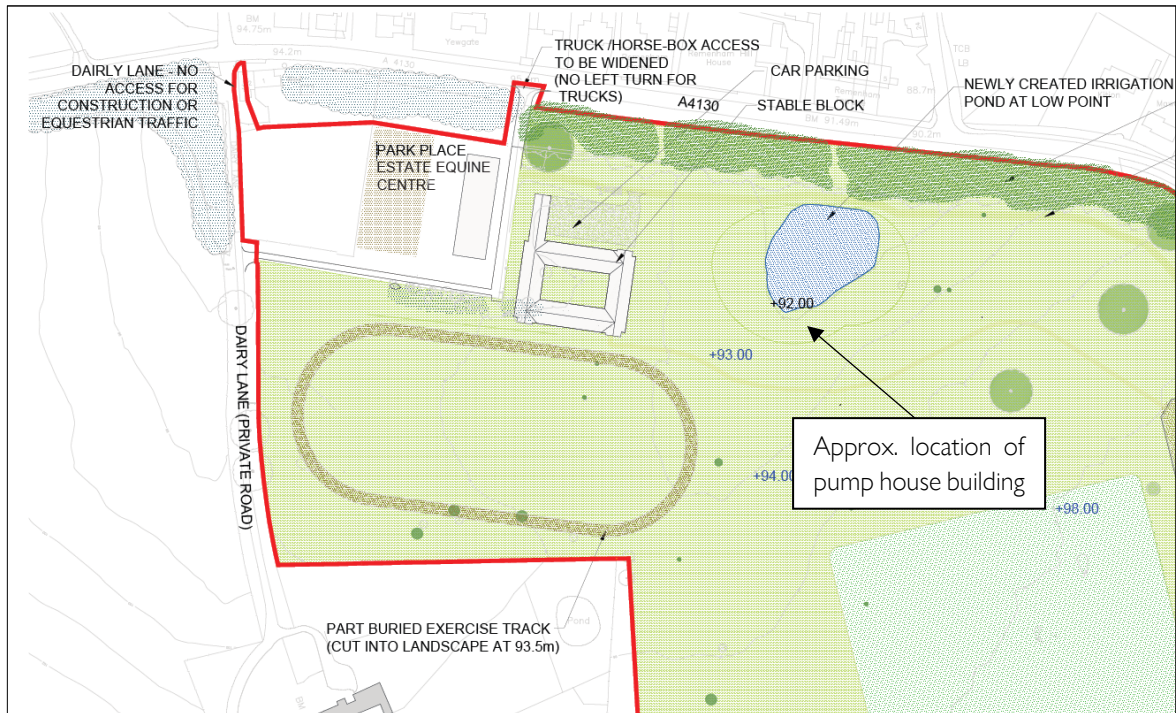


Fig. 5 – Enlarged approved site plan (162288) – showing no pump house building

- 2.4 Note: As part of the approval of the discharge of conditions under 170791, the size and shape of the irrigation pond was changed – see plans below (Fig. 6 and 7 below).

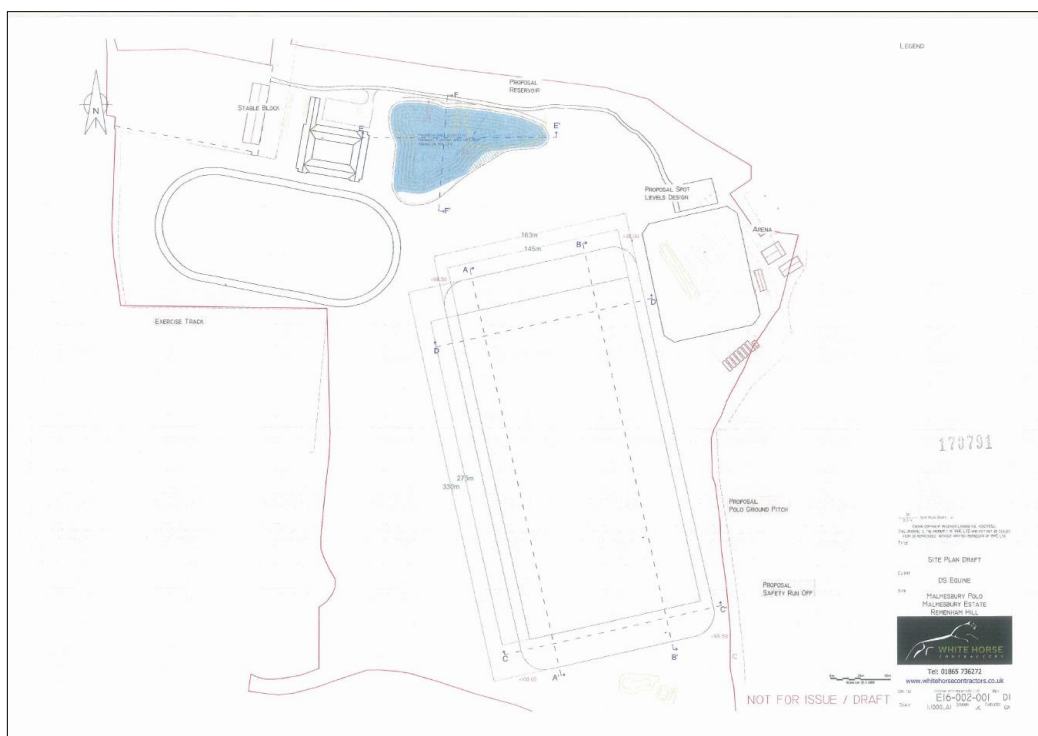


Fig. 6 – Approved levels drawing (application ref: 170791)

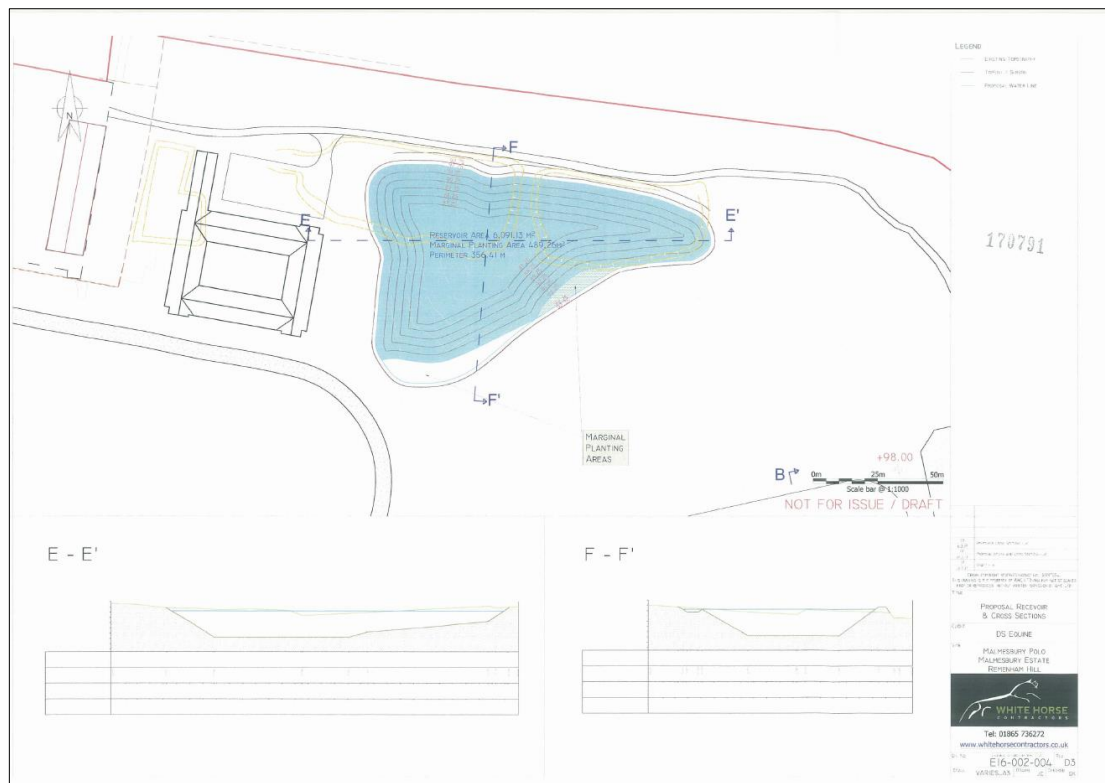


Fig. 7 – Approved levels drawing (application ref: 170791)

2.5 The time frames for the appeal against the refusal of 182524 were as follows:

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Reference: APP/X0360/W/19/3224329

Appellant/Applicant

Durio Limited

Agent

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
		Statement(s) due	30 Oct 2019
Case Officer	Adam Hill	Interested Party Comments due	23 Oct 2019
Procedure	Hearing	Appellant/LPA Final Comments due	N/A
Status	Complete: Decision issued	Inquiry Evidence due	N/A
Decision and Outcome	Dismissed	Event Date	Not arranged
	3224323 and 3224329 - Costs Decision		
	3224323 and 3224329 - Decision		
Case Link Status	Not Linked	Decision Date	11 Mar 2020
Linked Cases	0		

2.6 The deadline for the submission of appeal statements was 30 October 2019.

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 Grabbittas 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 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 pump house building was constructed on site and is a permanent feature. It has the appearance of a small building, is plainly visible and has a presence within the site.
- 4.6 It therefore constitutes a building / building operation within the meaning of Section 55 of the Act.

5.0 **EVIDENCE**

5.1 The submitted evidence comprises:

- Photograph taken on a smart phone (provided by Polo Manager, [REDACTED]) dated 28 April 2019
- Extract from LPA's Appeal Statement (submitted to PINS by 30 October 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 took various photographs of the polo facility during and after construction. 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. Attached at **Appendix 1** is a copy of a time and date stamped digital photograph taken by the Polo Manager on her smart dated 28 April 2019, which clearly shows the pump house building in situ, in a completed state – see Fig 8 overleaf.

5.3 The building is mentioned in the Council's own appeal statement, which was submitted to PINS by 30 October 2019 (appeal ref: APP/X0360/W/19/3224329) in relation to a number of items which were listed as non-compliance against which enforcement action was being considered. It states:

"Shed by the irrigation pond"

The relevant extract is attached at **Appendix 2**.



Fig. 8 – Photograph taken by Polo Manager () showing the completed pump house building in situ

- 5.4 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. A copy of the topographical survey covering the western part of the site has been provided as part of the evidence submission (**Appendix 3**). This clearly shows the pump house building in situ at that time – see enlarged extract of the survey below (Fig. 9).

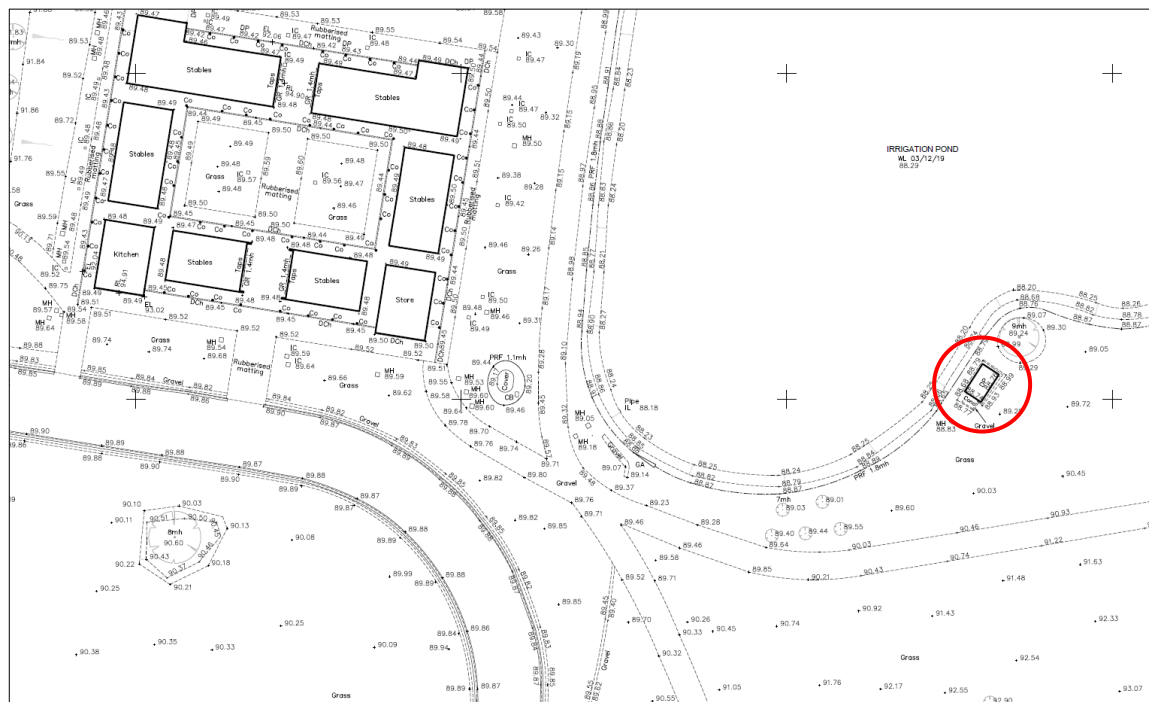


Fig 9. – Enlarged extract of topographical survey undertaken by Glanville in Dec 2019

- 5.5 The pump house building can also clearly be seen in the date verified aerial photograph from Getmapping.co.uk, dated 05/04/2020 (**Appendix 4** and Fig. 10 overleaf).

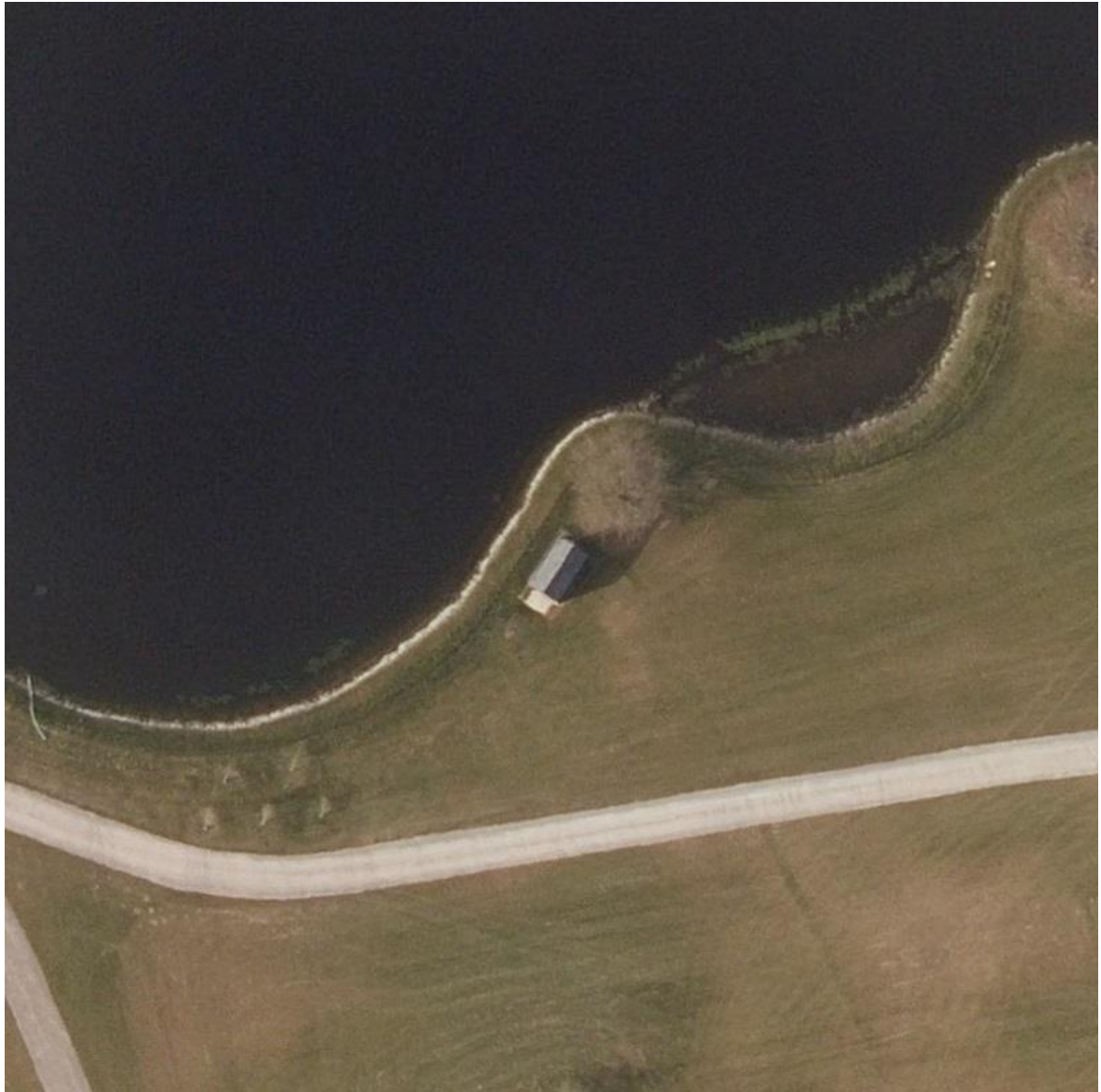


Fig 10. – Date verified aerial photograph (05/04/2020) showing the pump house building in situ

- 5.6 The building can also be seen in other publicly available aerial photographs, e.g. Google Earth, which confirm that it has been in situ at least 08/2018 and appears in all subsequent aerial photographs (dated 09/2019, 04/2020, 07/2021 and 02/2022).

6.0 ASSESSMENT / CONCLUSION

- 6.1 The pump house building was built next to the irrigation pond to pump water from the pond, to irrigate land as part of the polo facility permitted under 162288, although was not shown on the approved plans.
- 6.2 It was constructed on site and is a permanent building, and is therefore a building operation requiring planning permission under Section 55 of the Act.
- 6.3 The submitted evidence confirms that it was substantially completed more than 4 years prior to the submission of this application.
- 6.4 As it was substantially completed before 25th April 2024, it is subject to the 4 year rule under the previous wording of Section 171B(1).
- 6.5 The submitted evidence comprises a dated (and time stamped) digital photograph (April 2019) and a date verified aerial photograph (April 2020), which can be corroborated by publicly available aerial photographs, e.g. Google Earth.
- 6.6 The building was also specifically mentioned in the Council's appeal statement that was submitted to PINS by 30 October 2019 and is shown on a topographical survey carried out in December 2019.
- 6.7 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the pump house building is lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 6.8 A certificate of existing lawful development should therefore be granted.