

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

Site Address: Tournerbury Woods, Tournerbury Lane, Hayling Island
Proposal: Application for 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.
Application No: APP/19/01262 Expiry Date: 05/03/2020
Applicant: Mr & Mrs C Snell
Agent: Mr J Pavey Case Officer: Steve Weaver
 Irwin Mitchell
Ward: Hayling East

Recommendation: **REFUSE A CERTIFICATE OF LAWFULNESS**

1 Site Description

- 1.1 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) (it is identified in the application documentation as 'Area A').
- 1.2 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.

2 Planning History

- 2.1 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.

NB The site of the proposed fish tank lay to the east of Woods Cottage, within the current 'Area A' application site area. The application was submitted as a prior notification of agricultural or forestry development under the GPDO 1995.

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.
Current application under consideration.

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.

2.2 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.

3 Proposal

3.1 Application for Certificate of Lawfulness for an existing use or development (a 'CLEUD') 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.

3.2 In support of the application, evidence has been submitted by the applicant which has been examined by officers and which may be summarised as follows:

- Witness statement from the applicant in respect of the four elements of the application;
- Historical maps and Land Registry/Title Plans
- Photographs of Woods Cottage refurbishment and construction of log cabin and deck, and gazebo
- Photographs of event activities at the site
- Copies of marketing material and related correspondence
- Extracts from public representations made in respect of APP/18/00943
- Commercial holiday cottage insurance documents
- Purchase receipts and invoices
- Company information
- Booking calendar
- Invoices

- Bank statements
- Correspondence with Natural England

The application is also supported by legal submissions from the applicant's agent, to which due regard has been had.

4 Policy Considerations

Town and Country Planning Act 1990 as amended

5 Statutory and Non Statutory Consultations

Chichester Harbour Conservancy - Initial response

Recommendation – Objection. An Enforcement Notice relating to the unauthorised development has been served by the council, so under law it is not possible to grant the Certificate of Lawfulness.

The Conservancy notes that this application was made valid on 9.1.2020 and that the council served an Enforcement Notice relating to similar matters on 17.1.2020. So, whilst the council is obliged to determine this application, under Section 191 (2)(b) of the Town and Country Planning Act 1990(as amended), it is the Conservancy's opening position that it may not determine it favourably.

If however the council is going to determine the application, the Conservancy makes the following observations on the submitted evidence.

(Case officer comment: for the purposes of this report a slightly abridged summary follows of representations made on the evidence - full version available on Council website)

General

It is noted that the site location edged red concurs to that of withdrawn application APP/19/00889.

The location of structures associated with the purported use of the land are shown on evidence Base No. 0878. The plan EB0878, does correspond to where I saw these structures on site and photographed them during my visit to review application 18/00943 on 26.11.2018.

The property deeds documentation evidence Base No. 0879 to 0885, whilst confirming ownership of the Tournurbury Woods Estate, performs no other useful purpose. The Ordnance survey extract only shows the footprint of Woods Cottage. The restrictive covenants (a) and (b), would appear to prohibit what has taken place at the site.

Differing activities appear to have occurred at the site at various times, but perhaps not all at the same time in a continuous fashion through the 10 year period that is to be proven in terms of use of the application site.

The booking diary does appear to run from January 2009 (Evidence Base No. 0142) to December 2019 (Evidence Base No. 0197). The first event listed is a shoot event, but it seems corporate, wedding and other events have also occurred. It is not clear what 'WC only' means in terms of any booking, but I have assumed this refs to Woods Cottage. The total number of events is given as a figure at the end of each year, numbers recorded as -

2009 - 55 events spread over 157 days
2010 - 40 events spread over 174 days
2011 - 50 events spread over 179 days
2012 - 49 events spread over 195 days
2013 - 51 events spread over 232 days
2014 - 51 events spread over 186 days
2015 - 53 events spread over 203 days
2016 - 77 events spread over 186 days
2017 - 73 events spread over 112 days
2018 - 92 events spread over 108 days
2019 - 64 events spread over 73 days

Under planning application APP/18/00943, the applicant has stated the following to the council in terms of number and events through recent years –

2018 - 58
2017 - 46
2016 - 39
2015 - 36
2014 - 35
2013 - 36
2012 - 31
2011 - 28
2010 - 30
2009 - 29
2008 - 28

- in the design and access statement, which seem to be significantly at variance with the figures above.

A transportation statement also set out 42 events had occurred between 30 March 2019 to 5 October 2019, with evidence for the same period from the diary confirming 35 events, during the same period, albeit no diary entries are given for July and August 2019.

Evidence falling outside the relevant 10 year period should be given no weight.

Photographs of marquee dating from 2013 and 2014 are noted, as is the press report from 2015.

Whilst the application site address is not specified, 'Woods Cottage' is repeatedly mentioned in the invoices. Not all relate to hire for the purposes of a wedding/wedding reception.

Earlier events seem to be mostly the hire of Woods Cottage and a fair number of corporate/small shooting events.

Evidence base No.'s listed below; photographs of events –

There is no mapped schedule that accompanies the photographs, indicating where the person was stood when they took the photograph and what direction the camera was pointed in.

Where evidence pre-dates the 10 year period the council must scrutinise, it has no relevance.

0004 (2006) and 0014-0016 – December 2008 and January 2010 (smaller) marquee to that which exists now and located in a different position on the site to that which exists now.

0018-0019 - 2010 build of log cabin. This is attested to in the statutory declaration and the Conservancy has no contrary evidence to offer.

0020-0023 – 2011 build of deck attached to log cabin. This does not show the full extent of the decking, nor its later roofing ('stretch tent') over.

0024-0025 – 2011 Winter shoot events.

Photographs taken inside a marquee could be a marquee erected anywhere.

A number of photographs do not seem to relate to the structures sought to be regularised (at the application site) at all, but broadly indicate how the land was being used when the photograph was taken

Evidence base No. 0094-0095 – Applicant's commentary on 3rd party objections to APP/18/00943. Residents referring to a marquee standing 'in some form or another' since the early 2000's is ambiguous, as to whether it is the same marquee throughout or indeed located in the same position, especially when evidence base No. 0032 refers to 'new marquee build'. That none of the residents offer a statutory declaration as to how they know what was on the site and how exactly it was being used make such evidence weak and unreliable on a 'balance of probabilities'. The last note from an Austrian national, whilst saying they attended a wedding a Tournerbury woods 10 years ago, only offers a snapshot in time.

Evidence base No. 0140 – Companies House entry. Whilst this verifies the Tournerbury Holdings Ltd business address (incorporated 15.9.2006) to be the same as the applicant's home address, it does not mention the application site address, nor does it detail what the business is.

Evidence base No. 0141 – Companies House entry. Whilst this verifies the Monkey Puzzle Ribs Ltd business address (incorporated 5.1.2005) to be the same as the applicant's home address, it does not mention the application site address, nor does it detail what the business is. It is noted that company was dissolved 3.12.2013, before the end of the 10 year period to be evidenced.

Specific

The statutory declaration dated 9.12.2019:

The Conservancy considers the council - if it had not served the enforcement notice - would have some difficulty untangling the variety of uses area/element 1 has been put to, not all occurring at the same time and having a wide-ranging number of 'attendees'. The Conservancy considers the relative scale of each event is important. If some events were only attracting a couple staying at Woods Cottage, rather than hundreds of people attending a wedding, it would be unreasonable to suggest all events were the same and grant a Certificate for any sort of event.

Point 7: it would appear Woods Cottage was constructed as a dwelling and that this was its most probable 'appointed day' use on 1 July 1948, although it is not clear if use of part of the estate as a commercial brickworks had ceased at that time and one took the view that use of Woods Cottage were purely ancillary to the primary use of the (whole) site. Its hiring as holiday accommodation represents a material change of use.

Points 8 & 32: there is no planning history basis for the applicant claiming the curtilage of Woods Cottage is the area 'element 1' shown on 0878. However, if it truly is the curtilage, it is clear permitted development rights for temporary use of land for 28 days in any calendar year would not have been applicable, due to restriction B1.(b) of Class B to Part 4 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The uses set out in Point 31, needed planning permission to be lawfully undertaken from the outset.

Point 8.4: the applicant seems to suggest that the 3 unauthorised structures are ancillary outbuildings to Woods Cottage, yet they cannot be domestic outbuildings because of their commercial use.

Points 9 to 18: As these pre-date 19.12.2009, they are irrelevant to the council's determination.

Point 19: Only those dates in December on sheet 0146, which occurred after 19.12.2009 can be taken into consideration to assess this application. Sheet 0146 lists 16 days on which the site was booked. It is unclear how many of these were on or after 19.12.2009 as the document has been redacted on-line.

Point 20: The marquee in 0014-0016 is smaller than the one on site now and located in a different position.

Point 21: The applicant says 2011 was the year that the main focus of events switched to holding weddings at the site. This is less than 10 years ago.

Point 23: It is noted that the current marquee was purchased in 2013 and erected in its current position for the first time. There appears to be a typographical error; sheet 0165 gives an annual total for 2013 of 232 bookings days, not 234.

Point 26: There appears to be a typographical error; sheet 0178 gives an annual total for 2016 of 186 bookings days, not 183.

Point 31: Any events which occurred between 1998 to 18.12.2009 are not pertinent to the council's assessment of this application.

Points 34 to 41 (and that part of Point 42 between 20.3.2009 to 18.12.2009) are irrelevant to the council's determination of this application.

Point 44: If this was the first marketing of the application site as a wedding venue, this is less than 10 years ago. Subsequent marketing listed under points 45-47 & 49 also all less than 10 years ago.

Point 53: being as complaints to planning enforcement are confidential, it is not possible for the applicant to know if any complaints about use of the site had been made during the last 10 years and earlier.

Points 54, 56 & 57: the decking's extent has been added to over time and this includes its covering over with a canopy ('stretch tent'). The Conservancy does not consider all parts of the decking to be more than 4 years old in existence, on the basis of dated photography provided to it by a third party (see attached), but accepts that the log cabin may be more than 4 years old from the statements made in Point 55.

Under the latter part of Point 57, the applicant seems to appreciate that a certificate of lawfulness cannot be granted for the additions to the decking and presumably is seeking to regularise those under extant planning application APP/18/00943, which is currently undetermined and to which the Conservancy has made a formal objection.

Points 58-59: On the evidence presented (0055), the Conservancy could not oppose an application for a Certificate of Lawfulness of the Victorian style gazebo alone.

Point 62: the applicant confirms the marquee was taken down and not re-erected until March 2016. If the Marquee has periodically been taken down out of season, the Conservancy asserts that each time it is put up has been a separate time period of existence. For the council to grant the Certificate in respect of the marquee therefore the Conservancy suggests it would have needed to have been permanently up for the 4-year period sought and not taken down during that period. The Conservancy understands a third party will be sending you evidence claiming that the marquee was taken down during the winter of 2015-2016 and not re-erected until sometime in the spring of 2016. If this is true, then the 4-year period would not seem to have been reached yet.

Evidence base No.'s 0932-0935 merely show historic mapping and do not add anything to the submitted evidence, other than showing the footprint of Woods Cottage, which is not in dispute.

Photographs, evidence Base No. 0895 to 0913: whilst these clearly relate to refurbishment works to Woods Cottage, rather than demonstrating how the accommodation was being used. Only one slide has a date on it: the first, stating 1998.

The Note and Annex 1 and 2 to it:

A/Point 2/Element 2: given what has been said in Points 54, 56 & 57 above, even if the council had not served a planning enforcement notice, it would not have been tenable for the council to grant a Certificate for all parts of the decking.

B/Point 4 – see response to points 8 and 32 of the witness statement above.

B/Point 6.2 – the council can only consider the red line and related evidence in front of it.

C – All this conjecture is irrelevant if one accepts that Woods Cottage is no longer being used as a dwellinghouse within Class C3 of the Town and Country Planning (Use Classes) Order 1987 (as amended) or perhaps was not being used in that way on 1 July 1948. All that is relevant is the area that has been used for the specified purposes under 'element 1' of the application (the planning unit) and the evidence that is produced to prove that on the balance of probabilities. The Conservancy in the foregoing comments has raised queries about the veracity of various pieces of evidence produced. To that extent, why the applicant has drawn the red line to include, for example the Tournier Bury, other than the vehicular access running through it leading to the events area, is not understood.

C/Point 20 – The putting up and taking down of the marquee constitute separate episodes of development. The marquee was last re-erected in March 2016. 4 years have not elapsed since that time.

The Conservancy has no comments to make about Annex 1 and 2, other than to say the dates the photographs were taken is not recorded.

It is not clear from the photographs and witness statement when the 'stretched tent' awning was added over the decking structure associated with the log cabin, which is depicted 20.4.2018 in the lower part of 0087. Earlier photographs 0020 and 0021 show the deck beginning to be constructed dated 11.6.2011, yet the Conservancy is in receipt of alternative electronic photography dated 14, 17, 20, 21 and 27.4.2017, showing that decked platform being enlarged (to a much greater extent than depicted in 0020-0023), but without the awning fitted.

The Conservancy is aware that the timeframes to taking Enforcement Action/providing evidence relate to each structure being substantially completed, under S.171B(1) of the town and country Planning Act 1990 (as amended).

The Conservancy is of the view that the 4-year period to be demonstrated for the log cabin/decked structure at point 2 on EB0878 started when the awning was finally added, which does not appear in any of the photography submitted until 2018.

In this respect the Conservancy would suggest other council officers could usefully be interviewed for their recollection of what was in place at the site, when they made their visits, especially if any (dated) photography was taken. E.g. Environmental Health Officers looking into noise matters or other officers commenting on the Premises licence granted 24.8.2017 (PL) granted by the council.

Indeed, does the PL require the marquee to be taken down at the end of every season?

The Conservancy is still rather surprised no builders' invoices have been produced to show when the decking was built or when the (current) marquee was purchased.

There are two items the Conservancy notes the applicant is not claiming to have been in place for the 4-year period to be proven for operational development. These are –

- (1) the parking areas (for which the Conservancy has been informed that stone scalping materials by the truckload have in recent time been taken onto the site according to a neighbour commenting on this to the Conservancy; and,
- (2) the 'Versadock' pontoon (photographs on pages numbered 0079, 0081 and 0092). When the Conservancy's Planning Officer visited on 26.11.18, this structure was not in place.

The Conservancy is unlikely to grant a works licence for such a structure described in (2) as it is its policy not to do so, given the ecological importance of the intertidal mud it would rest upon/cover in the SPA/SAC/SSSI/Ramsar designation.

Chichester Harbour Conservancy - response following consultation on additional information in March 2021

Recommendation - Objection maintained.

The Conservancy notes the heavy redaction of photographs and other documents on-line, making it difficult to comment on the veracity and significance of such evidence. If the Council wants The Conservancy to comment on unredacted evidence, it will be happy to do so.

I comment as follows on the other evidence.

Bank statements and bank paying in book

The bank statements run from April 2010 to September 2014. This is only part of the 10 year period the applicant needs to substantiate. All relate to Tournerbury Holdings Ltd. Entries are redacted, so it is difficult to comment on what they relate to and whether the date of payment actually relates to the date of the event the applicant is seeking to evidence taking place.

The bank paying in book slips - completely redacted, albeit paragraph C.18.1 of the Pavey letter says these slips cover the period 2008 to 2012. Some of this pre-dates the period which needs to be proven and does not cover the entire 10 period to be proven.

Booking diary. This single spreadsheet indicates that the number of events per annum between 2009 and 2019 ranged from 40 to 92 and that the nights Woods Cottage was let per annum ranged from 73 to 234. What is the applicant applying for? 40 events or 92. These are significant ranges and do not demonstrate a consistent rate of usage over time. The Conservancy remains concerned that if a Certificate is granted, there will be no other control, other than through non-planning licencing legislation regimes and colder/inclement weather in respect of wedding events, as to the number of events that could be held.

Email to Mr Snell 14.8.12. It is accepted this relates to one wedding event, where hiring involved setting up and the event itself spread over 4 days. The email is referenced in the last piece of evidence (at paragraph C.14.2) -

Letter from Mr Pavey 24.3.2021 (using his paragraph numbering) .

(A.1) I see Mr Pavey's letter responds to yours dated 10.3.2021. As The Conservancy has not had sight of your letter, it is difficult to fully understand what Mr Pavey is responding to, or the points being made. Are you able to share your 10.3.2021 letter with The Conservancy? Presumably this would be produced in an Inquiry into a the ground (d) Appeal against the Enforcement Notice in any event.

(A.2-A.3) The Conservancy too is concerned over the time it has taken the Council to process both this application and App/18/00943.

However, given the Appeal lodged relating to an Enforcement Notice served, it is understandable that the Council would wish to fully understand all evidence rather than unnecessarily defend a Ground (d) Appeal.

The Covid 19 situation has not helped matters, but it is still considered that the applicant had not discharged the burden of proof in respect of all the matters for which a certificate is being sought.

(B.4) That matters of operational development are mixed in with issues relating to a material change of use of the land also complicates matters, as I have never seen a Certificate given for parts of what is applied for and declined for other parts, as one sometimes sees with applications for Express Advertisement Consent or more rarely handed down by Inspectors in Appeal decisions.

(B.5 & 5.3) It is agreed that changes which took place to the Use Classes Order for England 1.9.2020, have somewhat confused matters, but The Conservancy, given the amalgam of usage being sought, has always commented on the basis of a mixed sui generis use was claimed to be being operated at the site. What does complicate matters though is that for parts of the year, certain events like corporate shoots, seem to predominate over the 'wedding season'. So not only is the rate of events variable throughout the years, but also within the years too, such that no consistent pattern of activity over the 10 year period is being demonstrated.

(B.8) The Conservancy has commented on the operational development on the basis of a 4 year period of proof being needed.

(C.16) It will be interesting to see the approach taken by the Inspector, when the Appeal against the Enforcement Notice is heard. The Conservancy considers the Enforcement Notice should not be withdrawn. Temporary use of open land not forming the curtilage of Woods Cottage can exist for 28 days in any calendar year, leaving aside uses involving firearms, motor vehicles, etc, where the General Permitted Development Order sets that 14 days (cf. Class B to Part 4 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (as amended)). It might be argued that the trigger for a material change of use could be anything exceeding those limits. I return to The Conservancy's concern that the Council or Inspector would issue a Certificate for the upper number of events for which evidence has been submitted. Is it probable that 92 events occurred each year? 'No' is the answer.

(C.17.3) It is noted that some corporate clients paid a flat booking fee and then decided which dates they wanted throughout a season, such that one payment did not necessarily equate to just one 'event' at the application site.

Natural England Government Team

No comments received.

6 Community Involvement

This application was publicised in accordance with the Council's Code of Practice for Publicity of Planning Applications approved at minute 207/6/92 (as amended), as a result of which the following publicity was undertaken:

Number of neighbour notification letters sent: 0

Number of site notices: Not applicable.

Statutory advertisement: Not applicable.

Number of representations received: 21

Representations on the planning merits of the uses/operations for which a certificate is sought are not relevant to the question of whether those uses/operations are lawful. The determination of this application turns on the application of the relevant provisions of the Town and Country Planning Act 1990 and judicial authority to the facts of the case.

The following commentary sets out, in broad terms, representations received from third parties, including objections made to the application by and on behalf of an adjoining landowner, and a relative of the applicant. It can be noted that they contain a mix of planning merits observations, as well as observations regarding the use of the site and structures thereon which are more germane to the Certificate of Lawfulness considerations.

Objection

Observations regarding the use of the site and structures thereon

- The data submitted by the applicant is patchy and inconsistent and contradicts itself
- When commencing work at Tournerbury Farm in 1993 the entrance to the wood had a wooden gate which was always closed and had a sign on it saying "Tournerbury woods private property". There was never anyone using the entrance to the wood via the farm when I first started there working there. It wasn't until many years later that I saw the occasional car use the entrance. The main entrance to the woods was always via Mengham. I left the farm in 2012 and at that time there was no events going on in the woods and no one lived at the cottage as a permanent residence, it was only used as a holiday let.
- I have worked at Tournerbury Farm for 20 years so I am in a position to know how much traffic has used the right of way through the farm. There was very little traffic up to mid 2013 as only the people using the cottage came through here, since then it has slowly increased year after year.
- During the period 2000-2006 the wood went right up to the Cottage, which was surrounded by trees with a small lawn to the left
- Two quite separate material uses, the first not requiring planning permission - holiday lettings at Woods Cottage - and a second, later use that did require planning permission for change of use to permit the holding of commercial weddings and events, have been tacked together to give the impression that weddings have been taking place on a continuous, rolling basis since before December 2009, when they have not.
- 1998 is the correct date for the earliest start of a limited number of holiday lettings. The use as a wedding venue only began in 2012, and does not meet the 10 years requirement for a CLEUD
- Events prior to 2012 were one-off, stand alone events conducted under the 28 day rule and located in a different part of the then much smaller Woods Cottage curtilage
- The booking calendar procedure of including event days as both Woods Cottage days and event days could be argued to be misleading.
- Invoices do not exist for all of the booking calendar entries
- There are significant discrepancies between the event totals reported in the current planning application APP/18/00943, the current CLEUD application, and the invoice evidence.
- The extent of the Woods Cottage curtilage should be challenged, on the basis of physical changes to the site which took place in 2001 to extend the lawn area; and since 2011 which have resulted in an increased curtilage to accommodate the space and facilities required by weddings.

- Holiday lettings and weddings should not be regarded as the same thing, with a watershed difference between them in terms of the number of people visiting the site and the area of the site now in use.
- No evidence has been provided on the subject of camping.
- The applicant's evidence has failed to demonstrate a continuity of use, and in cases where there is a continuity of use it has not continued for ten years. The evidence demonstrates a material change of use by the introduction of several new uses since the earliest time within the time limit.
- With regards the planning unit, historically two or more physically separate and distinct areas have been identified - Woods Cottage with a very limited curtilage; and the remaining woodland in agricultural use (the Bury Wood and the Plantation in addition to the application site). The local planning authority should judge the materiality of the introduction of uses against these two planning units. Within the last ten years the use of the land has changed in such a manner as to result in different planning units being created with mixed uses.
- The evidence presented by the applicant does not support the issuing of a certificate in the terms applied for.
- The applicant's submissions regarding the curtilage of Woods Cottage are irrelevant; the starting point should be the identification of the planning unit.
- Previous planning applications made by the applicant appear to have relied on the '28 day rule', which is inconsistent with the current assertion of there being a greatly extended curtilage.
- The evidence is inconsistent with my personal and direct experience as a neighbour to the Tournurbury Woods Estate since well before the period of time relevant to the determination of the application. There was very little activity at all but there was a definite change after 2015 with a significant increase in activities, accompanied by other development and hardstanding.
- Woods Cottage was historically part of a much larger estate, but shooting takes place away from the Cottage and uses the whole of the woods and not just the area around the Cottage.
- I only began to have concerns about the use of the applicant's land from 2015 onwards as it impacted our amenity with participants travelling across our land.
- Considering the lawfulness of the structures separately from the change of use is inappropriate because they are ancillary to an extant unauthorised material change of use and must be considered as a whole - the relevant time limit should be ten years rather than four.
- The ancillary log cabin and decking was not substantially completed until 2017 when a larger structure of stage decking, roof and ramp area was added to the original small log cabin and decking (photographs supplied); it was not substantially completed more than four years from the date of the application.
- The marquee was not permanent as a feature until 2016.

- Soundproofing works undertaken to the marquee in 2019 mean that it should only be regarded as substantially completed in 2019.
- The victorian gazebo has been up since 2015.
- All the structures are ancillary structures that are part and parcel of the unauthorised use; the Town and Country Planning Act together with previous caselaw (*Murfitt* and *Kestrel Hydro*) enables the authority to take action against the structures, which are not immune from enforcement action as a result.
- The legal concept of an ancillary building with its own distinct use is unknown to the law.
- No witness statement has accompanied the additional information submitted.
- The application does not meet the tests in S191 of the Town and Country Planning Act.
- The applicant has not met the evidential or legal threshold for the granting of a certificate for the structures.
- The use of the site for weddings has necessitated the loss of tree cover and physical changes to the site with substantial engineering operations which have altered parts of the application site during the ten years prior to the making of the application.
- It is legitimate for the LPA to identify the single continuous mixed use for which the applicant is seeking a certificate - if any of these uses drop in or drop out during the relevant period then the certificate cannot be granted.

Planning merits observations

- Tournerbury Woods was formerly an untouched and unspoilt woodland with the cottage which stood alone amidst it. Recently the landscape has been built up and the cottage is now surrounded by various outbuildings, gazebo, marquee and car parking. It would appear that the rules governing development in an SSSI have been ignored and the Council should not reward the changes by making them legal.
- Trees surrounding the site are under threat from the application
- Permission should not be given for development affecting ancient woodland, historical remains, SSSI and AONB
- Use as a wedding venue has caused noise and light nuisance to the neighbours and the farm which is projected to increase. Noise controls should be imposed regarding noise-limiting equipment. No additional buildings should be allowed.
- Any permission should be limited to control the level of noise in the interests of the amenity of neighbours.

- Havant Council should not agree a Certificate of Lawfulness for a leisure business on Nationally protected Lands whose activities are in defiance of National Planning Policy Framework. Certificate of Lawfulness approval would be in contravention of the Secretary of States guidelines and give credence to back door environmentally inappropriate planning approval.
- Concern that agreeing the CLUED application will allow too great an opportunity to pursue all sorts of potentially undesirable activities in the future without any sort of control
- Limitations should be set on the use of the track (private use only); the height and weight of vehicles using it; and the numbers of weddings and guests to be accommodated
- Increased revenue for the island should not be a matter for a site in an AONB and SSSI
- There is a historic Roman earthwork on the site, that is being slowly eroded every day by vehicular use, both large & small.
- The ancient heron nesting site has been completely eroded by constant human activity, noise & light pollution.
- The unauthorised operational development and material change of use are contrary to the development plan and a breach of the Habitat Regulations.

Support

- I agree with and support the application and can confirm that, to the best of my knowledge, the site has been in the use described for the period of time stated. Indeed, I have attended a number of well-run events at the site over the years.
- I can confirm 100% that the activities as stated in the application have been taking place for considerably longer than the required amount of time. By way of example the first event of many over the years that I have attended at Tournerbury Woods was in 2002.
- We concur with the application and can confirm that Tournerbury Woods with its present array of structures has been run as a leisure operation for over 10 years

7 Planning Considerations

Introduction

- 7.1 The planning merits of the uses and operations applied for are not relevant to the determination of this application. Its assessment instead requires the Local Planning Authority (LPA) to determine whether as a matter of fact the uses and operations that the Applicant claims are lawful have subsisted for the requisite period in breach of planning control or are otherwise lawful having regard to the relevant provisions of the Town and Country Planning Act 1990, as interpreted and applied by decisions of the High Court.

7.2 The Applicant bears the burden of proving that, on the balance of probability, the uses are lawful.

7.3 The relevant parts of Section 191 of the Town and Country Planning Act 1990 provide:

"(1) If any person wishes to ascertain whether—
(a) any existing use of buildings or other land is lawful;
(b) any operations which have been carried out in, on, over or under land are lawful;
or
(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,
he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(2) For the purposes of this Act uses and operations are lawful at any time if—
(a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
(b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if—
(a) the time for taking enforcement action in respect of the failure has then expired; and
(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

(3A) In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if—
(a) the time for applying for an order under section 171BA(1) (a "planning enforcement order") in relation to the matter has not expired,
(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or
(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—
(a) specify the land to which it relates;
(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);
(c) give the reasons for determining the use, operations or other matter to be lawful; and
(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed."

7.4 With respect to time limits, Section 171B of the 1990 Act provides:

"171B Time limits.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(2A) There is no restriction on when enforcement action may be taken in relation to a breach of planning control in respect of relevant demolition (within the meaning of section 196D).

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach."

7.5 In this case the Applicant asserts that on the date of the application the following four elements of the application were lawful:

- * Element 1, based on 10 years use: 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.
- * Element 2, based on more than four years having elapsed since they were substantially completed: a log cabin and adjoining deck
- * Element 3, based on more than four years having elapsed since it was substantially completed: a Victorian-style gazebo structure
- * Element 4, based on more than four years having elapsed since it was substantially completed: a marquee

7.6 The Council's Legal team have advised that the approach to be taken when considering a Lawful Development Certificate are:

- (a) establish the correct planning unit;
- (b) consider the use of the planning unit as at the relevant date;
- (c) decide whether the overall use is dual or composite (where relevant);
- (d) decide what are the primary uses and what uses are ancillary to those primary uses; and
- (e) determine the parameters of the relevant use in terms of scale, nature or intensity.

With regard to the implications of Section 191 (2)(b) of the Town and Country Planning Act 1990 (as amended) – i.e. whether this application should be automatically refused as the enforcement notice referred to at Paragraph 2.2 is currently in force relating to the site and the uses applied for – this has also been reviewed in consultation with the Council's Legal team. Officers are of the opinion that this question is resolved by the fact that, were a CLEUD to be granted, it would relate to matters existing on the date that the application was submitted (24th December 2019) when no enforcement notice was in force. On that basis the CLEUD does not fail on this legal technicality, and consideration can move to the analysis of the evidence supplied.

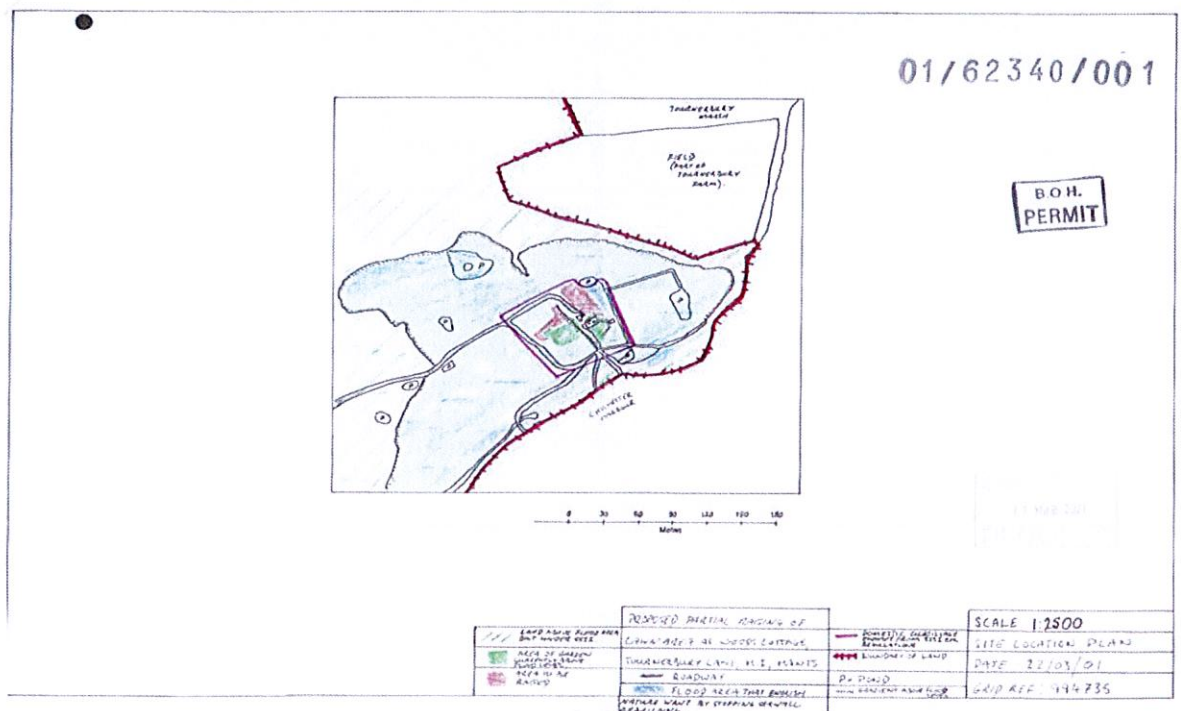
The Planning Unit

- 7.7 The question of whether there has been a material change of use falls to be determined by reference to the relevant planning unit. Generally speaking, the planning unit is the unit of ownership and occupation, unless some smaller unit can be recognised as the site of activities which amount in substance to a distinct and separate use, both physically and functionally: see *Burdle v Secretary of State for the Environment* [1972] 3 All E.R. 240.
- 7.8 The proposition made in the application is that the Tournerbury Woods Estate as a whole has historically comprised 4 distinct planning units (A) Woods Cottage & environs (B) The Bury, (C) Plantation and (D) Foreshore and mud lands, as depicted on Evidence Base No.878 submitted with the application. This is based on a number of pieces of evidence:
- (a) The applicant's witness statement describing how 'my family and I' have viewed and used Area (A) specifically (para 8.3 of the statement)
 - (b) The applicant's witness statement also makes reference to historic maps which it is stated show the distinctions. The maps of 1962 and 1938-1942 do have the notations of 'Tournier Bury Wood' in the general area of Area (B) and 'Tournerbury Bury Plantations' in the general area of Area (C). It is noted that the maps in themselves do not distinguish Area (A) as a discrete entity.
 - (c) The agent's submission in Part C of his note accompanying the application (particularly para 15), describes the distinctions as arising from the character of the land:
 - "the harbour's edge to the south and the boundary edges to the north and east are distinct"
 - "to the north west there is a discernible change (the woodland and cover become more dense) in the Bury, albeit not such a distinct boundary as the Harbour's edge"
 - "To the east, Tournerbury Plantation is a distinct area of woodland, different from the Bury and different from the curtilage of Woods Cottage, but, as with the Bury, there is no fence-line which easily delimits one from the other"
 - (d) A schedule of photographs of Woods Cottage and its environs

The application is submitted in respect of Area A only.

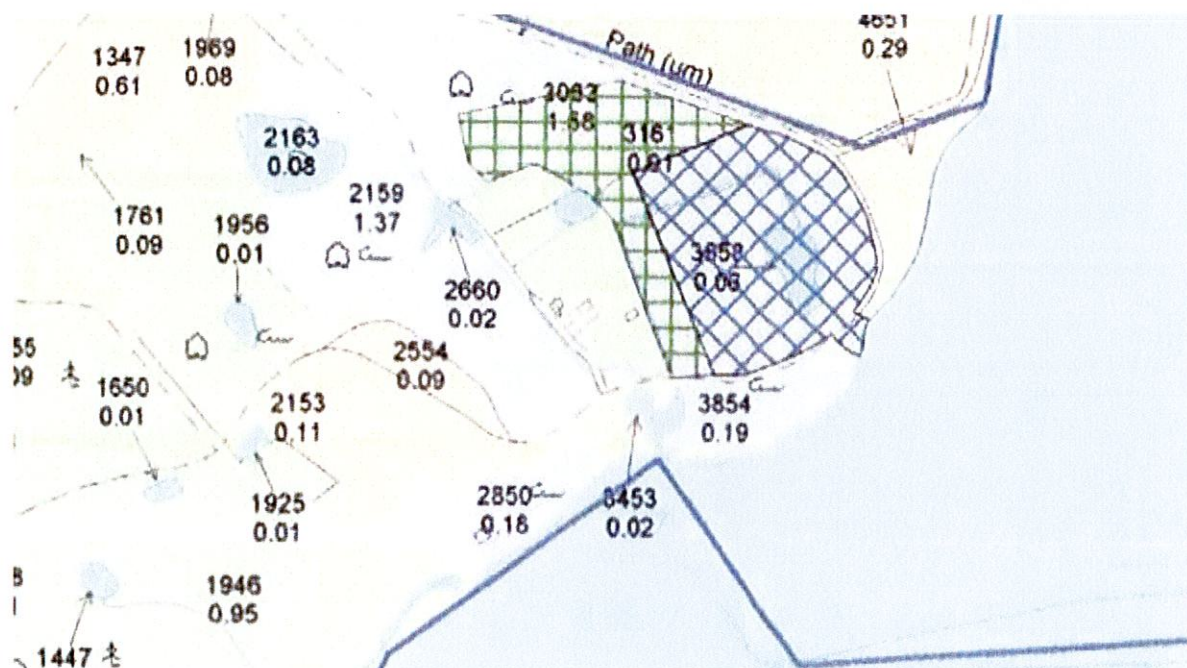
- 7.9 On the matter of ownership, the application is supported by Title Deeds showing areas (A), (B) and (C) are in the applicant's ownership under the same Title document. Area (D) is not covered by the Title Plan supplied.

- 7.10 The matter of whether Area A should be regarded as a discrete planning unit comprising Woods Cottage and its environs is contested by a number of representations received in relation to the application, including from parties with a familial connection to the site, and living and working on adjoining land ownerships. These argue that Woods Cottage instead benefitted from a far more limited curtilage associated with its original residential use, with the remainder of the land being in use for agricultural or forestry purposes.
- 7.11 The schedule of photographs submitted with the application do not show any clear delineation of Area A on the ground, with the area comprising the Area A 'environs' around Woods Cottage instead including a mix of more or less wooded areas, lawns and rougher grassed areas traversed by a series of driveways and tracks.
- 7.12 With regards the material submitted as part of the evidence base, this provides the following:
- * EB0011 - the advertising material for 'Club Monkey Puzzle refers to a range of activities and a 'stunning country cottage' within a 50 acre estate. An area of 50 acres equates to the overall area of the combined Areas (A), (B), and (C) described in the application, and not a separate sub-division of the site with Area (A) as a discrete element.
 - * EB0014-16 - the photographs in this documentation are headed 'Marquee at TW for corporate Christmas and shooting parties' - the location of the marquee can be clearly identified as the lawn to the west of Woods Cottage.
- 7.13 In weighing the available evidence relating to the planning unit officers have also reviewed the planning history of the site, and correspondence with the applicant in relation to the current application APP/18/00943. In the case of the former, a planning application was submitted by the applicant in relation to Woods Cottage in 2001 under reference 01/62340/001, for the raising of lawn levels around the cottage and the removal of two TPO trees. The application was accompanied by a plan whereby the applicant clearly identified (in 2001) the limits of the 'domestic curtilage' of Woods Cottage at that time, which is the area edged purple on the plan below:



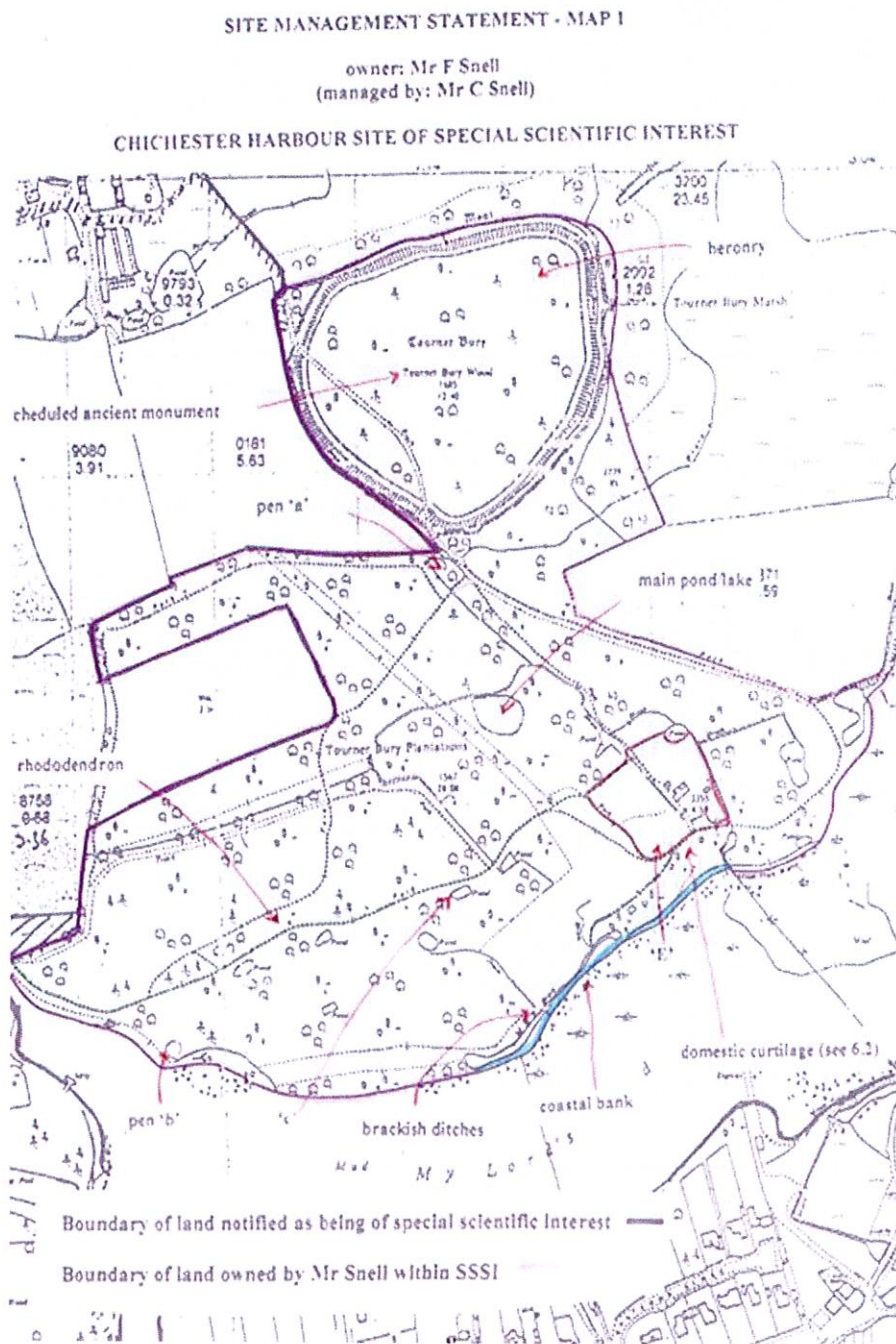
The application form retained on file describes the use of the site at that time as 'domestic dwelling and garden'. This post-dates the time at which the applicant advises the property began to be let for holiday accommodation.

- 7.14 More recently, and within the timeline of the 10 years' use being considered in this application, the applicant submitted Planning Application APP/12/00584 - an application to determine whether prior approval was required for the siting and appearance of a proposed fish tank. The site of the proposed fish tank lay to the east of Woods Cottage, within the current 'Area A' application site area - an extract of the submitted location plan identifying the location of the works (hatched green and blue) is provided below:



Notwithstanding this, the application was submitted as a prior notification of agricultural or forestry development under the GPDO 1995.

- 7.15 In the case of current Application APP/18/00943 relating to the site, correspondence has been undertaken with officers regarding a 'Site Management Statement' document entered into by the applicant and his father with (then) English Nature in April 1997. This defines an area of 'domestic curtilage' on a plan attached to the Statement within which certain operations do not require consultation with English Nature on the basis that 'The house and its immediate surroundings should have been excluded from the original designation'. The extent of this defined area (edged red), which accords closely with the Site Location Plan of the later planning application 01/62340/001, is attached below:



Both plans include the lawn to the west of Woods Cottage as part of the 'domestic curtilage'; this being the lawn on which the marquee depicted in EB0014-16 is sited.

- 7.16 In conclusion on this issue, and 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 plans above which were recognised by the applicant and the Council in relation to Application 01/62340/001, 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.
- 7.17 From this, it can be seen that Elements 3 and 4 (the gazebo and marquee) the subject of the application, fall outside of the identified curtilage of Woods Cottage; Element 2 (the log cabin and deck) lies within.

The use of the planning unit at the date of the application

- 7.18 The submission made in the legal note accompanying the application is that Woods Cottage and its environs has been *"....in 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."*
- 7.19 The applicant's witness statement accompanying the application states that Woods Cottage and its environs have been used for all of the following activities since 1998:
* *Corporate hospitality/client entertaining; corporate staff away days and management meetings; corporate Christmas parties; birthday parties; wedding anniversary parties; christening parties; wakes; weddings; retirement celebrations; commercially let shooting parties; charity fund raising balls; charity fund raising picnics and activity days; political social events; social club BBQs; charity fund raising dinners; forest school and outward-bound activity centre; scouts camping; holiday lettings; holiday camping; family parties.*
- 7.20 Following an initial review of the evidence relating to these uses by officers, and queries as to whether they could be corroborated with financial information to back up the booking calendar information (which highlights a number of differing categories of use), the applicant's agent has responded by stating that the application has been framed so as to encompass a mixed use for leisure, tourism and as a commercial events venue - i.e. there is more than one primary use of the land. In doing so it is argued that specific individual uses should not be analysed individually. This would suggest that the Council should be treating the various uses described in the applicant's witness statement under a single umbrella whereby all the various constituent uses form part of a generic mixed use.
- 7.21 Legal advice received in the course of determining this application, however, points out that the terms 'leisure', 'tourism' and 'commercial events venue' are not, in and of themselves, planning uses and confirms that they are generic terms. There is a clear requirement that any certificate of lawfulness must describe the use that is granted lawfulness and where such uses fall within a use class, the use class must also be stated. It is therefore considered entirely correct for the Council to consider each distinct planning use that the applicant considers to be lawful.

- 7.22 For example camping (a sui generis use) is an entirely different planning use to shooting (sui generis), which is also entirely different from a wedding event (sui generis) or the use of Woods Cottage as a holiday let or function room.
- 7.23 It is therefore considered appropriate to consider whether there is a 10 year use for each defined category of activity, and then consider the implications of *Beach v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 381*, where the Court decided that where in respect of one planning unit a use comprising uses A, B and C together is joined by use D, there is a change of use, which may or may not be a material change of use to uses A, B, C and D. Only those uses that have continued throughout the relevant 10 year period can be granted lawfulness.

The changing mix of uses within the planning unit

- 7.24 Turning to the evidence supplied in connection with the application and the representations received, there seems to be general agreement that the availability of Woods Cottage as a holiday let commenced in excess of 10 years prior to the date of submission of the application. This is also supported by the insurance documents submitted as part of the evidence base EB0096-0117, which covers the 10 year period as well as a number of years prior to that. As to the nature of the other uses which have taken place at and since that time, officers have analysed the information set out in the booking calendar, coupled with the explanation given of the classification of the bookings by the applicant's agent. Without reference to any corroborating information (such as bank statements and invoices), the nature of the various events set out in the booking calendar can be broken down into the following:

- 2009: Shoot event days total: 6
Corporate/business event days: 50
Corporate bookings/overnight accommodation (not event days): 15
Woods Cottage only: 86
- 2010: Shoot event days total: 5
Corporate/business event days: 36
Corporate bookings/overnight accommodation (not event days): 6
Woods Cottage only: 126
- 2011: Shoot event days total: 10
Corporate/business event days: 39
Corporate bookings/overnight accommodation (not event days): 9
Woods Cottage only: 118
- 2012: Shoot event days total: 7
Corporate/business event days: 28
Corporate bookings/overnight accommodation (not event days): 10
Woods Cottage only: 130
Weddings as event days: 10
Wedding related bookings (not events): 11
Other: 4 (2 x stag party; 2 x charity event)

2013: Shoot event days total: 10
 Corporate/business event days: 21
 Corporate bookings/overnight accommodation (not event days): 4
 Woods Cottage only: 140
 Weddings as event days: 18
 Wedding related bookings (not events): 35
 Other: 2 (*1 x film crew visit; 1 x family party*)

2014: Shoot event days total: 10
 Corporate/business event days: 6
 Corporate bookings/overnight accommodation (not event days): 0
 Woods Cottage only: 116
 Weddings as event days: 29
 Wedding related bookings (not events): 22
 Other: 6 (*1 x photo shoot; 2 x charity event; 1 x family party; 2 x christening*)

2015: Shoot event days total: 10
 Corporate/business event days: 8
 Corporate bookings/overnight accommodation (not event days): 2
 Woods Cottage only: 130
 Weddings as event days: 31
 Wedding related bookings (not events): 19
 Other: 3 (*1 x lunch; 1 x family party; 1 x wake*)

2016: Shoot event days total: 8
 Corporate/business event days: 6
 Corporate bookings/overnight accommodation (not event days): 0
 Woods Cottage only: 31
 Weddings as event days: 50
 Wedding related bookings (not events): 26
 Other: 12 (*10 x wedding open days; 1 x family party; 1 x wake*)

2017: Shoot event days total: 12
 Corporate/business event days: 4
 Corporate bookings/overnight accommodation (not event days): 2
 Woods Cottage only: 24
 Weddings as event days: 42
 Wedding related bookings (not events): 15
 Other: 14 (*10 x bridal open days; 1 x family party; 1 x lunch; 1 x anniversary; 1 x charity event*)

2018: Shoot event days total: 11
 Corporate/business event days: 7
 Corporate bookings/overnight accommodation (not event days): 1
 Woods Cottage only: 6
 Weddings as event days: 59
 Wedding related bookings (not events): 7
 Other: 17 (*8 x wedding open days; 7 x forest school; 1 x family fun day; 1 x anniversary*)

2019: Shoot event days total: 4
 Corporate/business event days: 4
 Corporate bookings/overnight accommodation (not event days): 0
 Woods Cottage only: 5
 Weddings as event days: 33
 Wedding related bookings (not events): 4
 Other: 5 (3 x *wedding open days*; 1 x *family event*; 1 x *corporate project party*)

- 7.25 From this it can be seen that, based on the booking calendar information only, the predominant uses undertaken at the site in 2009 were the booking of Woods Cottage for accommodation purposes for private individuals; and the use of the site for corporate events including overnight accommodation for corporate clients. During the course of the 10 year period to 2019, however, the balance of uses has clearly altered with wedding related activities emerging in 2012 and becoming the predominant activity by 2016 - this has been accompanied by a drop off in the numbers of Woods Cottage bookings, whether by private individuals or by corporate clients.
- 7.26 Officers have undertaken an exercise of corroborating the booking calendar entries by reference to the invoices and bank statements submitted in support of the application, in order to verify the numbers of activities entered on the booking calendar. Whilst the evidence submitted in this regard does not account for all of the entries in the booking calendar, with respect to the booking of Woods Cottage by private individuals as opposed to the use of the site for wedding related activities, the evidence supports the shifting balance of uses as set out above.
- 7.27 With regards to corporate events the picture is less clear as despite a large number of entries in the booking calendar, the evidence provided of those activities having taken place, in the form of invoices and bank statements relating to the specific bookings, is far less prevalent than for the Wood Cottage/wedding related activities. The agent on behalf of the applicant explains this situation by reference to the operation of a 'points based' system operated by his client whereby corporate clients could purchase points en bloc and then use them to set against the use of the site at various times, thus ensuring flexibility. It is stated that this system obviated the need for individual invoices to be generated for particular bookings.
- 7.28 Similarly evidence for the shoots is limited to photographic evidence of some of the entries on the booking calendar. It is noted that in a number of cases the shoots coincided with the booking of Woods Cottage by private individuals (24/12/11; 28/12/13; 25/10/14; 27/12/14; 18/11/16; 27/12/16), and given the nature of shoot activity this is likely to have taken place over a wider area than the immediate surroundings of Woods Cottage shown on the plan extracts above. In terms of the number of events, the shoot activities have only ever accounted for a very small number of events compared to the other categories of activity, ranging from 4 to 12 events in any one year across the 10 year period the subject of the application.
- 7.29 Taken together, officers consider 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 this is less easily demonstrated by other corroborating evidence.

- 7.30 By 2019 however the picture is one whereby the use of Woods Cottage for Class C3 occupation by private individuals has reduced to only 5 occasions and corporate events to 4 occasions; with weddings and their related events now the most prevalent activity in terms of the use of the site, outnumbering all other activities combined. The photographic evidence also shows that this activity is occurring across a far wider area than the 'domestic curtilage' previously associated with Woods Cottage, and thus it is considered that over the 10 year period there has also been a change in the extent of the planning unit associated with these changing uses. Applying the principles of Beach, it is considered that the supplanting of former uses by a new use which is materially different to those previously undertaken at the site does amount to a material change of use which is not immune from enforcement action.

Operational Development

- 7.31 In addition to the uses being applied for, Elements 2, 3 and 4 seek a Certificate of Lawfulness in relation to the following items of operational development, based on more than four years having elapsed since they were substantially completed:
- * Element 2, a log cabin and adjoining deck
 - * Element 3, a Victorian-style gazebo structure
 - * Element 4, a marquee
- 7.32 In the case of Element 2, the log cabin and adjoining deck, this lies to the north of Woods Cottage. Photographs submitted with the application demonstrate that the cabin was complete by 2nd December 2010, with a deck size of 6.5m x 14m being added and completed by 22nd July 2011. The applicant's witness statement goes on to say at Paragraph 57:
- "For clarity's sake, an extension was made to the Deck in 2017 which extended the decking to a total of 11.24 metres by 22 metres. Although the area of land beneath the extended area of decking is the subject of the application for Certificate 1 (i.e. on the basis of change of use), the extension is not the subject of the application for Certificate 2".*
- 7.33 Representations received in connection with the application from Chichester Harbour Conservancy and other third parties argue that the consideration of lawfulness in respect of the whole of the structure should be taken from the time of its substantial completion in its final form, rather than on the basis of the initial phase of its development which led to its 2011 form.
- 7.34 In the case of Element 3, the gazebo, photographic evidence submitted with the application shows its base under construction in May 2015 and in use in 2016. Third party representations bear out this date of construction.
- 7.35 In the case of Element 4, the marquee, this is stated to have been constructed in July 2013 and photographic evidence shows it in use later that year and since then. The applicant's witness statement acknowledges that the marquee was taken down for cleaning and to allow improvements to be made to the gravel base between November 2015 - March 2016, and the fact that the marquee was taken down for a period is highlighted by a number of representations made to the application, who argue as a result that its permanent presence on the site only dates from 2016 i.e. less than four years prior to the date of the application.

The applicant's agent argues that notwithstanding this, there is considered to have been continuity in the presence of the structure on the site for the requisite four year period.

- 7.36 Having regard to the photographic evidence submitted in connection with all three structures, in each case their primary purpose appears to have been to support the wedding and related event activity taking place across parts of Area A lying both within and outside the immediate 'domestic curtilage' of Woods Cottage described above. Legal advice received in connection with this case advises of the Murfitt Principle (*Murfitt v Secretary of State for the Environment and Another*, (1980) 40 P. & C.R. 254) which was upheld in *Kestral (Kestrel Hydro v Secretary of State for Communities and Local Government* [2016] EWCA Civ 784 and [2016] 7 WLUK 620) which established that a Local Planning Authority is entitled to enforcement action against operational development, irrespective of whether the 4 year period had passed where the operational development was part and parcel and integral to the material change of use of the land.
- 7.37 In the present case, and 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. This is notwithstanding the fact that 4 years have passed since the log cabin and initial phase of the deck were constructed; the gazebo was constructed; and the present marquee was first constructed - and also means that discussions over the meaning of 'substantial completion' of the decking and continuity of the marquee do not need to be rehearsed for the purposes of this report.

8 Conclusion

- 8.1 On the balance of probability the foregoing analysis has concluded the following in respect of the application:

Element 1: 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: 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 ten years prior to the making of the application, they are not immune from enforcement action.

- 8.2 Having regard to these conclusions, a Lawful Development Certificate cannot be issued for the matters the subject of the application.
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9 RECOMMENDATION:

That the Head of Planning be authorised to **REFUSE A CERTIFICATE OF LAWFUL USE** for application APP/19/01262 for the following reasons:

- 1 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 as demonstrated by the planning history of the site 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.

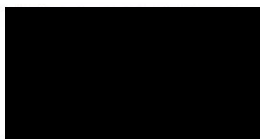
As a result, the mixed use of the larger planning unit to which Woods Cottage now belongs does not benefit from immunity from enforcement action.

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, it is considered 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.

Having regard to these conclusions, a Lawful Development Certificate cannot be issued for the matters the subject of the application.

Report agreed



Julia Mansi
Development & Building Control Manager