

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242597
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 the erection of 10no. wooden stable buildings (comprising a total of 24no. individual stables), concrete enclosure and timber shed	

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	Withdrawn	10 August 2016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	Withdrawn 22 February 2017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.	Approve 04 August 2010
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 RM/2010/1237: 15. Record of the existing brick buildings at Combe Dairy.	Approve 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
101749	Reserved Matters application on Outline Consent O/2008/1353 for the erection of one dwelling (Kenton's House). Reserved matters for approval are siting, design (including floorspace, height & massing, internal layout, external appearance), means of access and landscaping.	Approve 04 August 2010
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.	Approved 04 August 2010
041618	Application for a screening opinion prior to an application for restoration and redevelopment of Park Place.	EIA Development 14 January 2005
101743	Application for listed building consent for the conversion of barn to ancillary residential accommodation with general refurbishment and modernisation.	Withdrawn 04 August 2010

INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan Stables Muck
- Block Plan Block A
- Block Plan Block B
- Muck heap enclosure plans & elevations
- Shed plans and elevations
- Time and dated photographs from Polo Manager
- Extract from LPA's Appeal Statement 182524
- Dated verified aerial imagery

- Wigan Appeal decision dated 3 July
- Wigan Appeal photograph
- Eden District Appeal Decision
- Dartmoor National Park Appeal decision
- Supporting Statement by Southern Planning Practice dated September 2024

By the Council:

- Planning History
- Enforcement History
- Aerial Imagery

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 and the openness of the Green Belt. In 2018 an application for 24 stables was refused and dismissed at appeal therefore these should not have been built. The muck heap is of concrete construction and surface water contamination should be considered. They request that the Officers visit the site before determining the application.

(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 private polo complex for the residents of the Park Place Estate.

Proposal:

The certificate relates to for the erection of:

1. 10no. wooden stable buildings (comprising 24no. individual stables)
2. A concrete muck heap enclosure and;
3. A timber shed

The application is for operational development only, no use is sought as part of this certificate however the buildings are all sited within the equestrian land on the Malmsbury Estate.

The application is for a Certificate of Lawful Existing Use to regularise for the operational development of structures 1-3 listed above. 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 has been substantially completed for at least four years prior to the application i.e. 11 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 *Gabbitts 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".

In considering applications for a Certificate the guidance given by the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* and *Vale of White Horse D.C.* [1999] JPL 461 is of value.

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 27 September 2017.

No change of use of land.

Supporting Statement:

1. The stables are a mix of triple and double units constructed on metal bases in two linear rows. They were brought onto the land beginning in 2017. They are supplied within electrical lighting and there is a continuous electric cable running between the units along the rows of stables.
2. The muck heap is at the northern end of the stables/barn
3. The timber shed was constructed on site and has been in situ since at least June 2018 as shown in the Google Earth imagery.

Additional information by email on 29 November 2024 in relation to the timber shed:

3. The timber shed has timber beams running along its bottom edge. It is not what would be termed a skid as the building is not designed to be moved. It is a timber shed and therefore rests on the ground under its own weight.

Site Location Plan & Block Plan

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

Plans & Elevations:

1. Block A – 15 stables; each stable is approximately 3.5m x 3.5m set in pairs or triple blocks with stable doors and rear windows and overhanging canopy to the front. The stables are 3m in height with a pitched roof.

Block B – 9 stables; each stable is approximately 3.5m x 3.5m set in pairs or triple blocks with stable doors and rear windows and overhanging canopy to the front. The stables are 3m in height with a pitched roof.
2. The muck heap consists of timber boarding walls on three sides 2.1m in height with concrete internal panels and a concrete base. The muck heap is approximately 9.2m x 4m.
3. The timber building comprises an open sided section partitioned with an enclosed part of the building. The building is approximately 10m x 3.1m. the building is approximately 3m in height with a pitched roof.

Photographs taken by Polo Manager:

Nine photographs have been submitted.

Photos 1 and 5 show the concrete muck heap. Photo 1 is dated 12 March 2017 there is also a stable in this building but the muck heap does not appear to be substantially completed as there are no timber/concrete walls surrounding it. Photo 5 is dated 25 March 2018 however it is not as per the plans as it is not clad in timber. Part of Block B is also in this photo.

Photos 3, 4, 6 and 8 show the timber building. Photo 3 is dated 4 January 2018 – the building is not substantially completed at this stage as it is being erected and has no windows/doors Photo 4 (2 March 2018) and photo 7 (23 June 2018) show Block A. Photo 2 (19 December 2017), 6 (4 June 2018) and 8 (7 November 2018) show Block B. Photograph 9 (27 September 2018) shows the timber building.

It is not clear how photographs 1 and 3 correlate. Photograph 3 which was taken after photograph 1 shows the stables being erected but they are substantially completed in photograph 1 which pre-dates photograph 3. The photograph may either be misdated or the building was replaced. Regardless, these photographs indicate, on the balance of probabilities, that the buildings were substantially completed in 2018 which is prior to the 4 year required period for lawfulness.

Various appeal decisions:

The appeal decisions provided predominantly relate to the definition of a “building” under Section 55 of the Town and Country Planning Act 1990.

The Council’s Evidence

Application/Appeal Application/Appeal 182327

Site visit 7.10.2019



Site visit 17.10.2018



Landscape Officer Statement dated December 2019
4.37 of the Statement refers to:

Building stock

4.37 There appears a large collection of buildings in this part of the parkland which traditionally would not have been there. Working from west to east these include;

- a timber shed like building to the north side of the existing show jumping arena which I am advised does not have planning consent;
- the longer western block of unconsented stables;
- the showing jumping consented American Barn stable block;
- the shorter eastern block of unconsented stables;
- The consented oval shaped horse walker;
- the consented Quadrangle Stable block with its associated offices;
- the pump house situated adjacent to the irrigation pond that is unconsented;
- a collection of three unconsented agricultural buildings (one of which is the proposed location for the Groom's Accommodation); and
- the consented summer pavilion overlooking the principal polo field but which I have been advised is unconsented in its current design and finish.

It does not appear to reference the muck heap
LPA Appeal Statement dated December 2019

Buildings and Structures

- The associated appeal for stables and an arena is now retrospective under PINS reference 3224329 and LPA reference 182524; the stables applied for are on site, albeit in a smaller form and in two locations, the larger being in the proposed location
- Intensification of use of the existing American barn, which was approved for the stabling of six horses under PA ref F/2014/1637, the remainder to be used for associated storage. The barn now stables approximately 16 horses, with no space remaining for associated storage, as shown in Appendix 11

The statement does not appear to reference the timber building or muck heap.

Aerial Imagery:

27 February 2022 Google Earth Pro



15 April 2020 – Google Earth Pro

16 July 2021 – Google Earth Pro



23 June 2018 – Google Earth Pro



25 March 2017 – Google Earth Pro



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The aerial imagery provides a snapshot in time. Given the nature of the works, aerial imagery is relatively conclusive that the stables, timber building and muck heap have been in situ since at least 2020 and remains there to this date. The aerial imagery indicates that the development was erected between 2017 and 2020 as the aerial imagery 2017 and 2018 show part of the development only.

In the 2022 imagery there is a second row of stables to the east of the American barn which does not form part of this application.

Officer Site Visit:

An Officer visited the site on 3 July 2023 in relation to enforcement investigation RFS/2019/085351 and 20 November 2024 for this application. At the time of the visits, the stables, timber building and muck heap were in situ.

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". A "building" is defined at section 336(1) of the 1990 Act and includes "any structure or erection."

. None of these factors are necessarily decisive and greater weight may be given to one factor over another in reaching a decision. It is ultimately a matter of planning judgment.

Case law [footnote: Cardiff Rating Authority v Guest Keens [1949] 1 KB 385 & Skerritts of Nottingham Ltd v SSTER (No 2) [2000] 2 PLR 102] states that the appropriate criteria for determining whether a structure constitutes a building are size, permanence, and physical attachment.

1. Timber stables Block A & B

- Size: The timber stables although each individual stable is 3m x 3m, are adjoined in pairs or triplets and form a visual block (Block A 56m long & Block B 35m long) although there are gaps of between 0.3m and 0.5m between pairs/triplets.
- Permanence: The stables have been permanently stationed in the same place since they were erected and whether 'mobile' or not a key test is not whether the structures are capable of being moved but whether they are actually moved. The structures have a permanence in the landscape and have not changed position since they were substantially completed.
- Physical Attachment: the pair/triplets of stables are attached to each other by guttering/drainage and share a roof. The blocks share electricity cables which physically attach the full block. The stables are on metal bases ("skids") placed on the grounds. However, they are attached by way of their size and weight.

2. Timber Building:

- Size: The structure is 10m x 3.1m and 3m in height.
- Permanence: The structure has been in situ since it was substantially completed
- Physical Attachment: The structure is placed on the ground and appears to be on wooden skids and does not appear to have any foundations, however is not constructed to be moved. It has an attachment by way of its size and weight.

3. Muck Heap:

- Size: The structure is 9.2m x 4m with walls of 2.1m in height.
- Permanence: the structure has not been moved since its substantial completion and is concreted into its location.
- Physical Attachment: The structure has foundations by way of concrete on the ground.

On this basis, developments 1-3 comprise building operations within the meaning of Section 55 of the Act and therefore constitute "development" and are considered to be "buildings" as defined by the Act. The four year period from date of substantial completion is therefore required to be assessed.

Assessment & Conclusion:

The LPA aerial imagery aligns with that submitted by the Applicant. Although there are no statutory declarations submitted with the application, the evidence provided is clear and unambiguous. The Council has no contradictory evidence and some of the planning history corroborates the Applicant's evidence.

Having considered the evidence submitted any and contradictory evidence, the Local Planning Authority is satisfied on the balance of probabilities that the stables, timber

building and muck heap have been substantially completed at least four years prior to the application and are therefore immune from enforcement action

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 24no. stables (comprising 10no. buildings within Block A & Block B); a timber building and muck heap 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.

Date:	15 November 2024
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Earliest date for decision:	6 November 2024
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Recommendation agreed by: (Authorised Officer)	DAV
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Date:	09.12.24
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