

Dear Sirs

I wish to comment on the Planning Application APP/23/00076.

Application APP/23/00076 is for a change of use of land and woodland (retrospective) as a wedding and events venue including retention of permanent ancillary buildings and structures, the erection of removable structures (including marquees and temporary facilities) and the use of the land as a campsite in association with events together with the construction of vehicular track from the public highway to the proposed wedding and events venue at Tournerbury Woods ('the Application').

My comments are as follows.

1. Current Designation of Application Site

Chichester Harbour and its immediate environs, which include the Application site, is designated as a Site of Special Scientific Interest (SSSI) and has been for many years.

Chichester Harbour is one of the most important sites for wildlife in the UK and is globally important for migratory birds.

The statutory body responsible for ensuring protection of SSSIs is now Natural England, who were the successor to Nature Conservancy Council.

The Application site has clearly been considered to be of significant importance for many years.

Clear evidence of the importance of the SSSI is the agreement dated 1st August 1986 made between [REDACTED], as the former owner of the Application site, and Nature Conservancy Council (the predecessor to Natural England) ('the 1986 Agreement').

The 1986 Agreement, a copy of which is attached, covered an area of approximately 90 acres as evidenced on a plan annexed to the 1986 Agreement.

Nature Conservancy Council's view in the recital to the 1986 Agreement is that the land (which includes the Application site) is of special interest by reason of its flora and fauna.

The 1986 Agreement ran for a term of 20 years commencing 28th February 1985 and ending 27th February 2005.

Attached to the 1986 Agreement is an 'agreed management policy' which is self-explanatory, but the overarching principles were that the land was to be kept as far as possible free from disturbance and that it would be managed as unimproved, neutral and acidic permanent grassland maintained by the grazing of cattle and for encouraging the use of the land as a feeding and roosting area for wild fowl, waders and other wetland birds.

The 1986 Agreement also recited that only vehicles and machinery normally used in farming operations would be permitted on the land and no structures and erections should be placed in or over the land without the prior written consent of the Nature Conservancy Council except stock shelters within specific areas – in layman's parlance no development.

No references seems to have been made in any of the commentary or submissions to date of the existence of the 1986 Agreement, which is a legal agreement.

Nevertheless, the 1986 Agreement sets out very clearly the intended management strategy for the Application site in recognition of its status as an SSSI.

The 1986 Agreement was clearly considered to be important and legally binding as it is evidenced on the Land Registry title.

2. Enforcement Notice

It is clear from the current Application APP/23/00076 and, indeed, from the previous application APP/21/01310 which has not yet been determined that, as all these applications are for retrospective change of use, development has already taken place which was not authorised and which should not have taken place.

Indeed it would seem that the development that has taken place is in direct contravention to the agreed management policy set out in the 1986 Agreement made between the former owner of the Application site and Nature Conservancy Council on 1st August 1986.

On 2nd June 2021 Havant Borough Council refused consent for APP/19/01262. Application APP/19/01262 was for 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 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 a log cabin and adjoining deck (3) erection of Victorian style gazebo structure and (4) erection of marquee structure.

APP/19/01262 can only have been submitted to try and remedy, after the event, a breach of planning legislation. Application APP/19/01262 was for development activity which was considered contrary to planning policy.

In the decision to refuse permission issued by Havant Borough Council in relation to Application APP/18/00943, where Steve Weaver was the Case Officer, Mr Weaver sets out the planning history to the site. The development that had already taken place was not authorised and was considered to be such a serious breach that an Enforcement Notice was issued on 17th January 2020 regarding multiple breaches of planning control, the summary of which was “without planning permission and within the last 10 years a material change of use of the land from agricultural and a dwelling house used for holiday letting’s, to the use of the land for agriculture, a dwellinghouse used for holiday letting’s, camping, holdings of weddings and other commercial events”.

The Enforcement Notice took effect on 13th March 2020 and required that the land ceased to be used for weddings and other commercial events, for camping associated with weddings and other commercial events, for the use of the dwelling house for accommodation associated with weddings and other commercial events and required the removal from the land of all buildings excluding the dwelling house, structures, decking and marquees and any other paraphernalia associated with weddings and commercial events.

Despite the Enforcement Notice the unauthorised activities continue – why is this the case nearly 2 years later.

If one looks at the agreed management policy set out in the 1986 Agreement, which is a publicly available document held by the Land Registry and secured against the Title of the land, there is absolutely no doubt that Havant Borough Council as the Planning Authority regarded the unauthorised development to be of such a serious nature that it required service of the Enforcement Notice. An enforcement notice is only issued in the case of a clear breach of planning.

The access road to the site is only part of the reason why Application APP/18/00943 was refused and the Enforcement Notice served – the unlawful development activity is totally contrary to the SSSI policy and also to the 1986 Agreement.

One must therefore question why Havant Borough Council, who are responsible for enforcing the Enforcement Notice, have not ensured the matter is enforced and, in the absence of compliance, carry out the necessary works to remedy the breach and recharge the cost to the owner of the land.

Havant Borough Council should explain why they have failed to enforce the Enforcement Notice. It cannot be the case in a democratic society that someone who breaches planning policy can be permitted to continue to profit from that breach. The correct procedure seems to be that the current breach is rectified, not by further applications, but by ceasing to continue the breach and complying with the Enforcement Notice before proceeding further.

Havant Borough Council's planning policy is that, in such a case as this, no further applications should be considered until such time as the Enforcement Notice has been fully complied with – so why is this Application being considered?

3. Current Application

On examining the current Application it seems to be no different to that which had previously been submitted other than it provides a different means of access which avoids the farmyard.

Given the comments on enforcement above it is contrary to Havant Borough Council's policy to allow the Application to proceed – if Havant Borough Council allow the Application to proceed they are simply openly and publicly condoning breaches of planning legislation.

Whilst the alternative means of access proposed may have a bearing, no documentation has submitted with the Application which proves that the alternative access road, which is not owned by the applicants, is subject to a binding legal agreement with the land owner and the applicant for permanent use. The only legal agreement in place seems to be a right of access through the farmyard.

The recommendation was to refuse permission for the previous applications APP/18/00943 and application APP/19/01262 was also refused, the principal reason being that, having regard to the nature of the activities being applied for, Havant Borough Council as the local planning authority considered that the proposed development was not appropriate and contrary to planning policy.

I cannot see any circumstances under which the current Application should alter in any way the view previously taken by Havant Borough Council, and the proposed development seems in direct contravention to Havant Borough Council's own planning policies and does not fulfil, or comply with, the objectives of an SSSI – see the 1986 Agreement.

Indeed, were Havant Borough Council to grant consent to the Application, the effect would be to 'declassify' an SSSI, which Havant Borough Council has no power to do.

4. Natural England

Natural England wrote to Havant Borough Council on 27th February 2023 concerning the Application.

Their comment is "as submitted the application could have potential significant effects on Chichester Harbour Site of Special Scientific Interest. Natural England requires further information in order to determine the significance of these impacts and the scope for mitigation".

Natural England has recently made available, under Freedom of Information Requests ('FOIRs'), various documentation relating to the history of the Application site.

Several documents relate to the negotiation of a new site management agreement following expiry of the 1986 Agreement.

The 1986 Agreement ended on 27th February 2005 and Natural England sought to put in place a new site management agreement as required under statute to fulfil the protection of an SSSI.

As a result of a telephone call on 17th April 1997 between unnamed parties (assumed to be the applicant or a party representing the applicant) and Natural England, Natural England issued an agreed site management statement ('the Original April 1997 Site Management Agreement').

Natural England regarded the Original April 1997 Site Management Agreement as the settled position that had applied from April 1997 as that was what they held on their files.

Detailed correspondence in 2013 and 2014, obtained under FOIRs, show a dispute between the solicitors to the applicant and Natural England over the precise wording of the Original April 1997 Site Management Agreement.

The dispute appears to revolve around the applicant's assertion that the Original April 1997 Site Management Agreement was incorrect because it did not include one specific clause.

The Original April 1997 Site Management Agreement refers to a number of unauthorised activities which had already taken place by April 1997.

The specific clause concerned the applicant's solicitor's assertion that Natural England had agreed to add a new clause 6.2 vi which recited 'all land to the east of point 'c' is the business amenity area, consent is not required for operations provided that points i, iii, and

iv above are met, however this area excludes the 'Bury' and heronry'. An excerpt is attached with the additional clause highlighted in pink.

Correspondence from Natural England indicates that the amended April 1997 Site Management Agreement ('the Amended April 1997 Site Management Agreement') was only approved by Natural England in May 2014 and the circumstance of that approval require detailed investigation.

It should be noted that a 'business amenity area' does not appear to be a recognised term in planning of SSSIs.

The inclusion of the additional clause 6.2 vi in the Amended April 1997 Site Management Agreement seems entirely at odds with the 1986 Agreement and the Original 1997 Site Management Agreement as the net effect of the additional clause is to de-classify part of an SSSI and, so far as I can establish no legitimate procedure has been followed to de-classify part of this important SSSI – it appears to be in direct contravention to the legislation surrounding SSSIs and thus must be 'ultra-vires'.

These are points which are being raised separately with Natural England, not least because it could significantly affect their overall position in relation to the Application given that the inclusion of this clause in the Amended April 1997 Site Management Agreement is entirely at odds with the 1986 Agreement and with what Natural England thought was the accepted Original April 1997 Site Management Agreement

5. Conclusions

The 1986 Agreement sets out clearly the spirit of what was always intended for the Application site in accordance with the adopted strategy for SSSIs in the UK.

The general principle was that the Application site would not be subject to development and would be 'managed as unimproved, neutral and acidic permanent grassland maintained by the grazing of cattle and for encouraging the use of the land as a feeding and roosting area for wild fowl, waders and other wetland birds to ensure the maintenance of the rich and varied flora the high ornithological interest ...' - in other words to preserve the SSSI.

It is therefore entirely appropriate that Havant Borough Council did not permit a material change of use of the land to a wedding and events venue and refused applications APP/18/00943 and APP/19/01262.

It is also entirely appropriate and in line with those decisions that the Enforcement Notice was served.

I fail to understand why Havant Borough Council have not taken steps to ensure the Enforcement Notice is complied with as this requires the applicant to cease an unlawful use and to remedy the planning breaches by removing the specified structures and reinstating the SSSI.

Nothing in the current Application suggests that any of the SSSI circumstances have changed such as to alter the original decision of Havant Borough Council to refuse consent for applications APP/18/00943 and APP/19/01262.

This Application must therefore either be refused or deferred until there has been full compliance with the Enforcement Notice, and Havant Borough Council must ensure that the Enforcement Notice is complied with, without any further delay.

If this does not happen Havant Borough Council and its Councillors are guilty of the unlawful acts of allowing an SSSI to be de-designated and of assisting the applicant to continue to breach established planning policy.

Having listened to the deliberations of the planning meeting of 1st December 2022 in relation to APP/21/01310, I was surprised that some Councillors were proposing a 'solution' to allow that application to be approved on the grounds of commerce and the general promotion of business with seemingly little regard for the historic breaches of planning legislation confirmed by the Enforcement Notice and the Application site's designation as an SSSI.

It sets an unacceptable precedent to not ensure the Enforcement Notice is complied with before considering any further applications – if this is the policy of Havant Borough Council then it gives 'carte blanche' to anyone to flout planning legislation if all you have to do to avoid enforcement proceedings is to make further applications to attempt to 'wring a wrong'.

In light of the above could I please have formal confirmation that there is no 'non enforcement' agreement in place between the applicant and Havant Borough Council.

Yours faithfully