

Dear Steve

My last email to you (30.08.22) replied to the recently posted letter and accompaniments from Thrings on behalf of A G Philips and Son (AGP) dated 21.07.22. Unfortunately, as I explained in that correspondence, that very late representation simply recast information and opinion previously submitted; information which has been considered, tested and found not to carry weight in favour of the planning refusal requested. I now find from viewing the application website today, that Thrings have yet again written (letter dated 9th September) in opposition, once more very late in the determination process, and recasting the same arguments. I draw attention to paragraph 1.3 of the letter and the criticisms contained therein; argument which sums up the content and purpose of this latest letter on behalf of AGP.

Given that all material planning matters have been fully examined and assessed, we had expected the tit-for-tat exchanges to have been exhausted and it would be necessary only for us to respond to your recent specific queries raised for clarification, and to confirm mitigation agreed following further discussion with Natural England. Unfortunately, it is necessary for us to write more fully to ensure that inappropriate weight is not given to the latest, repetitive, submissions on behalf of AGP. It is for the planning authority to determine what matters are material to this planning application and to assign weight accordingly. These matters were set out clearly in your officer report to our previous application, and this submission has sought to address the reasons for refusal, which related to those few matters which had not been resolved to the planning authority's satisfaction. We have worked closely with the Council and Natural England to address those remaining concerns and we believe that the changes to the proposal made in this application (a reduction in the number of events to a level close to that which AGP has previously indicated is appropriate and the mitigation agreed through the VMS and Noise Management Plan) overcome those outstanding matters.

There is no technical public highway objection and consideration relates only to the continued use of a private right of way, the use of which is to be restricted voluntarily by the applicant. The fact that AGP continues to raise the matter of the existing right of way indicates clearly it is the true focus of their concern. The access has been used continuously by the applicant over very many years, most certainly in excess of 20 years (and historically for commercial use) as clearly evidenced in previously submitted supporting documentation to related applications, and the right to use the route was accepted by AGP when it purchased land around it, comprising Tournerbury Farm in 1987 as conveyed in deeds associated with the sale. That use has continued as Tournerbury Farm has subsequently developed land for other purposes and undertaken a diverse business operation.

The primary concern to the planning authority that remains, all matters environmental having been addressed positively, is that of private amenity. The applicant has stated repeatedly a willingness to use a lawful, alternative access on a like-for-like basis but the provision of such is thwarted repeatedly by the actions of AGP. Consequently, the applicant has amended the proposal significantly from an unrestricted level of activity as originally proposed, to that of a very limited number of events, covered by agreement that further restricts parts of the site which can be used and how that use is managed; controls which can be fully enforced.

Following further discussions within the applicant team, we feel it is appropriate to reiterate most strongly that no new material evidence is provided in these latest submissions and their purpose can only be to prolong determination; (a) in the hope of obtaining further concessions from our client, which are not justified in planning terms but beneficial to the objector, and (b) suggest to decision makers, with a threat of a legal challenge, that there is planning harm, when we have, working alongside yourself, other officers and statutory bodies, proven the contrary. In your previous report to the Planning Committee you indicated that the only issues remaining of any planning materiality, were the suitability of the access and the potential loss of amenity to residential property at Tournerbury Farm. Both issues have been examined thoroughly through this application, alongside the potential for further environmental impacts, suggested once more by this objector and others, but which do not raise any matter that has not been previously assessed and addressed.

We have undertaken extensive assessment of the potential for environmental harm (both on site and within adjoining areas) alongside Natural England and you have undertaken appropriate HRA/AA exercises in

response to previous and the most up to date regulations. The conclusion of Natural England, once again, is that potential threats of environmental harm have been ruled out from existing activities at Tournerbury Woods, and that the development is acceptable, subject to the provision of mitigation set out in the submitted VMS (again discussed and agreed with NE). With the proposed reduction in activity, new management measures and reinvestment in the site as a whole, the environmental position of the application site, and adjoining land owned by the applicant is expected to be enhanced. Despite these assurances, objectors continue to object on grounds of potential harm, yet fail to provide evidence to prove any harm has, or will occur, and do not comment on environmental concerns evident on land in the vicinity of the site and controlled by others. To the contrary, they provide evidence to indicate ecological interests co-exist with existing activities at Tournerbury Woods; a response to the stewardship of the land by the applicant and funded by the activities which have and continue to take place there. In parallel to our application, under appropriate but separate procedure, we have provided significant evidence, on the public record, of very harmful activities undertaken by our clients' neighbours to the same protected environment and which are under investigation by the appropriate bodies. These activities are, as we have previously advised, connected to the business operations undertaken by AGP and referenced in Thring's letter as being harmed by this proposal.

Contrary to the comments at paragraph 1.5 of the Thrings letter dated 21.07.22, you will be aware from correspondence shared with you, that our client has sought to maintain a dialogue with AGP at all times, responding to the concerns raised about access and amenity. AGP has been fully aware of the proposals and has contributed throughout the determination process of this and previous applications. In addition, our client has with AGP agreement, obtained planning permission for an alternative access, which it has not been possible to provide appropriately because of the subsequent actions of AGP. We submit AGP chooses to be selective in the acknowledgement and use of that knowledge to try to generate a position of personal advantage. Perpetual objection through the re-presentation of the same but reconfigured evidence is used to frustrate our clients' business and planning proposals in an attempt to enhance the objector's position.

The tone of the letter dated 21.07.22 from Thring's, like that of those which preceded it, suggests significant legal issues exist. These, it is suggested, are over and above planning considerations to be considered by the Council, with the clear suggestion of a legal challenge to any positive decision by the Council. You will be aware from the evidence we have submitted, much of it in direct response to comments from AGP and their advisers, our comprehensive approach to the planning application over some considerable period of time, and your own work, all undertaken with legal guidance, that each and every concern of objectors has been examined, tested and found not to give rise to any planning or legal concern. The views of all interested parties have been considered and changes to the proposal made as appropriate. There is no matter raised by AGP and their advisers, particularly that presented now, that should present the Council with any concern. The issues of environment, amenity and access have been appraised extensively through this latest application in accordance with due process and legal requirement. A positive planning decision would be sound, with all conditions and agreements enforceable.

Despite objectors' claims to the contrary, the use of an agreed VMS linked to planning conditions and restrictions on use of the site imposed through those same conditions, is an appropriate means of controlling a development and the risk of harm. Such an approach will satisfy NPPF tests in terms of need and mechanism, but if it was deemed necessary to provide even more comfort to elected members, we would be very happy to agree with you further triggers within any consent to ensure all mitigation offered is delivered.

The Thring's letter of 21.07.22 at paragraph 1.7 references specifically provision of an alternative access across land owned by A G Phillips and Son (AGP). It is highly transparent from this and previous and latest correspondence, that it is the true reason for continued objection by AGP. The objector continues to use the planning process for personal benefit by requesting the planning authority grants planning permission for our clients' proposal, but only on the prerequisite of an alternative access being provided, and that should such a provision be made, all objection by AGP will fall away. We have provided evidence of this fact and that claims of a suitable, and lawful, alternative access being available, are false. The latest comments fail to acknowledge any of the evidence we have provided previously which challenges and dismisses the claims contained in the continued representations on behalf of AGP.

The evidence submitted by Thrings in July 2022 is that which formed part of the objectors' case for presentation at appeal (to the former planning decisions and enforcement action) and on which they were to rely. Consequently, it cannot represent new evidence, and should be given very little weight in this later

application of more limited scope. We remain confident that all matters raised can be addressed positively, including their comment on amenity and access.

You have our responses to these issues but we take this opportunity to respond more thoroughly to one element, the "Transport Note" prepared by Evoke Transport Consultants in June 2021, referenced once more in the AGP appeal papers. This report was presented to the Council in response to our previous application, but again at the very last minute, immediately prior to determination and without any opportunity for our client to respond. In the absence of any assessment or commentary on the note's findings, it appears to have been given undue weight in the previous planning decision, which, if our interpretation is correct, was unwarranted and misguided.

The note was prepared to a specific brief to justify an alternative access, and presented as the only solution that would overcome all other areas of objection to gain AGP support. However, the note failed to balance the very many planning considerations applicable to this planning consideration and we believe many of the facts quoted and on which the conclusions were reached, were inaccurate or based on photos and other evidence that lack reliable provenance. AGP seek to rely again on the note's findings in this representation now focussed on the remaining amenity issue. Not only is the note presented again extremely late in the determination process, we assume for reason of frustration and delay (we are told the information was available some time ago when we had the Pre-inquiry hearing or soon thereafter), but once more its presentation and conclusions are not balanced nor responsive to the application before the Council for determination.

All material planning issues including environmental impact, access and amenity have been reconsidered through this proposal and have resulted in changes to the proposal to mitigate identified concerns (as discussed at length with you and which formed the basis of discussion with PINS and justification for deferral of the appeals as agreed by all parties including AGP). The only matter remaining in the planning balance exercise is whether the changes and mitigation to the proposal now made (in terms of event limitation, VMS and Noise and environmental management) are appropriate. The question of an alternative access, however desirable that might be (our clients' supportive position is well documented) is not part of this proposal, nor can it be delivered because of the antics of AGP. The late information provided by Things championing an alternative access on grounds of the existing lawful route is unsafe, is acknowledged by them as material prepared for the appeals not this application. Nevertheless, it is submitted to seek to support the claim of lost amenity, which in their view can only be resolved through provision of an unnecessary alternative access to AGPs benefit. We contend the case and evidence presented by AGP is inaccurate and of unsound reasoning and would be proven as such through Inquiry examination. We are not at Inquiry and it is necessary for us to respond to the submission for reason it has been submitted and is in the public domain. We cannot allow conclusions formed from unsafe evidence to be presented as fact, with the risk it might be relied upon when a decision on our clients' application is made.

The application proposal has moved on significantly from that at appeal and the information recently submitted must be treated as out of date and not relevant to the specific proposal before the Council. We have sought to separate previous proposals at appeal, from that now being considered and have provided a fresh application for consideration on its merit, that does not rely upon evidence previously prepared for an alternative scheme. However, for reason of parity, our clients request you are made aware of some of the counter evidence prepared on their behalf for the appeals and which would form the basis for examination during the Inquiry. The evidence exposes some of the false narrative presented to the appointed traffic consultant upon which the note was prepared and conclusions drawn. The purpose of providing you with a copy of part of the clients' appeal evidence is to demonstrate matters raised by both parties are not for this application, but for an appeal situation should it be necessary in the future. We request that the 'partial appeal rebuttal' we now provide (responding to the evidence contained in the Evoke report) is treated appropriately in challenge to the statements submitted on behalf of AGP which cannot be relied upon in this application. Our clients' latest submission indicates the evidence submitted by Things should not be given weight in this application. I would be very happy to discuss the latest Things representation and our response further with you, but I suggest that all material planning considerations to the extant application have already been assessed and discussed with you appropriately; to revisit them again in the light of these late submissions is of little added value in the planning balance decision you must now make.

Since we spoke, you sent an email to me, dated 31st August 2022, clarifying the justification for the most recent consultation on the application and requesting some final clarity on the VMS to take account of the latest comments from Natural England and any potential for confusion relating to the camping element of the proposal which was subject to Nutrient calculations.

We have taken on board fully your queries and those of Natural England and have adjusted the VMS accordingly. The amendment ensures that there is no discrepancy between the HRA/AA, Nutrient Calculation and the application proposal in respect of camping numbers. The effect of the VMS covering the application site (red line) in its entirety is also clarified. The camping area is identified on the plan attached to the VMS, both of which can be suitably conditioned for enforceability.

You questioned a change in versions of the VMS which removed “paragraphs 2.4 – 2.6” of the original document. This was for reason the measures contained therein are covered by other documentation regarding the right of way, and form part of the Noise Management Plan. Inclusion in the VMS could be considered unnecessary duplication (Natural England acknowledges provisions are secured in its letter 26th August). However, we accept your point that it cannot be guaranteed all documents will be read together and there is merit in repeating the provisions in the VMS. It is reasonable to suggest any concern raised in the future is likely to be first considered against the provisions of the VMS.

One final point is to address the NE comment that the plan in the VMS document appears to show a movement of reference points B and D. The transposition was unintentional and the result of updating the document. The correct positioning of points B and D is shown in the updated VMS now attached. For the avoidance of doubt, point B indicates the position of the area referenced as “the Harbour Lawn” (a very small grassy triangular area identified on the photo map) and point D indicating the position of a barrier and sign erected annually to limit access to the Harbour Lawn area between 1st November and 31st March.

I believe we have covered all substantive and material planning points and you should have all necessary information to allow the proposal to be determined. The VMS now submitted does not provide any new information but is a redraft to remove any opportunity for misunderstanding and to ensure there is no conflict between documentation. There is no reason this should be subject to a further period of consultation but please let me know if you believe it is necessary. We appreciate, as is the nature of this project, that further repetitive comment from AGP in response to the above may be forthcoming, seeking only to frustrate and delay determination of the application for reasons that are well rehearsed. Given the extensive factual evidence we have provided in response to all concerns raised against this project, there should be no reason for us to respond to any further, very late comments (unfortunately we anticipate AGP will not let this letter go without response in their attempt to secure ‘the last word’) but in the most unlikely situation of any new substantive matter being raised which causes you concern, please let me know as soon as possible.

My apologies for the length of this email, but it is important our client’s position is correctly portrayed.

Best regards

Haydn

Haydn Morris BA(Hons) Dip TP MRTPI
Director
Mobile : 07887 772082
Office : 01202 690488
Email : haydn.morris@hmpcltd.co.uk