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Director of Planning
Havant Borough Council
Public Service Plaza,
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For the attention of Mr S Weaver

Dear Steve

Application APP/23/00076

Land owners' agreement for new access route

I have previously advised that Heads of Terms for use of the alternative track (subject to this planning application) on a "like for like" basis had been exchanged with AGP Ltd. and we were awaiting a response to our latest drafting. Although a deadline of 15th March was set to conclude discussions on the broad terms, to allow broad agreement to be reported to Planning Committee on 16th March as confirmed at our meeting with you on 1st February, we had no response by that date. We did however receive a response late on 20th March and we have considered our response, which will be with AGP Ltd shortly.

I am pleased to report that, while there is legal detail yet to be sorted, clarity and trust to be established, for planning purposes I am confident the principal points are covered sufficiently to allow the application to progress to determination. I suggest that any permission should be drafted cognisant of the requirements within the agreement. I share with you the broad HoTs for that reason. I will be happy to discuss any planning implications arising, but these are more likely to be related to the implementation and completion of the access satisfactorily, than the application before the Committee.

In my email to you dated 20th February 2023 I set out broad terms for the "like for like" exchange as follows:

- our client to surrender the existing right of way through Tournerbury Farm and be given a new right of way over the new access for his business and personal use
- the new access to be compliant with planning permissions APP/17/00207 and APP/21/00536
- our client will be responsible for making good any damage caused by uses associated with the events site

- the new track to be 4.5m width with passing places and grass verges with planting along its' length
- a gate to be installed by our client at the northern end of the access with no other gates or obstruction to be erected to impede the route
- stock-proof boundaries to the route to be provided with access gates to fields at the sides of the track
- the new access not to be used in a manner likely to cause damage
- no other party to be granted a right of way over the new access

This was proposed to be agreed and executed by 15th March 2023 and subject to two conditions:

1. The grant of planning application APP/23/00076 with no legal challenge
2. Grant of CLEUD or written confirmation by Havant BC that the new access road has been completed in accordance with planning permissions.

For the greater part these have been accepted in principle by AGP Ltd, subject to

1. the agreement being triggered by completion of the new track in accordance with the existing planning permissions.
2. the right of way to exclude the verges
3. the track to be maintained by AG Phillips Ltd with a contribution from Tournerbury
4. there will be a right of use by a multitude of different people and vehicles
5. there will be a gate at the north end of the track and crossing point gates at the sides
6. suggested provision of a photographic record of access completion

As I say there is detail within the agreement yet to be clarified and agreed, but you will see for planning purposes the principle of a new access route should be deliverable. It is within the detail where matters could flounder, both within the planning permission we are discussing (any conditions linking it with the approved access permission) and implementation of the approved access in accord with its permission. Your help and advice in this regard will be appreciated.

Approval of application APP/23/00076 will put in place a new planning permission for the access road. This will be extensively the same as permission APP/17/00207 as amended by APP/21/00536. It will also involve connection of the new track through the boundary with Tournerbury Woods.

Concern remains that implementation of permission APP/17/00207 as amended is not lawful, as it fails to comply with all conditions agreed as part of this application, including construction methodology. Formal implementation of the new permission following the discharge of any conditions precedent and with demonstrable compliance to drawings, materials and conditions, would not only supersede the original permissions, but also remove any question of unlawfulness. In so doing it will trigger the agreement we are negotiating.

It is important therefore for us to understand and agree which permission has been implemented and for the Council to be content it is lawful following that implementation. Given the planning history with this project, not to implement this latest application in its entirety and to supersede earlier permissions, will simply offer the opportunity for issues to again arise, such as compliance and use. It will be useful if this latest permission is easily differentiated from those which preceded it and I suggest the link through the boundary fence and connection of the tracks will provide this.

Also, of concern is the suggested exclusion of verges from the right of way, which will inevitably give rise to operational difficulties and raises question about provision of essential landscape. We have assumed the right of way will include all land within the application red line needed for the purpose of gaining access and egress from Tournembury Woods. This would not be limited simply to the track surface itself, but also to any land associated with it and used for over-running, turning, passing, signage, means of enclosure and landscape. I am confident this was the intention with the previous access permissions and trust you will require this with the new consent.

There is then the question of completion of the new access, which can be as tricky to define as commencement. In this case not only does the question of which access has been implemented arise, but also at what point it becomes compliant, and triggers the agreement. The proposal is one where it will be useful to all parties to have independent confirmation that a route has been implemented and is compliant with its planning permission. We will be happy to discuss with you how this might be done. Clearly this could involve a formal Lawful Development Certificate approach, but I suggest that it might be sufficient only to formally discharge all conditions through the Council. I would welcome your views on this.

A final point to clarify on this agreement to use the alterative access is its daily use. The route is required to provide general access to Tournembury Woods (for any business or other activity undertaken there) and for agricultural use in connection with continued farming at Tournembury Farm, and for no other use. It would be most useful if this clarity can be provided within the planning permission to allow the Council to retain control over its use for other purposes.

I will advise you of our response to the latest agreement amendments in due course. If you have any questions arising from the above, please let me know.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'H. Morris', with a stylized flourish extending to the right.

Haydn Morris
For HMPCLtd