

DELEGATED OFFICER REPORT



WOKINGHAM
BOROUGH COUNCIL

Application Number:	242612
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 a change of use from staff day area to a self-contained dwelling occupied by staff employed at Park Place Stables	

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	Withdrawn 10 August 2016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	Withdrawn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.	Approved 4 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
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	Approved

	RM/2010/1237: 15. Record of the existing brick buildings at Combe Dairy.	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	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
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INFORMATION PROVIDED

By the applicant:

- Application Form
- Site Location Plan
- Block Plan
- Supporting Statement by Southern Planning Practice dated October 2024
- Letter dated 9 July 2024 from Alejandro Gonzalez (13 July 2024)
- Letter dated 9 July 2024 from Hannah Coniam (12 July 2024)
- Letter dated 9 July 2024 from Shannon Stephenson (9 July 2024)
- Statutory Declaration from Miss India Hill dated 16 September 2024
- Statutory Declaration from Miss Aislinn Price dated 19 September 2024
- Various TV licences

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. They further state that a TV licence is not a proof of occupancy and they also state that the change of use breaks a condition of planning in 2014. They do not state which application or which condition.

(Officer Note: The main issues raised by the Parish Council are not relevant to the determination of this Certificate application. The TV licence issue is included in this report. 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).

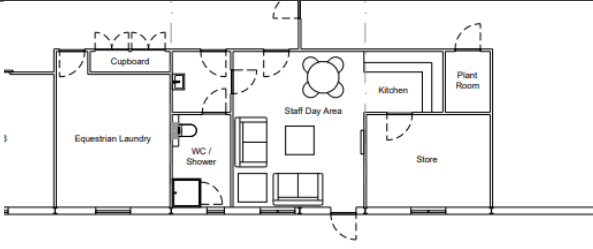
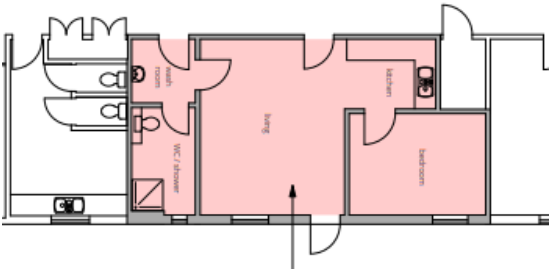
APPRAISAL

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 is for the change of use of the staff day area accommodation approved under F/2014/1637 to a single dwellinghouse used as grooms accommodation.

F/2014/1637 – Approved Floorplan	Development Proposed in this Certificate
 FLOOR PLAN	

The application is for a Certificate of Lawful Existing Use to regularise the change of use. 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 use has been occurring continuously as a single dwellinghouse for staff at Park Place Stables for at least four years prior to the application i.e. 14 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 *Gabbittas 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.

The principles of interruption of an unlawful use would also apply in this case in relation to the 4 year change of use to a single dwellinghouse.

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 30 September 2019.

No change of use of land.

Supporting Statement:

The supporting statement comprises photographs of the accommodation. It states that the dwellinghouse consists of habitable accommodation including an open plan kitchen and living space, double bedroom and washroom which leads to a WC/Shower. It lists the tenants between 1 November 2016 and the present day. No substantive break in tenancy is identified.

Tenant Name	Arrival Date	Departure Date
Alejandro Gonzalez	01-Nov-16	28-Feb-17
Michaela Gonzalez	01-Mar-17	30-Apr-19
India Hall	14-May-19	02-Oct-23
Hannah Coniam	10-Oct-23	31-Jan-24
Shannon Stephenson	11-Mar-24	Present Occupier

TV Licence:

Email correspondence confirming renewal of TV Licence between the dates below although they do not specify the address for which the TV licence is for.

1. 27 April 2016 - 31 March 2017 RG9 3EP
2. 3 April 2017 - 31 March 2018*** 3EP.
3. 26 March 2018 – 31 March 2019 *** 3EP.
4. 27 March 2019 – 31 March 2020 *** 3EP.
5. 25 March 2020 – 31 March 2021*** 3EP.
6. 17 March 2021 - 31 March 2022 *** 3EP.
7. 21 March 2022 - 31 March 2023 *** 3EP

8. 20 March 2023 - 31 March 2024*** 3EP
9. Current TV Licence - - THE MANAGER HRL NEW BARN REMENHAM HILL
REMENHAM HENLEY-ON-THAMES RG9 3EP - 31/03/2025

Letter dated 9 July 2024 from Alejandro Gonzalez (13 July 2024)

Alejandro supports the application for a self contained dwellinghouse. He states that he resided as a tenant in the property from 1 November 2016 until 28 February 2017 as part of his employment terms at Park Place Polo. He continuously occupied the property independently during this period.

He states that the property contained all the facilities for day to day living including a washroom WC/Shower Room and open plan kitchenette and living room and separate bedroom.

Further letters which are identical in content to Alejandro Gonzalez' letter, excluding the dates of occupation, have been submitted:

- Hannah Coniam (12 July 2024) confirms that she resided as a tenant from 10 October 2023 until 31 January 2024 as part of her employment terms at Park Place Polo
- Shannon Stephenson (9 July 2024) confirmed that she currently resides as a tenant in the property from 11 March 2024 until the present day as part of her employment terms at Park Place Polo.

These do not form statutory declarations therefore less weight is applied to this.

Statutory Declaration from Miss India Hill dated 16 September 2024

Miss India Hill states that she supports the application for a self-contained single dwellinghouse at Park Place Stables.

She states that she worked at the Park Place Polo team based at Park Place Stables from 14 May 2019 until 2 October 2023 and occupied the groom's accommodation during this period.

She states that the grooms accommodation is located within the American Barn. The land on which the American Barn is located forms part of the premises and polo facility.

She states that the accommodation contained all the facilities and services for independent living including an open place kitchen and living space, double bedroom and washroom leading to a WC/shower.

She states that the dwellinghouse was retained in the same location and layout within the barn during her occupation.

Statutory Declaration from Miss Aislinn Price dated 19 September 2024

Miss Aislinn Price states that she supports the application for a self contained single dwellinghouse at Park Place Stables.

She states that she is the Polo Manager for the Park Place Polo Team based at Park Place Stables.

She states that she started working for Park Place Polo team in a part time capacity in 2012 and witnessed the American Barn being built between 2014 and 2015.

She states that she has worked full time for Park Place Polo Team since 2018 and visit the American Barn on a daily basis as part of her contracted role, whilst in the UK. She states that she has therefore witnessed the grooms accommodation in continuous use as an independent dwelling.

She states that the accommodation contains all facilities and services for independent living including an open plan kitchen, living space, double bedroom and washroom which leads to a WC/shower.

She states that after the American Barn was completed, the 'store' area was converted into a bedroom

She states that the accommodation has remained in the same location, and same layout and has been continuously occupied by other tenants, current and previous employees of Park Place Polo Team.

Site Location Plan & Block Plan

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

The Council's Evidence

Aerial Imagery:

As the proposal relates to a change of use of a building, aerial imagery is unlikely to be conclusive evidence therefore these have not been reproduced in this report. However, the barn was substantially completed around 2015. No alterations have been made to the building to support the conversion therefore there is limited information that can be deduced from the aerial imagery.

14 September 2014	20/04/2015 WBC Mapping
	

Officer Site Visit:

An Officer visited the site on 3 July 2023 in relation to enforcement investigation RFS/2019/085351. At the time of the visit, the building was being used as groom's accommodation associated with Park Place Polo. A further site visit on 20 November 2024 confirms that the development remains as accommodation.

Utility bills:

No separate utility bills have been provided.

Council Tax/Business Rates:

The property is not registered with Wokingham Borough Council for Council Tax as confirmed by the Council Tax team on 19 November 2024.

Building Control:

No building regulations were sought for the conversion to a dwellinghouse as confirmed by the Building Control team on 27 November 2024.

Assessment:

There is no definition of the term 'dwellinghouse' in the 1990 Act but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The approach to be taken when making a determination was previously set out in paragraph 2.81 of Circular 10/97 (now cancelled having been replaced by Planning Practice Guidance but which is still in my view worthy of mention) the policy test being, "If no reasonable person would look at a particular structure used as a dwellinghouse and identify it as such, it is justifiable to conclude, as a matter of fact, that it is not a dwellinghouse". Previous cases including Appeal Reference: APP/R3325/X/12/2190138 have taken the view the question of what the building looks like is not necessarily relevant to the question as to whether there has been a change of use of the building to use as a single dwelling house. People can reside in various types of building which don't necessarily look like dwellinghouses but can be used as such

It is not disputed that the building contains all the facilities for day to day living. However, the kitchen and bathroom facilities were approved under planning permission F/2014/1637 for a staff break out area only. Even though this may be the case, it should be considered how the building was being used between 14 October 2014 and the time of the application.

TV licence documentation has been provided but this could be for the wider site as it is not addressed. However, the applicant has provided this to support the claimed use and there is no evidence that it is for a different property.

The fact that a building is being lived in is not necessarily decisive in determining whether it is a dwellinghouse. On the basis that the building contains all the facilities required for day to day private domestic existence, it is a dwellinghouse. It does not have the appearance of a dwellinghouse externally, as it is within the existing American barn, however internally it appears as a dwellinghouse and has been adapted and appears to be used as living accommodation. The statements from those renting the unit confirm they have been in occupation for some time and in living there have arguably demonstrated they are able to live in the unit with the facilities required for

day to day private domestic use. Although the building appears as stables, this does not affect the overall conclusions that in light of the stipulated tests.

It is however noted that the evidence indicates that this has not been used as an open market dwelling but occupied in connection with the Park Place Polo facilities only. This should be reflected in the description of development as this is what the evidence provided shows and it should therefore be considered as akin to a rural/equestrian worker's dwelling. The building used as a dwellinghouse was substantially completed by April 2015, four years prior to the application.

The applicant's evidence states that the accommodation has been continuously occupied by tenants who have all been staff associated with the Park Place Polo facility.

Conclusion:

The supporting information does not wholly take the form of Statutory Declarations. It is also noted that no Council Tax is being paid for the properties, and no utility bills have been provided as part of the evidence. In any event, it does not follow that non-payment of Council Tax means that the building was not in residential use. It indicates that the applicant chose, for or whatever reason, not to pay tax or register the properties. TV licence documentation has been provided to support the application. However, with limited evidence to the contrary, the evidence submitted as part of this application has demonstrated, on the balance of probabilities that part of the building has been used as a dwelling for staff members at Park Place Stables for a period of at least 4 years prior to the 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 dwellinghouse 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

Having considered the evidence submitted with the application and the Council's evidence outlined above, the Local Planning Authority is satisfied that, on the balance of probabilities. The part of the building has been used as a single dwellinghouse for staff at Park Place Stables for at least four years prior to the application.

Date:	15 November 2024
Earliest date for decision:	6 November 2024
Recommendation agreed by:	JAV

(Authorised Officer)	
Date:	19.12.24