

SUPPORTING STATEMENT

for

A CERTIFICATE OF EXISTING LAWFUL DEVELOPMENT FOR:

**Building operations comprising the permanent
siting of 7 portacabins, a WC unit and shed
on the land**

at

**Malmsbury Estate
Remenham Hill
Henley, RG9 3HN**

Prepared by

Neil March
BSc (Hons) DiP TP MRTPI



Date: January 2025

Client: Rilex Ltd

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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 7 portacabins, a WC unit and a shed that have been sited on the land since at least 2012. They are used by Estate workers for storage and welfare facilities ancillary to the grounds maintenance of the Estate.
- 1.3 With reference to case law and a number of relevant appeal decisions, and in view of their size and degree of permanence, it is argued that the structures are buildings under Section 336 of the Town and Country Planning Act 1990 (as amended) (“the Act”) and therefore constitute development under Section 55 of the Act, and having been substantially completed more than 4 years prior to the date of this application, are lawful.
- 1.4 The units were brought onto the land and used as site offices and welfare facilities by a previous landowner whilst implementing planning permission ref: 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).
- 1.5 They remained in situ and were used similarly during the construction of a polo facility permitted under planning permission 162288, which was completed in 2018. Since then, they have been retained by the current landowner and used as ancillary storage and welfare facilities by Estate workers.
- 1.6 They are located in the north eastern part of the Estate, to the south of the polo arena, within an area generally used to store plant and equipment used for estate management and grounds maintenance.
- 1.7 The units would have been transported to site on lorries. They rest on the ground on legs, which sit on concrete pads. The area beneath each of the units has been surfaced with scalpings.

- I.8 Five of the portacabins are linked / attached, creating a central walk-way / corridor between them. Services (i.e. water and electric) are attached.
- I.9 Photographs of the units (internal and external) taken in November 2024 are attached at **Appendix I**.
- I.10 As a result of their size and installation, and the period of time they have been in situ, they have become a permanent feature on the land.



Fig. 1 – Google Earth 2012 – showing the portacabins in situ in 2012



Fig. 2 – Google Earth 2021 – showing the portacabins still in situ in 2021

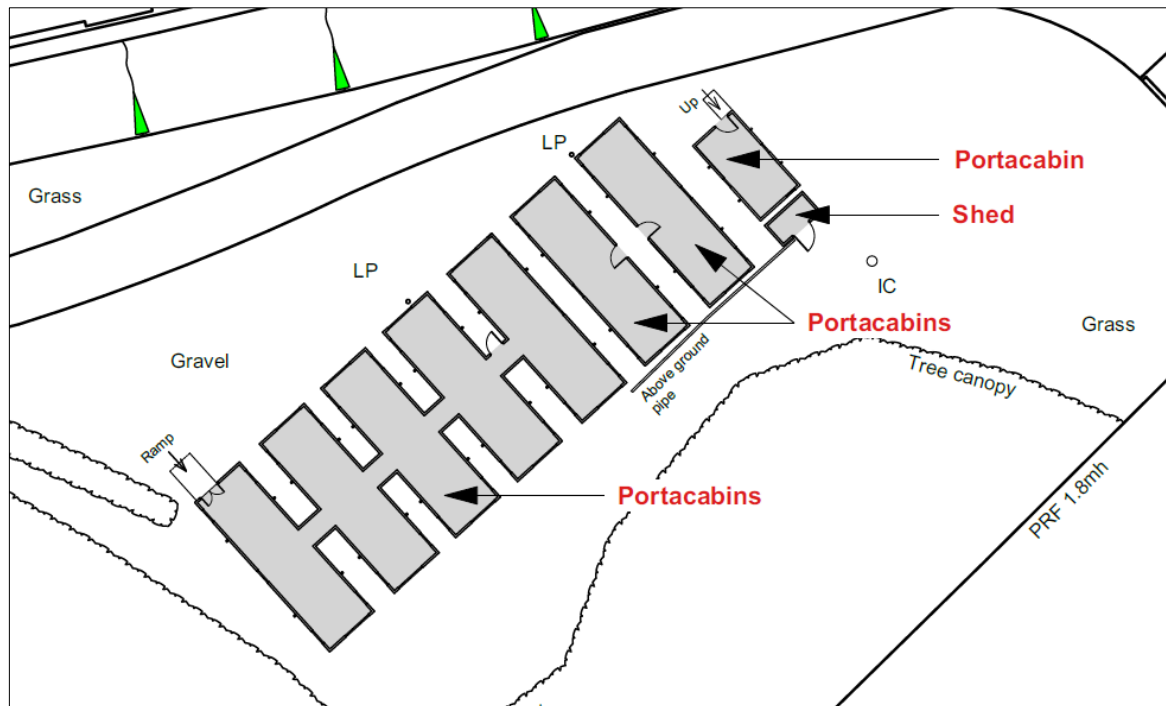


Fig. 3 – Layout of portacabins, showing the 5 linked units, the WC unit and shed

- 1.11 The Council have been aware of the existence of the portacabins since at least 2019, when they were identified as a potential breach of planning control in their appeal statements in relation to appeals against the refusal of planning application refs: 182327 and 182524. A copy of the LPA's Appeal statement for 182524, which refers to the 'Seven Portakabins' (sic), is attached at **Appendix 2**.
- 1.12 This statement sets out the case and the evidence to support the certificate.
- 1.13 The following plans have been provided with the application:
- Site Location Plan
 - Block Plan
 - Plan and elevations of the portacabins

2.0 **THE SITE**

- 2.1 The site forms part of the Park Place and 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 portacabins are located in the north eastern part of the Estate, to the south of the polo arena, within an area generally used to store plant and equipment used for estate management and grounds maintenance.

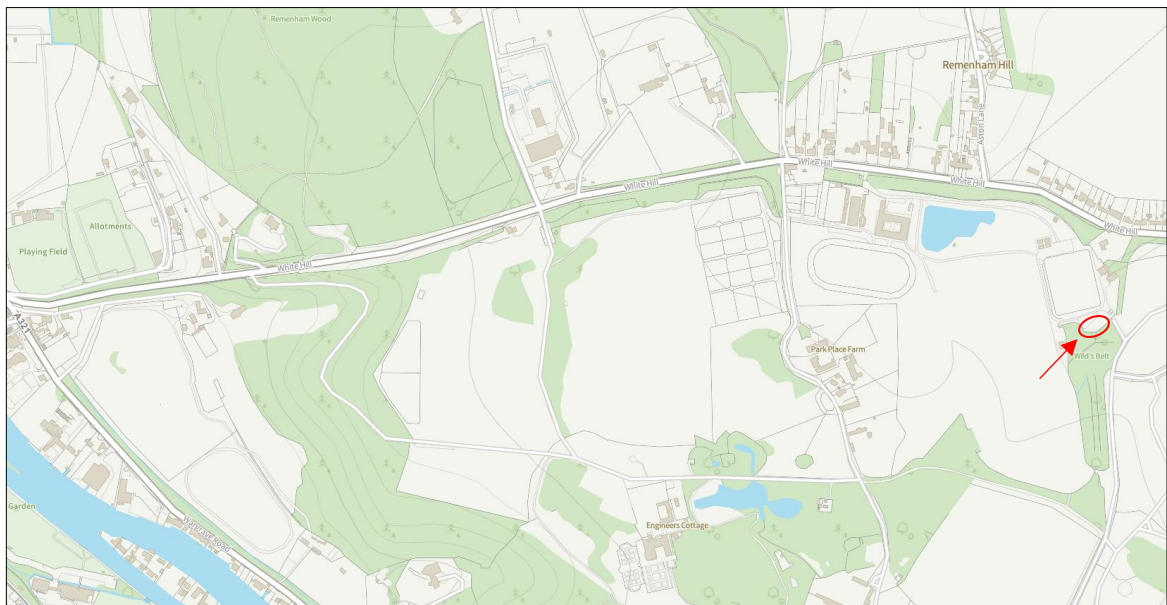


Fig. 4 - Map showing the location of the portacabins

- 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.
- 2.4 An asphalt drive runs from the entrance along the northern edge of the Estate and around the western and southern edges of the Polo arena to the subject buildings.

Relevant Planning History

- 2.5 There are a number of planning applications of relevance to this application:

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 Jul 2013
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

- 2.6 A copy of the decision notice for 162288 is attached at **Appendix 3** and a copy of the approved Site Plan (028-PI00 Rev F) is attached at **Appendix 4**. The remaining approved plans for 162288 are attached at **Appendix 5**.

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. 15. Accommodation of construction vehicles and deliveries. 20. Site specific Great Crested Newt method statement. 21. Landscape and ecological management plan (LEMP).	Approved; 14 Sept 2017
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- 2.7 A copy of the decision notice for 170791 is attached at **Appendix 6**.

182327	Demolition of an existing outbuilding and replacement with grooms accommodation with a players gym Appeal ref: APP/X0360/W/19/3224323	Refused; 16 Nov 2018 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 Appeal ref: APP/X0360/W/19/3224329	Refused; 19 Dec 2018 Appeal dismissed; 11 March 2020

- 2.8 An extract of the LPA's Appeal Statement for application 182524 (appeal ref: APP/X0360/W/19/3224329) is attached at **Appendix 2**.

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 S115 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 Under the transitional arrangements, any buildings or building operations that were substantially complete by 25th April 2024, will continue to be subject to the previous provisions under Section 171B(1). The **four year** period therefore applies.

3.8 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.*

3.9 In the case of *F W Grabbitts v SSE and Newham LBC [1985]* it was held that the applicant's own evidence does not have to be corroborated by 'independent' evidence in order to be accepted. If the LPA has no evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application

3.10 The burden of proof in an LDC application lies with the applicant and the relevant test is the "balance of probabilities".

4.0 WHAT CONSTITUTES A BUILDING

- 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."

In the case of R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council [2012] EWHC 2161 (Admin), Mrs Justice Lang ruled that the term "building" in section 336(1) has a wide definition which includes "any structure or erection".

This definition has been interpreted by the courts to include structures which would not ordinarily be described as buildings:

In Skerritts, an Inspector held that the erection of a 40 metre by 17 metre by 5 metre high marquee for an eight month period was the erection of a building; and in Hall Hunter v First Secretary of State [2007] 2 P. & C.R. 5 the erection of polytunnels was also the erection of a building.

Both decisions were upheld by the Courts.

- 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 A number of appeal decisions have been enclosed with this application (see Section 5.0) where inspectors have adjudged portacabins and similar structures to be buildings.
- 4.6 Despite not being attached to the ground and only resting on the ground under their own weight, all of the portacabin units in the appeals cited were judged to be buildings due to their size and degree of permanence.
- 4.7 It should also be noted that Wokingham Borough Council have recently granted a Lawful Development Certificate for the siting of 10 mobile stable units (on metal sleds) within the Park Place / Malmsbury Estate site, due to their size and form and the length of time that that have been in situ on the land resulting in them becoming permanent features, and so constituting building operations under Section 55 of the Act (application ref: 242597).

5.0 **SUPPORTING APPEAL DECISIONS**

5.1 **Rushcliffe Borough Council appeal decision (7 March 2014)**

2 Appeals relating to The Old School House, Gotham Road, Kingston on Soar, Nottingham NG11 0DE

Section 195 – Appeal against a refusal to grant a certificate of lawful use or development. The use or development for which a certificate of lawful use or development is sought is a temporary mobile portacabin on land at rear of The Old School House.

Section 174 – Appeal against Enforcement Notice. The breach of planning control alleged in the notice is carrying out a building, engineering or other operation on the Land by placing a 'portacabin' type structure (approximate dimensions 20 feet x 10 feet) on the Land in the approximate position marked blue on the attached plan. By virtue of its size, weight, connections to services, use and degree of permanence, the placing of the portacabin type structure constitutes a building or other operation amounting to development on the Land.

Relevant paragraphs:

25. The Appellant contends that the portacabin is a "temporary structure not a building". S336 of the Act states that "building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building. It also confirms that "building operations" has the meaning given in S55(1A) of the Act. That includes demolition of building, rebuilding, structural alterations or additions to buildings and other operations normally undertaken by a person carrying on business as a builder. That can include the placing of a building on a site.
26. Case law⁴ indicates that three factors are to be considered in this context. First is size. It suggests that buildings are normally constructed on the site which this portacabin was not. However, buildings may be small scale, which the portacabin is. Second, is the degree of permanence. The Appellant contends the portacabin is temporary. It had been on the appeal site for about a year prior to the Council seeking to initiate any action. It has remained since. It was moved once during those periods, but there is nothing to indicate that it would be moved again, only the Appellant's assertion that it could or might be. The circumstances do not equate, therefore, with, for example, a marquee erected on site for a short or set period and then removed. That would be less permanent than a prefabricated structure put on land for an indeterminate period. Permanent does not necessarily equate with an indefinite installation.
27. The third factor is physical attachment. In this case the portacabin is supported by four steel posts resting on pads on the ground. Essentially it remains there by virtue of its own weight. The structure is also connected to water and electricity supplies. Whilst I accept that those are non-rigid connections reasonably capable of removal, they nevertheless, indicate a degree of permanence for the structure and its location. Furthermore, case law⁵ has indicated that placement of a portacabin on land can constitute operational development. That case follows an established way of dealing with such development and cites the cases supporting it. Taken overall, I find that upon its own facts, the portacabin in this instance does constitute a building within the terms of the Planning Act.

28. S55(1) of the Act defines development as the carrying out of building engineering, mining or other operations in, on, over or under land, or the making of any material change of use of any buildings or other land. The Council contend that in this instance an "other operation" has occurred. It has been held that "operations" comprise activities which result in some physical alteration to the land, which has some degree of permanence to the land itself.
29. Physical alteration to the land does not necessarily imply excavation, or construction works associated with the prefabricated structure. It can relate to the physical character of the land. The portacabin does have a material effect upon the appearance of the land as any permanent or other building would.
30. Clearly the structure is capable of being moved because it has been, and that is not disputed. However, according to the Appellant special lifting apparatus was used for that purpose. Whilst the structure might be capable of being dragged to another location on the land, without skids or some form of runners, this would very probably lead to some consequent damage. Attaching a bogey or other wheels as suggested by the Appellant would also require some form of lifting gear as well. It is, therefore, relatively more permanent than temporary. It also has a physical impact upon the character of the land. Its form, bulk and general design are not particularly in keeping with the pastoral context.
31. For the reasons set out above I conclude that the installation of the portacabin on the appeal site constitutes a "building...or other operation" and is, therefore development even if it were not regarded as a building which, in my judgement, it is.
- ⁴ Skerritts of Nottingham v SSETR (No.2) [2000] 2PLR 102
⁵ R J Scott v SSE & Bracknell DC [1983] JPL 108
43. I find that the portacabin is operational development and for the reasons set out above it requires express planning permission, which it does not have. I also find that the stationing of the portacabin is not, in this particular case, a use of land and, even if it were, it is not associated with or ancillary to any lawful use of the land. Consequently, I find the Council's decision to refuse a Certificate of Lawful Development was justified and, accordingly the appeal fails.
50. For the reasons set out above in relation to Appeal 1 I conclude that the carrying out of operational development on the Land by putting a portacabin on to it does constitute a breach of planning control as alleged in the Notice. Accordingly, the appeal fails.



Photo taken 10 May 2012 from northwest (Old Schoolhouse in background)



Photo taken 10 May 2012 along northern boundary with Kingston Estate land (Old Schoolhouse in background)

Fig. 5 – Photographs of the portacabin in the Rushcliffe Borough Council appeal decision (taken from the LPA's Appeal statement)

5.2 East Hertfordshire District Council appeal decision (19 May 2011)

Appeal Ref: APP/J1915/C/10/2142691

Land at Foxholes Farm, London Road, Hertford SG13 7NT

Section 174 – Appeal against Enforcement Notice alleging “Without planning permission, the unauthorised erection of a portacabin in connection with the business of Windowman & Sons”

Relevant paragraphs:

Ground (c)

5. Under this ground of appeal the onus of proof falls on the Appellant to show that there has not been a breach of planning control. The reference to erection in the allegation and 4-years in the reasons for issue of the enforcement notice confirm that the Council regard the stationing of the portacabin in the court yard to have involved a building operation within section 55 of the Act; I agree.
6. In my experience the stationing of a portacabin on land, which is connected to services and in use for the purpose for which it was designed, would normally involve a building operation that gives rise to a building: portacabins are, by design, buildings (my emphasis). The Council has provided 2 appeal decisions [Ref T/APP/C/91/W5780/607320 and APP/P0119/C/01/1066564] which show The Planning Inspectorate has been consistent in its approach to portacabins over many years. I have been given no reason to take the opposite view in 2011 from those that have been expressed in 1991 and 2001, respectively.
10. In terms of size, the landowner has indicated that the portacabin is 12 m long, 3.8 m wide and 2.8 m high. At the site inspection both main parties accepted these measurements. I note that this portacabin is larger than the one at issue in the most recent appeal relied on by the Council. In that case the Inspector said [paragraph 5]: “*Its size is such that it cannot be regarded as insignificant and development has evidently occurred*”. These sentiments also apply here.
11. Although the Appellant says the portacabin is not permanent, it is admitted that it has been in place for 3-years and I have no doubt that were it not for the Council’s enforcement action that it would stay there for many years to come. Indeed at final comments stage the Appellant admits that “*We have had no reason to move the portacabin until now...*”. The portacabin is attached to services, such as telephone and electricity, which in my view formed part of the building operations, and this means that it cannot readily be moved around the farm. For these reasons it has a permanent rather than temporary character.
12. I acknowledge that the portacabin does not appear to have foundations, such as those that might be found with a brick building, but this was the position in both of the appeals quoted by the Council. My site inspection confirmed that this portacabin is similar in that it is largely kept in position by virtue of its own weight. Thus whilst I have no reason to doubt that the hard standing upon which it stands dates from 1967, that is irrelevant to the issue that I must determine under the ground (c). The fact that one end of the portacabin rests on a wooden block to ensure the structure is level does not alter my view.

13. In its appeal statement the Council give reasons why the portacabin would not be permitted development but the Appellant does not make this claim in his grounds of appeal and hence the onus of proof has not been discharged. Thus whilst it is claimed at final comments stage that there is still ample parking, that is not the point. Development is not permitted by Article 3 and Class A of Part 8 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 if it would lead to a reduction in the space available for parking or turning of vehicles. In the circumstances, since the burden of proof has not been discharged, it is not a point I need to examine further.
14. I appreciate the telephone and electricity connections could be disconnected but the very fact that they *"...were all installed by the appropriate qualified tradesmen"* does not assist ground (c). I note the claims that the portacabin compliments its surroundings, complies in height and design with adjoining buildings and makes use of an otherwise unusable piece of ground adding to the diversity and prosperity of the farm. However all of these points are completely irrelevant to the ground (c) appeal. In the circumstances it is clear that the onus of proof has not been discharged and the ground (c) must fail.

5.3 Selby District Council appeal decision (24 August 2023)

Appeal Ref: APP/N2739/X/22/3304569

Land Off Heck Lane, Great Heck, Goole, North Yorkshire DN14 0BL

Section 195 – Appeal against a refusal to grant a certificate of lawful use or development. The development for which a certificate of lawful use or development is sought is 'within the red line area shown on the submitted plans, the siting of 2 container buildings for general storage use only and the siting of 2 container buildings, joined together by a link container building, which are used to provide, welfare accommodation and private recreational leisure and camping facilities. Also the construction of an access track and area of hard standing around the barn.'

Relevant paragraphs:

Reasons

Operational development

14. The first step is to consider whether or not the containers are buildings amounting to operational development. Section 55(1) of the 1990 Act says that 'development' includes the carrying out of building, engineering, or other operations. Such operational development comprises activities which result in some physical alteration to the land with some degree of permanence. A building is defined by section 336 of the 1990 Act as including any structure or erection. The courts have held that three primary factors to establish what constitutes a building are (a) size, (b) permanence and (c), physical attachment. No one factor is decisive.
15. Containers 1 and 2 are each around 9m long by 2.7m wide, with a combined footprint of around 48.6sqm. Containers 3 and 4 comprise two longer containers linked in the middle by a shorter container, forming an H shape. The longer containers are approximately 13.2m long by 2.6m wide, and the

shorter is about 2.5m in length, so they have a combined footprint of approximately 75.14sqm. The structures are all large enough to be entered into in the manner that one would a building.

16. Due to their size and scale, the containers have a physical presence which alters the characteristics of the field. In contrast to the previously open land, they add development of a significantly different visual character to the agricultural nature of their surroundings.
17. The appellant confirms that the containers were delivered individually to the site on trucks and were lifted into place with a crane. They sit on sleepers and are held down by their own weight. They are substantial metal structures that are undoubtedly very heavy even when empty. Their size and weight indicate that they could only be moved to another location with specialist lifting equipment. The appellant confirms that the containers are intended to remain in place permanently.
18. Drawing these factors together, I am satisfied, on balance of probability, that both sets of two containers are buildings for the purposes of the 1990 Act.

Note: The appeal was dismissed as the inspector found that the containers had been used for residential and agricultural purposes by the appellants and therefore a material change of use had taken place. As such, use of the land amounted to development in the terms of s55 of the Act, such that it required a grant of planning permission.



Fig. 6 – Containers 3 and 4 referred to in the Selby District Council appeal decision

5.4 Wiltshire Council appeal decision (18 May 2020)

Appeal Ref: APP/Y3940/C/19/3243646**Atworth House, 194a Bath Road, Atworth, Melksham, Wiltshire SN12 8HF**

Section 174 – Appeal against Enforcement Notice alleging “Without planning permission, the unauthorised siting of a shipping container as shown in the photograph attached to the notice.”

Relevant paragraphs:

Appeal on ground (c) – that the matters stated in the notice do not constitute a breach of planning control

2. The enforcement notice alleges the carrying out of operational development. The appellant argues that the siting of the container constitutes a use of land, one that is incidental to the use of the dwellinghouse as such, and that by virtue of s.55(2)(d) of the Act, does not constitute development.
3. The court in *Cardiff Rating Authority and Cardiff Assessment Committee v Guest Keen and Baldwin's Iron and Steel Co.Ltd* [1949] 1 KB 385 found that three factors - size, permanence and degree of physical attachment - were relevant in deciding what was a building or structure. That was a case concerned with rating legislation, but its appropriateness to planning legislation was confirmed in *Barvis Ltd v Secretary of State for the Environment* [1971] 22 P&CR 710. A more recent case, *Skerrits of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and Harrow LBC (No.2)* [2000] 2 PLR 102 upheld the approach set out in *Cardiff Rating Authority and Barvis*.
4. Dealing firstly with size, the container is a 20DV model, measuring about 6m in length, 2.4m in width and 2.6m high. It is the size of a small garage, and larger than many sheds, both of which are readily recognised as “buildings”. Whilst it is not a structure that was constructed on site, the appellant’s photograph shows that it required a large, lorry-mounted crane to place it in position, but I note that it took 10 minutes to position (according to the appellant) or 30 minutes (according to a neighbour). It is of a solid, steel construction, and is highly durable. I therefore consider that it is of a size which could be defined as “a building”.
5. In terms of permanence, in the main function for which they are made, as shipping containers, they are clearly designed to be moved from place to place, on the back of a lorry, or on a ship, and in such use, they are usually impermanent structures. However, the circumstances of this case are that, according to the undisputed evidence of a neighbour, the container arrived on 24 July 2018. There is no suggestion that it has been moved since that time. When the notice was issued, it had been present for well in excess of a year. The appellant referred me to the case of *Valley Action Group Ltd, R (on the application of) v Bath and North East Somerset Council & Anor* [2012] EWHC 2161 (Admin) which applied the ruling in *Hall Hunter v First Secretary of State* [2007] 2 P. & C.R. 5. This latter case determined that permanence has to be construed in terms of significance in the planning context, and in the facts of that case, polytunnels remaining in one location for three months were sufficient to be of significance.

6. In this case, the container is permanently in position and there is no limit to the length of time it might remain there. The container lies within the grounds of a family home, amidst other residential properties, where commercial looking structures are not a commonplace part of the street scene, and where most structures are permanent. The ability to move the container elsewhere does not remove the significance of its presence in the planning context, and thus I find that it possesses a substantial degree of permanence.
7. In terms of its affixation, the container rests on stone slabs sited under each of the four corners of the base of the container. I could not tell whether the slabs have been concreted in place, but even so, an element of precision was required in ensuring that the container rests on a level base. Regardless of whether the slabs are concreted, the container is a substantial structure, which the appellant says weighs 2185 kg when empty. In my view, such a heavy structure is affixed to the ground by means of its own weight. It could not be readily moved other than by the use of powerful mechanical assistance. I therefore find that it has a degree of affixation sufficient to amount to a building operation.
9. Taking all the circumstances into account, I find that the container, by virtue of a combination of size, permanence and degree of affixation, is, as a matter of fact and degree, a building operation within the meaning of section 55 of the Act.
10. There are no permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which would permit such development in this position within the appellant's property, and no express planning permission has been granted for it. I find that the matter stated in the notice constitutes a breach of planning control. Accordingly, the appeal on ground (c) fails.

Conclusion

12. For the reasons given above, the enforcement notice is upheld and the appeal is dismissed.

6.0 EVIDENCE THAT THE PORTACABINS HAVE BEEN IN SITU FOR MORE THAN 4 YEARS

6.1 The evidence submitted confirming that the portacabins have been substantially completed and in situ for a period in excess of 4 years from the date of this application comprises:

- Photographs taken by [REDACTED] (ex-Director of SPP) taken 29 January 2019
- Extract from Council's appeal statement (submitted to PINS by 30 October 2019)
- Date verified aerial photograph (obtained from Getmapping.co.uk), dated 05/04/2020

6.2 The photographs taken by [REDACTED] dated 29 January 2019 (attached at **Appendix 8**) shows some of the portacabins. [REDACTED] was the expert planning witness in the 2019 appeals. The photographs were of general views of this part of site to do with the appeals and not of the portacabins per se. They just happened to be partially included in the photographs. They are therefore a good source of evidence.

6.3 The existence of the portacabins is expressly mentioned in the Council's appeal statement in appeal ref: APP/X0360/W/19/3224329 (**Appendix 2**), which refers to:

"Seven portakabins (sic) to the south of the polo area".

6.4 The time frames for the appeal are show overleaf (Fig. 7). The deadline for the submission of statements was 30 October 2019.

6.5 A date verified aerial photograph (taken on 05/04/20) has been obtained from Getmapping.co.uk (**Appendix 9**). This confirms that the structures were all in situ on this date – in excess of 4 years prior to the date of this application.

6.6 The dates that the portacabins have been in situ can also be verified in publicly available aerial photographs, e.g. Google Earth 09/2019.

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Reference: APP/X0360/W/19/3224329

Appellant/Applicant
Durio Limited

Agent

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
		Statement(s) due	30 Oct 2019
Case Officer	Adam Hill	Interested Party Comments due	23 Oct 2019
Procedure	Hearing	Appellant/LPA Final Comments due	N/A
Status	Complete: Decision issued	Inquiry Evidence due	N/A
Decision and Outcome	Dismissed 3224323 and 3224329 - Costs Decision 3224323 and 3224329 - Decision	Event Date	Not arranged
Case Link Status	Not Linked	Decision Date	11 Mar 2020
Linked Cases	0		

Fig. 7 – Appeal time frames for appeal ref: APP/X0360/W/19/3224329

7.0 INTERFACE WITH PLANNING PERMISISON 162288

7.1 The portacabins were contained within the red line site for, and already in situ when, application ref: 162288 was granted.

7.2 The decision notice for 162288 (**Appendix 3**) confirms that the description of the development was:

“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.”

7.3 There is nothing in the description of development to confirm that the proposal included the demolition or removal of the portacabins.

7.4 The approved plans on which 162288 was decided are listed in condition 2 of the decision notice. These are: 16/1997-20 rev D, 16/1997-21 Rev C, 16/1997-22 Rev C, 16/1997-23 Rev A, 16/1997-P40, 16/1997-41, 16/1997-30 Rev B, 8160507/6101, 502-0012-001 and 028-P100 Rev F. Copies of these plans are attached at **Appendix 5**.

7.5 The plan of most relevance is the approved Site Plan (ref: 028-P100 Rev F) (**Appendix 4**). An enlarged copy of the plan is shown at Fig. 5 overleaf. The portacabins are omitted from the plan, although there is nothing on the plan confirming their removal. Nor does it show anything proposed to be built in its location. The continued retention of the portacabins does not therefore conflict with this plan.

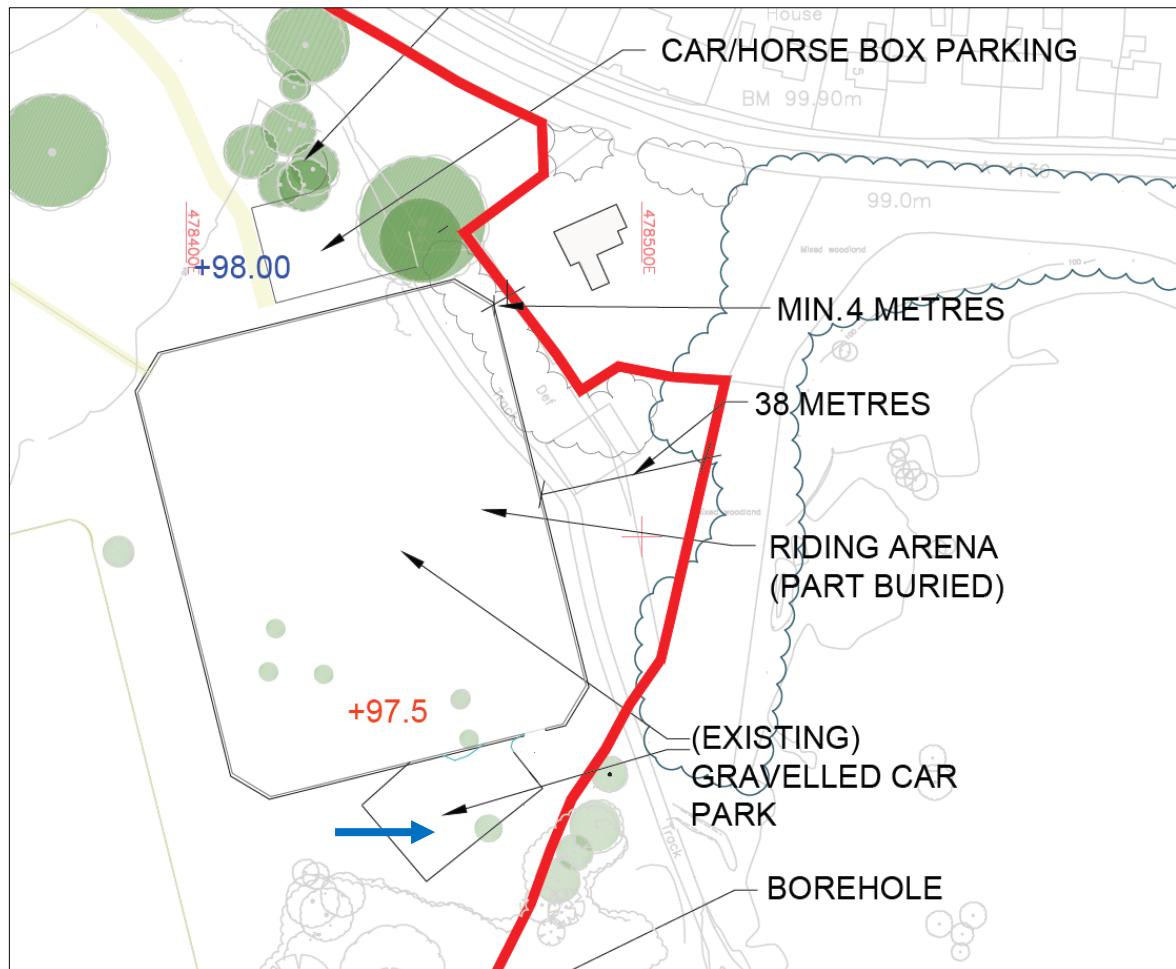


Fig. 5 – Enlarged extract of Approved Site Plan (028-PI00 Rev F) showing the location of the portacabins (as denoted by the blue arrow)

7.6 None of the remaining approved plans listed in Condition 2 are relevant to the subject building. A summary of the approved plans are set out below:

Drawing ref:	Description	Comment
16/1997-20 rev D	Stable Block floor plan	Not relevant to subject building
16/1997-21 Rev C	Stable Block – Proposed amenity block layout	Not relevant to subject building
16/1997-22 Rev C	Proposed stable block – Proposed elevations	Not relevant to subject building
16/1997-23 Rev A	Stable Block – Proposed roof layout	Not relevant to subject building
16/1997-P40	Riding arena - fence detail	Not relevant to subject building
16/1997-41	Riding arena - sections	Not relevant to subject building
16/1997-30 Rev B	Proposed private pavilion	Not relevant to subject building

8160507/6101	Site Access Visibility Splays	Not relevant to subject building
502-0012-001	Proposed Access Alterations	Not relevant to subject building

7.7 The conditions attached the planning permission granted under 162288 are also set out in the decision notice (**Appendix 3**). The condition summary headings are as follows:

1.	Development to be begun within 3 years
2.	Approved details – development shall be carried out in accordance with
3.	Ground and building levels
4.	External materials
5.	Details of boundary walls and fences etc
6.	Landscaping
7.	Details of a lighting scheme
8.	Archaeology
9.	Details of off-street parking for 10 spaces to be submitted
10.	Visibility splay provision
11.	Access surfacing
12.	Access to be provided before development
13.	Gates
14.	Construction method statement
15.	Accommodation of construction vehicles and deliveries, etc
16.	Traffic associated with development not to use Dairy Lane as a means of access
17.	Development permitted shall only be used a private facility (for friends / guests of Park Place
18.	Number of polo matches (on polo pitch permitted) shall be limited to 40 per annum.
19.	No public address system or amplification on the polo field at any time
20.	Great Crested Newt method statement
21.	Landscape and Ecological Management Plan (LEMP)

7.8 There are no conditions specifically relating to the subject portacabins or crucially, requiring them to be demolished / removed.

7.9 Following the grant of planning permission 162288, an application was submitted to discharge a number of conditions attached to that permission. This was application ref:

170791, which is titled: “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. 15. Accommodation of construction vehicles and deliveries. 20. Site specific Great Crested Newt method statement. 21. Landscape and ecological management plan (LEMP).”. A copy of decision notice 170791 is attached at **Appendix 6**.

- 7.10 None of the details approved under 170791 require the removal of the portacabins. On the approved landscape plans E16-002-001 Rev D1 and E16-002-003 Rev D2, the portacabins are clearly shown (copies of the plans are attached at **Appendix 7**).

8.0 ASSESSMENT / CONCLUSION

- 8.1 With reference to the relevant legislation, established case law and 4 highly relevant and considered appeal decisions, it has been demonstrated that the portacabins are buildings, due their size, permanence and presence, and therefore constitute development under Section 55 of the Town and Country Planning Act 1990 (as amended).
- 8.2 The submitted evidence, in the form of digital (date and time verified) photographs taken in January 2019 and also a date verified aerial photograph (April 2020), as well as reference by the Council to the seven portakabins in their own appeal statement in October 2019, confirms that the portacabins have been substantially completed and remained in situ for a period in excess of 4 years prior to the submission of this application.
- 8.3 The evidence submitted can be corroborated by publicly available aerial photographs (e.g. Google Earth), which also clearly shows the structures in situ.
- 8.4 As the buildings were substantially complete before 25th April 2024, they are subject to the 4 year rule under the previous wording of Section 171B(1).
- 8.5 Because the relevant time limit (of 4 years) has passed and as there is no enforcement notice in force, the buildings are therefore lawful under the relevant provisions of the Town and Country Planning Act 1990 (as amended).
- 8.6 A certificate of existing lawful development should therefore be granted.