

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242605
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 an open fronted 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	Withdrawn 10 August 2016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	Withdrawn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
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.	Approved 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.	Approved 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).	Approved 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.	Approvedd 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/s amples 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	Approved

	(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.	04 August 2010
250527	Application for a certificate of existing lawful development for a metal framed barn clad with green profile sheeting, used to store hay and feed.	Pending consideration
250526	Application for a certificate of existing lawful development for an agricultural building.	Pending Consideration
250370	Application for a certificate of existing lawful development for building operations comprising the permanent siting of 7 no. portacabins, a WC unit and shed on the land.	Pending Consideration

INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan
- Floorplans & Elevations
- Dated Aerial imagery
- Supporting Statement by Southern Planning Practice dated September 2024
- Statutory Declaration by Russel Howson dated 21 March 2025
- Statutory Declaration by Patricia Barnard 21 March 2025

By the Council:

- Planning History
- Enforcement History
- Aerial Imagery

By third parties:

- None

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 proposal is for the erection of an open fronted shed. The shed is a flat roof structure with horizontal timber boarding walls and a felt roof. It has a footprint of 3.4m x 4.1m and is 2.6m in height.

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

No use is sought for the building in this Certificate.

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.

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.

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.

Panton sets out guidance for a decision maker to follow in considering an application and from that case three questions need to be answered. Firstly, "When did the material change of use specified in the application occur?" To be lawful, this would need to be before 1 July 1948, by 31 December 1963, or at a date at least 10 years prior to the current application.

Secondly, if the material change took place prior to those dates, has the use specified in the application been lost by operation of law in one of three possible ways, namely by abandonment, the formation of a new planning unit, or by way of a material change of use, be it by way of implementation of a further planning permission or otherwise.

Finally, if the decision maker is not satisfied that the description of the use as specified in the application properly describes the nature of the use, the decision maker must modify/substitute each description so as to properly describe the nature of the material change of use which occurred.

The Panton case was considered further by the Courts in *Secretary of State for the Environment, Transport and the Regions v Thurrock BC* [2002] EWCA Civ 226. In this case the Court of Appeal considered that the rationale of immunity from enforcement was that throughout the whole of the ten year period of unlawful use the LPA, although having the power to take enforcement action, had failed to do so. So, if at any time during the relevant period the authority would not have been able to take enforcement proceedings in respect of the breach (because for example, the unauthorised use had temporarily ceased) then any such period could not count towards the ten year period which gives rise to immunity.

The effect of the decision in *Thurrock* is to require a far more stringent test of immunity than had previously been thought following the decision in *Panton*. In particular, the decision means that if an unlawful use ceases and is then recommenced, the ten-year period required for immunity begins on the act of recommencement. For an unlawful use to obtain immunity from enforcement it has to be exercised continually and without significant interruption for the whole of the ten year period.

The question is therefore whether an interruption of an unlawful use is enough to defeat any claim of immunity from enforcement proceedings. A short period may be regarded as a continuing use; a longer period may not. The Courts have held that this question is a matter of fact and degree for the decision maker in every case.

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 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 1 December 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 & Block Plan:

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

Floorplans & elevations:

This plan shows the dimensions and the materials of the building.

Site Survey:

The topographical survey dated December 2019 shows the building being present when the survey was undertaken.

Aerial Imagery:

Dated aerial imagery has been submitted with the application from 5/4/2020 showing the building in situ.

Statutory Declaration by Russel Howson dated 21 March 2025

Mr Howson states that the building is an open fronted shed used to house equipment necessary for maintenance of machinery required to work the polo field and wider estate grounds.

He states that he is the Landscape Manager responsible for maintaining the grounds of the Malmsbury Estate and has been employed in this position for 14 years. He was involved in making the arrangements for and overseeing the construction of the open fronted shed.

He states that the structure was built in the first few months of 2020. He states that the Local Authority visited on 10 February 2020 and the shed was incomplete at this time as the roof had yet to be built but the sides were complete.

Following this visit, Mr Howson was instructed to complete the building and the building was substantially completed by the end of February 2020.

Statutory Declaration by Patricia Barnard 21 March 2025

Ms Barnard states that the open fronted shed is used to house equipment necessary for the maintenance of the machinery requirement to work the polo field and wider estate she is the Estate Manager responsible for 10 years. Ms Barnard states that she was involved in making arrangements for and overseeing the construction of the open fronted shed.

She states that the structure was built in the first few months of 2020. She states that the Local Authority visited on 10 February 2020 and the shed was incomplete at this time as the roof had yet to be built but the sides were complete.

Following this visit, Ms Barnard was instructed to oversee the completion of the building and the building was substantially completed by the end of February 2020.

The Council's Evidence

Application/Appeal Application/Appeal 182327

Site visit 10.2.2020



The site visit photo shows the building was not substantially completed as it did not have a roof

Site visit 7.10.2019



The site visit photo shows the building was not substantially completed as it did not have a roof and the walls were incomplete.

This differs from the Statutory Declaration from the evidence provided Mr Howson and Ms Barnard which states that the building was erected in the first few months of 2020.

LPA Appeal Statement dated December 2019 for 182327

This document refers to two existing agricultural sheds and a third shed under construction to the east of the polo arena.

It is noted that there is no plan attached to this so it is not wholly clear that this relates to the building subject of this application.

Aerial Imagery:

16 July 2021 – Google Earth Pro

14 September 2019



15 April 2020 – Google Earth Pro



23 June 2018 – Google Earth Pro



The aerial imagery provides a snapshot in time. The building is seen on the 2020 aerial imagery however it is partially obscured by vegetation and it is not clear whether the building is substantially completed from this image though the grey area may be the flat roof of the building It also appears in the 2021 imagery.

Officer Site Visit:

An Officer visited the site on 4 July 2023 in relation to enforcement investigation RFS/2019/085351 and again on 20 November 2024 for this application. The building was substantially completed on these dates.

Assessment:

The building is considered to fall within the definition of development within Section 55 of the Town and Country Planning Act and within the definition at 336(1) of a building and therefore constitutes development

The Statutory Declarations are identical in wording, except the job descriptions and background of the authors. This gives the declarations less credibility as they are likely to have been written by a third party then agreed by the signatory. They are not their own recollections or personal knowledge in their own words. Furthermore, there are inaccuracies within the declarations regarding the commencement date of the building. Given there are known inaccuracies [the building did not commence in February 2020 and nor did it have sides at the time of the Authority's visit], the substantial completion date given of 'End of February 2020' is considered less reliable. This evidence is therefore neither precise or unambiguous, but does take the form of a Statutory Declaration.

In the Case Ocado vs. London Borough of Islington r: [2021] EWHC 1509 (Admin): Mr Justic Holgate states:

“To enable an authority to assess the weight to be placed upon a statutory declaration or witness statement, it is good practice for the author to make plain which matters are within his own personal knowledge and, unless it is obvious, how that knowledge was obtained. For each matter outside his own knowledge, he should identify the specific source relied upon. These are essentially the principles applied to witness statements in civil litigation (CPR PD32 para.18.2) and it is difficult to see why the approach should be any less rigorous in the context of s.171B where a declaration may be dealing with continuity over a long period of time.” (para 68)”

Limited evidence to cover a 4 year period has been submitted by the Applicant. No evidence has been submitted covering 2021-2024. Furthermore, the application form states that the building was substantially completed on 1 December 2019. The Council's evidence shows the building being erected between 7.10.2019 and 10.2.2020 therefore it cannot have been substantially completed on 1 December 2019. The Statutory Declarations state that the building was substantially completed by the end of February 2020. The aerial imagery is sporadic, hazy and does not cover the time period at the beginning of 2020. Whilst the evidence is not entirely clear there is no evidence showing that it was not completed by 14 October 2020. Thus, on the balance of probabilities, it is considered to have been completed before 14 October 2020 (4 years prior to the application).

Conclusion:

The operational development comprising the erection of a building 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 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 the building has been substantially completed for at least 4 years prior to the submission of the application. It is therefore considered that the application of a certificate of existing lawful use should be granted.

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
Date:	28.03.25