

## **SUPPORTING STATEMENT**

for

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

**INSTALLATION OF SEWAGE  
TREATMENT PLANT AND POWER UNIT**

at

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

Prepared by

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BSc (Hons) DiP TP MRTPI



Date: September 2024

Client: Rilex Ltd

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- APPENDIX 1 – Photograph taken on a smart phone by Polo Manager (██████) dated 18 September 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 a Lawful Development Certificate on behalf of the landowner, Rilex Ltd.
- 1.2 The application seeks to certify the lawfulness of the installation of a sewage treatment plant and associated power unit, which is situated on the Malmsbury Estate as part of a polo facility supporting a high goal polo team.
- 1.3 The sewage treatment plant serves a large quadrangle stable complex, which was permitted under I62288 as part of the development of a polo facility. The STP was not shown on the approved plans. It therefore comprises an additional structure that has been constructed on the land (without planning permission).

Note: the estate railings enclosing the STP are less than 2m high and therefore constitute permitted development under Schedule 2, Part 2, Class A of the GPDO 2015 (as amended).



Fig. 1 – Sewage Treatment Plant and power unit, enclosed by estate railings (May 2024)

- 1.4 The sewage treatment plant 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.

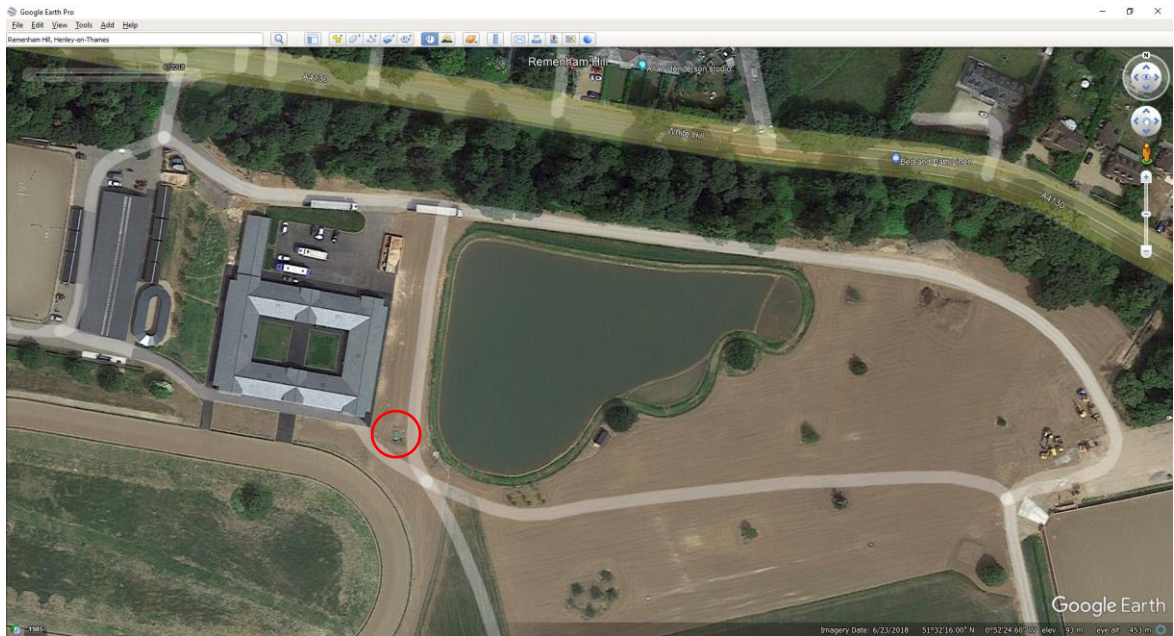


Fig. 2 – Google Earth (06/2018), showing the STP in situ

- 1.5 The Council's Enforcement team are aware of the structure 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.
- 1.6 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 Sewage Treatment System lid, power unit and estate fencing

## 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.

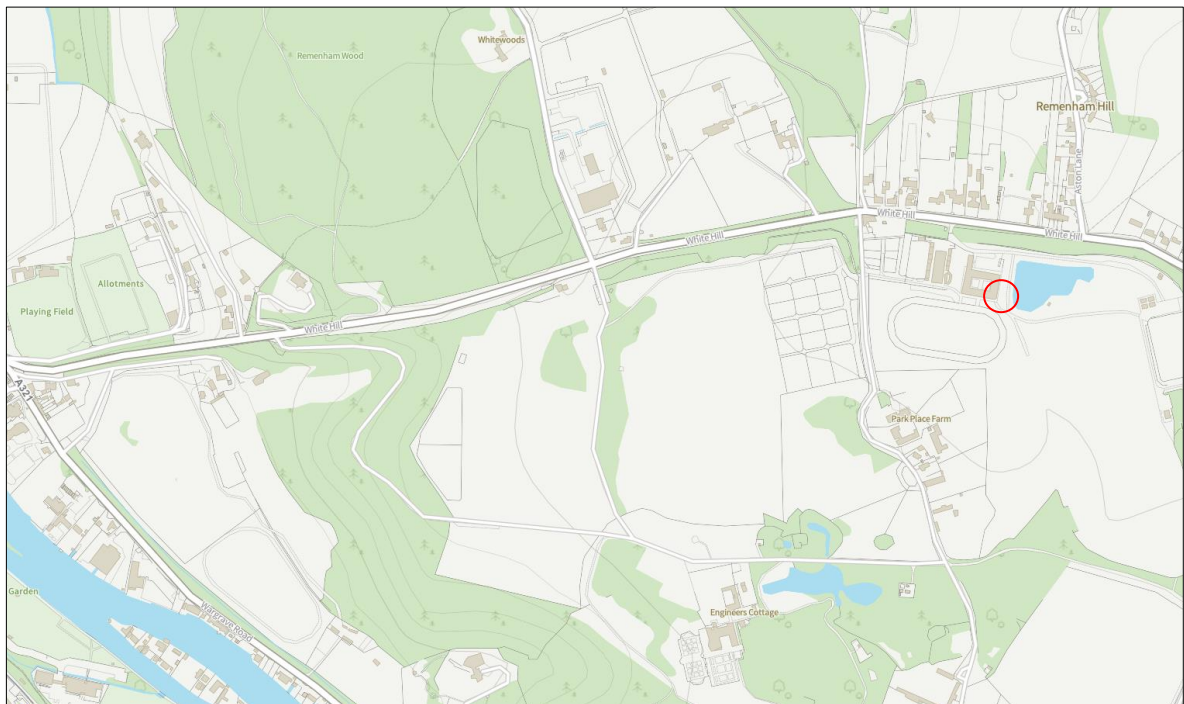


Fig. 3 – Map showing the location of the site

- 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;<br>8 Dec 2016 |
|--------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|

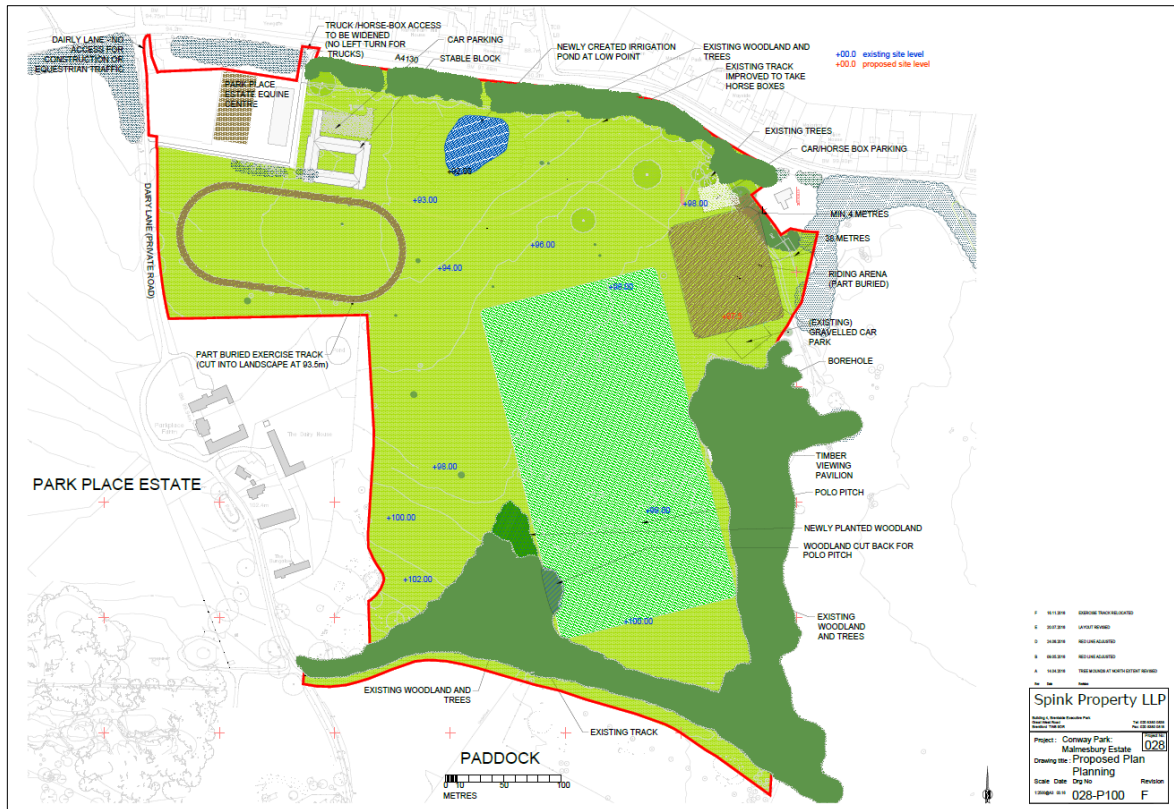


Fig. 4 – Approved site plan (I62288)

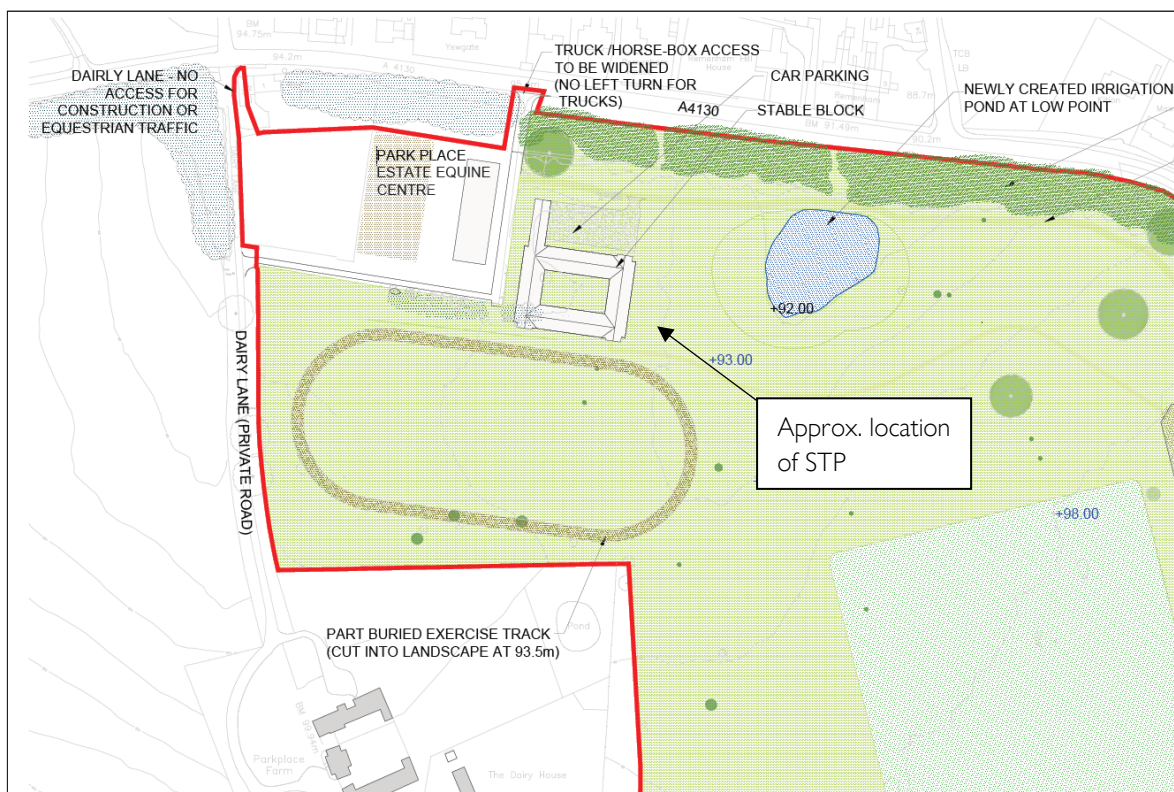


Fig. 5 – Enlarged approved site plan (I62288) – showing no STP

|        |                                                                                                                                    |                                                               |
|--------|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| 182524 | Full planning permission for the erection of a stable (consisting of 24 boxes, tack room, feed room and storage) with outdoor area | Refused;<br>19 Dec 2018<br>Appeal dismissed;<br>11 March 2020 |
|--------|------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|

2.4 The time frames for the appeal were as follows:

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**Reference: APP/X0360/W/19/3224329**

|                                             |                            |                                                                                                        |
|---------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------|
| <b>Appellant/Applicant</b><br>Durio Limited | <b>Agent</b><br>[REDACTED] | <b>Site Address</b><br>Park Place Stables<br>Remenham Hill<br>HENLEY ON THAMES<br>Berkshire<br>RG9 3HN |
|---------------------------------------------|----------------------------|--------------------------------------------------------------------------------------------------------|

|                                                                                                                                                    |                                                     |
|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| <b>Case Details</b>                                                                                                                                | <b>Dates</b>                                        |
| <b>Case Type</b><br>Planning Appeal (W)                                                                                                            | <b>Start Date</b><br>18 Sep 2019                    |
| <b>Local Planning Authority</b><br>Wokingham Borough Council                                                                                       | <b>Questionnaire due</b><br>25 Sep 2019             |
|                                                                                                                                                    | <b>Statement(s) due</b><br>30 Oct 2019              |
| <b>Case Officer</b><br>Adam Hill                                                                                                                   | <b>Interested Party Comments due</b><br>23 Oct 2019 |
| <b>Procedure</b><br>Hearing                                                                                                                        | <b>Appellant/LPA Final Comments due</b><br>N/A      |
| <b>Status</b><br>Complete: Decision issued                                                                                                         | <b>Inquiry Evidence due</b><br>N/A                  |
| <b>Decision and Outcome</b><br>Dismissed<br><a href="#">3224323 and 3224329 - Costs Decision</a><br><a href="#">3224323 and 3224329 - Decision</a> | <b>Event Date</b><br>Not arranged                   |
| <b>Case Link Status</b><br>Not Linked                                                                                                              | <b>Decision Date</b><br>11 Mar 2020                 |
| <b>Linked Cases</b><br>0                                                                                                                           |                                                     |

2.5 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 25<sup>th</sup> 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 and 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) (“the Act”), 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—
- (d) other operations normally undertaken by a person carrying on business as a builder.
- 4.3 Engineering operations is not specifically defined in the Act, although has been held to equate to work that is usually undertaken by an engineer and involve operations requiring the use of earth moving plant and machinery (although does not actually need to be undertaken by an engineer).
- 4.4 The installation of a sewage treatment plant required the ground to be excavated / a hole to be dug and the STP unit installed within the ground, connected to drainage pipes, etc. the type of operations typically undertaken by a builder.
- 4.5 The installation of the sewage treatment plant, including an above ground power unit, therefore constitutes development, as defined in 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 18 September 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 18 September 2019, which clearly shows the STP and power unit in situ, in a completed state – see Fig 6 overleaf. It also shows the completed stable complex served by the STP.

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

*“Sewage treatment plant partly above ground and fenced in, to the east of the existing American barn stables”*

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



Fig. 6 – Photograph taken by [REDACTED] (Polo Manager), submitted as part of the evidence

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 sewage treatment plant, power unit and estate fencing in situ at that time – see enlarged extract of the survey below (Fig. 7).

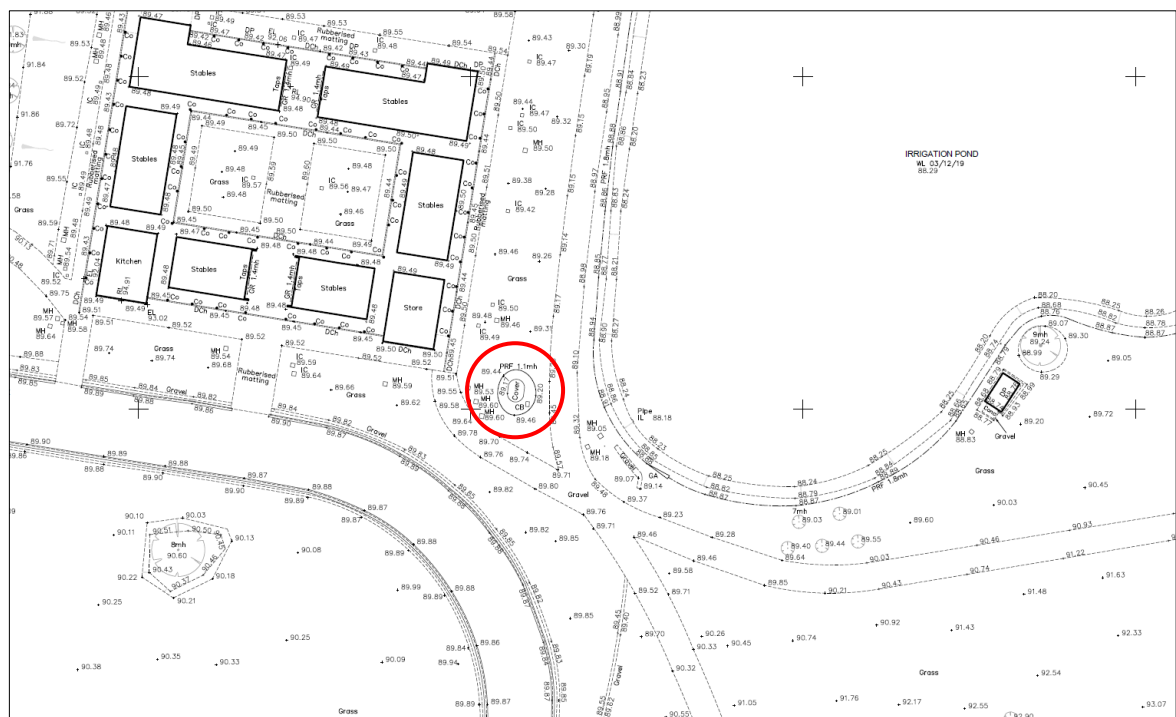


Fig 7. – Enlarged extract of topographical survey undertaken by Glanville in Dec 2019

5.5 The sewage treatment plant can also clearly be seen in the date verified aerial photograph from Getmapping.co.uk, dated 05/04/2020 (**Appendix 4** and Fig. 8 overleaf).



Fig 8. – Date verified aerial photograph (05/04/2020) showing the treatment plant and power unit in situ

- 5.6 The STP 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 STP was installed to serve the large stable complex permitted under 162288, which was built out in 2017 and completed in summer of 2018.
- 6.2 It has been demonstrated that the installation of the sewage treatment plant and power unit was a building operation requiring planning permission under Section 55 of the Act and the submitted evidence confirms that the operations were substantially complete and have been in situ for a period in excess of 4 years prior to the submission of this application.
- 6.3 As the operations were substantially complete before 25<sup>th</sup> April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 6.4 The submitted evidence comprises a dated (and time stamped) digital photograph (Sept 2019) and a date verified aerial photograph (April 2020), which is also corroborated by publicly available aerial photographs.
- 6.5 The structure was also specifically mentioned in the Council's appeal statement in October 2019 and is shown on a topographical survey carried out in December 2019.
- 6.6 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the STP and power unit 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.