

HAVANT BOROUGH COUNCIL

TOWN AND COUNTRY PLANNING ACT 1990

**TOWN AND COUNTRY PLANNING (APPEALS) (INQUIRIES PROCEDURE) (ENGLAND)
RULES 2000 SI 2000 No 1624**

Appeal by Mr and Mrs Chris and Alice Snell against the refusal by Havant Borough Council of a Certificate of Lawfulness for an existing use or development relating to (1) change of use of Woods Cottage and its environs into leisure/tourism use for the purposes of holiday lettings and camping, and as a commercial event venue for the purposes of both holidays and the holding of weddings and events and the utilisation of any ancillary buildings and structures that may be required as necessary for such uses; (2) erection of log cabin and adjoining deck; (3) erection of Victorian style gazebo structure; and (4) erection of marquee structure. Certificate of Lawful Use and Development for the use of land, building and structures, (including log-cabin and adjoining deck, gazebo and marquee) for weddings and as a commercial events venue, use of Woods Cottage for holiday lettings and uses ancillary to weddings and events, use of existing lawful access, woodland and agriculture on land at Tournerbury Woods Estate, Hayling Island, Hampshire, PO11 9DL

Planning Inspectorate Reference: APP/X1735/X/21/3278706

Havant Borough Council Reference: APP/19/01262

STATEMENT OF CASE ON BEHALF OF HAVANT BOROUGH COUNCIL

1 Introduction

- 1.1** The application that is the subject of this appeal was registered on 9th January 2020. It sought a Certificate of Lawful Use or Development for:

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

on land at Tournerbury Woods, Tournerbury Lane, Hayling Island.

- 1.2** The Certificate was refused under delegated powers by notice dated 2nd June 2021 for the following reason:

On the basis of the evidence submitted with the application and other material available to the Council, including the planning history of the site, the Council has concluded the following in respect of the application:

Element 1: Change of use of Woods Cottage and its environs into leisure/tourism use for the purposes of holiday lettings and camping, and as a commercial event venue for the purposes of both holidays and the holding of weddings and events and the utilisation of any ancillary buildings and structures that may be required as necessary for such uses.

Woods Cottage and its limited curtilage was once a separate planning unit, and the rest of the area affected by the CLEUD was necessarily part of another planning unit. Within the last 10 years that has changed, and Woods Cottage has become associated with a larger area, thereby creating a different planning unit. Furthermore, over the 10 year period the subject of the application there has been a material change in the mix and balance of uses undertaken at the site, with the result that it cannot be said that the activities being undertaken in 2019 are equivalent to those being undertaken in 2009.

As a result, the mixed use of the larger planning unit to which Woods Cottage now belongs does not benefit from immunity from enforcement action.

Elements 2-4: erection of log cabin and adjoining deck; erection of Victorian style gazebo structure; and erection of marquee structure.

Based on the evidence submitted, officers consider that on the balance of probability, all three structures are part and parcel of the material change of use which has occurred on the land. As none of the structures has been in situ for the period of 10 years prior to the making of the application, they are not immune from enforcement action.

2 Site and Surroundings

- 2.1 The application site forms part of the Tournerbury Woods Estate, a 300 acre (121.4ha) estate lying off Tournerbury Lane on the eastern seaboard of Hayling Island. Approximately 250 acres (101ha) of the estate is understood to comprise intertidal habitat, with the balance of 50 acres (20ha) on land. The application site forms a part of that 50 acres (20ha).
- 2.2 Access to the site is gained via a right of way through adjacent land, including the farmyard of Tournerbury Farm, which eventually leads to the eastern terminus of the adopted highway of Tournerbury Lane.

3 Planning History

3.1 Previous planning applications of relevance are as follows:

01/62340/001 - Partial raising of lawn to above tidal level and removal of two trees to north of cottage covered by TPO 448. Permitted 18/12/2001.

APP/12/00584 - Application to determine whether prior approval is required for the siting and appearance of proposed fish tank. Prior approval required and refused 04/07/2012.

APP/17/00207 - Construct vehicular track from the public highway to Tournerbury Woods Estates for the purpose of avoiding agricultural operations in Tournerbury Farm. Permitted 04/05/17 and part implemented.

APP/18/00943 - A material change of use of Land as a wedding and events venue and ancillary operational development to the material change of use.

Refused 25th June 2021 – Appeal lodged – PINS reference APP/X1735/W/21/3278661

APP/20/00626 - Variation of conditions 2 and 7 of Planning Permission APP/17/00207 (Construct vehicular track from the public highway to Tournerbury Woods Estates for the purpose of avoiding agricultural operations in Tournerbury Farm) to substitute a new plan "BJC Location and Site Plan (Plan no. H125/2020.07.03L/SP)" in lieu of approved plan "Site Plan and Section DN: A102"; and revised landscaping and tree planting proposals from those previously approved.

Current application under consideration.

APP/21/00536 - Part alternative to permission APP/17/00207. Construction of vehicular track from the public highway to Tournerbury Woods Estate for the purpose of avoiding agricultural operations in Tournerbury Farm.

Current application under consideration.

3.2 An Enforcement Notice was issued in respect of the site on 17th January 2020 regarding the following breach of planning control:

"Without planning permission and within the last 10 years, a material change of use of the land from agriculture and a dwellinghouse used for holiday letting's, to the use of the land for agriculture, a dwellinghouse used for holiday letting's, camping, holding of weddings and other commercial events."

The Notice took effect on 13 March 2020, and requires the following:

1 Cease the use of the Land for weddings and other commercial events.

2 Cease the use of the Land for camping associated with weddings and other commercial events.

3 Cease the use of the dwellinghouse for accommodation associated with weddings and other commercial events.

4 Remove from the Land, all buildings (excluding the dwellinghouse), structures, decking and marquees and any other paraphernalia associated with weddings and commercial events.

The Notice is currently the subject of an appeal to the Planning Inspectorate – PINS reference APP/X1735/C/20/3248610.

4 Planning Policy

- 4.1 Reference will be made to the relevant legislation within the Town and Country Planning Act (as amended) 1990.
- 4.2 Reference will be made to the relevant guidance within National Planning Guidance.

- 5 Case for the Local Authority
- 5.1 The Local Authority set out its conclusions on the application in the Delegated Officers Report.
- 5.2 The application was assessed having regard to the relevant provisions of the Town and Country Planning Act 1990 (The Act).
- 5.3 It has been established that in an appeal of this nature that the appellant bears the burden of proving that, on the balance of probability, the use was lawful having regard to the relevant provisions within the Act.
- 5.4 The Council's evidence will focus on the following matters:
- a. The extent of the relevant planning unit;
 - b. The lawful use of the relevant planning unit 10 years before the date of the application for a certificate of lawfulness;
 - c. The use of the relevant planning at the date of the application for the certificate of lawfulness.
 - d. In determining (b) and (c) the Council will carefully consider which uses ought to be regarded as primary or ancillary uses; whether the use of the relevant planning unit ought to be regarded as a dual or composite use; whether the scale, mix and intensity of uses has changed over time; and the relevance (if any) of such changes.
- 5.5 In respect of those matters the Local Planning Authority, for the reasons set out in the Officers Report concludes that:
1. On the balance of probability, officers are not persuaded that a distinct planning unit constituting Area A as applied for could be said to have existed 10 years prior to the making of the application. The available evidence would suggest that Woods Cottage had a small curtilage round it within Area A, as shown on the submitted plans which were recognised by the applicant and the Council in relation to Application 01/62340/001 (referenced above), and which continue to govern management activities at the site between the applicant and Natural England. Whilst the occupiers had use of the rest of Area A and the estate, the rest of Area A is considered to have fallen as part of the wider agricultural/forestry use associated with the remainder of the estate, as indeed is suggested by APP/12/00584 referenced above.
 2. Having regard to the evidence submitted the report concluded that over the 10 year period the subject of the application there has been a material change in the mix and balance of uses undertaken at the site, with the result that it cannot be said that the activities being undertaken in 2019 are equivalent to those being undertaken in 2009. The main use of Woods Cottage existing in 2009 appears to have constituted the use of the property for Class C3 holiday lettings by private individuals, which is supported by evidence in the form of insurance documents as well as bank statements and invoices. A further use of the property for corporate bookings and events is indicated by the booking calendar and submissions made on behalf of the applicant, suggesting that there may have been a dual use in operation at the time; however it was noted that this is less easily demonstrated by other corroborating evidence.
 3. In relation to operational development the appellant referenced:

- A log cabin and adjoining deck
- A Victorian-style gazebo structure
- A Marquee.

It was concluded that all elements were constructed over four years up to the date of the application. However, in the light of *Murfitt v Secretary of State for the Environment and East Cambridgeshire DC* (1980) 40 P. & C.R. 254, [1980] 5 WLUK 47 and *Somak Travel Ltd v Secretary of State for the Environment* (1988) 55 P. & C.R. 250, [1987] 5 WLUK 176 and *Kestral Hydro v Secretary of State for Communities and Local Government* [2016] EWCA Civ 784 the Council is satisfied that the relevant period for determining whether that development is immune from enforcement action for the purpose of determining whether the appellant is entitled to the grant of a certificate of lawfulness is 10 years rather than 4

- 5.6 On the balance of probability the Local Planning Authority has concluded the following in respect of the appeal:

Ten years before the application for the issue of a CLEUD Woods Cottage and its curtilage was physically and functionally separate from the surrounding land and constituted a discrete planning unit having a C3 residential use (albeit, it would seem, primarily devoted to holiday lettings). That planning unit was separate from the adjoining land, which had an agricultural use

Within the last 10 years it appears to the local planning authority that the former residential and agricultural planning units have merged and that the separate residential and agricultural uses and the structures which are functionally related to them now comprise a single planning unit having a composite use for leisure and tourism (including holiday lettings) and as a wedding venue. That change of use is of an entirely different character to the previous uses of the land and amounts to a material change of use.

- 5.7 It follows that the use of the land at the date of the application for a certificate was not lawful. In the circumstances, the Local Planning Authority will invite the Inspector to dismiss the appeal.