

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

Erection of 2 x pony lines

at

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

Prepared by

Neil March
BSc (Hons) DiP TP MRTPI



Date: September 2024

Client: Rilex Ltd

Southern Planning Practice Ltd

Registered Office: Youngs Yard, Churchfields, Twyford, Winchester SO21 1NN
Tel: 01962 715770 E-mail: info@southernplanning.co.uk Website: www.southernplanning.co.uk
Registered in England and Wales No. 3862030

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Appendices

APPENDIX 1 – Photograph taken by [REDACTED], 7 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 the erection of 2 x pony lines, situated on the Malmsbury Estate where there is a polo facility supporting a high goal polo team.
- 1.3 The pony lines are laid out in two rows (11m apart) and comprise a series of metal posts, linked with two lines of tensioned wire. They are 22.24m long and 2m high (top of posts). They are used to tether polo horses during practice matches. They are located to the west of the polo field and south east of the exercise track.



Fig. 1 – Pony lines (May 2024)

- I.4 The pony lines have been in position since early 2019 (as confirmed by the photograph at **Appendix 1**) and were also mentioned in the Council's own appeal statement, which was prepared in October 2019 (**Appendix 2**).
- I.5 The pony lines are visible in the Google Earth aerial photo dated 09/2019, although the image quality is a bit poor. They are more clearly visible on the 04/2020 (see Fig. 2 below) and can be seen on every Google Earth photo since – 07/2021 and 02/2022.

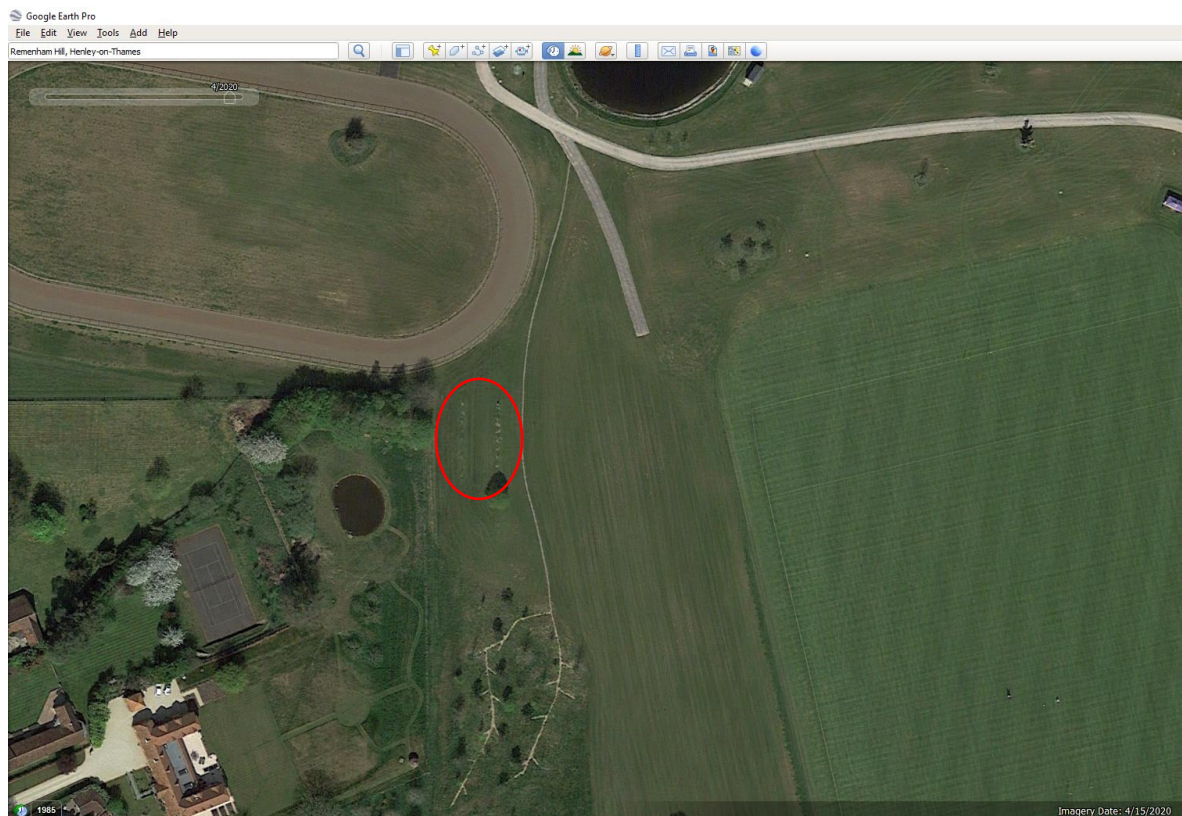


Fig. 2 – Google Earth (04/2020), showing the pony lines in situ

- I.6 The Council's Enforcement team are aware of the pony lines 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.
- I.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 pony lines

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 The pony lines are situated to the west of the polo field and south east of the exercise track.

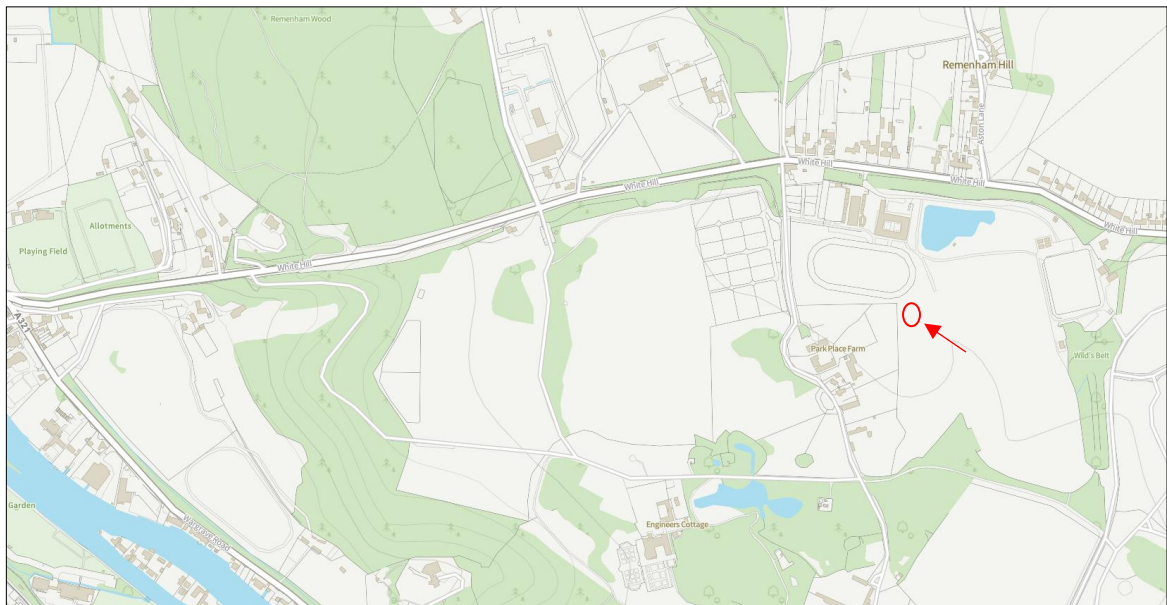
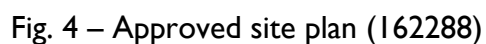


Fig. 3 – Map showing the location of the site

- 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.

2.4 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

2.5 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 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 polo lines are fixed structures – the metal posts are driven deep into the ground to ensure that they are secure (in order to withstand being pulled by the tethered horses). They are therefore a permanent feature. Whilst they are modest structures, they are visible and have a presence within the site.
- 4.6 They are no different to a section of post and wire fencing, which in most instances would be 'permitted development' (and therefore must be "development"). Although in this case, they are not a means of enclosure and so do not qualify as permitted development under Schedule 2, Part 2, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015.

- 4.7 The pony lines are therefore fixed structures with a degree of permanence, which were constructed on site and are of sufficient size to have a presence within the site. They comprise building operations within the meaning of Section 55 of the Act and therefore constitute “development” as defined by the Act.

5.0 **EVIDENCE**

5.1 The submitted evidence comprises:

- Time / date stamped photograph taken on smartphone by [REDACTED] (Polo Manager) 7 April 2019
- Extract from LPA's Appeal Statement (submitted to PINS by 30 October 2019)
- Topographical survey by Glanville Consultants Ltd, Dec 2019
- Date verified aerial photograph (obtained from Gettmapping.co.uk), dated 05/04/2020

5.2 During the course of the construction of the polo facility (following the grant of 162288 in December 2016) the Polo Manager took various impromptu photographs on her smartphone of things that caught her interest, i.e. showing the progress of the various structures and buildings being built, works on-going and items when they were completed. They are therefore a good source of contemporaneous and independent evidence. The photo taken by the Polo Manager at **Appendix I** shows the pony lines in situ on 7 April 2019 (see copy overleaf).



Fig. 7 – Smartphone photograph taken by [REDACTED] showing the pony lines in situ (7 April 2019)

- 5.3 Reference is made to the pony lines in the Council’s appeal statement (for appeal ref: APP/X0360/W/19/3224329), which was submitted to PINS by 30 October 2019. A number of items are listed in the statement as non-compliance against which enforcement action was being considered, including:

““Pony lines to the west of the polo arena”

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

Note: the reference to the polo 'arena' is believed to be a typographical error and should in fact refer to the polo 'field'. As there are no pony lines to the west of the polo arena. Elsewhere in the LPA statements it refers to 'Marquee framework bolted to the ground ... appearing to be a wash-down area for horses to the north of the polo arena'. The marquee framework is actually a set of polo lines (with the ability to be covered). So, these are already referenced by the LPA in their statement. Therefore, the reference to the pony lines to the west of the polo arena must mean the polo lines to the west of the polo field (as these are the only other pony lines on this part of the Estate).

- 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 eastern part of the site (Sheet 1) has been provided as part of the evidence submission (**Appendix 3**). This clearly shows the pony lines in situ at that time – see enlarged extract of the topographical survey overleaf (Fig. 8).

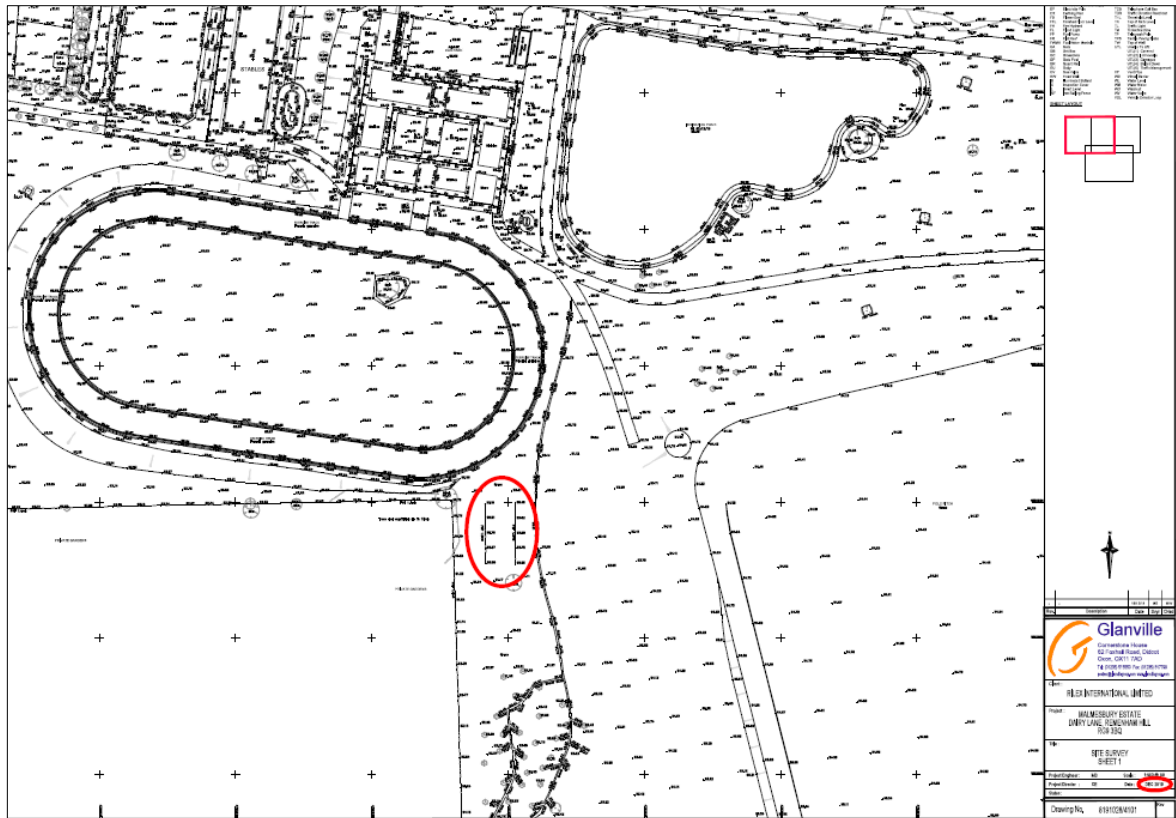


Fig 8. – Enlarged extract of topographical survey undertaken by Glanville in Dec 2019

- 5.5 The pony lines can also clearly be seen in the date verified aerial photograph from Getmapping.co.uk dated 05/04/2020 (**Appendix 4** and Fig. 9 overleaf).



Fig. 9 – Date verified aerial photograph (05/04/2020) showing the pony lines in situ

6.0 ASSESSMENT / CONCLUSION

- 6.1 The pony lines are fixed structures and have a visible presence within the site. They therefore constitute development requiring planning permission under the T&CP Act (Section 55).
- 6.2 The smartphone photograph taken by the Polo Manager on 7 April 2019 confirms the pony lines were in situ at this time.
- 6.3 The pony lines were also mentioned in the Council's appeal statement submitted to PINS by 30 October 2019 and are also shown on a topographical survey carried out in December 2019 by Glanville Consultants Ltd.
- 6.4 They can also be clearly seen in a date verified aerial photograph (dated 5th April 2020).
- 6.5 The submitted evidence therefore confirms that the structures were in situ / substantially complete more than 4 years prior to the submission of this application.
- 6.6 As they were completed before 25th April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 6.7 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the structures are 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.