

A.G. PHILLIPS & SON RULE 6 PARTY FINAL OBSERVATIONS

TOWN AND COUNTRY PLANNING ACT 1990 (AS AMENDED) SECTIONS 78, 174 AND 195 APPEALS

APPEAL SITE: TOURNEBURY WOODS ESTATE, TOURNERBURY LANE, HAYLING ISLAND, PO11 9DL

PINS REFERENCES

APP/X1735/W/21/32/78661 Appeal against refusal of retrospective planning permission

APP/X1735/C/20/3248610 Appeal Against Planning Enforcement Notice

APP/X1735/X/21/3278706 Appeal Against Refusal of Certificate of Lawfulness

INQUIRY DATE: COMMENCING 1 MARCH 2022

1. These representations are made on behalf of the Rule 6 Party AG Phillips & Son (AGP), in respect of all three appeals. A full response to the Appellant's grounds of appeal on all three matters has already been provided, these representations are confined to final observations.
2. The main concern raised by AGP pertains to the use of an access track, which traverses the entire working farm, owned and operated by AGP. AGP's objective is to

participate in the Inquiry to present the case that the use of Tournerbury Woods for a wedding event and commercial venue ought not to be given planning permission, that the use is not so established that it is immune from planning enforcement action and a certificate of lawfulness ought not to be granted.

3. These submissions are structured as follows:

- a. Observations on the section 78 appeal against the refusal of retrospective planning permission
- b. Observations on the appeal against planning enforcement notice
- c. Concluding remarks

APP/X1735/W/21/32/78661 Section 78 Appeal against refusal of retrospective planning permission

4. AGP intend to assist the inquiry with establishing matters of fact as set out in the 'Outline Statement of Case' and will make submissions in line with established law, development plans and the NPPF.
5. The evidence will focus on two principal areas: harm caused to the occupiers of Tournerbury Farm arising from the use of the right of way and the suitability of the right of way to access the appeal site.

Impact on Tournerbury Farm Occupiers

6. The evidence from AGP will comprise witness testimony from the owners, photographs, and video evidence. The value and weight to be given to their first-hand lived accounts should not be downplayed, they have suffered tremendously. The farm is both their livelihood and their home of many years.

7. AGP do not intend to respond to the unsubstantiated allegations of ‘improper purpose’ ‘unlawful actions’ ‘ulterior motive’ and so forth, as made by the Appellants. These are very serious allegations to make and AGP will submit that the pursuance of these unsupported points amounts to unreasonable behaviour.
8. AGP endeavoured to secure planning permission for an alternative track which was originally supported by the Appellants (planning permission for the alternative track has now been obtained). The personal benefit of the alternative track to the occupiers of Tournebury Farm are self-evident and will be apparent during the site inspection.
9. In so far as there are allegations of ‘financial benefit’ intended to cast doubt of the veracity of AGP’s evidence, it is of note that AGP properly appointed their lawyers to deal with the commercial aspects of the conveyancing process. These are not matters relevant to planning merits and do not undermine the very serious concerns raised. Similarly, the width and extent of use are all unresolved private law matters, except to the extent that they may be relevant to the enforceability of planning conditions.
10. In so far as it is suggested that AGP were aware of the ‘potential for noise disturbance and impact on private amenity’ prior to taking up residence, presumably this relates to the parties’ contemplation in 1987, when the Appeal Site was part of a working farm, comprising agricultural use. AGP strongly refutes this assertion and its relevance to the issues before the Inspector.

Suitability

11. There are real health and safety concerns which will be obvious during the site inspection. The simple fact is that the proposed use is incongruous with a large working farmyard. It is a matter of common sense that there is a high risk of conflict between visitor movements and the safe and satisfactory functioning of farmyard activities.

12. An unmarked access route traversing the entire farmyard is not at all suitable for the proposed use. AGP's concerns in this regard are supported by a detailed transport report to consider the proposed use, the assessment has been submitted as part of AGP's representations on appeal and the expert will be available to give evidence during the hearing if so required.

13. The key points arising in respect of the detailed transport report are:

13.1. There has been no clear assessment by the Appellant of the impact of the proposed use.

13.2. There are bodies of water either side of the access track, with no refuge for pedestrians, poor visibility and no signage.

13.3. Safe and suitable access is not afforded to the site for all users.

13.4. 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.

13.5. Large sections of the site access road are insufficient in width to accommodate two-way movement of vehicles.

13.6. As such any further increases in traffic will result in further driver delay and congestion which will impact the highway safety and carriageway condition.

13.7. The proposal would result in additional conflicts between vehicles and vulnerable road users on the access road, 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.

13.8. 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.

14. In so far as planning conditions are concerned, suggestions that the current access can be improved by the Appellant are not clarified and are likely to involve land outside of the Appellant's ownership. They are therefore likely to fail the test of enforceability and place an undue burden of supervision of compliance on both the LPA and AGP.
15. AGP support the stance taken by the Chichester Harbour Conservators regarding Habitat regulations. In order to avoid a duplication of resources, the environmental and ecological impact on the area is best dealt with by the Conservators.
16. On 22 October 2021, the alternative track was granted planning permission under "APP/21/00536 Part alternative to permission APP/17/00207". The Highway Authority raised no objection commenting that the a 'coach can enter and egress the site in a forward gear within the proposed access width'.
17. The LPA officer report records:

The context of the application site in relation toad joining uses has not significantly altered since Permission APP/17/00207 was granted. To the west of the site, the track is separated from a cattery use by a mature hedgerow; whilst to the north lies the Tournerbury Golf Centre. Neither of these uses are considered to be prejudiced by the operation of the track. To the east lies the land associated with Tournerbury Farm, and the provision of the track as an alternative route to access the Tournerbury Woods Estate is considered to have clear amenity benefits for the working of the Farm and the residential properties it contains, as well as the Estate; these being benefits highlighted in the submissions made on behalf of the Estate when submitting Application APP/17/00207.

18. The salient aspects of that application and the grant of planning permission will be referenced during the appeal.

APP/X1735/C/20/3248610 Section 174 Appeal Against Planning Enforcement Notice and APP/X1735/X/21/3278706 Section 195 Appeal Against Refusal of Certificate of Lawfulness

19. The farm once formed part of the wider Tournembury Woods Estate but was sold off in around 1987, albeit the Appellant retained a right of way giving access to and egress from the main roads to the appeal site. In the intervening years, the right of way became the *only* access to the appeal site.

20. As a result, AGP are uniquely placed to give a first-hand account of activity passing through the farm. The main points are:

34.1 The activities relied on by the Appellant did not take place over 28 days until around 2016.

34.2 The marquee was not a permanent fixture on the landscape until around 2016.

34.3 The ancillary log cabin and decking was not substantially completed until 2017.

21. AGP maintains that a continuous activity amounting to a single mixed use has not taken place over a rolling ten-year period. AGP will make submissions about the correct approach to be taken in line with established case law.

22. AGP will liaise with the LPA regarding the presentation of its case on the appeal against enforcement notice and refusal to issue a certificate of lawfulness in order to avoid duplication.

23. In summary, AGP will submit that the LPA's decision was not wrong; it was well-founded. It follows that the development is not immune from enforcement action.

Concluding Remarks

24. AGP will give factual evidence in proofs of evidence, these witnesses of fact will be available to give evidence.

25. AGP's expert witness will be available to give evidence on the suitability of the current access track if so required.
26. AGP have appointed counsel to act in the appeal.
27. AGP will submit proofs of evidence to expand on its statement of case.
28. AGP will respectfully invite the Inspector to dismiss the appeals.

**REPRESENTATIONS
ON BEHALF OF A.G. PHILLIPS & SON LIMITED**

NOVEMBER 2021