

CHICHESTER HARBOUR CONSERVANCY (CHC)

Town and Country Planning Act 1990 (As Amended) - Sections 195 Appeal against –

The refusal (2.6.2021) to grant a lawful development certificate by Havant Borough Council in respect of 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 as described in the written particulars, plans and other documents submitted with your application received on 24 December 2019, and subsequent submissions during the course of consideration of the application.

PINS REFERENCE:

APP/X1735/X/21/3278706 (Appellants - Mr C Snell & Mrs A Snell)

**Local Planning Authority (LPA)
REFERENCE:**

APP/19/01262

APPEAL SITE ADDRESS: **Tournerbury Woods Tournerbury Lane
Hayling Island PO11 9DL**

INQUIRY DATE: **Commencing 24 February 2026**

Pre-Inquiry Statement of case of Chichester Harbour Conservancy (CHC - Rule 6 Statement)

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1.0 The Enforcement Notice served at the site

- 1.1 The Enforcement Notice, dated 17 January 2020, and related Council Officer report will be referred to in Chichester Harbour Conservancy's submissions. (**Appendix 1**).
- 1.2 Havant Borough Council reached its decision to serve the Enforcement Notice being satisfied that the material change of use of the land and its related ancillary structures had occurred within 10 years of the Notice being served.
- 1.3 Chichester Harbour Conservancy will set out its position referring to *Staffordshire CC v. Challinor [2008] 1 P & CR 10*, that should this Appeal succeed, the Appellants' lawful rights will immediately be lost by reason of the Enforcement Notice referred to in **Appendix 1**. As such, continuing with the Appeal might well be considered to be unreasonable.

2.0 THE APPEAL SITE AND ITS SURROUNDINGS

- 2.1 The Conservancy will state that the Appeal site relates to an open clearing made within Tournerbury Woods, adjacent to Woods Cottage. Historic 'Google Earth' and others' LIDAR data from Environment Agency aerial photography will be referred to suggest when the clearing was made (**Appendix 2**). This is also corroborated by evidence received by the Council in giving publicity to application APP/19/01262 (Page 11 of the Council Officer report (**Appendix 2a**), 4th bullet point down).
- 2.2 The part of the woods which is considered to be ancient woodland and its immediate proximity to the wedding and commercial events 'arena' and the location of a Scheduled Ancient Monument through which vehicular traffic passes to reach the 'arena' will be described.

3.0 PLANNING HISTORY

- 3.1 A list of other recent relevant applications submitted at the site will be referred to by the Conservancy (**Appendix 3**).
- 3.2 Reference may also be made to the evidence of third parties in this regard.
- 3.3 Reference is made in the Council Officer report on APP/18/00943, at paragraph 3.2 and 7.26, to a temporary jetty structure forming part of the proposals. This appears to have crept into the altered description of development under the words '*ancillary operational development*'. Within the description of development for APP/19/01262, this may also be referred to within the words "...and the utilisation of any ancillary buildings and structures that may be required as necessary for such uses ...". The Conservancy will wish to have this matter clarified, as the pontoon – when deployed and with the tide out, rests on intertidal mud which is part of the Chichester and Langstone Harbours SPA. The Appellants' June 2020 ecological report at paragraph 5.5.1 does not cover such impacts and no Works Licence/Marine Licence has been sought from Chichester

Harbour Conservancy/The Marine Management Organisation respectively. It is acknowledged that such impact is considered in the 'shadow' HRA for application APP/23/00076, which remains undetermined at the time of preparing this Rule 6 statement. The Conservancy has a strict policy to oppose new jetties of this nature. If the Inspector is minded to allow the Appeal, CHC would appreciate the Inspector clarifying whether the Certificate of Lawfulness sought is binding and also relates to the periodic deployment of this jetty structure.

4.0 REPRESENTATIONS RECEIVED BY THE COUNCIL DURING THE DETERMINATION OF APP/19/01262

- 4.1 The relevance of third party evidence objections received from giving publicity to APP/19/00889 and APP/19/01262, as may be expanded upon by giving publicity to these Appeals will be set out by the Conservancy (**Appendix 4**). In terms of the S195 Appeal, the relevance of various parts of NPPG ID 17c (Lawful Development Certificates), will be set out in support of the Borough Council's stated reason for declining APP/19/01262

5.0 THE APPEAL MADE

- 5.1 The burden of proof is on the Appellants to demonstrate that the use and related operational development set out in the description given to APP/19/01262 has continuously operated/existed for a 10 year period, without interruption by any other alternative use, from the time the application was made. The application form to APP/19/01262 is dated 19 December 2019. The Appellants' evidence for the period 18 December 2009 to 19 December 2019 will therefore only be scrutinised against others' contrary evidence for the same 10 year period. On a procedural point it is noted in the Appellants' 2021 statement of case that the application, which became referenced APP/19/01262, was submitted on 24 December 2019. The Council made the application valid on 9 January 2020. It would be appreciated if the Inspector could clarify the 10 year period being considered at the start of the Inquiry and whether only a 4 year period relates to structures associated with APP/19/01262. Chichester Harbour Conservancy will refer to *Murfitt v. SSE* (1980) 40P. & C.R. 254 and *Kestrel Hydro v. SSCLG* [2016] EWCA Civ 784, in arguing a 10 year period is applicable to all matters under application APP/19/01262.

6.0 RESPONSE TO THE APPELLANTS' CASE AND CHC ANALYSIS OF THE SUBMITTED EVIDENCE

6.1 The S.195 Appeal

- 6.1.1 The Conservancy will make observations on the veracity of the evidence presented by the Appellants, in terms of the balance of probabilities test governing such matters. Any evidence which does not relate to the period 18 December 2009 to 19 December 2019 - (or subsequently clarified by the Inspector during the Inquiry) - will be stated to be irrelevant to the Inspector's consideration of the Appeal. CHC's comments on application APP/19/01262 (**Appendix 5**) will be referred to. The Conservancy supports the very thorough and diligent Officer report assessment undertaken by the Council's Planning Officer in close liaison with Officers in the Council's Legal Service Department, with clear reference to established caselaw to support its position.
- 6.1.2 The Conservancy will provide a full response to the appellant's grounds of appeal. These grounds are indicated in the appellant's Planning Appeal Form, as expanded upon within the appellant's (initial) statement of case (Rule 6) – including that previously

prepared for the now withdrawn Appeal references APP/X1735/C/20/3248610, 3248611 and 3248612 dated March 2020 (**Appendix 6**) - and any subsequent proof(s) of evidence.

6.2 In terms of the S.195 Appeal the following observations are made using the previous Appellants' March 2020 statement (**Appendix 6**) on the now withdrawn Appeals APP/X1735/C/20/3248610, 3248611 and 3248612 paragraph numbering (in brackets) –

- 6.2.1 (2.4 & 2.7) The use of the phrase 'ad hoc' is noted. Whilst the character of usage is asserted not to have changed, The Conservancy considers that elements of the use have changed over time (for example camping at the site) and that the intensity of attendees and frequency of events has increased over time. It is important to establish the moment when what was undertaken constituted development requiring planning permission. The Council considers that was within a period less than 10 years and that it became proportionate and expedient and in the public interest to serve a planning enforcement notice for the reasoning it has given. The Conservancy is supportive of that approach.
- 6.2.2 (2.5) The Conservancy has made its own Freedom of Information request to the 'local authority for civil marriages' to understand when registration first took place and may introduce the responses received into its evidence. The words '*when required*' imply that the marquee - (noting that from the Appellants' own photographic evidence that a smaller marquee was previously used to that now in use) – was taken down and packed away after each wedding. This has been verbally corroborated with the farmer at Tournerbury Farm, who has legal access to the Appeal land.
- 6.2.3 (2.7) The Appellants seem to distinguish between civil marriages (paragraph 2.5) and marriages in this paragraph first licenced 27.1.2016 by Hampshire County Council. This date does not demonstrate a 10 year period of such usage to the time the planning enforcement notice was served on 17 January 2020.
- 6.2.4 (2.29-2.30, & 3.31) It is the Conservancy's position - (having taken advice from Counsel) - that the structures are integral to the use of the land and that therefore the appropriate time period to be proven is 10 years, implied by the withdrawal of application APP/19/00889.
- 6.2.5 (3.7 & 3.30) It is wrong to say that no breach of planning control has occurred, when paragraphs 3.5 and 3.30 acknowledge that the use of the land is unauthorised under planning legislation. It will be for the Inspector to determine whether, on the balance of probabilities, if such use and associated structures have become lawful.
- 6.3 Section 195 Appeal matters, using Appellants' July 2021 Statement of Case paragraph and Appendix numbering -
 - 6.3.1 (2) Chronologically, the CLUED application APP/19/01262 was submitted before the Council served its planning enforcement notice, not after it.
 - 6.3.2 (7) The Conservancy considered and commented on the evidence submitted under applications APP/19/00889 and then APP/19/01262 on the basis of fact and whether each piece of evidence corroborated the other as well as evidence supplied by others which appeared to contradict the Appellants' versions of chronology.

6.3.3 (10 iv to xi) These matters relate to the merits of the now withdrawn S.174 (a) and S.78 Appeals, not the S.195 Appeal.

6.3.4 (Appendices dated 6 January 2021, 24 March 2021 and 27 April 2021) The Conservancy may offer comment on these three letters, where considered to be relevant and relating to the S.195 Appeal evidence.

7.0 CHC EVIDENCE

7.1 CHC will refer to its **Appendix 2**. The Conservancy will refer to its own comments made on applications APP/19/00889 and APP/19/01262 as part of its case (reproduced as **Appendix 5**).

8.0 Conclusions

8.1 The Conservancy will submit a proof of evidence to expand upon this Statement of case prior to the scheduled Inquiry.

8.2 The Conservancy will conclude that insufficient evidence has been provided to discharge the burden of proof on the applicant to demonstrate that the requisite 10 year period of usage with associated structures.

8.3 For the reasoning given by the Council, as expanded upon in this Statement of Case and as to be amplified in the Proof of Evidence and at the Public Inquiry, the Inspector will be respectfully requested to dismiss the Appeal.

Copies of all documents identified in this statement may be inspected during normal office hours (Monday to Friday 9.00am to 5.00pm at the Conservancy Harbour Office at The Street, West Itchenor, PO20 7AW. Please give 48 hours notice so that the documents may be assembled.

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LIST OF DOCUMENTS

Appendix 1 – Enforcement Notice dated 17 January 2020 and related Council Officer report.

- Appendix 2 –** Historic ‘Google Earth’ satellite and others’ LIDAR data from Environment Agency photography showing the changes in tree cover at the events ‘arena’ subject of this Appeal
- Appendix 2a –** Havant Borough Council Officer report related to application APP/19/01262
- Appendix 3 –** Relevant planning applications made at or related to the Appeal site
- Appendix 4 –** Representations made by third parties and applicant’s submissions during the determination of applications APP/17/00207, APP/19/00889 and APP/19/01262
- Appendix 5 –** CHC comments on applications APP/19/00889 & APP/19/01262
- Appendix 6 -** Appellants’ statement of case related to the now withdrawn Appeals APP/X1735/C/20/3248610, 3248611 and 3248612