

Analysis of 'Evoke' Transport 'note', submitted on behalf of A. G Phillips & Son Ltd in objection to the previous application and re-submitted as Appeal paperwork but in response to the current application..

INTRODUCTION:

This document analyses a "*Transport Note*" prepared by Evoke Ltd (Transport & Planning Consultants) in regard to use of the private Right of Way to the Tournerbury Woods Estate through the neighbouring land holding known as 'Tournerbury Farm'.

The Evoke 'Transport Note' was commissioned by A G Phillips & Son Ltd (the owner of Tournerbury Farm) in opposition to planning application APP/18/00943. The Transport Note was submitted to HBC on the 11th June 2021. The Transport Note was uploaded to the LPA Planning Portal on the 14th June 2021. The case officer's report with a recommendation for refusal was issued on the 16th June 2021.

This document responds to the points made by the Evoke 'Transport Note' (numbered as per the 'Transport Note' and boxed in italics).

The Evoke Transport Note has now been resubmitted by A G Phillips & Son Ltd in opposition to the extant application APP/21/01310 having been sent to Havant Borough Council on 21st July 2022 and publicly published on the planning portal on 25th August 2022, although currently (14/09/2022) the planning portal states the document and other AGP Ltd objection information was published on the 25th July 2022.

“2. Existing Site and Planning History

1.1.5. Tournerbury Lane falls within the public highway to where it meets Eastwood Close; after which the road is under ownership of Mr. & Mrs. Phillips to where it meets the Estate’s land.”

RESPONSE: This is factually incorrect. The access road is part of the land holding known as ‘Tournerbury Farm’. This land holding is owned by a Ltd company, A G Phillips & Son Ltd’ (AGPS). AGPS’s shareholding is as follows –

Shareholding 1: 50 ORDINARY shares: ESTATE OF ARTHUR GEORGE PHILLIPS

Shareholding 2: 15 ORDINARY shares: ESTATE OF PATRICIA EMILY STUART PHILLIPS

Shareholding 3: 25 ORDINARY shares: MR GRAHAM STUART ARTHUR PHILLIPS

Shareholding 4: 10 ORDINARY shares: JOHN PATRICK ANDREW PHILLIPS

Shareholding 5: 50 ORDINARY B shares: MRS SUSAN PHILLIPS

Source: Companies House

The B Shares owned by Mrs Susan Phillips are non-voting and only in situ for dividend and capital distribution. Out of the 100 Ordinary shares (the ownership shares), Mr Grahame Phillips outright owns 25%. The 50% Estate of Arthur Phillips shares are split between 6 family beneficiary members including Mr Phillips held in a family trust structure. Mr and Mrs Phillips have overall control of AGPS with Mr & Mrs Phillips listed as directors.

“2.1.6. The Estate claim to have full rights of access over the private section of Tournerbury Lane, which is owned by Mr & Mrs Phillips; the current owners and occupiers of Tournerbury Farm, which the lane also passes through. We understand that Mr. & Mrs. Phillips and the Estate are in dispute about the use of the existing access track. Mr. & Mrs. Phillips have received legal advice that the increased and excessive use of the express right of way caused as a direct result of the Estate’s unauthorised use is not within the permitted uses of the track. The matter is subject to litigation, which is yet to be determined. However, that is not a relevant matter for the purposes of this report.”

RESPONSE:

Tournerbury Farm was sold in November 1987 by the applicant’s late father, Francis Snell, to the current owner – A G Phillips & Son Ltd. At the time of purchase AGPS was a building and property development business (as shown by Companies House records). As no fields that linked the public highway at the end of Tournerbury Lane to the Tournerbury Woods Estate were being retained, an all-encompassing Right of Way from the end of the public highway to the Tournerbury Woods Estate was retained by Francis Snell and his successors in title. This Right of Way is on the first page of the conveyance of Tournerbury Farm from Francis Snell to AGPS and it is clear on its terms:

“EXCEPT AND RESERVED unto the Vendor a right of way in favour of the Vendor and his successors in title being the owners or occupiers for the time being of Tourn Bury Wood Tourn Bury Plantation and Wood Cottage and their tenants agents licensees and others authorised by them at all times and for all purposes with or without vehicles over and along the tracks shown hatched black on the said plan making good any damage thereby caused.”

Evokes state that *“Mr. & Mrs. Phillips have received legal advice that the increased and excessive use of the express right of way caused as a direct result of the Estate’s unauthorised use is not within the permitted uses of the track. The matter is subject to litigation, which is yet to be determined.”*

On the 13th June 2019 Thrings LLP (solicitors for Mr & Mrs Phillips & AGPS) started litigation against Christopher Snell (the applicant) by writing to the applicant demanding an immediate cessation of use of the Right of Way through Tournerbury Farm for the purposes of weddings and events. The letter stated –

- | | |
|-----|--|
| 4. | Remedies |
| 4.1 | Our client requests that you immediately abate the excessive use of the right of way and agree to limit any further use of the right of way to the use envisaged by the vendor and our client at the time that the right of way was granted. |
| 4.2 | If you do not comply with our client's request, our client will be forced to issue proceedings in order to obtain: <ul style="list-style-type: none">(a) A declaration as to the proper use of the right of way;(b) An interim and/or permanent injunction preventing the excessive use of the right of way;(c) Damages flowing from the excessive use of the right of way;(d) Interest; and(e) Costs. |

Fig 1: Source: Thrings LLP Letter of Claim on behalf of A G Phillips & Son Ltd against C Snell 13/06/2019

The applicants, fearful of such action by AGPS (having witnessed aggressive physical and verbal abuse against Tournerbury guests and suppliers by Mr Phillips, over a period of time) had already taken Barrister's opinion and so Irwin Mitchell LLP (the applicant's solicitor) responded to this letter of claim by AGPS at the beginning of August 2019. That response was full and included multiple enclosures including evidence that the late Arthur Phillips (Grahame Phillips's late father) was fully aware of the terms of the Right of Way, and fully availed and cognisant of its possible commercial uses in the future, when he purchased Tournerbury Farm (through his business AGPS) in 1987 and evidence shows without any doubt that he was advised by his solicitor at the time of purchase specifically in this regard.

Irwin Mitchell's response was sent to Thrings LLP on the 9th August 2019. Thrings LLP response came in a short letter sent to Irwin Mitchell on 11th November 2019. It did not actively advance or pursue the claim made by AGPS in Thrings LLP letter of claim of 13th June 2019. No further litigation action has been taken since that time by AGPS.

Having sent a full response to Thrings LLP, backed by Barrister's opinion and irrefutable evidence in August 2019 proceedings have not been issued by AGPS and none of the point 4.2 (a to e) of the letter of claim have been progressed by AGPS.

"2.1.7. Access through the private section of Tournerbury Lane has taken place for a number of years since the Estate was first occupied; although use of the estate for commercial purposes including weddings and large events has increased significantly only in the very recent past. Before this time, the Estate was historically in agricultural and residential use only with the occasional family event."

RESPONSE: Historically and factually this statement is inaccurate. It paints a picture of a 'virgin' greenfield site that has only seen use for "commercial purposes.....only in the very recent past".

As far back as 1879 the Ordnance Survey map shows the private section of Tournerbury Lane (the Right of Way) in its current position today. It shows the road going over the Scheduled Ancient Monument of 'The Bury' on its western side. The map also shows that what is now 'The Tournerbury Woods Estate' was a "brickfield", a "nursery", and a brick "kiln". Woods Cottage (which was built in 1873 as the brickworks foreman's house) is clearly delineated on this map. The map shows no buildings in Tournerbury Farm. **The access road to Tournerbury Woods (used clearly for commercial use, was in existence before there were any buildings at Tournerbury Farm, and before Tournerbury Farm was even a farm. Certainly, no farm buildings are shown on this map. No other access to Tournerbury Woods is mapped.**

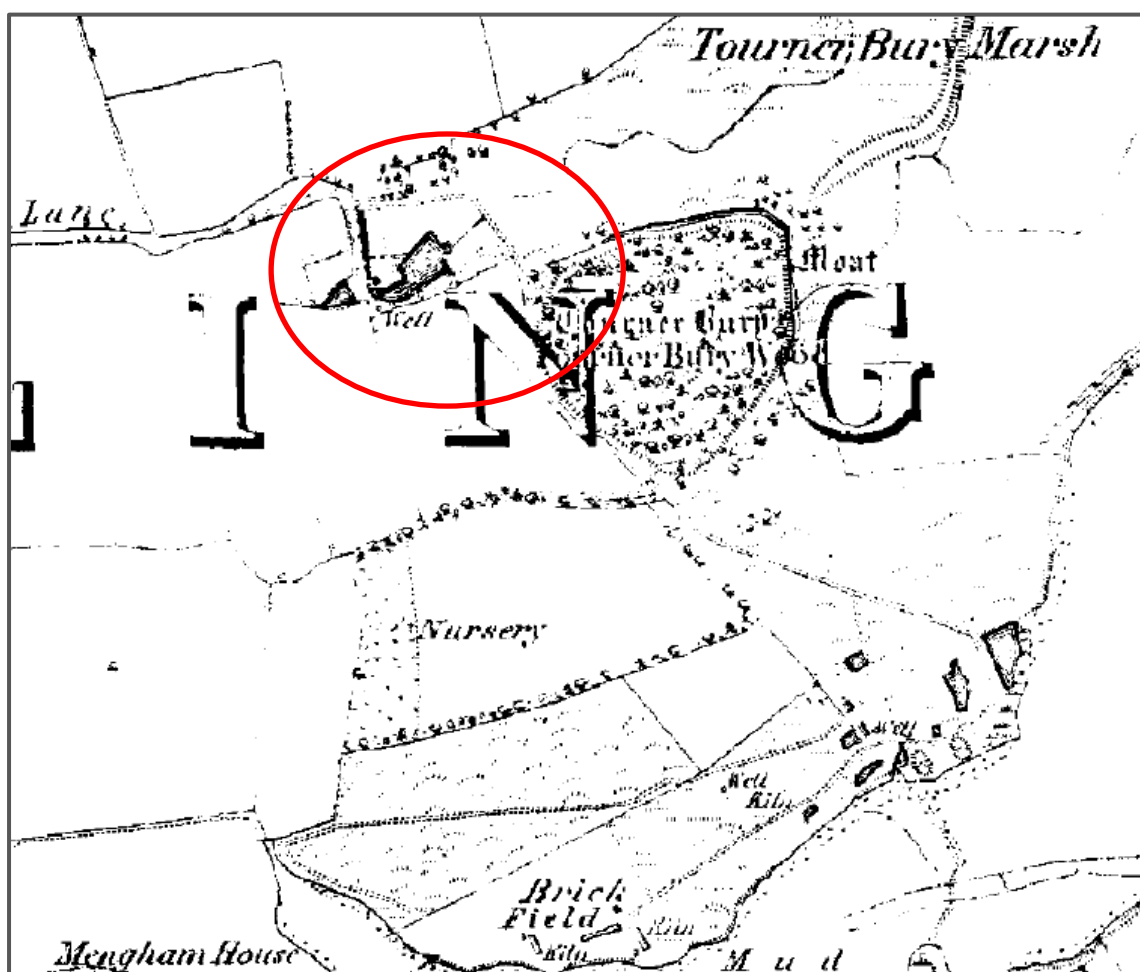


Fig 2: Source: OS County Series: Hampshire & Isle of Wight 1:10,560 1879

Thirty one years later, the 1910 Ordnance Survey map still shows the Tournerbury Woods Estate to be a “Brick Works” and there to be a “Clay Pit” and a “Boathouse” adjacent to Woods Cottage. Again, the Right of Way access to the Estate is clearly delineated in its current position today and now ‘Tournurbury Farm’ has come into existence and what is now Mr and Mrs Phillips house ‘1 & 2 Farm Cottages’ appears to be defined on the map to the south west of the access as well as barns creating the original farmyard to the north of the Right of Way. The access can be more clearly seen on this map running through the Bury to the “Brick Works”. Again, it should be noted that the only access to the Tournerbury Woods Estate is exactly where the Right of Way is today.

This is 111 years ago. The reader should also note that the western side of the woods is now demarcated as “Tournurbury Plantations”. This shows that objector’s comments to the applications “that the whole of the woods is ‘Ancient Semi Natural Woodland’, is incorrect. In England, to be defined as ASNW, the woodland must have existed for at least 400 years.

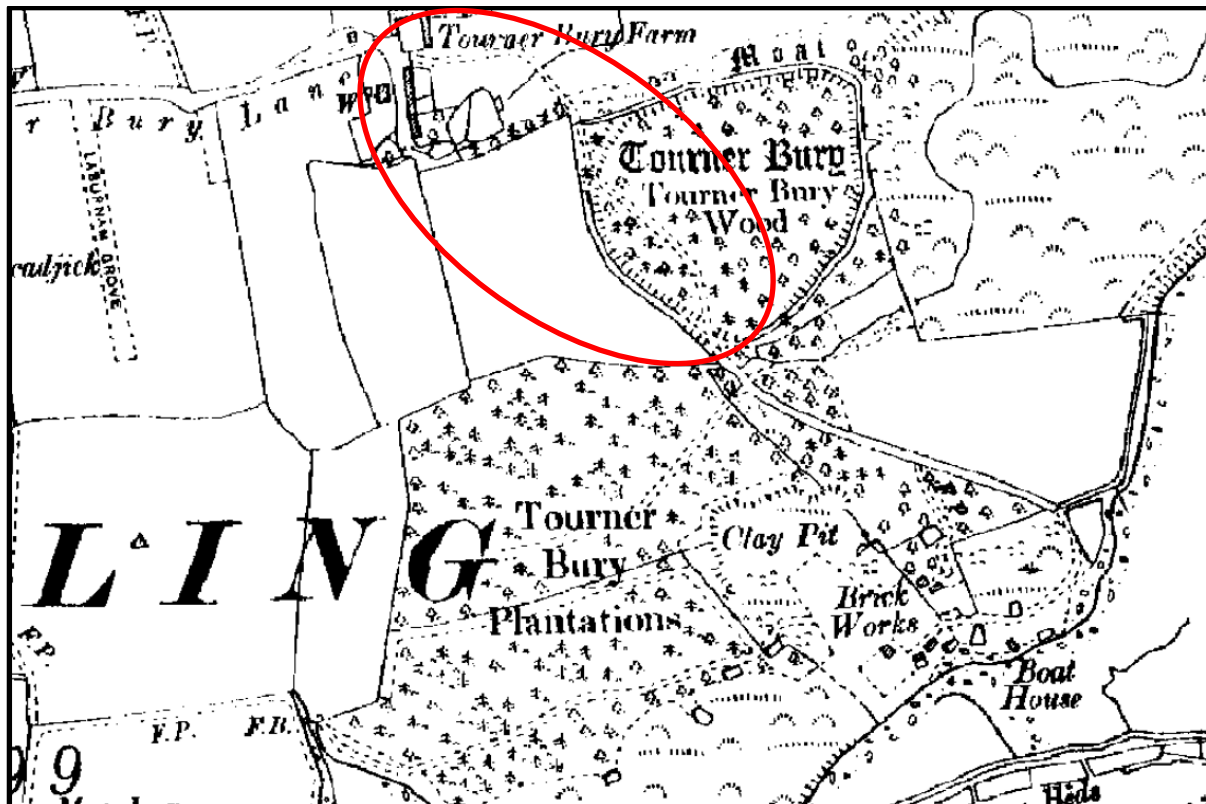


Fig 3: Source: OS County Series: Hampshire & Isle of Wight 1:10,560 1910 – 1911

A further 32 years later the next Ordnance Survey map (1938 - 1942) shows exactly the same commercial activity – a Brick Works / A Clay Pit / A Boat House. Again, the only access to Tournerbury Woods is along the existing Right of Way, through the now established Tournerbury Farm, in exactly the same situ as it is today. The access carries on through the Bury in exactly the same location as it is today.

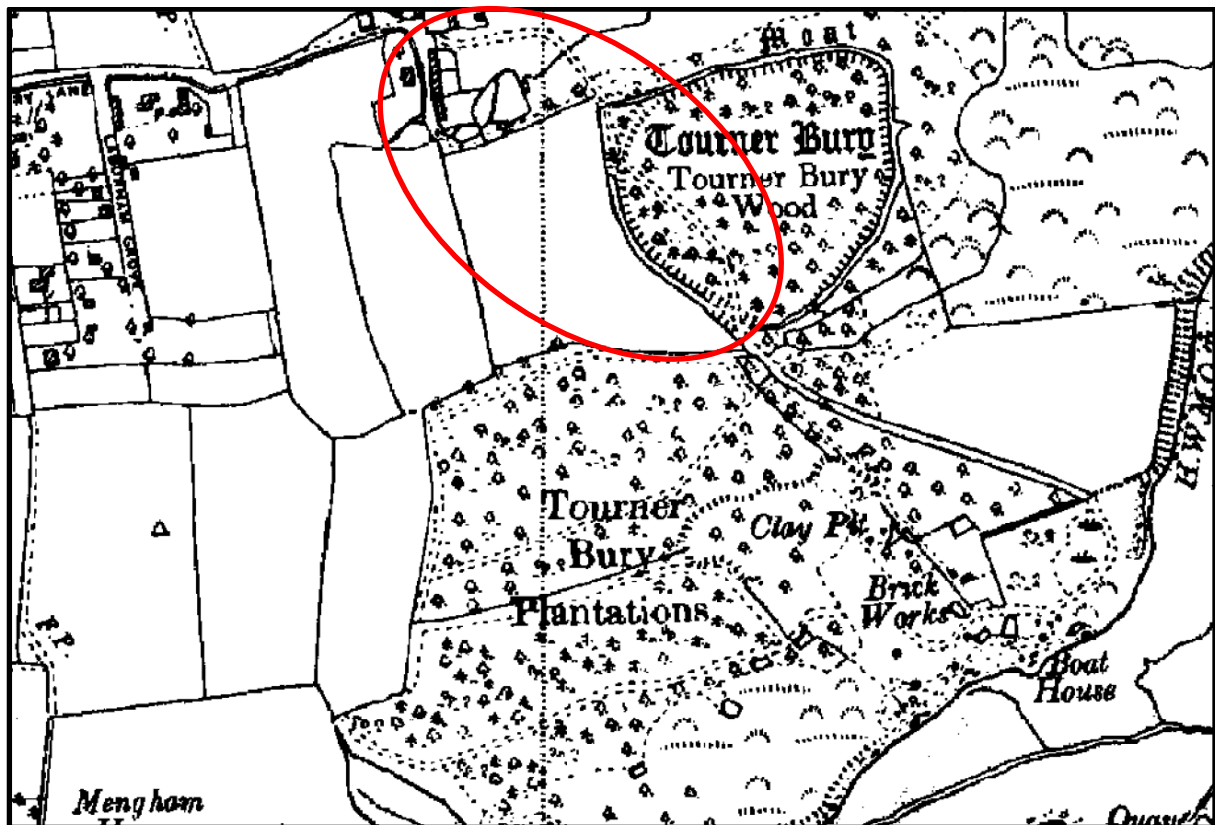


Fig 4: Source: OS County Series: Hampshire & Isle of Wight 1:10,560 1938 – 1942

The next OS map (1962) still shows the access to Tournerbury Woods being in its current position today, and whilst it is believed that brickmaking in Tournerbury ceased in the late thirties, early forties, the wedding venue area is still demarcated as a “Works”.

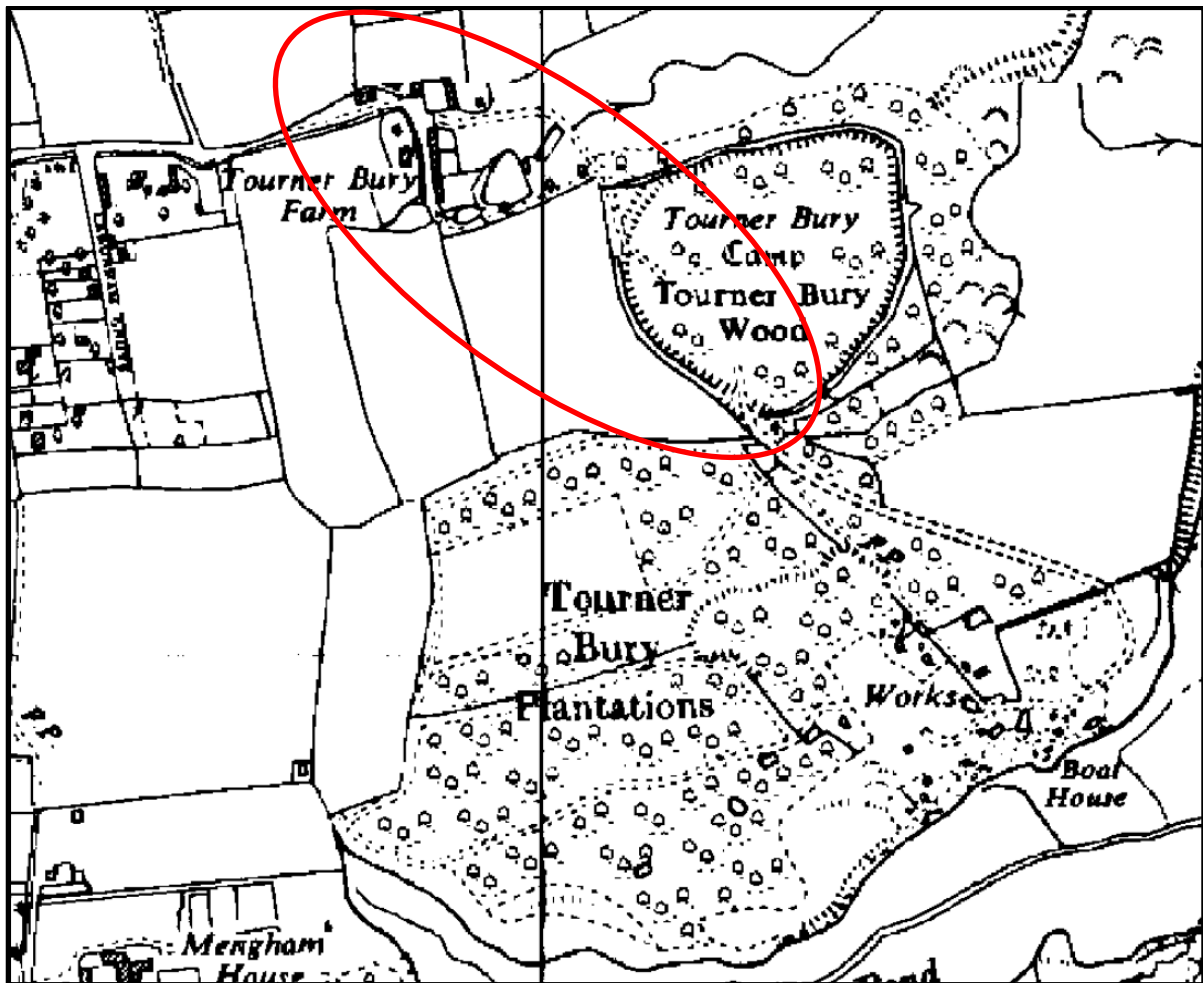


Fig 5: Source: OS Plan 1:10,560 1962

The photograph below, believed to have been taken in the 1930's shows the brickworks and boathouse at Tournerbury. Woods Cottage is clearly visible. There is no southern access across the fields to the west of Tournerbury.



Fig 6: Aerial photograph – Tournerbury Brickworks

What the above maps and photograph succinctly evidence is that the Evoke report at 2.1.7, where it states “Before this time, the Estate was historically in agricultural and residential use only with the

occasional family event”, is not representative. The Tournembury Woods Estate has had commercial use in it for over a hundred years, and that access for such commercial purposes has used the Right of Way from the end of the public highway part of Tournembury Lane, through Tournembury Farm, both long before Tournembury Farm even existed as a farm, and before the access road was formalised as an all-encompassing Right of Way on the sale of Tournembury Farm to A G Phillips & Son Ltd in November 1987 by the late Francis Snell.

“2.3.2 - The track would be accessed from Tournembury Lane, adjacent to the existing access which leads to the Becks Boarding Cattery. It would extend southwards along the western edge of an existing field to join up with the existing track within the Estate. The track is within ownership of Mr & Mrs Phillips, but the Estate owners would, when constructed, be given full rights of access, including for use of the site as an events venue (subject to the relevant planning permissions).”

RESPONSE: The ownership of the alternative track is held by the Ltd company A G Phillips & Son Ltd, with Mr and Mrs Phillips owning a minority stake but nonetheless Mr & Mrs Phillips being the sole Directors and Mr and Mrs Phillips having control over the business.

In the final sentence of 2.3.2, Evoke state *“but the Estate owners would, when constructed, be given full rights of access, including for use of the site as an events venue...”*.

Councillor Isobel Scott when making her deputation to Havant Borough Council Planning Committee against the previous application at committee on the 24th June 2021 also stated (directly transcribed from recording of Planning Committee meeting):

“The continual wish to access the wedding venue through the farmyard is perplexing. I would like to make one important point. I have mentioned the new track within this deputation, however the new track cannot be considered in this application, as whilst it is positive that the applicants may be willing to use the new access road in time, the current application should not be approved because there is no guarantee that they will ever agree to use the new road. Even when it has been completed. This is shown by Mr & Mrs Snell’s recent objections to the completion of the new route, and their reluctance to, over the last 9 years, give up the current route through the farmyard. Mr and Mrs Phillips have only ever wanted to have peace and quiet and to have Mr Snell use the new track.”

These words and the previous statement do not subsequently mention the terms which A G Phillips & Son Ltd presented to the applicants for use of the new alternative track.

The Heads of Terms offered by A G Phillips & Son Ltd to the applicants do not offer *“full rights of access”* as stated above. The commercial deal and rights offered to the applicants by Mr & Mrs Phillips (acting as AGPS) and presented to the applicants in July 2021 by Savills LLP (agents for AGPS Ltd) following on from refusal of the previous application were as follows –

***“AG PHILLIPS & SON LIMITED AND MR C SNELL
HEADS OF TERMS FOR ALTERATION OF PRIVATE RIGHT OF WAY BENEFITTING
MR SNELL***

A. GROUND

Tournembury Farm, Hayling Island registered at HM Land Registry HP342493 owned by AG Phillips & Son Limited.

B. CURRENT SITUATION

Mr C. Snell has a right of way over Tournurbury Farm by virtue of a conveyance dated 17 November 1987 (entry A5 on property register HP342493). This benefits his land registered under SH14945.

C. AIM/CONCEPT OF TRANSACTION

- (i) Mr Snell will release his current right over the track absolutely so that it is never used again.
- (ii) A new right of way will be granted over the new track.
- (iii) Mr Snell will release the covenants in clauses 7a and 7b of the 17 November 1987 conveyance re agricultural use and development over the areas shown blue and red on the attached plan: concurrently a release will be provided in accordance with the 17 November 1987 deed of covenant.

This will require both consent from Mr Snell as to his equitable charge re clawback; confirmation that this does not trigger clawback as it is a planning permission (as per 1987 deed of overage) and Lloyds Bank's consent.

This will be documented by a deed of release (current right) and grant of rights of way for the new right of way

In relation to the deed of covenant, a deed of release would be executed/granted without any payment made.

Irwin Mitchell will register the removal of the current right from both titles and the registration of the new rights on both AG Phillips & Son's and Mr Snell's titles. Copies of registrations to be sent to Thrings within 28 days of receipt from Land Registry.

Likewise, the release of the overage will be processed by Thrings for AG Phillips & Son.

D. DETAILED HEADS OF TERMS

1. Route as per BJC PLAN H125/20200703L/SP (as laid plan, particularly re connecting points).
2. Route width to be cited in both document and on a detailed second plan in deed of grant. The width is 4.5 metres wide. The detailed plan needs to show bellmouth measurements.
3. Use of track (nature/time/type) to be twofold:
 - a. for purposes in connection with use of Mr Snell's land as a wedding and event venue for no more than 500 people, in accordance with (i) the use of Mr Snell's land referred to in the appeal from the notice of refusal of planning permission by Havant Borough Council dated 25 June 2021 of application reference number APP/18/00943 received on 18 September 2018 for "material 18205957change of use of Land as a wedding and events venue and ancillary operational development to the material change of use"; and (ii) the planning permission (and its conditions) that may be granted by Havant Borough Council on application reference APP/21/00536 part alternative to permission APP/17/00207 for the "Construction of vehicular track from the public highway to Tournurbury Woods Estate for the purpose of avoiding agricultural operations in Tournurbury Farm" or the extant planning permission reference APP/17/00207 granted by Havant Borough Council on 4 May 2017 to "Construct vehicular track from the public highway to Tournurbury Woods Estates for the purpose of avoiding agricultural operations in Tournurbury Farm.". 24 hour use permitted. This nature/time/type use is subject to Mr Snell complying with other conditions in the deed of grant (particularly safety & control measures).
 - b. agricultural purposes on Mr Snell's land, such use being permitted at all times with or without vehicles. The use is subject to Mr Snell complying with other conditions in the deed of grant (but not safety & control measures relating only to wedding and event traffic) and the planning permission (and its conditions) granted (in due course) by Havant Borough Council on AG Phillips' land for the new track.

NOTE: if the permitted use of Mr Snell's land changes further due to a later permission then such use is only permitted if agreed to by AG Phillips & Son. A deed of variation of the deed of release and grant would be required, to be prepared and completed at the Snell's cost.

4. Vehicle type and size to be restricted to no larger than a luxury coach.
5. Maintenance and road renewal contribution by Mr Snell - 90%.

6. The repair and renewal of the road will be the responsibility of AG Phillips & Son.
7. Fence, hedgerow and tree maintenance will be the responsibility of AG Phillips & Son.
8. Payment for new right - none. The consideration for the grant of the new right will be the release of the current right.
9. The new right of way will be non-exclusive to Mr Snell. Both AG Phillips & Son will use it together with their workers, contractors and whoever else they permit ie there will be other third party users.
10. Damage to the land by Mr Snell or any users of track going to and from his land, must be repaired by Mr Snell within 21 days or compensation paid to AG Phillips & Son re damage that cannot be repaired, to be paid within 28 days of such damage.
11. Mediation or arbitration clause to settle any future disputes.
12. SAFETY MEASURES: speed limit 10mph; track safe use and safety instructions to be advised to all guests/visitors of Mr Snell including making it clear that the track is not Mr Snell's; guests not loiter nor congregate on the track nor cause a nuisance. Phillips & Son may install speed bumps to control traffic. This will need to be shown on signs, the website and joining instructions for visitors.
13. Safety & speed signage to be appropriate and approved by AG Phillips & Son.
14. Signage to wedding venue at bell-mouth to be permitted, subject to AG Phillips & Son's approval.
15. The right allows vehicle and foot use but there is not a footpath.
16. No parking or obstructing the track.
17. Rights to be reserved to carry out works on/under the track.
18. Indemnity by Mr Snell to AG Phillips & Son as to any accidents or injuries on the track involving Mr Snell or guests/visitors/third parties to his land, to the level of £10 million per event or series of events.
19. Mr Snell to confirm that his insurance policy includes incidents on the track and each renewal of insurance to include this provision.
20. No nuisance clause.
21. Future owners of Mr Snell's land to enter into a deed of covenant (at Snell's cost) to observe and perform the terms of the deed of release and grant.
22. AG Phillips & Son reserve the right to install a security gate to the new track (possibly set back from bell-mouth) to control unauthorised access (for example this could be an electric gate with sensor/timer access).
23. AG Phillips & Son to notify Mr Snell of substantial works affecting the track, so as not to create a problem on, for example, a wedding weekend.
24. Mr Snell to covenant with AG Phillips & Son (by way of deed and chain of positive indemnity covenants) not to object to planning applications on the land shown coloured red and blue on the attached plan.
25. Mr Snell to pay for any CIL or other local authority charge which becomes payable by the creation and use of the new track.

Fig 7: Source: Savills LLP (on behalf of A G Phillips & Son Ltd) letter to the applicants (highlighting own) – 23/07/2021

The above terms offered by Mr and Mrs Phillips can be compared against the existing and historical Right of Way, retained by the applicant's late father (Francis Snell) on selling Tournerbury Farm to A G Phillips & Son Ltd. It is as follows –

“unto the Vendor a right of way in favour of the Vendor and his successors in title being the owners or occupiers for the time being of Tournier Bury Wood Tournier Bury Plantation and Wood Cottage and their tenants agents licensees and others authorised by them at all times and for all purposes with or without vehicles over and along the tracks shown hatched black on the said plan making good any damage thereby caused”

It is clear that the rights being offered by Mr and Mrs Phillips for use of the alternative access are **not** “full rights of access”.

The new rights across the alternative track are greatly diminished from the existing Right of Way and the limited offer further demands a substantial relinquishing of valuable Restrictive Covenants over 12 acres of ‘Tournerbury Farmstead’

The Heads of Terms ‘offer’ by A G Phillips and Son Ltd, also creates a future onerous position against the applicants for all time, whereby if the applicants wanted to undertake any future development in the Tournerbury Woods Estate, the applicants (or their successors in title, such as their children) would be entirely beholden to the Phillips’s to allow them use of the new road for such development. This is tantamount to a ransom of the applicants in perpetuity.

It is therefore clear why the applicants have not acquiesced to these Heads of Terms.

The continued extensive campaign by AGPS Ltd to interfere with the planning process, in order to stop Havant Borough Council issuing planning permission for the Tournerbury Woods Wedding venue, has nothing to do with cattle, a working farm, residential amenity, peace and quiet or safety issues. It is more a strategy to try to ensure the applicants relinquish substantive parts of their valuable Restrictive Covenants on Tournerbury Farm, (these were agreed to by Mr Phillips’s father in the 1987 conveyance & with full knowledge & advice from his solicitors as to the meaning of these covenants) to allow AGPS Ltd (the Phillips’s) to develop Tournerbury Farm without the contractual obligations they agreed to on purchasing Tournerbury Farm in 1987.

2.3.5. The ‘Letter to Council’, prepared by the applicant and Estate owner, summarises the following issues with the existing access track:

- Free passage to and from the estate ‘causes extreme difficulties and raises Health and Safety issues, both for farm workers and for the well-being of cattle during times of movement.’*
- The movements to and from the estate add ‘complexity and unnecessary delays to what should be normal farm operations.’*
- The farm is unable to be ‘secured at night or when on holiday, leaving valuable equipment and livestock potentially vulnerable to theft.’*
- Planned planting and sea wall repair will ‘result in increased disruption on Tournerbury Farm over a substantial period of time and, without the proposed road, will result in ongoing and increased hampering of both farming operations in Tournerbury Farm and forestry operations in Tournerbury Woods.’*

RESPONSE: This ‘letter to Council’, written by the applicant, was originally submitted to HBC in 2012 to support the application for an alternative access to the Tournerbury Woods Estate. The contents of it were written in good faith based on conversations with Mr Phillips at the time and the issues Mr Phillips perceived to be with the continued use of the Right of Way through Tournerbury Farm and

that he had verbally communicated to Mr Snell. The applicant took Mr Phillips at his word and wrote to the Council ad verbatim.

This naïve trust by Mr Snell almost a decade ago, has been used comprehensively against the previous application by AGPS. The actual uses of Tournerbury 'Farm' are further analysed later in this document.

It should be noted by the reader that the applicant paid for, organised, submitted and oversaw the application for the alternative access as A G Phillips & Son Ltd, although in agreement with submitting an application for such, was unwilling to contribute financially or in terms of effort. This was also true for the 2017 updated application for the alternative access. This does not therefore support the claims made by Councillor Scott and others that there is a 'lack of willingness' on behalf of the applicants to move forwards with the alternative access.

"2.3.6 The application received permission in May 2017 and is currently being constructed. However, since this application there have been minor changes to the route of the track due to the landowners (Mr & Mrs Phillips) wishing to retain an ash and an oak tree which would otherwise require unnecessary felling. A revised planning application has therefore been submitted and is currently awaiting decision."

RESPONSE: Mr Phillips started to construct the new access in May 2020 but did not comply with the conditions laid down in its grant of planning permission by Havant Borough Council, predominantly omitting measures to safeguard existing mature trees and their Root Protection Areas along its route and using materials of questionable and verifiable provenance.

Having noticed this taking place, the applicants emailed Mr and Mrs Phillips on the 11th May 2020 to forewarn them that they were not constructing the track as per the planning permission and that their actions risked either enforcement action by the Council or if the alternative access was not delivered as per the grant of planning permission, then an impossibility for the Snells to accept it for use unless such changes to the planning permission were agreed by the Council. Despite this attempt by the Snells to be neighbourly in forewarning Mr & Mrs Phillips, no response was forthcoming from the Phillips's and construction continued throughout 2020 by Mr. Phillips.

Faced with the awkward position that the alternative access was being constructed unlawfully; and as such this made the alternative access once fully constructed unviable to make a formal agreement between the two parties, the applicants had no choice but to make objection to the track's construction to the Council. As a result of this, HBC issued enforcement action against the unlawful construction of the track for its breaches of the planning permission conditions.

This resulted in a planning permission being sought by A G Phillips & Son Ltd to vary various conditions in the existing planning permission to more closely resemble what had been constructed. This application (APP/21/00536) was granted permission (22/10/2021).

The reader should note that this 'alternative Right of Way' to the Tournerbury Woods Estate, has not been subjected to the '**Manual for Streets**' or **NPPF paragraph 110** scrutiny that the Evoke report demands in regard to the existing Right of Way. In granting planning permission (both back in 2017 and then in 2021 with amendments to accommodate the errors made by Mr Phillips in semi-constructing the alternative access) Havant Borough Council have not subjected the alternative Right of Way to such measures as street lighting, priority for pedestrians and cycle movements or addressing the needs of people with disabilities and reduced mobility in relation to all modes of transport; as Evoke insist in their 'Transport Note' that the existing Right of Way should be subject to.

Havant Borough Council did not, when granting planning permission for the alternative access, stipulate that it must "*allow for 2-way flow over all of its length*" as demanded by the Evoke 'Transport

Note' in regard to the existing Right of Way, and of note, this was stated as a reason for refusal of the previous application.

In the previous application, the Officer's report recommends refusal solely based on the situation of the existing Right of Way, saying *"..the limitations of the access track which do not allow for two-way flow over all of its length through the adjoining Tournerbury farm holding, the Local Planning Authority considers that it is not appropriate in planning terms for the wedding and events venue to rely on this route."*

Two critical questions therefore fall out of this reason for refusal:

1) How factually accurate is the data that has been presented by objectors on which the decision maker is asked to base his decision, i.e. over what distances or percentages of the existing Right of Way can two vehicles not pass?

2) How is it acceptable, on an impartial, objective and a reasonable and rational basis, for the Local Planning Authority to grant permission for the alternative access (both in 2017 and with minor variations in 2021), with such permission being granted solely on the basis of access to Tournerbury Woods wedding and event venue, when such access has considerably less length whereby two vehicles can pass easily?

This is clearly demonstrated on the following Google Earth image which compares the two routes (the existing Right of Way and the alternative access) and the lengths at which both routes are more than 4.5 meters in width for the safe passing of two vehicles to address the point made in the reason for refusal of the previous application.

On the existing Right of Way, there is **237.7 meters** of possible two way traffic length (usable width over 4.5 meters) and on the new alternative access (deemed acceptable in planning terms) there is **only 80 meters** along its new length. Please see Google Earth image below –



Fig 8A: Source: Google Earth image. The blue line shows the existing Right of Way and orange lines show distances where the Right of Way on the ground is usable to over 4.5 meters in width. The yellow line shows the new alternative access (as granted planning permission in 2017 & granted again with variations in October 2021) and the red lines show where this alternative access is more than 4.5 meters wide, which is only two 30 meter long passing places and the first approx. 20 meter entrance splay.

Further, the Heads of Terms offered to the Snells by A G Phillips & Son Ltd allow for the alternative access to be used by A G Phillips & Son Ltd and whomever they choose – point 9 of their Heads of Terms state – “9. *The new right of way will be non-exclusive to Mr Snell. Both AG Phillips & Son will use it together with their workers, contractors and whoever else they permit ie there will be other third party users.*” As this is the case, then *every argument* put forward by A G Phillips & Son Ltd, and their advisors, stating that the existing Right of Way is not suitable because of “large machinery” and “farm workers” etc, are entirely confusing as such arguments would presumably apply equally to the new alternative access.

In light of the above, it should further be noted that within the terms of the offer to the Snells from A G Phillips & Son Ltd for a very limited Right of Way along the new alternative access, that A G Phillips & Son Ltd retain full rights to use this new road however they want, but the Snells are responsible for **90% of the cost of “maintenance and road renewal”**.

As the new alternative access provides a new road access to '12 acres field' (immediately south of Laburnum Grove & Beech Grove & owned by A G Phillips & Son Ltd), if A G Phillips & Son Ltd were to develop 12 acres field into houses, and utilise the new alternative access as part of that scheme as one of the access's to Tournerbury Lane. That would leave the Snells responsible for 90% of the cost of “maintenance and road renewal” for such a large housing development, for all of time.



Fig 8B: Source: Google Earth image. 12 acres field shown in red outline and new alternative access to Tournerbury Woods (and 12 acres field) shown in yellow.

“3. National and Local Policy Considerations

3.1.1. This section sets out the relevant national and local policy which development applications should seek to comply with in order to be found acceptable on highway grounds:

3.2. National Planning Policy Framework (NPPF) (February 2019)

3.2.1. Paragraph 109:

Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

3.2.2. Paragraph 110:

- *Within this context, applications for development should:*
- *Give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use;*
- *Address the needs of people with disabilities and reduced mobility in relation to all modes of transport;*
- *Create places that are safe, secure and attractive – which minimise the scope for conflicts between pedestrians, cyclists and vehicles, avoid unnecessary street clutter, and respond to local character and design standards;*
- *Allow for the efficient delivery of goods, and access by service and emergency vehicles; and*
- *Be designed to enable charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.*

3.2.3. Paragraph 111:

All developments that will generate significant amounts of movement should be required to provide a travel plan, and the application should be supported by a transport statement or transport assessment so that the likely impacts of the proposal can be assessed.

3.3. Manual for Streets

3.3.1. Manual for Streets provides guidance primarily for residential streets, but also provides general design principals which can be used to consider other issues such as widths, maintenance and safety.

3.3.2. Section 7.2.8 relates to shared surface streets and squares. When designing shared surface schemes, careful attention is required to avoid problems such as:

- *Undifferentiated surfaces leading to poor parking behaviour;*
- *Vulnerable road users feeling threatened by having no space protected from vehicles; and*
- *The positioning and quality of planting, street furniture and other features creating visual clutter.*

3.3.3. Paragraph 7.2.14 states that shared surface streets are likely to work well ‘where the volume of motor traffic is below 100 vehicles per hour.’

3.3.4. Figure 7.1 provides guidance on carriageway widths and the types and numbers of vehicles that can be accommodated, as reproduced in Figure 3.

Figure 3 Carriageway Widths (MfS Figure 7.1)



Figure 7.1 Illustrates what various carriageway widths can accommodate. They are not necessarily recommendations.

3.4. Havant Adopted Local Plan (Core Strategy) 2011

3.4.1. The 2011 Local Plan (Core Strategy) and 2014 Local Plan (allocations) for part of the Development Plan for Havant until the Emerging Local Plan is adopted. Policy DM 11 and DM12 are concerned with transport and state;

- *DM11 Planning for More Sustainable Travel* The council will seek to ensure that every opportunity is taken to increase integration of sustainable travel modes and availability of non-motorised modes by appropriate measures including:
 1. Securing on-site and/or off-site interventions that promote integrated travel and access by non-motorised modes.
 2. Requiring safe and secure vehicular and cycle parking and turning facilities to adopted standards.
 3. Securing appropriate improvements to public and community transport (including infrastructure requirements) in accordance with the Hampshire Local Transport Plan and (where applicable) the relevant sub-regional transport strategy.
 4. Proposals for reducing opportunities for informal parking in the area surrounding the development where this would impact on the capacity, operation and safety of the local highway network and/or the amenity of the locality.
 5. Ensuring that new developments are located and designed at the outset to encourage lower vehicle speeds and safe, permeable, inclusive layouts that integrate with existing pedestrian, cycle and public transport routes. This will facilitate and encourage short distance trips by cycle and walking, including to public transport interchanges.
- *DM12 Mitigating the Impacts of Travel* New developments will be required to mitigate their travel impact, including the environmental impacts of travel (such as noise, air and visual pollution) and impacts on amenity, health and climate change by ensuring that, where relevant, the following criteria are met:
 1. Adequate provision is made for integrated and improved transport infrastructure or appropriate mitigation measures, through direct improvements and S106 contributions in accordance with the Hampshire County Council Transport Contributions Policy.
 2. The submission of a transport assessment and travel plan alongside any planning application on proposals for major development or where a proposal is likely to have significant transport implications.

- 3. The submission of a transport statement must accompany planning applications to explain changes to travel demand.
- 4. A bond is provided which will be used to mitigate negative travel impacts of the development, should the travel plan fail to achieve its targets. This bond will be held by the relevant local transport authority.
- 5. In relation to outline planning applications, a framework for the preparation of travel assessment.

RESPONSE: Evoke's section 3, from 3.1.1 to 3.4.1 relates to Highways and Streets. The private road used as the Right of Way to the Tournerbury Woods Estate has been in existence since at least 1879 (see above) and is not a Public Highway, nor is it a Street. Including such references from 3.1.1 to 3.4.1 is irrelevant to the planning considerations. Such factors as highlighted here by Evoke have been fully considered by Hampshire Highways and Havant Borough Council Traffic Team and found to be totally acceptable with no objection and no conditions imposed.

The Evoke 'Transport Note' does not reference these Statutory Consultees and as such this section is not balanced. The alternative Right of Way (granted under APP/21/00536) that Evoke promote to the reader in order to support A G Phillips & Son Ltd.'s objection strategy, was not subjected to this level of "Street" applicability and scrutiny by Havant Borough Council. On a comparable basis, nor was the very similar private access to Mill Rythe Holiday Village subject to such scrutiny or demands in planning permission being granted for wholesale expansion of the hospitality offering at Mill Rythe in 2017 & more recently in October 2021.

"3.5. Havant Borough Design Guide SPD (December 2011)

Policy CS16: High Quality Design

*'Planning permission will be granted for development that is designed to a high standard, which helps to create places where people want to live, work and **relax** [Emphasis added]. All development should demonstrate that its design:*

1. Responds to, draws inspiration from and respects local context and:

f) Is well connected to and integrates with the immediate local area and the wider area by linking to existing pedestrian and cycle routes and encouraging people to use public transport where possible; and

e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

4. Is inclusive by considering the needs of those with disabilities, ensuring safe and convenience access for all.

RESPONSE: The most important part of this Policy which Evoke brings the reader's attention to is clause "e) The development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking."

The Planning Officer also references it in his report recommending refusal of the previous application at point 7.59, saying - "Policy CS16 of the Havant Borough Local Plan (Core Strategy) 2011 supports the achievement of High Quality Design; this including where the development does not cause unacceptable harm to the amenity of neighbours".

The Officer elaborates further in his conclusion saying at point 8.4 of his decision report - *“With regards to the use of the track through the farmyard, the question of whether legal rights exist for the applicant to use this route for visitors to the facility is not a material planning consideration. However, the impact of the use of the track on the functioning and amenity of the adjoining farm holding and associated dwellings is considered to be material to this case. **Having regard to the nature of the activities being applied for – which include celebratory and social gatherings – and the number of participants involved, which may include several hundred guests, it is not considered appropriate for the wedding and events venue to rely on this route, bringing as it does the risks of noise and disturbance in residential amenity terms, and the risk of conflict between visitor movements and the safe and satisfactory functioning of the farmyard.**”* (emphasis own).

Responding to this it is important to consider the nature of the adjoining farm holding and the ‘residential amenity’ of the two dwellings at Tournurbury Farm (Tournurbury Farmhouse and 1&2 Farm Cottages (which is a single dwelling).

Immediately adjacent to the farm holding is The Tournurbury golf driving range building along with the licenced premise ‘The Tea Caddy Café’.

The café / restaurant facility at the golf centre has been licenced by Havant Borough Council for the sale of alcohol for over the last 11 years from 08/06/2010, with alcohol sales permitted from 9am through to 9pm seven days a week and opening hours from 7am to 10pm. (Premises licence HPR0257).

On 01/06/2021 Councillor Isobel Scott, applied on behalf of Mrs Phillips to alter and increase the Premises Licence. This licencing application (045594) was granted:

Permitted Activities

- a performance of live music
- any playing of recorded music
- a performance of dance
- the supply of alcohol

Premises Open Hours Requested

	Time From	Time To
Friday	15:00	21:00
Saturday & Sunday	11:00	21:00

Activities - Times Requested

E. Performance of live music (Indoors & Outdoors)

	Time From	Time To
Friday	15:00	21:00
Saturday & Sunday	11:00	21:00

F. Playing of recorded music (Indoors & Outdoors)

	Time From	Time To
Friday	15:00	21:00
Saturday & Sunday	11:00	21:00

G. Performance of dance (Indoors & Outdoors)

	Time From	Time To
Friday	15:00	21:00
Saturday & Sunday	11:00	21:00

J. Supply of alcohol for consumption ON and OFF the premises

Friday	15:00	20:30
Saturday & Sunday	11:00	20:30

Fig 9: Source: Havant Borough Council Public Register of Premises Licences

Within the 'planning balance context' it is important to understand that Mr & Mrs Phillips are expanding their own licenced premises for –

- a) The performance of live music (Indoors & Outdoors)
- b) Any playing of recorded music (Indoors & Outdoors)
- c) Performance of Dance (Indoors & Outdoors)
- d) Supply of alcohol for consumption ON and OFF the premises.

On the 8th September 2021, Councillor Isobel Scott, again on behalf of Mr and Mrs Phillips, applied to Havant Borough Council to vary the premises licence application to increase its use (Licensing Application 046108) again.

This variation was granted on 7th October 2021. It allows the Tournerbury Golf Centre to undertake the following -

Permitted Activities

- a performance of live music
- any playing of recorded music
- a performance of dance
- the supply of alcohol

Premises Open Hours Requested

	Time From	Time To
Friday	15:00	23:00
Saturday & Sunday	11:00	23:00

Activities - Times Requested

	Time From	Time To
E. Performance of live music (Indoors & Outdoors)		
Friday	15:00	23:00
Saturday & Sunday	11:00	23:00
F. Playing of recorded music (Indoors & Outdoors)		
Friday	15:00	23:00
Saturday & Sunday	11:00	23:00
G. Performance of dance (Indoors & Outdoors)		
Friday	15:00	23:00
Saturday & Sunday	11:00	23:00
J. Supply of alcohol for consumption ON and OFF the premises		
Friday	15:00	22:30
Saturday & Sunday	11:00	22:30

Fig 10: Source: Havant Borough Council Public Register of Premises Licences

So two requests to vary and increase the existing premises licenced for a venue that is immediately adjacent to the two residences in Tournerbury Farm have been made within the lifetime of this planning application. It is acknowledged that the increase in licencing applied for was to cover the

activities of a charity festival held at Tournembury Golf Centre, but the existence of an ongoing live and well used premises licence at a venue immediately next door to the properties claiming amenity concerns should be carefully considered within the context of Policy CS16.

In the same light the alternative Right of Way (granted under APP/21/00536) does not appear to have been subjected to the level of "Street" applicability and scrutiny and Policy CS16.

Additionally, The 'Tee Caddy Café' Licenced Premise at Tournembury driving range has its waste bins in the middle of Tournembury 'farmyard'. So, every day after revellers and diners have stopped eating and drinking, all bottles and waste are transported from the Tee Caddy Café to the waste bins immediately adjacent to the two dwellings in Tournembury farm.

The only public access to the Tee Caddy Café is along the garden fence of Tournembury Farmhouse, which loss of amenity is claimed for (due to the Tournembury wedding venue traffic). The car park for the Phillips's licenced premise is also within meters of both dwellings and so both Mr & Mrs Phillips & their tenants in Tournembury Farmhouse are likely to be subjected to revellers getting into cars, slamming doors, shouting goodbyes at each other, singing etc.

This is different to patron noise from Tournembury Estate whereby wedding guests get into their transport by the marquee in the Estate (469 meters away from Mr & Mrs Phillips's house) and are already in cars or taxis or minibuses long before they reach the farmyard and the two dwellings and are merely travelling carefully past these two dwellings on a very limited number of days a year.

Please see below Google Earth image to understand these double standards –

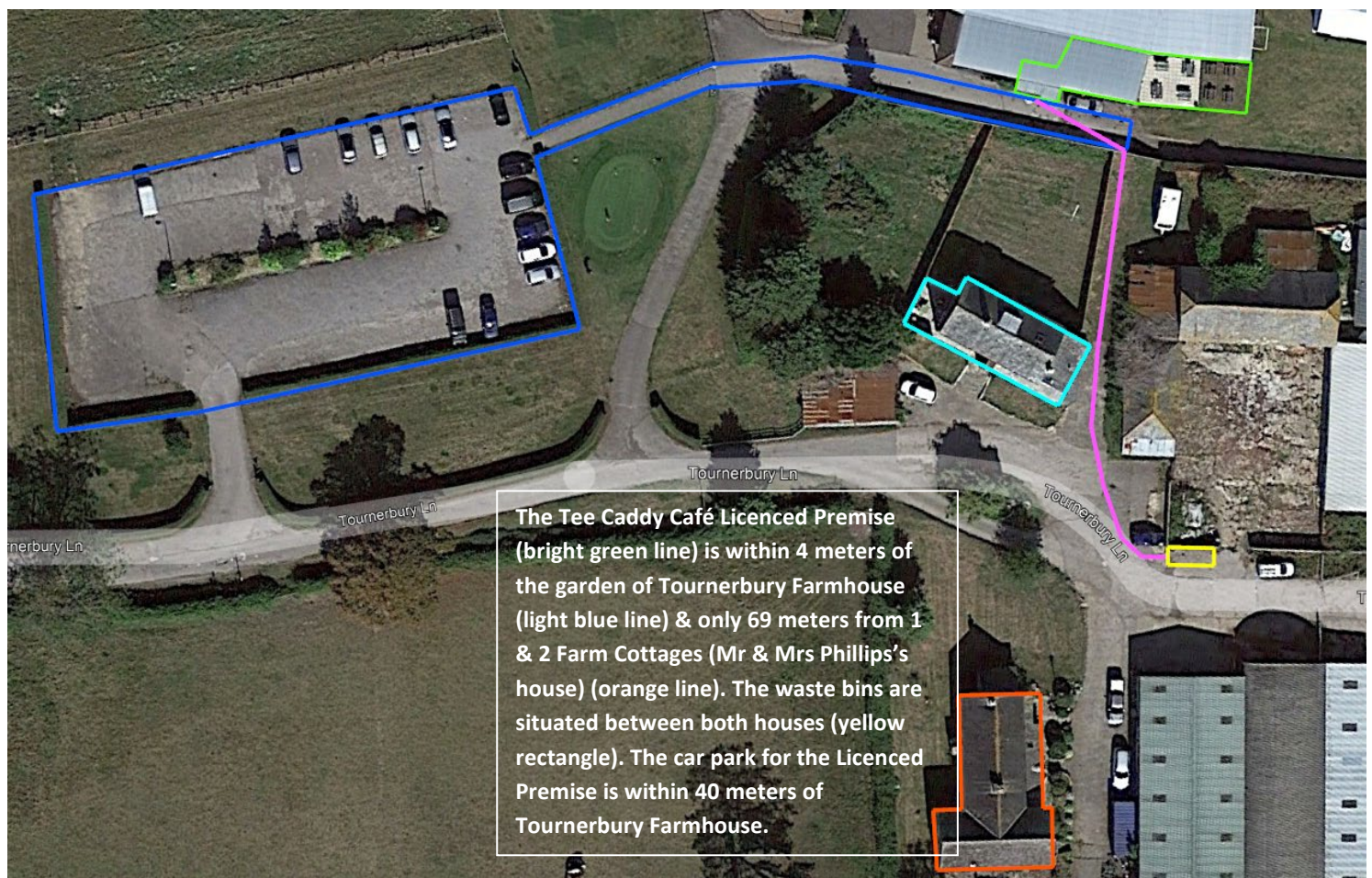


Fig 11: Source: Google Earth image. Orange & light blue polygons show the two dwellings. The dark blue polygon shows the Tee Caddy Café car park and pedestrian access. The green polygon shows the Tee Caddy Café. The yellow polygon shows the Tee Caddy Café waste and commercial bins storage

area and the pink line shows the route taken by staff to empty waste from the Tee Caddy Café to the bins.



Fig 12: Source: TWE photograph of Tee Caddy Café bins area in the middle of Tournerbury 'Farm'.

The Tournerbury Woods Wedding venue marquee by comparison is 469 meters away from Mr & Mrs Phillips house and screened by thousands of mature trees in between.

There is further concern regarding the claim of *"loss of residential amenity"* and *"risks of noise and disturbance in residential terms"* in objection to the previous application when Havant Borough Council have before them submissions to build **150 dwellings** immediately adjacent to the two existing dwellings at Tournerbury Farm.

In the submitted Local Plan a scheme has been promoted on behalf of A.G Phillips & Son Ltd for **150 dwellings** on the existing Golf Centre Car Park and Hayling College land surrounding it. This submission for land allocation H30 was proposed to Havant Borough Council as far back as February 2018 according to the promoter's letter (MatPlan Ltd) dated 12th March 2019 and viewable as submission R110 to the Local Plan.

The original submission was for 60 dwellings, but this was then increased to 150 dwellings over approx. 10 acres in submission R111 to the local plan as part of a co-joined plan with Hayling College for Hayling College's playing fields to be sold off for housing. This combined substantial housing estate would be immediately adjacent to the two existing dwellings at Tournerbury Farm.



Fig. 3 Extract from Pre-submission Local Plan Hayling South Policies Map, showing land to be added to proposed housing allocation H30

Fig 13: Source: Havant Borough Council - DP/19/02036 – Havant Borough Local Plan 2036 consultation, proposal submitted on behalf of A G Phillips & Son Ltd (& Hayling College) – R111.

If the development H30 were to proceed, then the submitted plan and accompanying application letter of 12th March 2019 show the Golf Centre / Tee Caddy Café car park gets moved to within meters of the Tournembury Farmhouse. So, all the noise and disturbance of the licenced premise, the Tee Caddy Café, with taxis, patrons, revellers walking out of the premises when intoxicated etc comes considerably closer to the two residential dwellings at Tournembury 'farm' as the car park is shifted eastwards. Please see proposed development plan from Local Plan submission R111 by Mr and Mrs Phillips below -

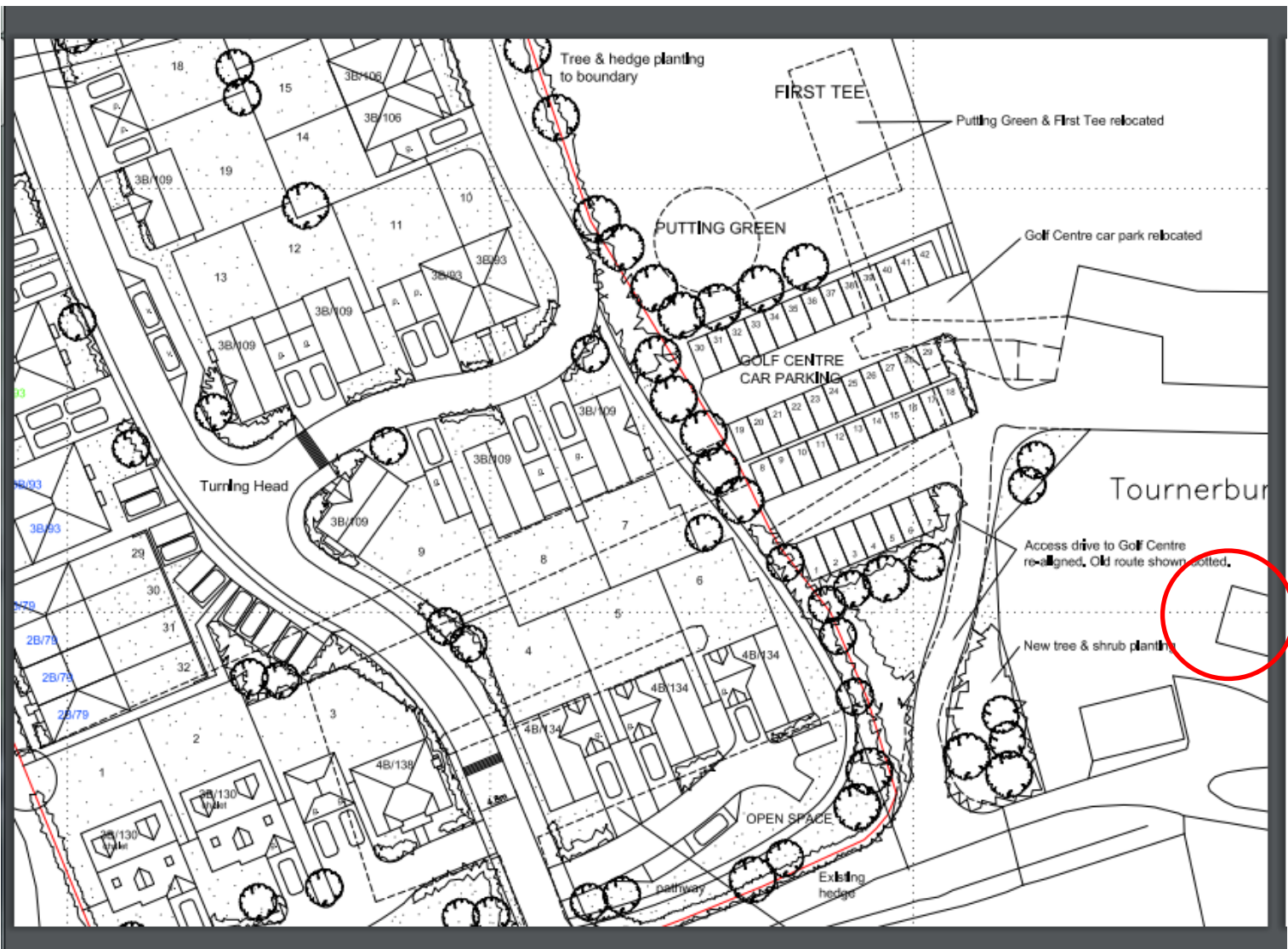


Fig 14: Source: Havant Borough Council - DP/19/02036 – Havant Borough Local Plan 2036 consultation, proposal submitted on behalf of A G Phillips & Son Ltd R110. Tournurbury Farmhouse is on the far right of the plan under the word 'Tournurbur' (and marked by the red circle) and within 25 meters of the access to the golf centre and Tee Caddy Café new access and new car park. The Tournurbury Farmhouse garden is immediately adjacent to the public access to 'The Tee Caddy Café' & the golf centre's car park.

Having had no engagement from A G Phillips & Son Ltd (or their advisers) in regard to their submissions to the Local Plan, the applicants made representation to the Council to explain that Restrictive Covenants are in force on the land. It is understood that the Council withdrew the land as a housing submission (H30), but nonetheless moved the suburban defined area eastwards from the existing housing line into this area to facilitate future development.

The Google Earth image below shows the extent of this proposed 150 dwelling housing estate and how it will change the whole vicinity from urban rural fringe countryside to suburban sprawl.

In light of these submissions it may therefore be confusing to suggest that Mr & Mrs Phillips "*only ever wanted to have peace and quiet*" as stated by ex-Councillor Isobel Scott on their behalf at the previous application's Planning Committee meeting on 24th June 2021



Fig 15: Source: Google Earth. A G Phillips & Son Ltd proposed 150 dwelling development (in conjunction with Hayling College) is in the red line, the orange & light blue polygons show the two dwellings at Tournbury Farm – Tournbury Farmhouse (blue) & 1&2 Farm Cottages (orange).

It should be noted that the previously submitted local plan was withdrawn after scrutiny by the Planning Inspectorate and Havant Borough Council is currently working on the new Local Plan, it is reasonable to assume that the above referenced scheme for development by AGPS Ltd & Hayling College will be re-submitted in the new Local Plan.

3.5.1. Paragraph 5.32 states:

‘Where access roads exclusively serve five dwellings or more the access road will need to be of an adoptable standard as agreed by Hampshire County Council.’ “

RESPONSE: The access road does not “serve five dwellings”. It serves 3 residential properties: Woods Cottage in the Tournbury Woods Estate, 1&2 Farm Cottages (a single dwelling and Mr & Mrs Phillips’s house) and ‘Tournbury Farmhouse’, an agriculturally tied property which should only be let to agricultural tenants.

“3.7.5. Manual for Streets provides width guidance for carriageways, where it states that widths of 2.75m can accommodate one-way movement only, widths of 4.1m can accommodate passing of two small vehicles and widths of 4.8m can accommodate passing of a car and a larger vehicle, or two cars comfortably.”

RESPONSE: This statement is irrelevant as the private Right of Way to the Tournerbury Woods Estate is not ‘a Street’. The Oxford English Dictionary defines a street as “*noun - a public road in a city, town or village.*” The Private Right of Way that benefits the Tournerbury Woods Estate, is not a “*public road*”. It is not “*in a city, town or village*”.

“4. Issue 1: Discrepancies in Recorded/Reported Events

4.2.3. There is also the potential that the proposal may well fail to meet the NPPF’s key test in transport terms; that development should be prevented or refused on highway grounds if therefore would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.”

RESPONSE: The previous application and this application have been fully assessed by both Hampshire Highways and Havant Borough Council Traffic Team and no objection has been made by either party, and nor were any conditions attached. No safety or suitability issues were raised. Hampshire Highways Officer insisted on being driven the whole length of the Right of Way from the Public Highway to the marquee on his site visit with Mr Snell & raised no concerns.

“5. Issue 2: Trip Generation Assessments

“5.1.1. The trip generation assessment undertaken by ITL considers the existing use of the site on four of the 42 recorded ‘large event’ days between September and October 2019. The four events are taken from late September/early October; outside of peak wedding season.”

RESPONSE: This is an irrelevant point as Evoke (who may not be experts in the wedding market) imply here that weddings that take place in September or October are not comparable to weddings that take place in July or August. September and early October are also still peak wedding season for most wedding venues and major months in the English weddings season.

“6. Issue 3: Venue Capacity, Future Events and Expansion

6.3.5. Whilst alternative uses of the site may not generate the same traffic impacts in capacity terms as weddings, other potential issues should have been considered, such as overnight stays resulting in campers walking to the local Co-op (1.2km away; a 14 minute walk), the nearest Pub (also 1.2km away) or the Indian Restaurants along Elm Grove (1.3km; a 15-minute walk away). Many of these trips would likely occur at night and therefore carriageway widths, opportunities for refuge from oncoming vehicles, obstacles either side of verges, lighting and surfacing conditions should have been assessed.”

RESPONSE: This is an incorrect analysis and conclusion. The Tournerbury Woods Estate only offers camping pitches to wedding guests. It is not a ‘general use camp site’. As such, the suggestion here is

that a guest who is attending a wedding and has access to the bar on site is suddenly going to decide to walk to a pub 1.2km away. This is unrealistic. Likewise, guests at weddings are fed substantially, both wedding breakfasts and evening food. No explanation is provided by Evoke as to why a guest who has free and substantial food on site at Tournurbury might decide to leave the wedding party and walk to the nearest Indian restaurants. The suggestion made is illogical, not based in fact and presents a picture that simply doesn't exist. Again, guests have no reason to suddenly decide during a wedding party that they would like to go shopping at the local Co-op.

"6.3.6. Another important consideration is the potential increase in the number of coaches if school related holidays were to be accommodated. Whilst coaches currently use the site for weddings on occasion, an increase in the number of large vehicles for other events would negatively impact on the use of the road in both capacity terms and considering safety for non-motorised users in addition to further deterioration of the road surfacing."

RESPONSE: The previous application and this application never requested "school related holidays...to be accommodated". Further, Evoke state that such activity (which is irrelevant as not applied for) would cause "further deterioration of the road surfacing." As the applicants have full Ancillary Rights to repair, mend and indeed improve the road surface across their Private Right of Way through Tournurbury Farm, this point is irrelevant. Evoke have chosen not to mention the extensive Ancillary Rights that go with a lawful Right of Way to make it safe and useable.

"6.4.4. The direction of travel and lack of two-way movement assessment is particularly important when considering the narrow nature of the track with limited forward visibility and significant obstacles which make the potential for two-way movement dangerous, as detailed further in Section 7."

RESPONSE: The track does not have "limited forward visibility and significant obstacles" and this will be dealt with comprehensively further on in this document.

"6.5.5. Again, it is also likely that the application may well fail to meet the NPPF's key test in transport terms; that development should be prevented or refused on highway grounds if therefore would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe."

RESPONSE: Again, the previous application and this application have been scrutinised by both Hampshire Highways team (including a site visit by Hampshire Highways right along the Right of Way from Tournurbury Lane to the Tournurbury Woods Estate) and both consultees to the planning process found no issues from a Highways perspective. As both consultees had already submitted their reports to the Council at the time the Evoke report was written (both stating "No objection"), the Evoke report has selectively chosen not to reference this fact.

"6.5.6. In addition, the application fails to consider non-motorised users and is therefore contrary to paragraph 110 of the NPPF and Policy CS16 of the Havant Borough Design Guide SPD."

RESPONSE: This is incorrect. As a rural location the vast majority of guests to Tournerbury use either taxis or cars or minibuses or coaches to access the site. Conflating policy statements that refer predominantly to the built landscape in urban and suburban settings are irrelevant and incorrect.

"7. Issue 4: Track Width Constraints

7.2.5. Between the access to Tournerbury Golf Centre and the entrance to the farm; a length of 65m, the width of the carriageway is 3m which is not sufficient width for two vehicles to pass (4.1m) and therefore is only sufficient for one directional vehicle traffic at a time as demonstrated in Figure 5.

&

7.2.6. On the northern side of the carriageway, the verge between the carriageway and the hedge measures 0.3m. On the southern side, the verge measures between 1m and c.2.4m, although immediately adjacent to the verge a deep ditch is located which is entirely covered by vegetation which is demonstrated in Figure 6, meaning that any vehicles wishing to pass on this section would be at great risk of traversing into this ditch."

RESPONSE:

7.2.5 above is factually incorrect. From the entrance splay to Tournerbury Golf Centre which can be lawfully used as a passing place (see below on width of the Right of Way) to the 'staff entrance' splay to Tournerbury Golf Centre (which can also be lawfully used as a passing place) is only 35m. See Google Earth image below –



Fig 16: Source: Google Earth

7.2.6 belittles the true picture on the ground. In between the entrance splay to Tournerbury Golf Centre which can be lawfully used as a passing place in any event, to the 'staff entrance' splay to Tournerbury Golf Centre (which can also be lawfully used as a passing place) there is at least 4.5 meters of width should two vehicles wish to pass here before the staff entrance splay without being even close to the ditch on the southern side. The photograph referred to was taken in June at the height of vegetation growth obscuring the ditch. It should be noted by decision makers that the applicant's ownership of the Right of Way includes extensive 'Ancillary Rights' which go to making the Right of Way safe and usable and would include clearing this ditch of vegetation if required so it can be easily

seen. A more 'normal' or 'real world' view of this area (rather than an exaggerated closeup photograph of a badly maintained ditch as provided by Evoke) can be seen here on Google Earth –



Fig 17: Source: Google Earth

Most important to note though, is that since Tournurbury Farm was sold in 1987 there have been hundreds of thousands of vehicular movements to and from the Tournurbury Woods Estate and the residences at Tournurbury Farm and the Golf Centre and there have been no incidents such as those suggested by the Evoke report through the phrase “...*would be at great risk of traversing into this ditch*”.

“7.2.9. Access to the farm (and through to Estate land) is taken via a gate measuring 3.4m between the posts, allowing one-way movement only. This is demonstrated in Figure 7. The ITL Highway Review notes that vehicles are able to wait within the golf centre access which is considered a good passing point for vehicles entering and exiting the farm at the same time, although it should be noted that the golf club access is also within private ownership and so cannot be relied upon as a formal passing place.”

RESPONSE:

The retained Right of Way is (at a minimum) drawn as 7 meters in width along its entire length from the end of the public Highway at the eastern end of Tournurbury Lane to the entrance to the Tournurbury Woods Estate. This is very clearly and intentionally well drafted in the original conveyance map of the sale of Tournurbury Farm by the Late Francis Snell to A G Phillips & Son Ltd.

Please see photographs below of the original signed conveyance map of the sale of Tournurbury Farm to A G Phillips & Son Ltd. The map is at a scale of 1:5000. The photographs show the width of the Right of Way as drafted on the conveyance map as being a minimum of 1.4 millimetres wide along its entire length which when transposed on to the ground is 7 meters. For the avoidance of doubt the digital measuring calliper used in the photographs is accurate to a tolerance of +/- 0.01 mm.

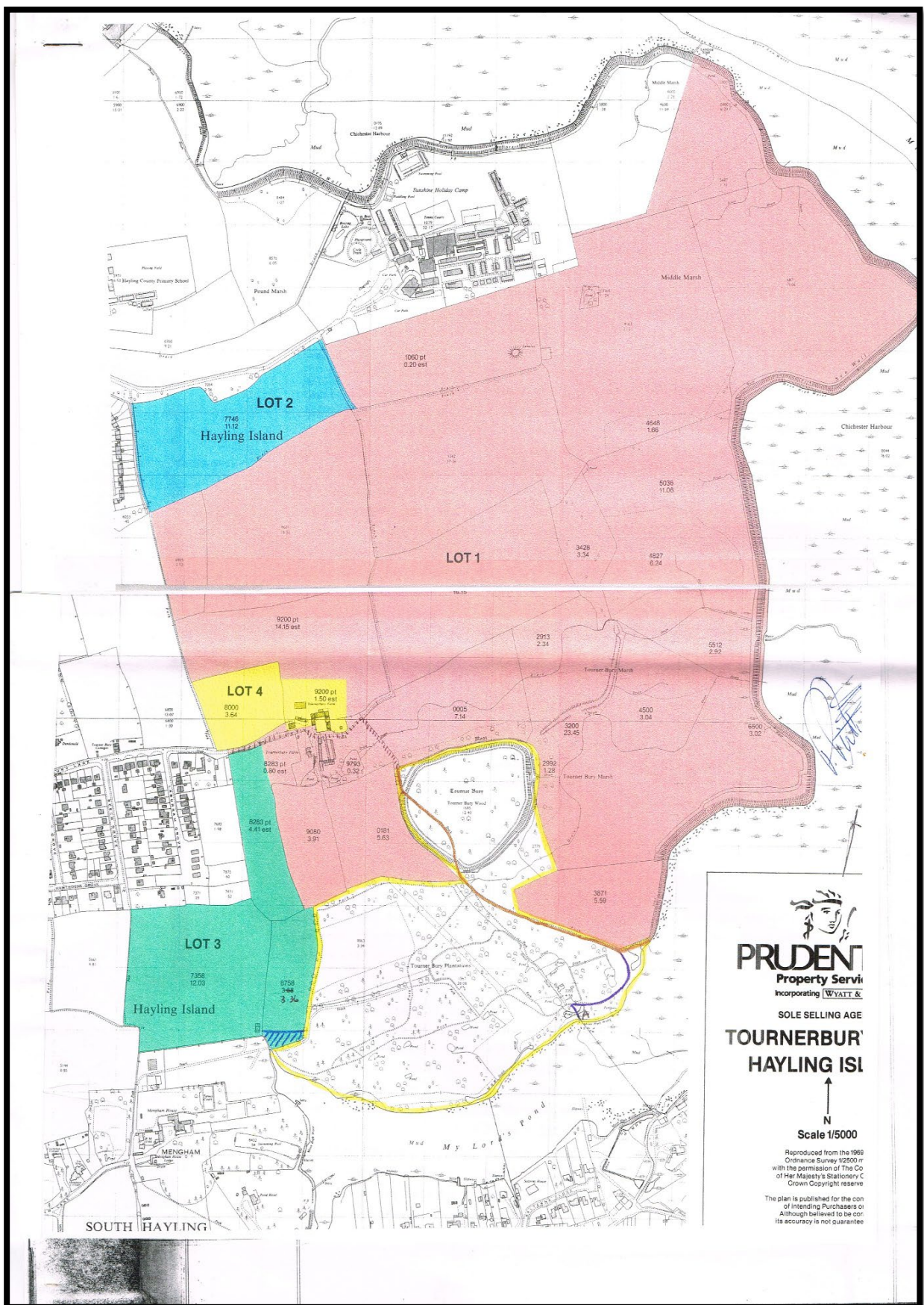


Fig 18: Source: Snell family legal files. Original signed conveyance map of sale of Tournembury Farm in November 1987.



Fig 19: Source: Snell family legal files. Original signed conveyance map of sale of Tournurbury Farm in November 1987.

The photograph above shows a close up of the Right of Way to Tournurbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.41 mm (just over 7 meters on the ground) across the north / south section in between the two ponds created by A G Phillips & Son Ltd.

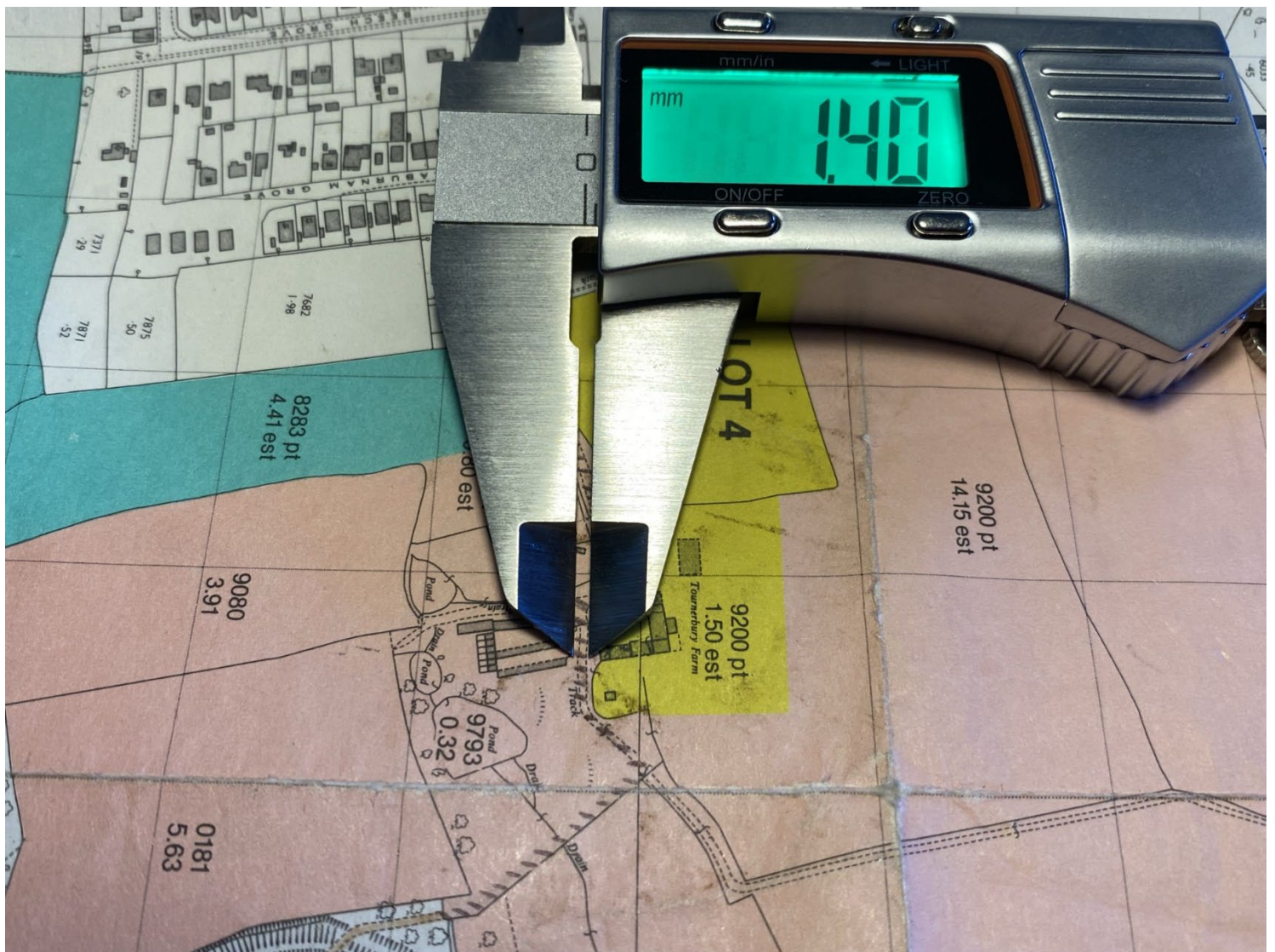


Fig 20: Source: Snell family legal files. Original signed conveyance map of sale of Tournurbury Farm in November 1987.

The photograph above shows a close up of the Right of Way to Tournurbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.40 mm (7 meters on the ground) through the centre of Tournurbury Farm.

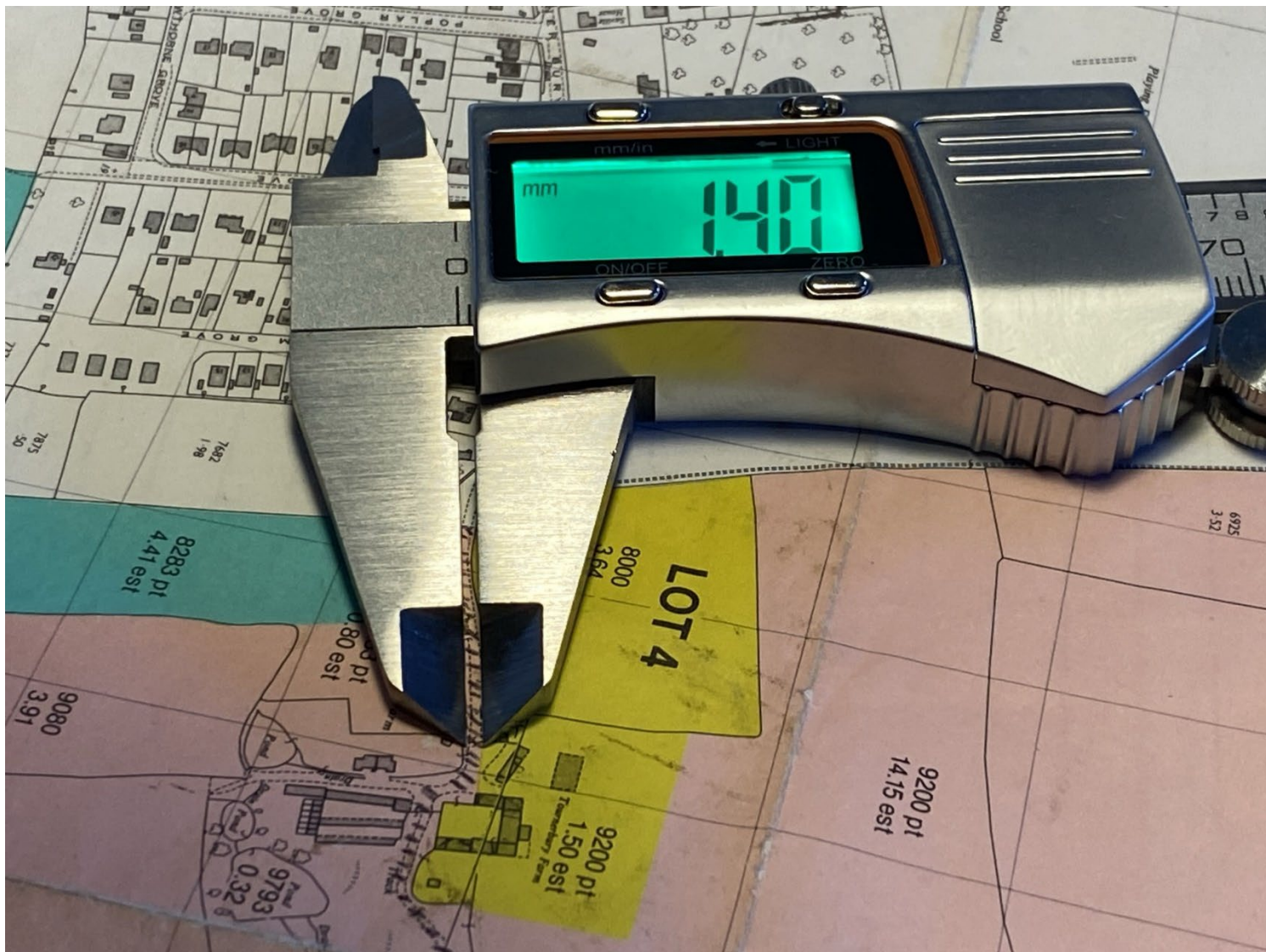


Fig 21: Source: Snell family legal files. Original signed conveyance map of sale of Tournurbury Farm in November 1987.

The photograph above shows a close up of the Right of Way to Tournurbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.40 mm (7 meters on the ground) running from Tournurbury Lane past what is now the two entrances to Tournurbury Golf Centre.

Even if it could be proved by A G Phillips & Son Ltd, in a Court, that the passing places were not included within the Right of Way as reserved, they have been used by those lawfully exercising the Right of Way, their agents and visitors without force, secrecy or permission continuously for such period of time that they enjoy a prescriptive right of way with vehicles and pedestrians and a right to park for a limited time on it (if not an ancillary easement to the right of way) by the doctrine of lost modern grant and/or pursuant to the Prescription Act 1832.

Point 7.2.9 of the Evoke report should therefore not be used in any decision making process over the suitability of the Right of Way as access to the Tournurbury Woods Estate.

“7.3.2. Whilst the farmyard has suitable capacity for the passing of vehicles in width terms, the farm is a working farm and is operational throughout the year. For example, harvesting of hay occurs in June which requires constant back-and-forth of large vehicles and tractors throughout the month within the farm to transport hay between the fields surrounding the farm and the barns within the farmyard. These operations coincide with peak event season for the venue.”

RESPONSE: The phrase “Tournerbury Farm is a working Farm” or “Tournerbury Farm is a full time farm”, were used extensively throughout the previous application in opposition to the granting of planning permission for the wedding and events venue in the Tournerbury Woods Estate. This narrative falls short of full disclosure as to the true nature of activities at Tournerbury ‘Farm’.

The facts are as follows: Tournerbury ‘Farm’ is the 250 acre land holding owned by A G Phillips & Son Ltd. Those 250 acres are divided into the following:

- a) approx. 80 acres are the Tournerbury Golf Centre and Driving Range,
- b) approx. 120 acres are Tournerbury Marsh (SSSI, SPA, RAMSAR),
- c) approx. 30 acres of fields to the south and south west of Tournerbury farmyard,
- d) a 12 acre field to the south east of Tournerbury golf centre.
- e) approx. 8 to 10 acres of mixed commercial use land surrounding Tournerbury Farmyard.

The above constituent parts of Tournerbury ‘Farm’ are used as follows –

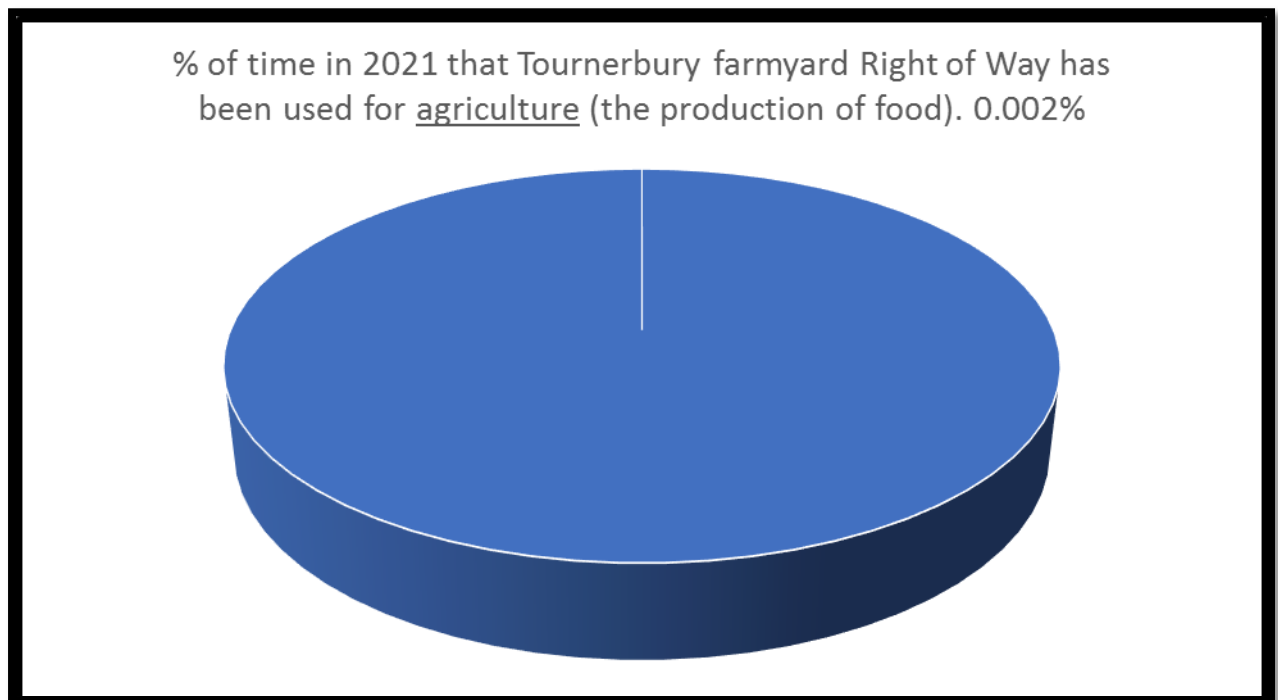
- a) The Golf Centre Driving Range is a licenced premise for live music indoors and outdoors, performance of dance, service of alcohol, a successful and busy restaurant / café & food delivery service.
- b) Tournerbury Marsh is a protected SSSI / SPA / RAMSAR area on which a very small number of cattle are grazed annually. Cattle are bought to Tournerbury in Spring as calves in a livestock lorry and delivered directly to the marsh. This is one agricultural transport movement, taking less than 30 seconds to transit through the ‘farmyard’. The cattle are then left on the marsh to graze and fatten up throughout the summer and autumn. They are then moved to one of the barns at the farmyard in the very late winter months (if it is cold) before being transported off the farm for sale, another single ‘agricultural machinery movement’.

At time of initial drafting of this report, (8th February 2022), the small number of cattle (no more than 35) have been moved to the farmyard on only three occasions since January 1st 2021,- on Tuesday 6th of August 2021, Monday 11th October 2021 & Tuesday 16th November 2021 that we have witnessed, despite using the Right of Way on an almost daily basis. They were housed in one barn for two days in October it is believed for Bovine TB checks and then moved back out to the Marsh on Thursday 14th October 2021. The cattle were moved into the barn and out of it again on November 16th 2021, it is assumed for health checks.

Thus far, in 2021 and 2022, over the course of 404 days there has been one single ‘agricultural’ lorry movement through Tournerbury ‘Farm’ (taking less than 30 seconds) and cattle have been moved through the ‘Farmyard’ (taking no more than two minutes actually in the ‘farmyard’ for each ‘movement’ and therefore very temporarily blocking the Right of Way) only 6 times. Three times to a barn in the farmyard and three times back to the marsh.

That equates to a total of no more than 12 minutes of interruption to the usage of the Right of Way by wedding and event guests from January 1st 2021 to 8th February 2022. Out of 581,760 elapsed minutes in 2021 and 2022 (to the time of drafting this report, 8th February

2022), cattle movements (i.e. 'farming activity') have caused the Right of Way to be unusable for only 12 of those minutes. This is 0.002 % of the time that the 'farmyard' is actually engaged in agricultural movement so far in 2021 and 2022. This is clearly demonstrated by the pie chart below –



Mrs Phillips has supplied video evidence of this to the Planning Inspectorate as a Rule 6 objection applicant to the planning appeal by the Tournerbury Woods Estate against the refusal of the previous application / CLEUD and enforcement.

In her video of the 8th of August 2021 cattle movement from the barn to the marsh the whole movement takes less than 2 minutes. Of most interest though, is the fact that 3 cars that are exiting the Tournerbury Woods Estate can be seen patiently waiting behind the gate for the cattle to be moved. This completely disproves what Mr Phillips told Mr Snell in 2012, and on which basis Mr Snell wrote his letter to the Council in regard to the alternative access. This letter has consistently been used against The Tournerbury Woods Estate's applications for planning permission for the venue since.

Mrs Phillips's Rule 6 party video evidence shows the small number of cattle being safely moved from a barn in the farmyard to the marsh for grazing, at the height of the wedding season 2021. The cattle movement was swift & safe (as shown by Mrs Phillips's video) and her video shows unequivocally that the dual use by both users (AGPS & The Tournerbury Woods Estate), does, in reality, coexist in an entirely safe and suitable manner. The impact shown by this evidence on either user of the farmyard / Right of Way is zero impact to A G Phillips & Son Ltd and virtually zero impact to the Tournerbury Woods Estate. Please see screenshots of Mrs Phillips's video evidence below –



Fig 22 & 23: Source: Screenshots of Mrs Susan Phillips's video evidence of a cattle movement along the Right of Way, taking less than 2 minutes. Second frame shows 3 cars exiting the Tournerbury Woods Estate and waiting for the gate to be opened (red circle). This caused no issue to the safe operating of Tournerbury Farm or the wedding venue.

- c) Of the 30 acres of fields to the south and south west of Tournerbury farmyard, these are given over to horse grazing of no more than 4 or 5 prize winning horses. Mr & Mrs Phillips predominant 'activity' is the rearing of Cobs and Maxi Cob horses which are shown at British

Horse Show Association (BHSA) shows. This is not farming or agriculture (the production of food). Every year a small area of these fields are used for making hay for winter horse feed.

- d) The 12 acre paddock to the south east of Tournerbury golf centre is also given over to horse grazing. This is not 'agricultural'.
- e) The circa 8 to 10 acres of Tournerbury 'farmyard' are put to a diverse range of mixed use, none of them agricultural. These uses include, but are not limited to;
 - 1) Use as a scaffolding businesses operating yard, (change of use from agriculture),
 - 2) use as an operating and storage base for a road marking business, (change of use from agriculture),
 - 3) use of an agricultural barn for golf centre equipment storage and maintenance,
 - 4) use as a commercial residential let (the agricultural tie remains on this dwelling),
 - 5) use of a static home for commercial letting, (change of use from agriculture),
 - 6) use for storing building materials (non-agricultural related) for the purposes of running a landscaping and fencing business (Phillips Fencing & Landscapes), (change of use from agriculture),
 - 7) use as a storage operation for motorhomes and caravans, (change of use from agriculture),
 - 8) change of use of part of an agricultural field (**and a Scheduled Ancient Monument**) into a construction and demolition (C&D) waste storage yard, (change of use from agriculture),
 - 9) change of use of part of an agricultural field into a mixed waste burning facility for builders and landscapers and fencing contractors to dispose of mixed waste by burning, (change of use from agriculture). This activity has been run at Tournerbury 'Farm' by A G Phillips & Son Ltd over a long period of time it creates substantial airborne pollution to residential properties to the south west, and Hayling infant schools, potentially releasing leachates of burnt mixed waste such as plastics into Chichester Harbour water courses and also pollutes the heronry in Tournerbury Woods, as this activity has been extremely prevalent during heron nesting season. The heronry is immediately adjacent to this waste operation site.
 - 10) Change of use from farmyard to waste area for the 'Tee Caddy Café', the hospitality venue situated in the Driving Range building at Tournerbury Golf Centre.

A considerable library of photographs (time and date recorded) can be presented to show these activities and will be used at the PINS appeals if required.

It is suggested therefore that farming is a very minor activity in many ways in comparison to other activities undertaken within the Business Enterprise that is Tournerbury Farm as acknowledged by advisors to A G Phillips & Son Ltd.

Evoked make the statement, *"For example, harvesting of hay occurs in June which requires constant back-and-forth of large vehicles and tractors throughout the month within the farm to transport hay between the fields surrounding the farm and the barns within the farmyard. These operations coincide with peak event season for the venue."* This gives the reader the impression that at the height of wedding season there is constant large tractors and trailers operating every day in the farmyard involved in the daily operation of making and baling hay from extensive fields around the farm. This is not the case.

A very small acreage is given over to hay making every year (no more than 20 acres at the most) of the southern fields at Tournerbury Farm. This produces a small number of hay bales that are transported to a barn in the farmyard on a large flatbed trailer. This process takes no more than 10 to 15 vehicle

movements in and out of the farmyard over 5 to 6 working days. Again, in reality, the actual impact on either user (A G Phillips & Son Ltd or The Tournerbury Woods Estate) of use of the Right of Way, is virtually zero.

It should be noted that AGP's own advisors now refer to Tournerbury Farm both as a "working farm" and "a business enterprise", see Thrings LLP objection letter of 21/07/2022.

"7.3.3. The 'Letter to Council', prepared by the Estate owner and detailed in Section 2.3 of this report in support of the alternative access track, recognised the impact of the Estate's event operation on the farm:

- Free passage to and from the estate 'causes extreme difficulties and raises Health and Safety issues, both for farm workers and for the well-being of cattle during times of movement.'*
- The movements to and from the estate add 'complexity and unnecessary delays to what should be normal farm operations.'*
- The farm is unable to be 'secured at night or when on holiday, leaving valuable equipment and livestock potentially vulnerable to theft.'*
- Planned planting and sea wall repair will 'result in increased disruption on Tournerbury Farm over a substantial period of time and, without the proposed road, will result in ongoing and increased hampering of both farming operations in Tournerbury Farm and forestry operations in Tournerbury Woods.'*

"7.3.4. It is clear therefore that, whilst in capacity terms this section may appear suitable for two-way movement of vehicles, in reality Estate traffic through the farm, particularly on large event days, imposes a significant risk to operations within the farm and results in potential highway safety and security concerns."

RESPONSE: 7.3.3. of the Evoke report has already been responded to earlier in this document. Here, at 7.3.4, It needs to be stated firmly that these risks do not exist in reality since the actual impact on either user (A G Phillips & Son Ltd or The Tournerbury Woods Estate) of use of the Right of Way, is virtually zero.

"7.4.1. To the east of the farmyard, the track passes through a further gate which measures 4.0m between the gateposts before traversing in a north/south direction as demonstrated in Figure 9. Notably this does not provide sufficient width for two cars to pass at the gate (4.1m)."

RESPONSE: This is incorrect.

On the ground, the physical distance between the two gate posts is 4.75 meters. Not 4.0 meters. The gate itself is 4.58 meters long allowing just on 15 cm for hinges and bolt mechanism.

Since the measurement provided incorrect so is the subsequent conclusion that "Notably this does not provide sufficient width for two cars to pass at the gate (4.1m)."



“7.4.2. The length between the gate (to the north) and the Tournerbury Estate boundary (to the south) measures approximately 80m.”

RESPONSE: This statement made by Evoke also appears incorrect. The length of the Right of Way between the gate in the farmyard and the Tournerbury Woods Estate gate is 76 meters.

“7.4.3. The ITL Highway Review states that, from the gate the access track reduces to 3.7m in width, further narrowing to c.3m for a short section (approx. 18m), before widening again to c.4m for the final 30m section until it reaches the boundary of Tournerbury Woods; after which the applicant has full control of the access track.

&

7.4.4. Through on-site measurements undertaken on 8th June 2021, the section between the gate (4.0m) and narrowing has a varied width of between 3.4m and 4.0m and generally measures c.3.8m, defined on the eastern side by scrub which is not suitable for overrun, and to the west by vehicles associated with the farm as demonstrated in Figure 10.

&

7.4.5. Generally therefore, two vehicles could not pass along this section in accordance with MfS guidance.”

RESPONSE: The ITL Highway review as referenced here only took into account the physical track that could be seen at the time of survey. At the time of survey there was substantive vegetation that obscured the full picture. The above section (Response to 7.4.1), adequately demonstrates inaccuracies within the Evoke ‘Transport Note’ and so measurements have been retaken (October 2021) on the ground. As has been demonstrated above in response to 7.2.9, the retained usable Right of Way as drafted on the 1987 Sale of Tournerbury Farm Conveyance Map is circa 7+ meters in width throughout its entire length.

However, at various points, both geographically and in time) A G Phillips & Son Ltd have placed equipment (both agriculture related and non-agriculture related), scrap, waste, building materials, scrap vehicles (non-agricultural), storage containers (non-agricultural) and other paraphernalia (such as storing third parties caravans) along the Right of Way so as to cause interference with its lawful use. This can be clearly demonstrated by comparing the 2001 Google Earth photograph (top photograph below) with the 2015 Google Earth photograph (bottom photograph below) –



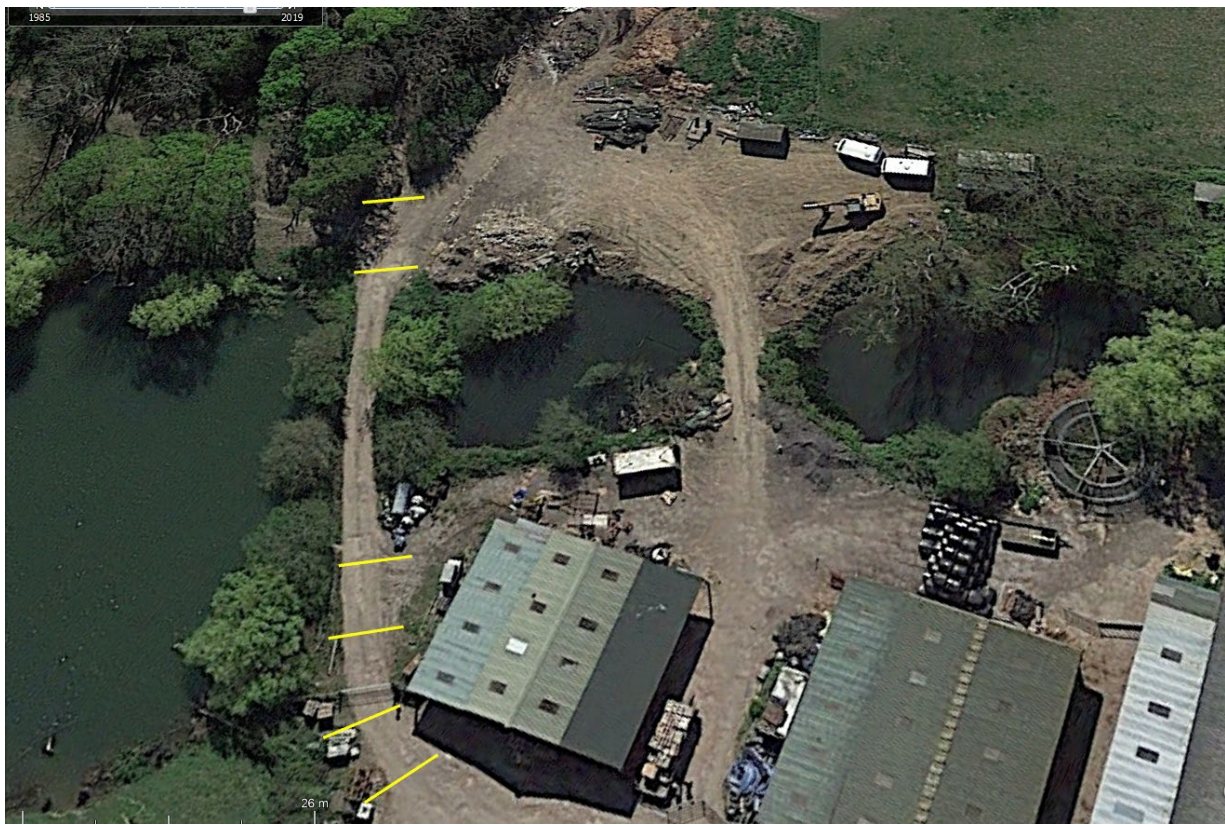


Fig 24 & 25: Source: Google Earth photographs 2001 & 2015

There are several relevant factors to be taken from these photographs, that decision makers should draw their attention to:

- a) The yellow bars have been drawn on Goggle Earth's mapping functions and measure exactly 7 meters.
- b) In 2001 the Right of Way was unencumbered by any of the items as described above.
- c) In 2001 the tree vegetation along the Right of Way was de minimus.
- d) The 2015 photograph shows that items have been placed along the Right of Way to narrow its useable width.
- e) It is clear from the 2001 photograph that the only 'narrowed' section is between the golf course irrigation pond and the shallow pond to its west.
- f) In the 2015 photograph the gate (4.75 meters wide, not 4.0 meters wide as presented by Evoke) is visible having been installed by Mr & Mrs Phillips in 2006. The wider Google Earth image shows this was temporarily closed for a cattle movement.
- g) Of other notes of interest to decision makers in these photographs is the use of Tournerbury Farm for the storage of caravans (a change of use), the infilling of part of one of the ponds with unscreened and untreated builders waste to create a horse training ring and the expansion of the waste tipping and burning activities (without relevant waste permits). This expansion of the waste facility run by A G Phillips & Son Ltd into an agricultural field is also on the Tournerbury Fort Scheduled Ancient Monument (SAM).

At 7.4.4.Evoke says "...defined on the eastern side by scrub which is not suitable for overrun, and to the west by vehicles associated with the farm as demonstrated in Figure 10."

This is incorrect, as has been evidenced by a) the original conveyance map and the b) the Google Earth images showing historically wide areas for passing here. The "vehicles associated with the farm" are domestic scrap left to rot by A G Phillips & Son Ltd.

The photograph below shows the tanker parked on the Right of Way passing place and the rotting scrap vehicles (that are not working farm vehicles). A rotting scrap container can also be seen in the background –



Fig 26: Source: TWE photograph

At 7.4.5. Evoke relies on the MfS (Department for Transport Manual for Streets) widths for two cars to pass when it says - *“Generally therefore, two vehicles could not pass along this section in accordance with MfS guidance.”* The MfS guidance is for “Streets”. The Oxford English Dictionary defines a street as *“noun - a public road in a city, town or village.”* The Private Right of Way that benefits the Tournerbury Woods Estate, is not a “public road”, it is not “in a city, town or village” MfS guidance was not designed to cover such private rights of way, and is therefore not applicable, to such a scenario.

Notwithstanding the above point, and in light of the fact that measurements were taken when the surrounding vegetation was very overgrown, the true extent of this section should be broken down into its constituent parts.

Heading south from the farmyard towards the Tournerbury Woods Estate entrance there are 5 distinct sections (A to E) to this part of the Right of Way –

- A) Section A – length of 23 meters. Northern Passing Area. Usable width of 7 meters (if scrap, junk, concrete waste and other paraphernalia that has been deposited is removed). Section A is coloured bright green on the Google Earth image below.
- B) Section B - length of 4.5 meters. Northern Passing Area splay reducing to narrowed length. This is a short section whereby the full 7 meter width of the Right of Way narrows to the length that runs between the two ponds. Section B is coloured pink on the Google Earth images below.
- C) Section C – length of 13.5 meters. This is the section that narrows between the two ponds. The minimum width of track here is 3.4 meters. However, it should be noted that this minimum width (3.4 meters) is only so for a length of 7 meters (Section C1). Section C is coloured light

blue on the Google Earth images and the sub-section (Section C1) as described above that only lasts for 7 meters is coloured red on the Google Earth images.

- D) Section D – length of 20 meters. Southern Passing Area. Usable width of 7 meters for over 14 meters of this length. Section D is coloured yellow on the Google Earth images.
- E) Section E – length of 16 meters. Approach to the Tournerbury Woods Estate entrance. The track here is circa 3.5 meters in width. Section E is coloured orange on the Google Earth images.

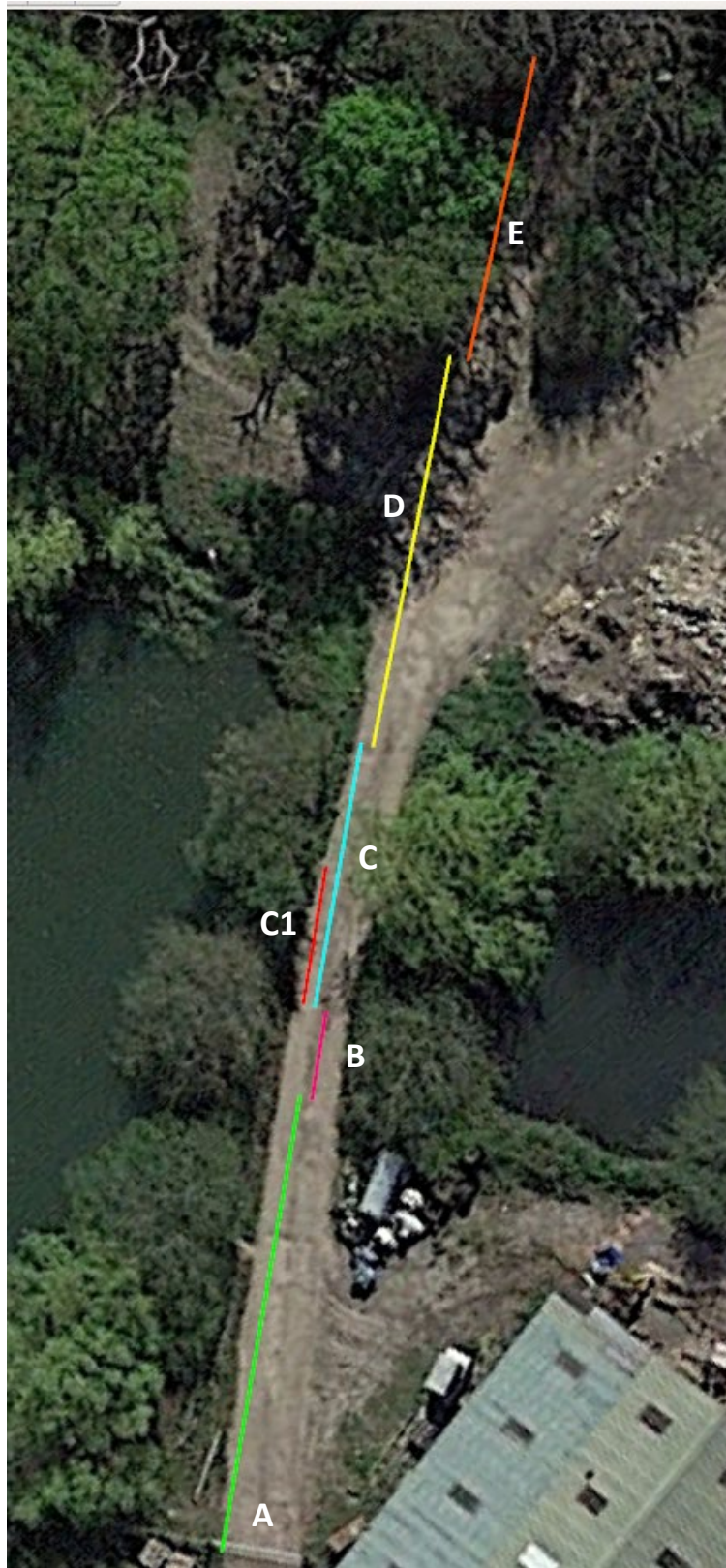


Fig 27: Source: Google Earth

The reader should also take note of the straight line of sight from the farmyard gate to the gate at the entrance of The Tournurbury Woods Estate. This is counter to the claims made by Evoke in their Transport Note. Now the excess vegetation has been cleared that was temporarily obscuring sightlines, any vehicle exiting the Estate can see straight along this section of the Right of Way to the farmyard gate. The applicants cleared the overgrown vegetation utilising their Ancillary Rights to their Right of Way in order to make the Way safe for users. See photograph below –



Fig 28: Source: TWE photograph

Likewise, on turning at the gate in the farmyard when heading south to Tournurbury Woods, there is a full sightline right up to the entrance to the Estate. See photograph below –

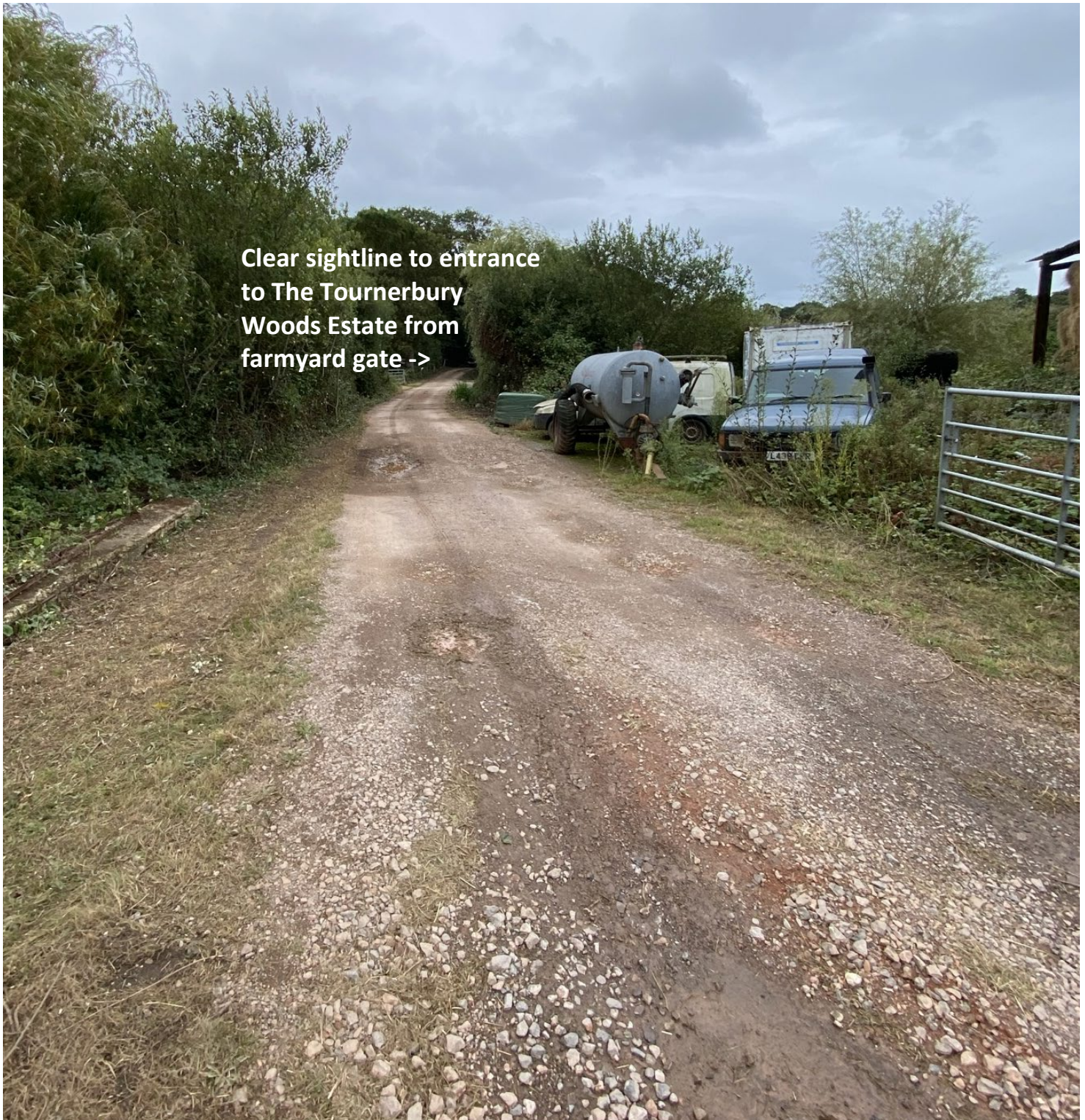


Fig 29: Source: TWE photograph

Once inside the Tournerbury Woods Estate there is a 47 meter long stretch of road that allows for large vehicles to pass each other, and indeed, if a vehicle is seen heading south towards the Estate on the Right of Way through the farmyard, there is enough room here for a full size coach exiting the woods to wait for another full size coach entering the woods to pass. Please see Google Earth image below.



Fig 30: Source: Google Earth

NB – Since this report was first drafted, Mr & Mrs Phillips have further constricted this section of the Right of Way with concrete barriers that serve (counter to Mr & Mrs Phillips’s claims in their

objection letter of 19/04/2022 that “..health and safety...is a matter we take very seriously”) no useful purpose other than to create a negative optic in the planning process. These actions by AGPS are detailed in Appendix 3 of Haydn Morris’s letter to HBC dated 17/08/2022 and Figs 1, 2, 3, 4 and 5 of that Appendix should be cross-referenced with Figs 28 & 29 above to see the attempts to deliberately create chaos by AGPS and dissuade HBC from positively determining Tournerbury’s applications.

“7.4.9. Immediately alongside both sides of the carriageway along the 2.8-3.0m narrowed section are deep ditches and lakes. These lakes encroach right up to the carriageway and are covered by shrubs and reeds and therefore those unaware of the constraints may well seek to squeeze onto the ‘verge’ and immediately fall into the ditch and lake. This issue is also present when considering pedestrians moving over to wait for a passing vehicle, leading to serious accident concerns.”

RESPONSE: This is not factually accurate. To the east of the narrowed section is the golf course irrigation pond. This water is separated from the track by a number of mature trees that provide a natural safety barrier. To the west of the narrowed section is a shallow pond. Now that the applicants have cleared the overgrowth of vegetation by utilising their Ancillary Rights, this shallow water is abundantly clear to the naked eye. There is no “deep ditch” as Evoke state there to be. Evoke’s conflated false narrative that “those unaware of the constraints may well seek to squeeze onto the ‘verge’ and immediately fall into the ditch and lake. This issue is also present when considering pedestrians moving over to wait for a passing vehicle, leading to serious accident concerns” has been written to promote a fearful response in the reader that this is “an accident waiting to happen” as a misdirected and misled committee member said at the 24th June 2021 planning committee meeting.

The track has been in situ since at least 1879, and the golf centre irrigation pond since 1991. Woods Cottage was first properly refurbished in 1998 and commercially let (23 years ago). Since 1998, there have been many hundreds of thousands of car and pedestrian and bicycle and motorbike and van and lorry movements along the Right of Way, both during day and night, and there is not one single incidence of any guest having ever “immediately fallen into the ditch and lake”.

If it were the case that these two water bodies presented a genuine danger to users of the Right of Way, or indeed if there had ever been so much as one incidence of an accident happening here, the applicants would have used their Ancillary Rights to undertake whatever works were necessary to make the Way safe for its lawful users, as is their right.

It should be noted that the application is not for a ‘virgin greenfield’ site but for an existing business and operation that has been used lawfully and extensively by tens of thousands of guests and visitors to The Tournerbury Woods Estate over a very long period of time; on foot, on bicycles and by cars and with supplier vans and trucks & coaches using the Right of Way. There has never been an accident in this area, or indeed on any part of the Right of Way.

“7.4.10. Vehicles at either end of this narrowed section, waiting within the widening further south to allow a vehicle to pass could not see vehicles traversing through the farmyard gate from the north; or indeed from south when leaving the Estate as demonstrated in Figure 13.

7.4.11. This means that a vehicle entering this section and happening upon an opposing vehicle would need to reverse along the road, past farmyard vehicles and paraphernalia and through the gate to wait within the farmyard. Due to the aforementioned lakes alongside both sides of the carriageway, this manoeuvre would be dangerous, particularly at night-time with no street lighting and when vehicles were not familiar with the road (which is likely given the occasion use of the venue).

7.4.12. For these reasons, it is considered that there is a length of c.46m over which two vehicles, or a pedestrian and vehicle, cannot pass and with limited forward visibility, could not see an opposing vehicle.

7.4.13. Notably, the Health and Safety Executive (HSE) state that nearly a quarter of all deaths involving vehicles at work occur during reversing. Many other reversing accidents do not result in injury but cause costly damage to vehicles, equipment and premises. (Source: <https://www.hse.gov.uk/workplacetransport/information/reversing.htm>).

7.4.14. Whilst the ITL Highway Review notes that the characteristics of vehicle movements to and from weddings is tidal, it does not consider any event in which two opposing vehicles met each other which could well happen when considering the types of events which take place at the venue but have not been assessed, such as wedding open days.”

RESPONSE: This section of the Evoke ‘Transport note’ ignores the ability of the applicants to make their Right of Way safe for users by Ancillary Rights including cutting back vegetation that creates a nuisance / hindrance / safety issue to safe use of the Right of Way. Evoke took photographs of the Right of Way on 8th June 2021 when the surrounding vegetation was at its densest for some time. As no accidents have ever happened along the Right of Way involving visitors to The Tournurbury Woods Estate, the applicants are grateful to Evoke for pointing out potential issues with surrounding vegetation. As such, the Right of Way has been cleared of infringing vegetation and the true picture of sightlines can be clearly seen in Fig 28 & Fig 29 above, therefore making Evoke’s points 7.4.10, 7.4.11, 7.4.12, 7.4.13 & 7.4.14 null and void.

To further illustrate this, it should be noted by decision makers that a vehicle exiting the Tournurbury Woods Estate, on seeing a vehicle turning into the north / south section of the Right of Way (or indeed at night, on seeing headlights in the farmyard ahead) has the option to wait at the Woods entrance (which is more than 7 meters wide) and to let south bound vehicles traverse the north / south section of the Right of Way before moving safely northwards themselves.

By way of general observation it is interesting to note that at 7.4.11, Evoke state that a vehicle entering the north / south section of the Right of Way would need to reverse into the farmyard and past the lakes to let a vehicle from the south go past. This is incorrect as any vehicle exiting the Woods has the option to wait at the Woods entrance gate (on the 7 meter wide splay) or to (previous to the recent antics and actions of AGPS) wait at the southern passing place on the Right of Way whilst the south bound vehicle heading towards the Woods passes.

Evoke used a photograph at their “Figure 13 Limited Forward Visibility for waiting Vehicles”. It is therefore interesting to compare Evoke’s Figure 13 Photograph with the now vegetation cleared Right of Way at the southern passing place. The photographs are taken from the same spot clearly

showing the unimpeded sightline here, whilst allowing ample room for even large vehicles to pass along the main body of the Right of Way. Please see below –

“Figure 13 Limited Forward Visibility for waiting Vehicles”



Fig 31: Source: Evoke Transport Note – Figure 13 Photograph taken from standing in a bush to the side of the Right of Way by Evoke on 8th June 2021.



Fig 32: Source: TWE photograph on 03/10/2021. Clear sightline view from southern passing place to farmyard gate. Photograph taken from exactly the same spot as Fig 31.

The practical and safe operating application of this part of the Right of Way can be seen in the below series of photographs taken by the applicant when exiting the Tournurbury Woods Estate, and a large, long wheelbase Transit van belonging to an event supplier entering the north / south section of the Right of Way.





Fig 33,34,35,36: Source TWE photographs on 06/10/2021.

On exiting the Tournerbury Woods Estate the driver has two choices in this scenario, to either use the 47 meter long passing place splay at the Estate entrance or to move forward to the southern

passing place on the Right of Way (as described by Evoke & as the photographs above depict). The usable width of this area can easily be seen in these photographs and it should be noted by the reader that even when temporarily parked in the Right of Way passing place to allow the van past, the driver still has clear line of sight to any vehicle turning into this section at the farmyard gate.

If further vehicles were exiting the Estate at this time as the southerly bound van moves towards them, they would have the option to stop on the extensive exit passing place splay at the Estate's gate (47 meters long), and wait for the southerly bound van (and any other Estate bound traffic) to come past.

NB – the ability to use this Southern passing place has temporarily been halted by the actions of Mr and Mrs Phillips placement of concrete barriers and as Appendix 3 of Haydn Morris's letter to HBC dated 17/08/2022 details, this is now in the hands of the applicants solicitors to seek removal of such barriers, which if not forthcoming will most likely end in action needing to be taken.

It is noted that Evoke does not consider that if the planning application is not granted, then the economic activity required to support the Estate would have considerably less control on it (from a planning perspective). In other words, Evoke do not consider 'the fallback position'

If permission for the lawful use of the Estate as a wedding and events venue continues to be rejected, whether in this application or in the PINS appeals, or indeed in both, and then later at Judicial Review, then continued use of the Right of Way doesn't suddenly disappear.

Indeed, it is likely to become much less contained and managed. If the wedding and events venue at the Estate is forced to close, the applicants will be required to develop new ways of funding the conservation and management of the Tournurbury Woods Estate and this may well include projects such as 'Bluebells in the Bury'. The success of 'Sam's Sunflowers in Northney on Hayling Island has been a hugely positive addition to the Borough's hospitality offering. This is undertaken under permitted development rights without the need for planning permission. In 2020 some 37,000 visitors attended and in 2021, some 50,000 visitors attended including coach parties from London (source of information – applicant conversations with Sam Wilson, owner of Sam's sunflowers).

Other projects such as 'Spooky Woods Halloween' etc could be laid on also under permitted development / use of the agricultural land classification of the Estate. These projects would not require planning permission and could attract far higher numbers of visitors and differentiating traffic flows than those of weddings and events.

This is a critically important point that was ignored in the previous application, by objector's like the Chichester Harbour Authority, who are misguided that good, long-term countryside management and conservation happens by itself without any funding source.

"7.4.15. The ITL review also does not consider movement of non-motorised users, which are expected to increase when considering the future uses of the site which include overnight stays, large groups of school children and a significant increase in staff numbers. Non-motorised users are further considered in Section 8 of this report."

RESPONSE: This statement misleads by suggesting that those that are camping overnight for a wedding might walk along the Right of Way. Having not discussed this behaviour with the applicants who are best placed to know the habits of their guests, the report has not been able to convey the

reality that all campers arrive by car with their tent, stay overnight after the wedding, pack up the following morning and leave by car. In regard to school children; in the past, the forest school in the Estate has had school children dropped off by parents in cars and then picked up at the end of the forest school session. It is inaccurate of Evoke to paint a picture of either attended or unattended school children walking along the right of Way. In regard to staff, most staff at the Estate live on Hayling Island or the wider Borough and drive to the Estate. Occasionally in summer months, some do use bicycles. None to date have suffered any accidents or even 'near misses' when using the Right of Way.

"7.4.16. In order for the track in this location to be found acceptable, it would need to be widened to allow passing of two vehicles; to at least 4.5m, with additional refuge for pedestrians. Forward visibility would need to be improved through cutting back of vegetation in the event that two large vehicles, which would require 5.5m to pass, were to pass."

RESPONSE: In this statement Evoke are making the point that planning permission cannot be granted because the Right of Way as it is, is not *"acceptable"* at this north / south area of the Right of Way. We understand that this is meant as 'acceptability in planning terms'.

The analysis of the Right of Way, it's passing places, it's lawful width as conveyanced in 1987 (7 meters), the status of Tournurbury Farm being a 'working farm' have all been addressed in this document above. The point that Evoke kindly make in regard to *"Forward visibility would need to be improved...."* has now been remedied on the ground, using the applicants lawful Ancillary Rights to make safe the Right of Way for their users, as is evidenced in the photographs in Figs: 32, 33, 34, 35 & 36.

As such, that just leaves scrutiny of Evoke's point on 'acceptability' and its merits (or lack of merits) to be examined. In order to do so objectively, then comparable access routes (that are on private land and are not 'Public Streets'), that lead to other hospitality venues within Havant Borough should be reviewed to ensure that there is a fair, rational, reasonable and objective response from decision makers to such access roads to hospitality venues within the planning process, and that decision making based on Tournurbury's access route is in-line with similar situations within the Borough.

There are two good comparable examples of hospitality venues on Hayling Island that have gained full planning permission for their operations / expansion from Havant Borough Council, whilst solely exercising access over private land on accessways that do not allow for two cars to pass each other at least for a substantial length of their access routes, and in both cases for longer distances than that on the Tournurbury Right of Way.

These two examples are Mill Rythe Holiday Village (MRHV) and Hayling Island Sailing Club (HISC). Both these venues are substantially greater in size than the offering at the Tournurbury Woods Estate in terms of numbers of guests, traffic movements, size of vehicles, number of public walkers using the access ways, numbers of annual events, guest capacity etc. Tournurbury is a hospitality minnow in comparison.

MRVH: Away Resorts (owners of MRVH) applied to Havant Borough Council in 2016 for a large scale overhaul of its hospitality offering. The application was validated in December 2016 and granted full

planning permission less than 5 months later at the beginning of May 2017. The application was for –

“APP/16/01237 | Demolition of 6,111 square metres of redundant chalets and facilities buildings, use of land for the siting of 203 holiday caravans including 5 caravans for use as staff accommodation, refurbishment of retained single and two storey holiday chalets to form 87 units of holiday accommodation, retain managers bungalow, sales area for 5 caravans, refurbishment of remainder of central facilities building, CCTV cameras, provision of new pedestrian concourse with terraces, splash and dry play areas, multi-games court, adventure golf course and outdoor theatre and new landscaping. Retaining existing pitch and putt golf course to the east of the site. (Approved 5.5.17).”

Fig 37: Source: Havant Borough Council Planning Portal

On the 8th January 2021 a further application was validated which was granted full planning permission 9 months later. The application was for –

APP/20/01127 | Application for full planning permission, pursuant to APP/16/01237, for the redevelopment of the holiday site including the demolition of redundant chalets, use of land for the siting of 112 holiday caravans with areas of open recreational space, cease the use of the land for pitch and putt purposes and retain the remaining pitch and putt area as a managed wildlife area including the provision of an ecology bund & ditch, landscaping, the siting of three bird hides with bat roost in their roof spaces and a mown 'circular wildlife walkway'.

Fig 38: Source: Havant Borough Council Planning Portal

These applications consist of a major overhaul and expansion of an existing hospitality venue within the Borough, bringing in many hundreds of thousands of visitors and guests, holding celebrations and live music events (both indoors and outdoors) - the outdoors ones being clearly audible from the Salterns Lane / Marine Walk area of Hayling Island and often wrongly blamed on Tournerbury. No Visitor Management Strategy nor Noise Management Plan appear to have been requested or implemented for this large scale development at MRHV.

MRHV is accessed along a private access road (not a Street) measuring 491 meters in length. This is considerably longer than the Right of Way to Tournerbury Woods which measures 338 meters. The first 178 meters of the MRHV is wide (varying between 5 to 6.5 meters width). However, it should be noted that members of the public park their cars here, reducing width. This stretch also acts as a Public Footpath to the public highway as the Public Footpath from the end of Tournerbury Lane to Havant Road joins at this part of the MRHV access road. It should be noted that there is not a separate 'footpath' along this public Right of Way, rather, the access road to MRHV acts as the path itself for both walkers, bicyclists and horses.

This section is also used extensively by school children from Mill Rythe Junior School with a capacity of 360 pupils and Mill Rythe Infants School with a capacity of 270 pupils. Pupil capacity of both establishments is up to 630. Please see Google Earth Streetview image below of a pupil and parent walking down the MRHV access route –



Fig 39: Source: Google Earth Streetview image, Mengham Rythe school pupil and parent on public footpath on the MRHV access road.



Fig 40: Source: Google Earth Streetview image, pupil and parent on MRHV access road and cars parked. This is also a public footpath for pedestrians, bicycles, horse riders.



Fig 41: Source: Google Earth Streetview image, school children on MRHV access road and cars parked.

This stretch of the MRHV access road is also used by horses as it appears Mr & Mrs Phillips have erected stables on land owned by their company A G Phillips & Son Ltd, on part of the northern part of the golf course. These stables were erected between 2015 and today.

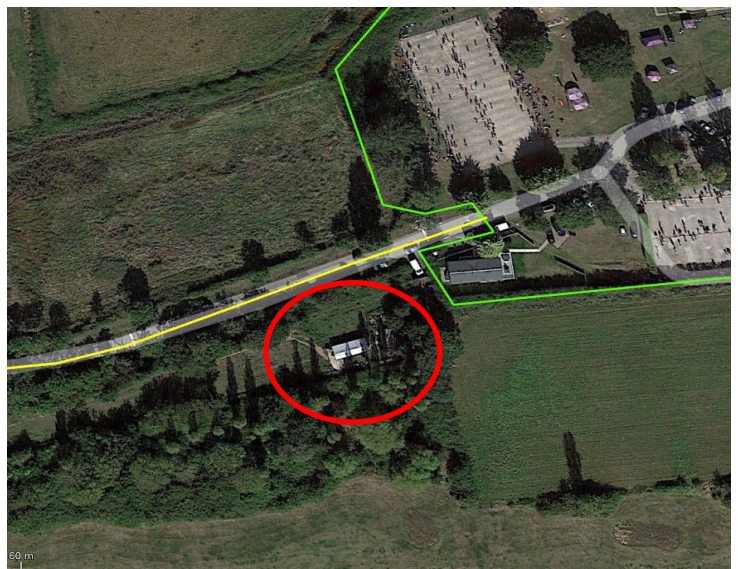


Fig: 42 & 43 Source: Google Earth. Left hand image is 2015, right hand image is 2021. The stables can be seen in 2021 but not in 2015. No planning permission exists on the planning portal for this.

The entrance area to this access road also gets used by HGV's taking tachometer breaks, see photograph below –



Fig 44: Source: TWE photograph.

After the first 178 meters the access road to MRHV then narrows for the remainder 313 meters into a single width road, which at its narrowest is 3.45 meters wide. There is a single passing place along this length. See Google Earth image below –



Fig 45: Source: Google Earth Streetview image, walkers on MRHV access road.

From a residential amenity point of view (the previous Tournerbury application was refused on the basis of 'residential amenity of the two dwellings in Tournerbury farmyard'), the MRHV access road is immediately adjacent to the residential gardens of 20 houses on Kings Road, albeit there is good tree and shrub screening. Nonetheless there is the potential for noise and disturbance from late night revellers who have been eating and drinking at MRHV or attending a live music event and are Hayling

residents and are exiting MRHV late at night, or alternatively MRHV guests walking back from local pubs such as the Maypole or Yew Tree to MRHV.

Once the full redevelopment of MRHV is complete there will be 309 holiday accommodation units with each one sleeping between 6 to 8 guests. The guest population at MRHV will then be (if averaged at 7 per unit, 2163 guests at any one time.

Contextually, it should be noted that the access road to MRHV has no street lighting; very limited passing places, is immediately adjacent to 20 residential dwellings gardens, is a Public Right of Way, for a long stretch it is narrower than the Tournerbury Right of Way, is used every day by school children and members of the public on foot and with bicycles and with dogs. It serves a substantial hospitality business with over 4 times the potential guest numbers on any one day that Tournerbury's previous application applied for (and nearly 10 times the number of guests the extant Tournerbury application is applying for), has multiple coach party traffic movements, is a licenced premise used for consumption of alcohol, with live music and celebratory events. Yet despite all of the above, in planning terms, the access to MRHV was deemed to be **entirely acceptable**, by planning officer decision and by planning committee in both 2017 and in October 2021.

The Google Earth photograph below shows the extent of the access road to MRHV (yellow line) and also the extent of this hospitality complex which dwarfs the marquee at Tournerbury in terms of planning impact and capacities and activities. The MRHV access road as described above is denoted by a yellow line. The extent of the main complex at the holiday village is outlined in green and for useful comparison purposes (in order to understand comparative scale of operations), the dimensions of the Tournerbury Marquee have been shown in red, as if it were erected at MRHV –



Fig 45: Source: Google Earth MRHV access road (yellow line), Public Right of Way (purple line), MRHV site (green border) & Tournerbury marquee to scale (bright red) for comparison. The seemingly non-planning consented stables building is circled red.

It is confusing to see how the access road to MRHV is felt to be acceptable in planning terms, but the access road to The Tournerbury Woods Estate is felt not to be. The only condition that was applied to the MRHV access route was that signs must be erected warning drivers that there is a public Right of Way along the route. Condition 9 “Prior to the occupation of the development hereby permitted details of signage to warn vehicle drivers of the need to give way to users of the Right of Way, shall be submitted to and agreed in writing by the Local Planning Authority.” There is no such Public Right of Way at Tournerbury along the private Right of Way.

HISC: The second example of a busy and successful hospitality, wedding and event venue in the Borough of Havant with a non-public road access is Hayling Island Sailing Club (HISC). It is acknowledged that planning permission for the wholesale demolition and reconstruction of the modern clubhouse and facilities was granted by Havant Borough Council in 1995 when planning policies were likely different to today.

However, in the context of the Evoke Transport Note’s unsubstantiated claims that the Right of Way to the Tournerbury Woods Estate is “*wholly unsuitable*” (8.2.8) and that the “*the application is unacceptable on Highway safety grounds*” (10.1.16), the comparable access road to HISC is worth taking into account and analysing for its similarities with the Right of Way to Tournerbury and understanding just how “*wholly unsuitable*” and “*unacceptable*” and ‘dangerous’ in safety terms such an access is, when used in the ‘real world’ over the course of two decades by a hospitality venue that is considerably larger and more complex in its offerings and guest numbers than the Tournerbury Woods Estate previous application ever attempted to be.

HISC sits on a sand promontory at the eastern end of Hayling Island. It is accessed by a causeway measuring 467 meters from the public highway (Bracklesham Road) up to the main car park outside the clubhouse.

This access route contains many similarities to the Right of Way at Tournerbury –

- a) It passes immediately adjacent to 6 residential properties after the public highway (Tournerbury Right of Way passes 2 residential properties).
- b) It is unlit at night.
- c) It has water either side of it (for a far greater distance than the Tournerbury access has).
- d) It serves a licenced premise that hosts celebratory events, including weddings – albeit HISC does this 12 months a year on a scale and magnitude unimaginable at Tournerbury.
- e) Its existing track allows only one way traffic at various points (over much greater distances than the Tournerbury track).

On top of the above, it should be noted that the narrow single vehicle access to HISC also -

- a) Serves the Hayling Island Lifeboat Station (one of the busiest RNLI stations in the country) for which unrestricted emergency access is required 24 hours a day, 7 days a week, and
- b) is a public footpath giving access to the general public to one of the most attractive and appealing stretches of beach on the South Coast, with daily visitors on 365 days a year including being a magnet for dog walkers both from the Island and from off the Island.

The entrance to the HISC access road is only wide enough for one-way vehicle movements for the first 65 meters as the road is situated between residential properties. In terms of amenity, these

residential properties are immediately adjacent to the access road and 3 of the dwellings have shared use of the HISC access road.

After the first 65 meter single width part, there is then an 11.7 meter long passing place with a width of up to 6 meters at its widest point, thereafter the passing place narrows back to one-way vehicle width of between 3.2 and 3.6 meters. This single vehicle width length lasts for 44 meters before splaying out to the turning to the RNLI Lifeboat Station and HISC overflow Car Park on a southerly right hand turn or continuing to HISC by driving northerly to the HISC access barrier. Once past the barrier the access road continues along the sand causeway, and the concrete metalled surface averages approx. 4.5 meters in width. However, during the summer months especially, and during National and International Sailing Events as well as corporate functions, the sides of the causeway are used for car parking and the access along this stretch can become predominantly one-way vehicular use again.



Fig 47: Source: TWE drone photograph of single vehicle width 44 meter section of HISC access road, water surrounds this on either side during high tides. This access road is not lit at night.



Fig 48: Source: TWE drone photograph of single width 44 meter section of HISC access road. A member of the public using the Public Footpath along this section walking his dog.



Fig 49: Source: TWE photograph of a member of the public with her dog using the 44 meter section of HISC access road, wearing dark clothing and at night, moving over to the small grass verge, next to the drop into the lagoon which is filled with water (tidal).



Fig 50: Source: TWE photograph of a member of the public using the single vehicle width, 65 meter long initial section of HISC access road in between the residential dwellings at night. The walker is wearing dark clothing, is difficult to see & moved over to the small grass verge on seeing the photographer's headlights approaching.

It is acknowledged that Havant Borough Council granted planning permission for the wholesale redevelopment of HISC just over two decades ago, when policy may have been different to today. However, the above is presented to show that such an access as this is entirely safe. As over those two decades, despite millions of pedestrian movements and hundreds of thousands of vehicle movements, many towing long boat trailers with very limited rear visibility and extreme difficulty in

reversing, during the night and day time, with wedding and event guests and patrons coming and going to HISC (and after they have been consuming alcohol), there is not one reported incident of anyone reversing into the water, being run over or any accidents happening in relation to the access road. This is despite HISC attracting sailors and event guests from all over the UK and from all over the world for international events, who are not familiar with the access.

The hospitality operation of HISC dwarfs Tournerbury in every way –

- it has 3710 full time members; many are under 18 and many are retired,
 - it has 800 + watercraft stored on site,
 - it has car parking at full capacity for 500 cars. (circa 400% Tournerbury's capacity)
 - On busy summer weeks there can be up to 1600 people using HISC at any one time.
 - In July 2021 there were 27 non-sailing events held at HISC and over 60 events held including sailing events. Even in October 2021 (a quiet month for a sailing club) there were 16 non-sailing events held.
 - There are 37 staff on the payroll and many more part time staff during school holidays at peak times. Many of these staff are local and walk or bicycle to HISC.
- (Source of Data – HISC Club Manager, October 2021)

Such empirical evidence; on the ground and in the real world, for an access route that arguably contains many more 'potential conflicts / hazards' (it's a Public Footpath, it serves the RNLI station, it serves and is immediately adjacent to multiple residential dwellings) than the Tournerbury Right of Way, casts considerable doubt on the Evoke reports arguments as to 'unacceptability of the Tournerbury Right of Way' at Evoke's points 7.4.9, 7.4.10, 7.4.11, 7.4.12, 7.4.13, 7.4.14, 7.4.15, 7.4.16, 7.5.2, 7.5.3, 7.5.4, 7.5.5, 7.5.6, 7.5.7, 7.5.8, 8.2.2, 8.2.3, 8.2.4, 8.2.6 & 8.2.8.



Fig 51: Source: Google Earth image, HISC access road (yellow line), Public Rights of Way (purple lines) & Tournerbury marquee to scale (bright red) for comparison. The RNLI station is in the red oval. It is one of the busiest RNLI stations in the country.



Picture: HISC Causeway Access road 2022 – unlit, single lane access, with pedestrians, HGV’s delivery for food and drinks supplies, boats being delivered and removed on long trailers etc.

The single reason for refusal of the Previous Application (APP/18/00943) was stated as – *“Having regard to the nature of the activities being applied for, which include celebratory and social gatherings into the late evening; the high number of participants proposed; and the limitations of the access track which do not allow for two-way flow over all of its length through the adjoining Tournerbury Farm holding, the Local Planning Authority considers that it is not appropriate in planning terms for the wedding and events venue to rely on this route.”*

If this wording were applied to HISC and MRHV it might read as follows: *having regard to the nature of the activities at Mill Rythe Holiday Village and Hayling Island Sailing Club, which includes celebratory and social gatherings into the late evening, with high levels of participants and limitations of their access tracks that do not allow for two-way flow over all of their length, both accesses are deemed, nonetheless, by the local authority, in planning terms, entirely acceptable.*

“9. Issue 6: Other Known Constraints & Further Evidence Base

9.1.1. Havant’s Design Guide SPD Policy CS16 requests that development does not cause unacceptable harm to the amenity of neighbours through smell, the loss of privacy, outlook, noise and overlooking.

9.1.2. Through discussions with Mr, & Mrs, Phillips a number of other issues have been advised which cause further distress and safety/security concerns as a result of ever-increasing large events at the Estate, including:

- Drivers travelling through the farm and turning left (travelling north east) rather than right towards the Estate. The track to the north east is not properly surfaced and is used for ad-hoc access to fields and movement of agricultural vehicles and is unsuitable for most cars. An example of a car travelling out of the estate and turning the wrong way, trying to turn around and getting stuck is demonstrated in Figure 14. Mr & Mrs Phillips were required to use their machinery to relieve the car

and have also erected further signage at their own expense. Other examples of similar instances on a number of other occasions are available, including video recordings;”

Figure 14 Car Stuck after Making a Wrong Turn



- *A number of instances have occurred with livestock leaving the farmyard due to the need to keep the gates open to retain right of way. Livestock either make their own way from the farm or are spooked by fast-moving vehicles. Whilst not evidenced through photographs, the Phillips have a number of witnesses to such events including their vet and the local police (including a police report which was made when livestock went missing);*

- *Taxis and pick-ups often knock on the farmhouse door in the early hours to ask for directions to the Estate which is poorly signed on Google Maps, waking up Mr & Mrs Phillips and their tenants who also live on the farm;*

There have been many incidents where wedding guests walk from the Estate late at night to wait for taxis either by the farm or at the Co-Op. In addition to the aforementioned safety issues for guests walking along the track at night, there have been instances where the Phillips have found guests shielding from the rain within their hay barn, including guests urinating and smoking whilst sitting on hay bales. This causes a significant potential fire hazard;

- *Due to the need to retain right of way to the Estate through the working farm, security is a significant and ongoing issue and there have been a number of incidents where equipment and machinery have been stolen or damaged.*

&

9.1.3. These examples of some of the distress caused to Mr. & Mrs. Phillips through a lack of security or privacy are considered to cause unacceptable harm, again demonstrating that the application is contrary to Policy CS16 of the Havant Design Guide SPD.”

RESPONSE:

Bullet point 1 –

“Drivers travelling through the farm and turning left (travelling north east) rather than right towards the Estate...”

At the end of Tournerbury 'farmyard' the Right of Way curves to the right in a southerly direction. The track referenced here splits off the Right of Way and curves up to the north and east and provides access to the eastern parts of Tournerbury golf course and Tournerbury marsh. Mr & Mrs Phillips have erected gates up the track to the golf course and to the field adjacent to the golf course, in both examples, immediately off this track to the marsh. As the Evoke report rightly states this track "*is used for ad-hoc access to fields.*" If the scenario painted here was as bad as is suggested it might be sensible for a simple sign (saying no access to Tournerbury wedding venue) to be erected at the yellow star (see below), or even a gate, and this would ensure the scenario painted in bullet point 1 of Evoke's 9.1.2 would never happen.

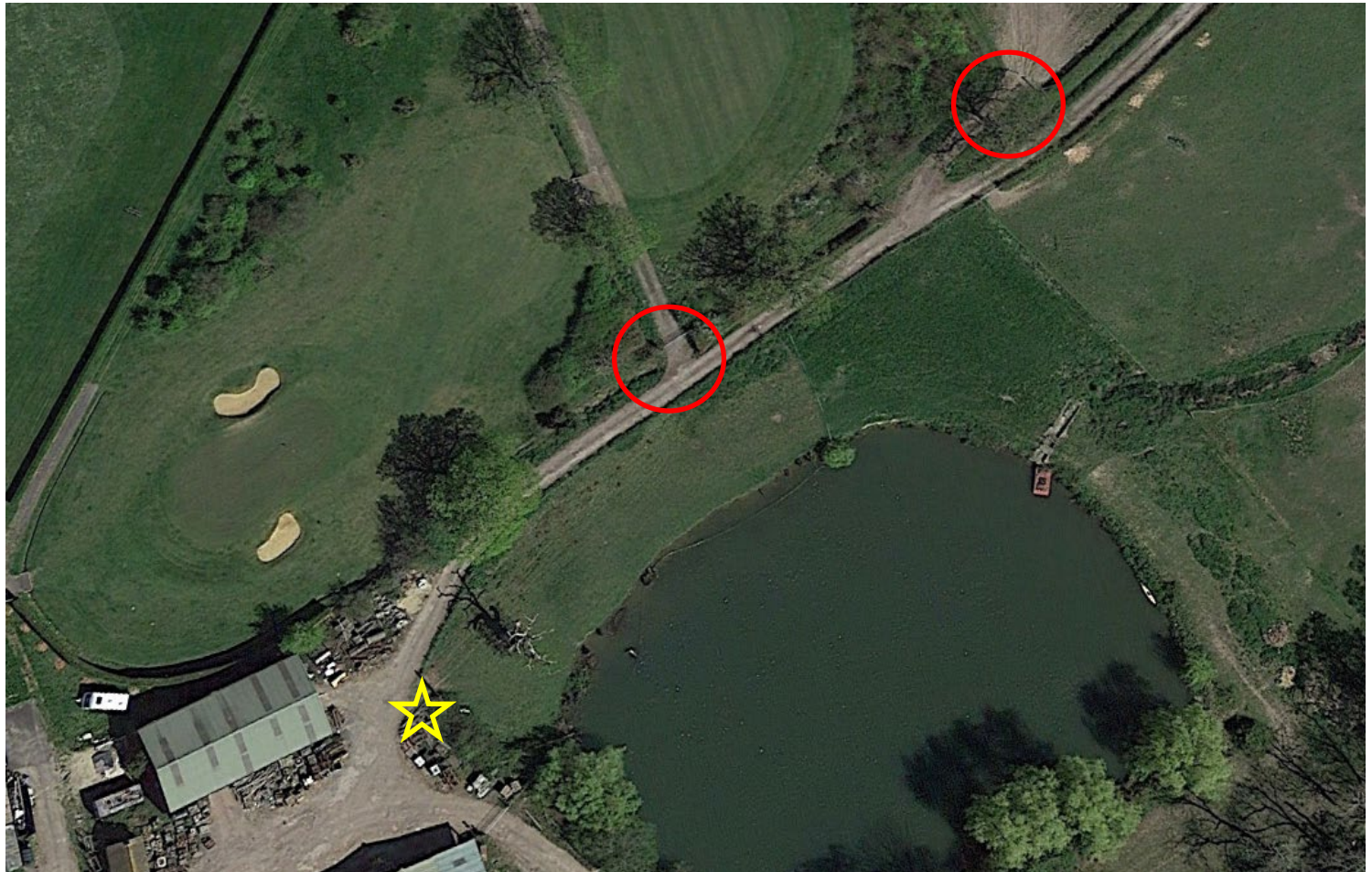


Fig 52: Source: Google Earth image showing track referenced in Evoke report and gates to golf course access and field access (in red circles).

Bullet point 2 –

"A number of instances have occurred with livestock leaving the farmyard due to the need to keep the gates open to retain right of way."

The argument presented here by Evoke is questioned. The lack of livestock being present in or around the Right of Way has been discussed above. Photographs to back up the statements in regard to either cattle use or any agricultural use of Tournerbury farmyard are available to decision makers on request. This statement suggests that if planning permission isn't granted for the wedding and event venue in Tournerbury Woods, then gates may be able to be closed across the Right of Way. The right of Way as reserved does not contract to gates, or to the closing of gates. A G Phillips & Son Ltd, their

Directors and their advisers (Thrings LLP & Savills LLP) have been avowed to this fact by Irwin Mitchell LLP on behalf of the applicants in 2019 and have not disputed it.

It is wrong of Evoke to suggest that somehow the Right of Way (and the inability to have closed gates) falls away if planning permission for the venue in Tournerbury Woods is not granted. It is an entirely false claim.

As has already been stated in this document, the economic necessity to generate revenue to protect and conserve Tournerbury Woods, without the wedding venue, is most likely to create a considerably 'worse' fallback position in regard use of the Right of Way, without any planning conditions being able to be imposed. For instance, the "Rogate Pumpkin Patch" event, over 18 days in October, at Rogate outside Petersfield, attracts up to 7,000 visitors a day and goes on for 18 days. A similar experience could be set up in Tournerbury Woods (not all of which is SSSI), without the need for planning permission. That's a possible 126,000 visitors and a considerably different scenario for A G Phillips & Son Ltd than up to 250 guests on an event day attending a wedding or corporate hospitality event.

Bullet point 3 –

"Taxis and pick-ups often knock on the farmhouse door in the early hours to ask for directions to the Estate which is poorly signed on Google Maps, waking up Mr & Mrs Phillips and their tenants who also live on the farm;"

Historically there was a sign at the entrance to the farmyard directing taxis / pickups etc to turn right after the last barn, see below –



Fig 53: Source: TWE photograph.

However, Mr and Mrs Phillips removed this useful sign and replaced it with the following confusing signs for a taxi driver or someone picking a guest up –



Fig 54: Source: TWE photograph.

Legally the sign is correct, it is private land and the Right of Way is not a Public Right of Way, it is a private Right of Way. But in practice this action by AGPS has created the opportunity to cause confusion to some guests lawfully using the Right of Way, when none existed when the previous sign was in place. It is no wonder that anyone who has not looked properly at the comprehensive directions sent out to all Tournerbury Estate guests, that some might knock on the door of one of the two houses and ask how they access the Tournerbury Woods Estate.

“there have been instances where the Phillips have found guests shielding from the rain within their hay barn, including guests urinating and smoking whilst sitting on hay bales. This causes a significant potential fire hazard;”

This point, possibly aimed to raise disgust in decision makers minds is disputed by the applicants who have never been informed of any such incidences nor presented with any evidence to support this. Further no evidence of these claims have been submitted with the ‘evidence’ produced by A G Phillips & Son Ltd as Section 6 objection applicants to the planning appeals.

The applicants are confused by an accusation that use of the Right of Way creates a “fire hazard”. The largest single potential fire hazard is the continual use of Tournerbury farmyard as a mixed waste burning facility for builders, landscape contractors, ground workers business’s etc.

This facility which has been run by A G Phillips & Son Ltd over many years does not seem to benefit from planning consent for change of use or Environmental Waste Permits from the Environment Agency for such commercial activity, and is situated within meters of the Hay barn.









Fig 55: Source: Various TWE photographs of mixed waste burning at Tournurbury Farm over time. Dates and times of all photographs can be supplied on request.

The above are a very small selection of photographs taken over time, as concern has grown as to the potential effects smoke pollution has on the Heronry in Tournerbury and school children and residents in Mengham village. Planning Enforcement are currently aware of this activity.

The waste burning site is immediately adjacent to the Heronry in Tournerbury Woods and the last two photographs above show this smoke pollution streaming into the Heronry. Both photographs were taken during Herons nesting and breeding season.

A FOI request on this activity overtime shows that AGP have been told by the Environment Agency not to burn anything other than green waste generated on site, a number of times over the years and that they have not been able to present any waste transfer notes in respect of this site.

Bullet point 4 –

“Due to the need to retain right of way to the Estate through the working farm, security is a significant and ongoing issue and there have been a number of incidents where equipment and machinery have been stolen or damaged.”

The applicants are saddened by the implication (without evidence) that thefts at Tournerbury Farm are the result of the Right of Way; as has been previously stated, the Right of Way and its use does not extinguish because of the refusal of planning permission for the wedding and event venue in the Tournerbury Woods Estate.

In fact, the fallback position of potentially up to 146,000 visitors attending ‘Bluebells in the Bury’ or ‘Spooky Woods Pumpkin and Halloween’ festivals akin to Sam’s Sunflowers or the Rogate Pumpkin Patch, would have the potential to make security at Tournerbury Farm considerably less appealing.

If A G Phillips & Son Ltd desire better security and the ability to lawfully close their own front gate, then it is reasonable to suggest that both parties should consider a fair and commercially realistic proposal over moving the Right of Way to the alternative access, once it has been lawfully constructed in accordance with all extant planning permission conditions.

9.1.3. These examples of some of the distress caused to Mr. & Mrs. Phillips through a lack of security or privacy are considered to cause unacceptable harm, again demonstrating that the application is contrary to Policy CS16 of the Havant Design Guide SPD.”

Invoke claim that Mr & Mrs Phillips suffer “distress..... through a lack of security or privacy”.

Mr & Mrs Phillips were party to the purchase of Tournerbury Farm in 1987. Snell family records and legal files of meetings with the late Arthur Phillips (Grahame Phillips father) show Mr & Mrs Phillips in attendance on the farm prior to purchase and being fully availed and cognisant of the Right of Way that was being retained by the Snells. These documents will be submitted to PINS in the appeals process when required. AGPS have had 34 years to get accustomed to the idea that their family business (then a property developer business, not a farming business) purchased a landholding with a totally unencumbered Right of Way through the middle of it and all of the implications that such a purchase brings.

Refusal of planning permission for the wedding and events venue in the Tournerbury Woods Estate does **not** bring privacy or security by extinguishing the Right of Way. As has been shown through this document, privacy and security could indeed become worse, as the refusal of planning permission doesn’t stop the requirement of the Tournerbury Woods Estate to be economically active; in order to continue to maintain, conserve, manage and improve the habitat and woodland features of the Estate.

It is a false argument to claim that “Policy CS16 of the Havant Design Guide SPD” applies, or that it should be utilised in the decision making process and weighing the planning balance.

“10. Summary and Conclusions

10.1.16. It is on the above grounds that this application should be **REFUSED** as it is contrary to Paragraph 108, 109 and 110 of the National Planning Policy Framework (NPPF), Policies DM11 and DM12 of the Local Plan (Core Strategy) as well as guidance at a national and local level. In summary;

- *The application will be unacceptable on highway safety grounds;*
- *Safe and suitable access is not afforded to the site for all users;*
- *The peak hour traffic flows on the site access road exceeds 100 vehicles which is the recommended maximum flow for a shared surface road in MfS and therefore the shared surface proposals would not be acceptable on highway safety terms;*
- *Large sections of the site access road are insufficient in width to accommodate two-way movement of vehicles. As such any further increases in traffic will result in further driver delay and congestion which will impact the highway safety and carriageway condition;*
- *The proposal would result in additional conflicts between vehicles and vulnerable road users on the access road which is in a poor state of repair, has no separate pedestrian infrastructure and is not lit which, due to the existing constraints on the access track, could result in an unacceptable impact on highway safety; and*
- *Additional traffic on the access road would further reduce the suitability of the link for use by pedestrians and cyclists which would discourage travel by sustainable modes of transport, contrary to policy objectives.*

RESPONSE:

Bullet point 1 –

“The application will be unacceptable on highway safety grounds;”

The Evoke report does not mention the Statutory Consultees on traffic movement who have found the application to be acceptable.

The Right of Way has existed and been used extensively over decades without incidence, by all manner of users.

The Right of Way compares very favourably as an access route when compared against similar access routes to considerably larger hospitality venues in the Borough of Havant such as HISC and MRHV which have benefitted from grant of full planning permission for expansion / wholesale redevelopment right up to October 2021 without concern regarding their access routes.

Bullet point 2 –

“Safe and suitable access is not afforded to the site for all users;

The three response points (above) to Bullet point 1 apply here also. But it should also be noted that the applicants hold very considerable ‘Ancillary Rights’ to make the Right of Way “safe and suitable” for users and have the right (as the dominant owner) to enter the servient land (Tournurbury Farm) to undertake such work as is necessary to make the Way. This may include resurfacing the Right of Way with a smooth tarmac finish, line marking etc.

It is settled law that there are a number of ancillary rights to the Right of Way, which would enable the applicants to lawfully to make up (as they have done previously) and significantly to improve the surface of the Right of Way or, indeed, to do other works to accommodate vehicular user safety and convenience.

As 'Gale on the Law of Easements (20th edition)' summarises at paras.9-112 to 9-113:

"9-112 The dominant owner is entitled to enter the servient land to effect repairs or to alter the surface of the servient land to accommodate the right granted. So a dominant owner may be entitled to enter the servient land to install lighting if that is reasonably necessary to enable the way to be used safely and conveniently.

9-113 The following summary of the law has been described as "settled for centuries" and uncontroversial. Subject to contrary agreement, (1) the grantee may enter the grantor's land for the purpose of making the grant of the right of way effective viz. to construct a way which is suitable for the right granted to him;"

Bullet point 3 –

"The peak hour traffic flows on the site access road exceeds 100 vehicles which is the recommended maximum flow for a shared surface road in MfS and therefore the shared surface proposals would not be acceptable on highway safety terms;"

The use by Evoke of the Manual for Streets (MfS) and application of it to the private Right of Way through Tournerbury Farm is irrelevant to the Right of Way as it is not a "street".

The MfS has not been used and applied to the decision making process and grant of planning permission for either the alternative access track to the Tournerbury Woods Estate or for other applications that have been granted permission over similar private ways such as Mill Rythe Holiday Village (both of the most recent applications for these two examples granted permission in October 2021 – Tournerbury alternative access APP/21/00536 & MRHV APP/20/001127).

Bullet point 4 –

"Large sections of the site access road are insufficient in width to accommodate two-way movement of vehicles. As such any further increases in traffic will result in further driver delay and congestion which will impact the highway safety and carriageway condition;"

This is incorrect as has been adequately demonstrated throughout this document. The Right of Way as retained is drawn and conveyed at least 7 meters in width along its whole length and the applicants hold Ancillary Rights to 'make the Way' safe and suitable for users. Notwithstanding this, the right of Way has served the purpose of allowing many hundreds of thousands of vehicle and pedestrian and bicycle movements to and from the Tournerbury Woods Estate for the purposes of holidays, camping, corporate events, family events, wakes, weddings, shooting parties, woods and habitat management and agricultural activity etc since Woods Cottage was first refurbished and commercially let in 1998.

As described in response to Bullet point 3 – if the applicants want to improve the road surface of the Right of Way by tarmacking it or concreting it and line marking it for safe and suitable use, they are legally and lawfully fully entitled to do so.

Bullet point 5 –

“The proposal would result in additional conflicts between vehicles and vulnerable road users on the access road which is in a poor state of repair, has no separate pedestrian infrastructure and is not lit which, due to the existing constraints on the access track, could result in an unacceptable impact on highway safety; and”

The ability of the applicants to make the Way safe and suitable is lawfully available to them. The alternative access has been deemed to not have an “*unacceptable impact on highway safety*” and has been granted planning permission by Havant Borough Council in 2017 and again with variations in October 2021, and yet there is no mention, nor conditioning applied to lighting it or providing “*separate pedestrian infrastructure*”.

Bullet point 6 –

“Additional traffic on the access road would further reduce the suitability of the link for use by pedestrians and cyclists which would discourage travel by sustainable modes of transport, contrary to policy objectives.”

In the real world, it is extraordinarily strange to imagine that wedding guests in their finest clothes, who have travelled from all over the UK or indeed from all over the world to attend a friend or family member’s wedding, will either walk or bicycle to such an event. A very small number of local guests might, but this is a very small percentage minority.

CONCLUSION:

The Evoke ‘Transport Note’ seeks to validate the opposition by A G Phillips & Son Ltd to Havant Borough Council granting planning permission to the Tournbury Woods Estate for its longstanding wedding and event venue operation.

If someone had a Right of Way through their landholding, which they were unhappy with, but to which they could not lawfully extinguish – a good solution might be to discuss with the other party the use of a suitable alternative on realistic, commercially sensible and fair terms.

Sadly however, in this current situation the applicants feel that the opposition activities by A G Phillips & Son Ltd over a very long period of time are designed and acted out to push the applicants towards an existential crisis position of trying to save their business in Tournbury Woods and their livelihood in order to force the applicants to acquiesce to AGPS’ s demands and Terms. This is the reality that is felt.

It was the applicants who applied for, paid for and gained planning permission for the alternative access in both 2012 and 2017, showing clear indication of their wish to amicably resolve this matter. But A G Phillips & Son Ltd have consistently and assertively used the existing lawful Right of Way through Tournbury Farm (and the planning process) to try to move the applicants to relinquishing their Restrictive Covenants on Tournbury Farm and submitting to accepting a diminished Right of Way with additional new substantial liabilities.

The Savills LLP letter to the Snells, shown at Fig 7 in this document, is not a ‘new approach’ by A G Phillips & Son Ltd. The below email from Ian Judd (a previous land agent to Mr & Mrs Phillips & A G Phillips & Son Ltd), in September 2006, very simply and clearly lays out **the heart of this matter** -

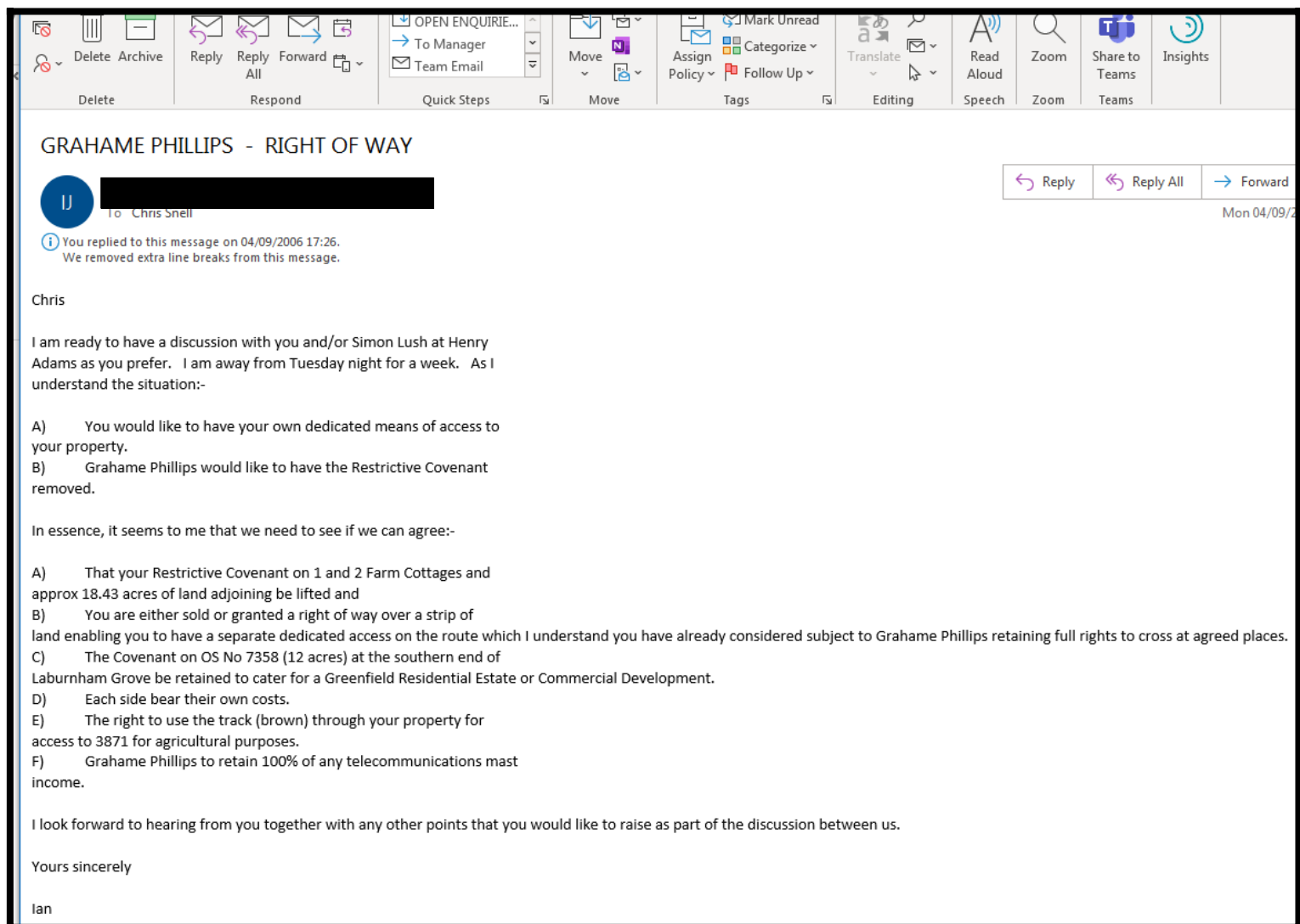


Fig 56: Source: Tournerbury Woods Estate Office email from Ian Judd Land Agent on behalf of Mr & Mrs Phillips / A G Phillips & Son Ltd, 4th September 2006.