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Mr Steve Weaver
Planning Officer
Havant Borough Council

BY EMAIL ONLY

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24 March 2021

Dear Mr Weaver

**MR CHRISTOPHER AND MRS ALICE SNELL
APPLICATION FOR A CERTIFICATE OF LAWFUL EXISTING USE OR DEVELOPMENT ("CLEUD")
APP/19/01262 ("the CLEUD Application")**

A. INTRODUCTION

1. I am writing in substantive response to your e-mailed letter of 10 March 2021.
2. In doing so, I should like to thank you for the opportunity to comment on the draft workings and preliminary legal advice in what is undoubtedly a complicated matter, but also to register two linked concerns: the length of time which it has taken your team to consider the substance of the CLEUD Application, which was lodged on 24 December 2019, and the request on 10 March 2021 for further information.
3. Since 24 December 2019, there has been a significant number of communications, mainly by e-mail, but also by telephone, between you, for the Council, and Haydn Morris of HMPC Ltd and me, for my clients. Mr Morris and I have been asking since at least July 2020 whether any further information or clarification is required for the Council to determine the CLEUD Application. In short, if the issues raised in your e-mailed letter of 10 March 2021 were matters of concern, the Council should have raised them nine months ago, if not, indeed, in the first quarter of 2020. By my clients' calculation, the Council has determined over 1,000 planning applications of one type or other since 24 December 2019.

B. PLANNING USE AND OPERATIONS

The correct approach to change of use

4. In your e-mailed letter of 10 March 2021, you have quoted advice from "the Legal team", which, in form and in substance, appears to separate out uses: Woods Cottage, shooting and camping, weddings, and corporate events are all treated separately. That advice, which mixes commentary on law and evidence, seems to ignore, without explanation, the way in which the CLEUD Application was framed. "Element 1" (as it was described in Mr Snell's witness statement and our Note

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accompanying the CLEUD, referring to the first numbered bullet point in box 8 of the CLEUD Application form) was expressed to seek recognition of "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 events venue for the purposes of both holidays and the holding of weddings and events and utilisation of any ancillary buildings and structures that may be required for such uses". More importantly, the advice ignores how the change of use should be properly characterised.

5. As a matter of analysis and by reference to the Town and Country Planning (Use Classes) Order ("UCO") 1987 (as amended):
 - 5.1 There are no specific planning use classes which cover use as a wedding venue, as a commercial event venue or for shooting events.
 - 5.2 The above uses might constitute leisure and assembly and recreational uses which now fall into three categories under the UCO 1987:
 - Class E – for indoor sport, recreation or fitness, not involving motorised vehicles or firearms, principally to visiting members of the public.
 - Class F2 – an area or place for outdoor sport or recreation, not involving motorised vehicles or firearms.
 - Sui generis – other assembly and leisure and recreational uses.
 - 5.3 The uses for which the CLEUD Application seeks recognition of lawfulness, however, are both indoor and outdoor uses and the sporting element includes the use of firearms. So, they do not fall into Class E and F respectively; rather, each constitutes a *sui generis* use.
6. Element 1 of the CLEUD Application is framed so as to encompass a mixed use comprising *sui generis* use for leisure, tourism and as a commercial events venue: ie, there is more than one primary use of the land. Section 191(5)(b) Town and Country Planning Act ("TCPA") 1990 requires the CLEUD to "describe the use" - or uses – but it clearly envisages the same approach to uses and the UCO 1987 as would obtain when the local planning authority is considering an application for planning permission under s.70 TCPA 1990.
7. In simple terms, the Council should not be breaking down the CLEUD Application into what amounts to a series of "mini" CLEUD applications for specific individual uses and the Council risks a justiciable legal error if it proceeds to determine the CLEUD Application in this way.

Operations

8. The legal advice quoted in your letter of 10 March 2021 reads as follows in respect of the gazebo, log cabin and decking (numbered bullet points 2-4 in box 8 of the CLEUD Application form):

"Gazebo, log cabin and decking.
The structures are part and parcel of the change of use and are not lawful unless the use itself has been demonstrated to be lawful."
9. This too appears to disclose an error of law. Where, as here, the CLEUD Application is referential to expiry of the time limits in s.171B TCPA 1990, the material issue is whether the structures have been physically present on the ground for four years. If so, the Council must grant the CLEUD in respect of them as has been physically present. There is no requirement to demonstrate both use and physical presence nor to link operations to use: see s.191(1)(a) and (b) TCPA 1990, which are disjunctive.

C. EVIDENCE

Calculating the number of events

10. In your e-mailed letter of 10 March 2021, you have explained the analytical approach you have taken to the evidence, by compiling two spreadsheets. You provide two summary tables in the body of the letter: ie, summarising the analysis in the spreadsheets. At section B above, we have set out how, as a matter of law, we believe the Council should properly approach its consideration of the CLEUD Application vis-à-vis uses. In light of that analysis, the division in the summary tables between (at least) "Wedding Event", "Corporate booking" and "Event" falls away: they are essentially false distinctions. Moreover, they are false distinctions which are carried into the Council's legal analysis quoted below and the second summary table in the 10 March 2021 letter.
11. Furthermore, you have appreciated that, in my clients' booking calendar, "multiple entries arise for individual days to some extent," without, perhaps, appreciating that there is no double-counting or intention to double-count. I enclose a spreadsheet, in which my clients and I have sought to summarise accurately the approach to how the numbers of events and lettings of Woods Cottage have been calculated in preparing the CLEUD Application. See Table 1 and, in particular, please note:
 - 11.1 Table 1, when read with my client Christopher Snell's witness statement and the booking calendar extracts which have been exhibited, should assist you to see that the CLEUD Application has been prepared scrupulously and with intellectual honesty; also, that it is not simple and that choices had to be made as to how most accurately and logically to do so, in particular by reference to legal analysis as to uses. It was necessary to find a way of consistently and coherently describing and counting events: my clients and I went to a great deal of trouble in working out the most accurate and helpful way of doing so, having regard to the way in which the land and structures are used by reference to the events. My clients hope that table 1 will assist the Council.
 - 11.2 The total figures in numbered rows 1 and 5. Those are the figures set out in paragraphs 19-29 of my client Christopher Snell's witness statement for the 11 years from 2009 to 2019 (inclusive), supported by a statement of truth.
 - 11.3 In reviewing and checking the figures, my clients note that there is one correction to be made to the calculations, which was simply human error: the total number of days in 2016 is 133 days, as set out in the enclosed spreadsheet, rather than 183 days.
12. Table 2 in the enclosed spreadsheet provides what I hope is a clearer explanation as to the colour-coding applied to my clients' booking calendar to help in the taxonomy and counting of the number of events when preparing the CLEUD Application in 2019.
13. Against that background, it is worth highlighting that the Council has, by counting the coloured squares in the booking calendar and ignoring the totals in the tables to the right, miscalculated the number of events, to populate its spreadsheets/summary tables. To take an example, you say that the example of a "7 day wedding" is "insightful". This appears to be the wedding booking of [REDACTED] in August 2012, but, if not, it provides a helpful example. To reproduce the relevant colour key ("WC" is "Woods Cottage") and booking calendar extract for August 2012:

MONTH							
EVENT							
CORPORATE BOOKING							
WEDDING							
WC ONLY							
OTHER							
ig-12 Mon	Tues	Wed	Thurs	Fri	Sat	Sun	Booked August
		1st	2nd	3rd	4th WEDDING	5th	
6th	7th CHARITY EVENT	8th	9th	10th	11th	12th	
13th	14th	15th	16th	17th CLIENT EVENT	18th CLIENT EVENT	19th	
20th	21st	22nd	23rd	24th	25th WEDDING	26th	
27th	28th	29th	30th	31st			
							DAYS
							EVENTS

14. If you adopt the approach of counting the different coloured squares, you would read the extract from the booking calendar as representing 13 'Wedding days' + 6 'Corporate days' + 11 Event days and 8 WC Only (Woods Cottage only/ holiday let) days. My clients have been rather more precise in their approach:
- 14.1 Please see the table immediately to the right of the calendar: there were 11 events, which saw use of the land within the red line on the CLEUD Application plan on 28 of 31 days in August 2012. For the purposes of counting, the 11 events are coloured purple.
- 14.2 Like many others, the [REDACTED] wedding was not a single, one-day event. Woods Cottage was occupied in connection with it from Thursday to Wednesday, including the first three days of the bride and groom's honeymoon. As you will see from the enclosed e-mail of 12 August 2012 from the bride to my client Mr Snell, the wedding itself took place on the Saturday, with set-up on the Thursday and the Friday and tidy-up on the Sunday. There were associated, but separate, parties with guests on both the Friday and Sunday: together with the wedding on the Saturday, that gives you the key as to why three events have been counted for the purposes of the CLEUD Application in relation to that booking. As such, it is a good example of the type of extended weddings, some with a series of events over days, which my clients specialise in.
- 14.3 It would be wrong of the Council to approach wedding (and indeed other event) activities at the Tournbury Woods Estate as if it were, say, a hotel venue which only rents a dining room for a single day hire. Tournbury has, since at least 2009, offered clients flexibility as to use of the site: such use is not limited or constrained as the afternoon or evening hire of an hotel or social club for the purposes of 'an event'. That is a significant part of its attraction as a venue for event hire, in particular for wedding events, with associated parties/events taking place over a number of days, with a single booking fee and invoice.
15. If you take the figures from the monthly tables to the right of the calendar, you will see how the figures in the tables showing annual totals are calculated: it is those figures which are set out in paras.19-29 of Mr Snell's witness statement, subject to the correction for 2016 at para.11.3 above.
16. Lastly, I note in the first summary table that you have a final column, "No event". That appears to miss the point: there does not need to have been use of that part of the Tournbury Woods Estate included within the red line of the CLEUD Application for each of 365 days a year for 10+ years to have changed the use. The relevant uses inevitably fluctuate in their intensity year on year and, indeed, with the seasons within those years, but those set out as "Element 1" of the CLEUD Application have been the primary uses (ie, comprising the mixed use).

Further evidence

17. The following further documents have been uploaded into a dataroom in a file named "2021 Further Information":
 - 17.1 Bank statements from January 2010 to December 2014.
 - 17.2 Tournerbury Holdings Ltd's Barclays "Paying in Book" from June 2008 to May 2012. Please note, in particular, payments for BTL Ltd and Insurance Initiatives Ltd and CMF Ltd payments, including that 'Club Monkey Puzzle Points' (rendered as "CMP" or "CMP points").
 - 17.3 'Club Monkey Puzzle', as shown in the public marketing of the Club at a South Coast Exhibition in May 2008 (see the Evidence Base), was Tournerbury's "points based" system so that corporate clients could utilise full flexibility in booking Tournerbury for various different purposes throughout a year: for example, client entertaining or staff off-site meetings. There are not individual invoices for each 'event day' and the paying in slips and corroborating bank statements attest to these purchase of points *en bloc*.
 - 17.3 Various photographs from 2009 to 2020 showing the shoot at Tournerbury, provided by [REDACTED] who have run the Tournerbury shoot consecutively since 2004. (Please see the pdf entitled "Assorted Tournerbury Shoot Photographs 2009 to 2020".) Apart from one photograph (at the top of page 20 of the pdf), all the photographs were taken in different parts of the CLEUD Application red-line area. As well as showing those present on shoot days, they also show use of Woods Cottage, the Gazebo, the deck and the marquee, as well as pheasant poults and ducklings being delivered in the summer months in a number of years.
18. Please note:
 - 18.1 My clients have provided corroborative bank statements from January 2010 to December 2014 (5 years inclusive) and the copies of paying-in books from 2008 to 2012 for several reasons. First and foremost, summary table 2 in your 10 March 2021 letter discloses that your preliminary view is that there were no or very few events in the years 2008 to 2012: those documents corroborate the booking calendars and the numbers of events to which my client's witness statement speaks. Secondly, as it goes to credit: it is a representative sample which goes to a true picture of what events were taking place. Thirdly: the paper and electronic search, scanning, redaction and uploading of the additional documents now available in the dataroom took more than seven very full working days to achieve, and my clients had to draw a line somewhere, in the interests of proportionality.
 - 18.2 Unredacted and redacted versions of the documents listed in paras.17.1 and 17.2 are provided, as before on the basis that the Council does not disclose the unredacted copies on its planning website. A separate file in the dataroom named "2021 Further Information – Fully redacted for HBC to publish on portal" has also been supplied for the Council's ease and contains the same documents but redacted appropriately.

Corroboration

19. In your letter of 10 March 2021, you place significant emphasis on corroboration by documentary evidence and appear to give no credit to my client Christopher Snell's evidence as set out in his witness statement, though I note that you have stopped short of saying that:
 - 19.1 As you will be well aware, the Evidence Base supporting the CLEUD Application runs to c.1,000 pages – and, in its preparation just as in additions to it, a line had to be drawn somewhere in the interests of proportionality and cost. As set out at para.17, my clients are, nevertheless, happy to provide further corroborating documentary evidence: see below.

- 19.2 As I have indicated at para.11.1, it was necessary, in preparing the CLEUD Application, to find a method of taxonomising and counting events which reflected (a) a proper legal analysis as to uses and (b) the events and uses of land as they have taken place on the ground. I hope that table 1 in the enclosed spreadsheet will assist you quickly to see that the way in which the events and uses of land have been characterised and counted has been coherent and intellectually honest throughout.
20. As a matter of the proper consideration and weighing of evidence, the Council should, in any event, be slow to disregard my client's witness evidence as such without direct evidence to the contrary, similarly verified by a statement of truth. There is a small number of representations in response to the CLEUD Application: before attributing any weight to those representations, the Council should consider very carefully the motivation of their authors, as a matter of inference, and, moreover, what direct and detailed evidence they can give over the prolonged period. The standard of proof for my clients is the balance of probabilities; there is no witness evidence, in particular from a non-partisan source, which is properly formulated and verified with a statement of truth to gainsay what my client Christopher Snell has attested to; and the Council should be very careful not to elevate the evidential bar higher, so that my clients are, in practice, having to prove their case beyond reasonable doubt.

D. NEXT STEPS

21. Please acknowledge receipt by return.
22. In my e-mail of 10 March 2021, I spelt out the objective urgency in consideration and determination of the CLEUD Application. To that end, please will you scrutinise the contents of this letter and its enclosures carefully, including with the Council's lawyers to whom this is copied. If you are in any doubt as to any evidence or as to how events have been counted, please e-mail me as a matter of priority: it may be simplest that my client Christopher Snell explains to you and your colleagues, in a Teams call, how the events have been counted. He is willing and, indeed, would be pleased to do so, in order to avoid any further confusion or delay.
23. In light of the parallel planning enforcement appeal, please would you confirm to Haydn Morris and me when you propose to determine the CLEUD Application.

Yours sincerely

JAMES PAVEY
PARTNER
For and on behalf of IRWIN MITCHELL LLP

Sent electronically
Read and approved by James Pavey but not signed