

Dear Mr Weaver,

Apologies for the late reply owing to workload pressures.

Tournerbury Woods, Tournerbury Lane, Hayling Island

APP/19/01262 – Application for Certificate of Lawfulness for an existing use or development relating to (1) change of use of Woods Cottage and its environs into leisure/tourism use for the purposes of holiday lettings and camping, and as a commercial event venue for the purposes of both holidays and the holding of weddings and events and the utilisation of any ancillary buildings and structures that may be required as necessary for such uses; (2) erection of log cabin and adjoining deck; (3) erection of Victorian style gazebo structure; and (4) erection of marquee structure.

Fully delegated Officer decision from Chichester Harbour Conservancy

Recommendation – Objection. An Enforcement Notice relating to the unauthorised development has been served by the council, so under law it is not possible to grant the Certificate of Lawfulness.

The Conservancy notes that this application was made valid on 9.1.2020 and that the council served an Enforcement Notice relating to similar matters on 17.1.2020. So, whilst the council is obliged to determine this application, under Section 191 (2)(b) of the Town and Country Planning Act (1990(as amended)), it is the Conservancy's opening position that it may not determine it favourably.

If however the council is going to determine the application, the Conservancy makes the following observations on the submitted evidence.

General

It is noted that the site location edged red concurs to that of withdrawn application APP/19/00889.

The location of structures associated with the purported use of the land are shown on evidence Base No. 0878. The plan EB0878, does correspond to where I saw these structures on site and photographed them during my visit to review application 18/00943 on 26.11.2018.

The property deeds documentation evidence Base No. 0879 to 0885, whilst confirming ownership of the Tournerbury Woods Estate, performs no other useful purpose. The Ordnance survey extract only shows the footprint of Woods Cottage. The restrictive covenants (a) and (b), would appear to prohibit what has taken place at the site.

Differing activities appear to have occurred at the site at various times, but perhaps not all at the same time in a continuous fashion through the 10 year period that is to be proven in terms of use of the application site.

Large parts of the documents are redacted (presumably by the council for privacy reasons under the Data Protection Act), so it is difficult to fully comment on the veracity and relevance of the evidence presented. This includes –

- Bank statements evidence Base No. 0922 to 0929; and,
- The booking diary.

The booking diary does appear to run from January 2009 (Evidence Base No. 0142) to December 2019 (Evidence Base No. 0197). The first event listed is a shoot event, but it seems corporate, wedding and other events have also occurred. It is not clear what 'WC only' means in terms of any booking, but I have assumed this refers to Woods Cottage. The total number of events is given as a figure at the end of each year, numbers recorded as –

2009 - 55 events spread over 157 days

2010 - 40 events spread over 174 days

2011 - 50 events spread over 179 days

2012 - 49 events spread over 195 days

2013 - 51 events spread over 232 days

2014 - 51 events spread over 186 days

2015 - 53 events spread over 203 days

2016 - 77 events spread over 186 days

2017 - 73 events spread over 112 days

2018 - 92 events spread over 108 days

2019 - 64 events spread over 73 days

Under planning application APP/18/00943, the applicant has stated the following to the council in terms of number and events through recent years –

2018 - 58
2017 - 46
2016 - 39
2015 - 36
2014 - 35
2013 - 36
2012 - 31
2011 - 28
2010 - 30
2009 - 29
2008 - 28

- in the design and access statement, which seem to be significantly at variance with the figures above.

A transportation statement also set out 42 events had occurred between 30 March 2019 to 5 October 2019, with evidence for the same period from the dairy confirming 35 events, during the same period, albeit no diary entries are given for July and August 2019.

Whilst the event flyer (Evidence base No.'s 0930-0931) speaks of 1990, 1990 is not actually on the flyer and the other event in 1996 is also outside the relevant 10 year period to be proven. No weight can be attached to that evidence.

Publicity photograph of trade display (11.5.2008)(Evidence base No.'s 0011-0012), advertising Club Monkey Puzzle 'private party venue': also outside the relevant 10 year period to be proven. No weight can be attached to that evidence.

Press report (29.1.2012) - Evidence base No.'s 0026 – 0027: refers to Woods Cottage and its 'log-cabin cinema' and '300 sq.ft tent for entertaining', marketed by Premier Cottages.

Publicity photograph of trade display (2013) - Evidence base No. 0031, advertising the site as a wedding/events venue. Contains smaller photograph of a marquee. This may be the current marquee.

Publicity photograph of trade display (27.10.2013) - Evidence base No. 0039, advertising the site as a wedding/events venue. Contains smaller photographs of a marquee. This may be the current marquee.

Press report (October [?] 2014) - Evidence base No. 0053 – report of charity event which attracted 150 guests. The current marquee is pictured.

Press report (8.2.2015) - Evidence base No. 0054, refers to the site as a wedding venue, marketed by Premier Cottages. The article refers to a marquee and that so far that year 20 weddings had occurred. (N.B. from 1.1.2015 to 8.2.2015, this is hard to verify as 0170 is wholly redacted).

Tournerbury Holdings Ltd (dated) invoices evidence Base No.-

- 0198 (23.1.2007) to 0330 (22.1.2013)- not all in chronological order,
- 0331 (29.1.2013) to 0664 (13.12.2016),
- 0665 (13.12.2016) to 0876 (8.5.2019).

Those referring to events predating 19.12.2009 (10 years before the date on the current application form) are not relevant to the council's determination (0198 to 0222). Time has not allowed the Conservancy to work through the dates to compare them to the number of events in the booking diary to assess whether consistency of evidence is being presented, but it is suggested that the council does carry out that exercise.

Whilst the application site address is not specified, 'Woods Cottage' is repeatedly mentioned. Not all relate to hire for the purposes of a wedding/wedding reception. Notable invoices include –

- 0198 (23.1.2007) is the first to refer to the renting of Woods Cottage;
- 0199 is the first to refer to Monkey Puzzle annual membership (8.6.2008);
- 0329 (15.1.2013) may be the first recording hiring of the site for a wedding ('Invoice No. TH00233 WEDD');
- 0331 (10.2.2013) first refers to a marquee 24m x 12m footprint;
- 0317 (6.6.2012) first refers to annual membership of a 'Tournbury Club';
- 0347 and 0350 just refer to 'land hire';
- The first to exclusively refer to camping at the site (1 pitch) is dated 5.8.2013, (evidence Base No. 0421), with 0537 (30.6.2015) the first to refer to motor home pitches as well: many do not refer to the hiring of tent pitches;
- 0494 appears to be the only one referring to the build of a pontoon;
- 0651 refers to the hire of 'festoon lighting – marquee external and 'lasers – external', related to the event;

- One event 3.8.2018 includes the hire of 2 No. ribs (evidence Base No. 0793);
- Another dated 3.8.2018 makes first reference to the hiring of West Plantation for a forest school on several dates (evidence Base No. 0806).

Earlier events seem to be mostly the hire of Woods Cottage and a fair number of corporate/small shooting events.

Evidence base No.'s listed below; photographs of events –

There is no mapped schedule that accompanies the photographs, indicating where the person was stood when they took the photograph and what direction the camera was pointed in.

0001-0003 – 2002: First wedding at the application site. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance.

0007 – 0010 – March to June 2008: refurbishment of Woods Cottage. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance.

0013 – August 2008. Helicopter purportedly associated with a corporate event at the site. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance.

0004 (2006) and 0014-0016 – December 2008 and January 2010 (smaller) marquee to that which exists now and located in a different position on the site to that which exists now.

0018-0019 - 2010 build of log cabin. This is attested to in the statutory declaration and the Conservancy has no contrary evidence to offer.

0020-0023 – 2011 build of deck attached to log cabin. This does not show the full extent of the decking, nor its later roofing ('stretch tent') over.

0024-0025 – 2011 Winter shoot events.

In terms of photographs taken *inside* a marquee and could be a marquee erected anywhere, namely 0032-0036, 0041, 0043-0045, 0047, 0049-0051, 0056-0058, 0060-0061, (there is no 0062 on-line), 0063, (there is no 0064 on-line), 0065-0066, 0069, 0071-0078, 0083, 0085-0086, 0089-0090, 0092-0093.

A number of photographs do not seem to relate to the structures sought to be regularised (at the application site) at all, but broadly indicate how the land was being used when the photograph was taken, notably –

- 0005-0006 and that numbered 0017 relating to property owned by the applicant in London;
- 0028-0029, show a white tented structure, but I am unclear whether it is the same marquee sought for retention – in fact it cannot be because the sworn statement says that marquee was not purchased until 6.6.2013 and the marquee in 0028-0029 are variously dated in 2012;
- 0030;
- 0037-0038;
- Upper part of 0040;
- Lower part of 0041;
- Upper part of 0042;
- Lower part of 0043;
- Lower part of 0045;
- 0046
- Lower part of 0047;
- 0048;
- 0052;
- Lower part 0056;
- Lower part 0057;
- Pink/patterned marquee in lower part of 0058;
- Lower part of 0059;
- Upper part 0060;
- Lower part 0063;
- 0064;
- 0066;
- Lower part 0067;
- Upper part 0068;
- 0070;
- Lower part 0074;
- Upper part 0075;
- Upper part 0077;
- Lower part 0079;
- Lower part 0080;
- Lower part 0081;
- Lower part 0082;
- Upper part 0084;
- 0088;
- Upper part 0090;
- 0091;
- Lower part 0092.

Evidence base No. 0094-0095 – Applicant's commentary on 3rd party objections to APP/18/00943. Residents referring to a marquee standing 'in some form or another' since the early 2000's is ambiguous, as to whether it is the same marquee throughout or indeed located in the same position, especially when evidence base No. 0032 refers to 'new marquee build'. That none of the residents offer a statutory declaration as to how they know what was on the site and how exactly it was being used make such evidence weak and unreliable on a 'balance of probabilities'. The last note from an Austrian national, whilst saying they attended a wedding a Tournerbury woods 10 years ago, only offers a snapshot in time.

The marketing flyer for 'Monkey Puzzle Country Club', with an associated invoices from 2007 and 2008, evidence Base No. 0886 to 0891; these also pre-date the relevant 10 year period the applicant needs to establish. No weight can be given to this evidence.

Applicant's correspondence (25.11.2014 to 11.5.2016) with Natural England evidence Base No. 0892 to 0894. This offers no proof of the site's purported use nor structures associated with that. No weight can be given to this evidence.

Evidence base No. 0096-0117 –documentation dated between 1998 and March 2019. 0096 being an Insurance certificate for a holiday cottage, namely Woods Cottage at Tournurbury Woods. Subsequent renewal certificates/renewal reminders. Some documents redacted so it is difficult to tell if they relate to Woods Cottage at the application site. That evidence pre-dating the relevant 10 year period the council must scrutinise, has no relevance.

Evidence base No. 0118-0121 – 3 No. invoices first dated 2004, 2nd redacted date and last 2006. Last seems to be for the purchase of a marquee. It is not clear if this is the marquee that exists on the site today or indeed whether it was then erected on the application site. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance and is not clear that it relates to the application site.

Evidence base No. 0121-0125 – email correspondence September 2001 to June 2002 agreeing to rent a cottage some time after someone had been married and returned from their honeymoon, addressed to Chris Snell and printed off at the Tournurbury Woods Estate Office. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance and is not clear that it relates to the application site.

Evidence base No. 0126-0127 – March 1998 bank letter account name Snell CMV – Woods and cheque dated 2000 – Council tax paid to Havant Borough Council. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance and is not clear that it relates to the application site.

Evidence base No. 0128 – April 1996. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance and is inclusive as to whether the 'location manager' agreed to 'list' Wood Cottage, Tournurbury Woods as a holiday letting opportunity.

Evidence base No. 0129 – November 2008, addressed to 'christopher@monkeypuzzleribs.com', printed off at the Tournurbury Woods Estate Office, confirming registration with 'owners direct holiday rentals ltd'. No mention is made of the property to be a holiday rental. As this evidence pre-dates the 10 year period the council must scrutinise, it has no relevance.

Evidence base No. 0130-131 – March 2009 correspondence with firm marketing 'BabyFriendlyBoltholes', offering a temporary listing on their website, addressed to Chris Snell and printed off at the Tournerbury Woods Estate Office.

Evidence base No. 0132-135 – November 2010 correspondence with firm marketing holiday cottages/accommodation, with specific reference to Woods Cottage and 'christopher@monkeypuzzleribs.com', printed off at the Tournerbury Woods Estate Office, with subsequent confirmation of membership of 'Premier Cottages'.

Evidence base No. 0136-137 – January 2011 correspondence with wedding-fayre organiser, printed off at the Tournerbury Woods Estate Office

Evidence base No. 0138 – November 2012 correspondence with marketing executive of 'wedding-venues.co.uk', offering a website 'listing' for privately owned wedding venues, printed off at the Tournerbury Woods Estate Office.

Evidence base No. 0139 – November 2013 correspondence with marketing executive, renewing a website 'listing' for a further year, printed off the Tournerbury Woods Estate Office.

Evidence base No. 0140 – Companies House entry. Whilst this verifies the Tournerbury Holdings Ltd business address (incorporated 15.9.2006) to be the same as the applicant's home address, it does not mention the application site address, nor does it detail what the business is.

Evidence base No. 0141 – Companies House entry. Whilst this verifies the Monkey Puzzle Ribs Ltd business address (incorporated 5.1.2005) to be the same as the applicant's home address, it does not mention the application site address, nor does it detail what the business is. It is noted that company was dissolved 3.12.2013, before the end of the 10 year period to be evidenced.

Specific

The statutory declaration dated 9.12.2019.

The Conservancy considers the council - if it had not served the enforcement notice - would have some difficulty untangling the variety of uses area/element 1 has been put to, not all occurring at the same time and having a wide ranging number of 'attendees'. The Conservancy considers the relative scale of each event is important. If some events were only attracting a couple staying at Woods Cottage, rather than

hundreds of people attending a wedding, it would be unreasonable to suggest all events were the same and grant a Certificate for any sort of event.

Point 7: it would appear Woods Cottage was constructed as a dwelling and that this was its most probable 'appointed day' use on 1 July 1948, although it is not clear if use of part of the estate as a commercial brickworks had ceased at that time and one took the view that use of Woods Cottage were purely ancillary to the primary use of the (whole) site. Its hiring as holiday accommodation represents a material change of use.

Points 8 & 32: there is no planning history basis for the applicant claiming the curtilage of Woods Cottage is the area 'element 1' shown on 0878. However, if it truly is the curtilage, it is clear permitted development rights for temporary use of land for 28 days in any calendar year would not have been applicable, due to restriction B1.(b) of Class B to Part 4 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The uses set out in *Point 31*, needed planning permission to be lawfully undertaken from the outset.

Point 8.4: the applicant seems to suggesting that the 3 unauthorised structures are ancillary outbuildings to Woods Cottage, yet they cannot be domestic outbuildings because of their commercial use.

Points 9 to 18: As these pre-date 19.12.2009, they are irrelevant to the council's determination.

Point 19: Only those dates in December on sheet 0146, which occurred after 19.12.2009 can be taken into consideration to assess this application. Sheet 0146 lists 16 days on which the site was booked. It is unclear how many of these were on or after 19.12.2009 as the document has been redacted on-line.

Point 20: The marquee in 0014-0016 is smaller than the one on site now and located in a different position.

Point 21: The applicant says 2011 was the year that the main focus of events switched to holding weddings at the site. This is less than 10 years ago.

Point 23: It is noted that the current marquee was purchased in 2013 and erected in its current position for the first time. There appears to be a typographical error; sheet 0165 gives an annual total for 2013 of 232 bookings days, not 234.

Point 26: There appears to be a typographical error; sheet 0178 gives an annual total for 2016 of 186 bookings days, not 183.

Point 31: Any events which occurred between 1998 to 18.12.2009 are not pertinent to the council's assessment of this application.

Points 34 to 41 (and that part of *Point 42* between 20.3.2009 to 18.12.2009) are irrelevant to the council's determination of this application.

Point 44: If this was the first marketing of the application site as a wedding venue, this is less than 10 years ago. Subsequent marketing listed under points 45-47 & 49 also all less than 10 years ago.

Point 53: being as complaints to planning enforcement are confidential, it is not possible for the applicant to know if any complaints about use of the site had been made during the last 10 years and earlier.

Points 54, 56 & 57: the decking's extent has been added to over time and this includes its covering over with a canopy ('stretch tent'). The Conservancy does not consider all parts of the decking to be more than 4 years old in existence, on the basis of dated photography provided to it by a third party (see attached), but accepts that the log cabin may be more than 4 years old from the statements made in *Point 55*. Under the latter part of *Point 57*, the applicant seems to appreciate that a certificate of lawfulness cannot be granted for the additions to the decking and presumably is seeking to regularise those under extant planning application APP/18/00943, which is currently undetermined - (website says an extension of time has been given to determine to 28 February 2020) - and to which the Conservancy has made a formal objection.

Points 58-59: On the evidence presented (0055), the Conservancy could not oppose an application for a Certificate of Lawfulness of the Victorian style gazebo alone.

Point 62: the applicant confirms the marquee was taken down and not re-erected until March 2016. If the Marquee has periodically been taken down out of season, the Conservancy asserts that each time it is put up has been a separate time period of existence. For the council to grant the Certificate in respect of the marquee therefore the Conservancy suggests it would have needed to have been permanently up for the 4-year period sought and not taken down during that period. The Conservancy understands a third party will be sending you evidence claiming that the marquee was taken down during the winter of 2015-2016 and not re-erected until sometime in the spring of 2016. If this is true, then the 4-year period would not seem to have been reached yet.

Evidence base No.'s 0932-0935 merely show historic mapping and do not add anything to the submitted evidence, other than showing the footprint of Woods Cottage, which is not in dispute.

Photographs, evidence Base No. 0895 to 0913: whilst these clearly relate to refurbishment works to Woods Cottage, rather than demonstrating how the accommodation was being used. Only one slide has a date on it: the first, stating 1998.

The Note and Annex 1 and 2 to it

A/Point 2/Element 2: given what has been said in *Points 54, 56 & 57* above, even if the council had not served a planning enforcement notice, it would not have been tenable for the council to grant a Certificate for all parts of the decking.

B/Point 4 – see response to *points 8 and 32* of the witness statement above.

B/Point 6.2 – the council can only consider the red line and related evidence in front of it.

C – All this conjecture is irrelevant if one accepts that Woods Cottage is no longer being used as a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) or perhaps was not being used in that way on 1 July 1948. All that is relevant is the area that has been used for the specified purposes under 'element 1' of the application (the planning unit) and the evidence that is produced to prove that on the balance of probabilities. The Conservancy in the foregoing comments has raised queries about the veracity of various pieces of evidence produced. To that extent, why the applicant has drawn the red line to include, for example the Tournier Bury, other than the vehicular access running through it leading to the events area, it not understood.

C/Point 20 – The putting up and taking down of the marquee constitute separate episodes of development. The marquee was last re-erected in March 2016. 4 years have not elapsed since that time.

The Conservancy has no comments to make about Annex 1 and 2, other than to say the dates the photographs were taken is not recorded.

It is not clear from the photographs and witness statement when the 'stretched tent' awning was added over the decking structure associated with the log cabin, which is depicted 20.4.2018 in the lower part of 0087. Earlier photographs 0020 and 0021 show the deck beginning to be constructed dated 11.6.2011, yet the Conservancy is in receipt of alternative electronic photography dated 14, 17, 20, 21 and 27.4.2017, showing that decked platform being enlarged (to a much greater extent than depicted in 0020-0023), but without the awning fitted.

The Conservancy is aware that the timeframes to taking Enforcement Action/providing evidence relate to each structure being substantially completed, under S.171B(1) of the town and country Planning Act 1990 (as amended).

The Conservancy is of the view that the 4-year period to be demonstrated for the log cabin/decked structure at point 2 on EB0878 started when the awning was finally added, which does not appear in any of the photography submitted until 2018.

In this respect the Conservancy would suggest other council officers could usefully be interviewed for their recollection of what was in place at the site, when they made their visits, especially if any (dated) photography was taken. E.g. Environmental Health Officers looking into noise matters or other officers commenting on the Premises licence granted 24.8.2017 (PL) granted by the council.

Indeed, does the PL require the marquee to be taken down at the end of every season?

The Conservancy is still rather surprised no builders' invoices have been produced to show when the decking was built or when the (current) marquee was purchased.

There are two items the Conservancy notes the applicant is not claiming to have been in place for the 4-year period to be proven for operational development. These are –

- (1) the parking areas (for which the Conservancy has been informed that stone scalping materials by the truckload have in recent time been taken onto the site according to a neighbour commenting on this to the Conservancy; and,
- (2) the 'Versadock' pontoon (photographs on pages numbered 0079, 0081 and 0092). When the Conservancy's Planning Officer visited on 26.11.18, this structure was not in place.

The Conservancy is unlikely to grant a works licence for such a structure described in (2) as it is its policy not to do so, given the ecological importance of the intertidal mud it would rest upon/cover in the SPA/SAC/SSSI/Ramsar designation.

Yours sincerely

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