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Mr Steve Weaver
Planning Officer
Havant Borough Council

BY EMAIL ONLY

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27 April 2021

Dear Mr Weaver

**MR CHRISTOPHER AND MRS ALICE SNELL
APPLICATION FOR A CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT ("CLEUD")
APP/19/01262 ("the CLEUD Application")**

A. INTRODUCTION

1. I am writing in response to the Further Representations made by Thrings LLP on behalf of AG Phillips & Son Ltd and, to a lesser extent, to the comments made by my client Christopher Snell's cousin Virginia Knowles on the submissions made in my letter of 24 March 2021.
2. By way of emphasis:
 - 2.1 This is by way of *reply* in the usual forensic way: ie, the proponent of a proposition is given the opportunity to put it forward; the opponent to respond; and the proponent to reply. It does not, on any analysis, merit or require a further round of consultation.
 - 2.2 If I have correctly understood the Council's approach to consultation, you will have sent a copy of my 24 March 2021 letter to over 100 people. From what has been published, only four people responded within the consultation period: two apparently in concert; one short hand written note and one short objection directly on the planning portal. My clients and I draw the obvious inference from that.

B. POINTS IN REPLY

The correct approach to change of use

3. At para.6f of my letter of 24 March 2021, I set out the correct characterisation of use for the purpose of considering the CLEUD, reflecting how the CLEUD Application was framed, as made, in December 2019:

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"Element 1 of the CLEUD Application is framed so as to encompass a mixed use comprising sui generis use for leisure, tourism and as a commercial events venue: ie, there is more than one primary use of the land. Section 191(5)(b) Town and Country Planning Act ("TCPA") 1990 requires the CLEUD to "describe the use" - or uses – but it clearly envisages the same approach to uses and the UCO 1987 as would obtain when the local planning authority is considering an application for planning permission under s.70 TCPA 1990."

4. Thrings LLP, at paras.2.1 to 2.4 of their Further Representations describe the evidence as an "ever-changing jumble of diverse alleged activities" and an "all-encompassing medley of changing mixed uses", but that is to miss the point. There has been a continuous thread running through the considerable volume of use: ie, as an events venue. The CLEUD Application, as originally made and as it continues to be explained some 16 months later, reflects the factual reality: there has been a consistent and continuous mixed use for leisure, tourism and as a commercial events venue for more than a decade.
5. In my letter of 24 March 2021, I also cautioned against the "salami slicing" approach which Thrings LLP urge on the Council – or, as I put it, what would amount to breaking the substance down into a series of "mini" CLEUD applications for specific individual uses:
 - 5.1 As above, that approach is inconsistent with the way in which the CLEUD Application was made – and, indeed, with the continuity of the evidential picture over more than a decade.
 - 5.2 It is a contrived approach, which, if taken to a logical extreme, would raise the bar for CLEUD applications inappropriately high: it focuses on trying to find as much dissimilarity as possible between individual events, so as to differentiate between them and draw a conclusion that there is no continuity of use. That is not how s.191 Town and Country Planning Act 1990 (particularly s.191(5)(b)) is framed, nor how the Courts have approached its interpretation and application in practice.

Operations

6. At paras.8 and 9 of my letter of 24 March 2021, I wrote as follows:

"8. The legal advice quoted in your letter of 10 March 2021 reads as follows in respect of the gazebo, log cabin and decking (numbered bullet points 2-4 in box 8 of the CLEUD Application form):

"Gazebo, log cabin and decking.

The structures are part and parcel of the change of use and are not lawful unless the use itself has been demonstrated to be lawful."

9. This too appears to disclose an error of law. Where, as here, the CLEUD Application is referential to expiry of the time limits in s.171B TCPA 1990, the material issue is whether the structures have been physically present on the ground for four years. If so, the Council must grant the CLEUD in respect of them as has been physically present. There is no requirement to demonstrate both use and physical presence nor to link operations to use: see s.191(1)(a) and (b) TCPA 1990, which are disjunctive."

7. Clearly, para.9 was a response, as a matter of legal analysis, to the approach which your legal advisors had proposed and which you had set out in writing. It did not, as Thrings LLP seem to suggest, at para.3.2 of their Further Representations, "introduce a new matter for enquiry" on behalf of my clients.

Evidence

8. At para.3.4 of their submissions and elsewhere, Thrings LLP call for yet further evidence. The Council has well over 1,000 pages of contemporaneous documentary evidence in support of the CLEUD Application, together with witness evidence. It is an evidence-base whose detail and magnitude is highly unusual in support of such an application and whose substance has not been

refuted by any third party making representations which are actually corroborated by documentary evidence.

9. In March 2021, my clients spent in excess of 100 hours undertaking a further evidence-gathering exercise to corroborate the witness and earlier documentary evidence. My clients and I have also spent significant time in seeking to bring clarity to a complicated matter: as your letter of 10 March 2021 and my letter of 24 March disclose, it is not a straightforward exercise when it comes to "counting" events. It is necessary to adopt a framework which is referential to the CLEUD Application as made, the law as it should be properly interpreted, and the events and uses as they actually took place at this particular events venue.
10. Thrings LLP suggest, at para.5.3 of their Further Representations, that the Council should treat the evidence made available on 24 March 2021 "with appropriate caution". The evidence principally comprised bank statements which were generated by a third party (Barclays Bank PLC): it is difficult to see how their integrity or substance can be impugned; nor, indeed, that they reasonably require further verification. My letter of 24 March 2021, at section C, contained submissions and a key to the interpretation of the evidence (paras.10-14): it was not itself a vehicle for witness evidence. If the Council, nevertheless, feels that it needs statements of truth from my client to corroborate the contents of para.17.3 and from Chris and Julia Makin to confirm that they provided the photographs of the shoot, then they can readily be provided, but that rather goes to emphasise the point: that the Council can safely place reliance on the significant body of further evidence submitted on 24 March 2021.
11. Thrings LLP also ask you to prefer the evidence of the directors of AG Phillips & Son Ltd because they have a "front row seat" as to what has been going to and from my clients' land. Unless there are many hitherto-undisclosed incidents of trespass by them, they have not, however, had a "front row seat" as to the use of the land itself, which is the subject of the CLEUD Application. Given the nature of the land (woodland), there is no unimpeded view through from Tournerbury Farmyard to Woods Cottage and the venue at any time of year. That is quite aside from the caution with which the Council should treat their evidence: see para.12 below.

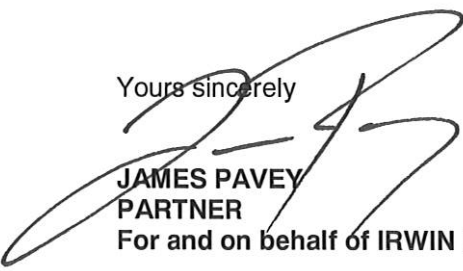
Improper purpose

12. At paras.7.1 and 7.2, Thrings LLP give the game away: the Council should (they submit) condition the retrospective application to require use of the "new" or "alternative" route which their client has partially built, but not completed. As to which:
 - 12.1 In determining the CLEUD Application, that is not a relevant consideration.
 - 12.2 AG Phillips & Son Ltd's "alternative access" is, in any event, problematic, not least as it is the subject of enforcement action by the Council.
 - 12.3 The Council is all too obviously being asked to help AG Phillips & Son Ltd engineer a situation which it could seek to exploit. The Council should be wary about this generally, but should consider the evidence from the directors of AG Phillips & Son Ltd in that light.

Fairness

13. Whatever approach the Council has adopted to consultation as a matter of its own policy, the Town and Country Planning (Development Management Procedure) (England) Order 2015/595 does not contain publicity or consultation requirements in relation to CLEUD Applications. That is for good reason as a matter of public policy: the only matter for the local planning authority (LPA) is whether the development is lawful or not, having regard to the substance of the particular application. There is no want of fairness here, as Thrings LLP and Mrs Knowles suggest.
14. The significant volume of documentary material has been provided to the Council in a form which it can fairly scrutinise in order to determine the CLEUD Application. The Council should now determine the CLEUD Application.

Yours sincerely



JAMES PAVEY
PARTNER

For and on behalf of IRWIN MITCHELL LLP