

Appendix 1

Retrospective planning permission Tournerbury Woods – Planning application APP/21/01310

Appendix to HMPC Ltd letter 17th August 2022

Resubmission of appendix to letter 22 05 22

The letter from [REDACTED] undated but received by the local planning authority on 19th April 2022, contains a number of inaccuracies, which we are required to correct to provide a true planning context within which the planning authority can reach a determination.

Alternative Access provision

The attempts of A G Phillips and Son Ltd to provide an alternative means of access to Tournerbury Woods is acknowledged. However, not only is the construction of the proposed alternative route not to the standard, detail and conditions approved in any planning permission, it is neither completed (with no date offered as to when completion is planned) nor are the terms of use and maintenance offered acceptable to the applicants. There is no guarantee of the provision of the "wider, safer, superior" access claimed.

No like-for-like agreement has been offered (by A G Phillips & Son Ltd) or agreed as stated by the letter. The terms of use offered are not those suggested in the letter, but aggressively favour Tournerbury Farm in perpetuity.

Approaches by the applicants to negotiate an alternative access have been ignored or hindered over many years. It is on record that the applicants first approached A G Phillips & Son Ltd in 2006 to discuss this matter. Please see the first response email (from A G Phillips & Son Ltd's Land Agent – Ian Jubb) to the applicants, replying to the applicants first cordial approaches to the owners of Tournerbury Farm in regard to alternative access matters (please see below – Fig.12). It is not unreasonable therefore to interpret the recent willingness to provide an access, as being incentivised by the potential to force the lifting of a substantial acreage of restrictive covenants, which preclude the objector's development aspirations. The objectors are seeking to misuse the planning system to enhance their negotiating position through contrived and continuous moving of planning representations, that repeatedly reopen matters that have been resolved, in order to prolong a favourable determination which would provide a satisfactory solution for all.

The terms of use of an alternative access have been in negotiation for 16 years as explained in detail in the attached letter from Irwin Mitchell 7th March 2022 (Fig.2) and in a recent email, both copied below for information. These are currently unresolved and at the date of this letter no response has been received by the applicants to their email via James Pavey of Irwin Mitchell LLP of 26 April 2022.

From: James Pavey <James.Pavey@IrwinMitchell.com>

Date: 26 April 2022 at 21:59:30 BST

To: Jonathan Thompson <jthompson@thrings.com>, Robert James <rjames@thrings.com>

Dear Robert and Jonathan

Thank you for your e-mails of 18 March 2022.

In my e-mailed letter of 7 March 2022 (re-attached), I proposed a "like for like" surrender of the existing right of way at all times and for all purposes, with or without vehicles, in exchange for the grant of such a right of way over the partially built out track (once completed) pursuant to planning permissions APP/17/00207 and APP/21/00536 ("the Track"). As the letter said, the proposal was intended to enable your client to take a simple step to resolve what is or is said to be at the heart of [REDACTED] concerns about my clients' current use of their title SH14945.

Your (Robert's) response on 18 March 2022 was that that proposal was "acceptable in principle".

Your (Jonathan's) response on the same date, however, was to send a marked-up set of draft Heads of Terms, which would see the surrender of the existing right of way and grant of a new right of way granted on nothing like the same terms. The proposed new right of way would be granted for much more limited purposes:

"a. for purposes in connection with use of Mr Snell's land as a wedding and event venue in accordance with (i) the planning permission (and its conditions) granted (in due course) by Havant Borough Council on Mr Snell's land for the wedding & event venue ; and (ii) the planning permission REF No: APP/4/00536 (and its conditions) granted by Havant Borough Council on AG Phillips' land for the new track . 24 hour use permitted. This nature/time/type use is subject to Mr Snell complying with other conditions in the deed of grant (particularly safety & control measures).
b. agricultural purposes on Mr Snell's land, such use being permitted at all times with or without vehicles. The use is subject to Mr Snell complying with other conditions in the deed of grant (but not safety & control measures relating only to wedding and event traffic) and the planning permission (and its conditions) granted (in due course) by Havant Borough Council on AG Phillips' land for the new track."

The draft Heads of Terms also proposed a multitude of controls and constraints where none currently exist.

You (Jonathan) have e-mailed, sent a letter on 31 March 2022 and subsequently telephoned, pressing for confirmation that you can prepare a draft Deed of Easement.

The regrettable reality, based on your clients' draft Heads of Terms, is, however, that our clients are nowhere near agreement. That is a source of some significant disappointment to my clients, in particular in light of your (Robert's) e-mail of 18 March 2022 indicating that my clients' proposal was acceptable in principle.

My clients have also drawn to my attention considerable activity on [REDACTED] part in the last fortnight, apparently to try to finish the Track, albeit minus a section at the southern end (see para.5 below). Given that we have not even concluded heads of terms, such activity is, on its face, premature, but, in any event, my clients are equally disappointed to observe that:

1. The Track is supposed to be dug to a depth of no less than 400mm: see [REDACTED] letter of 2 December 2019, at page 1 under the heading "Track construction" and containing details subsequently approved in discharge of conditions. Unfortunately, the Track does not appear to have been dug to that depth, from my clients' observations.
2. The Track is supposed to comprise a geotextile membrane, then a minimum depth 250mm of approved subbase (permeable coarse aggregate to clause 6f5 specification), rolled and compacted, and then covered with minimum 150mm wearing coarse (of a permeable aggregate to clause Type1 803) and top dressed with road planings. Again, it appears that a significant volume of crushed builders' rubble has been used to construct the Track, which has then simply been covered over with the road planings.
3. It is not clear that the required drainage has been installed and the drainage pipe in the existing ditch at the Tournurbury Lane end appears not to have been capped off with concrete to ensure that it can bear heavy loads without damage to the pipe. In that regard, it is my clients' reasonable expectation that it would be constructed so as to be fit to bear the weight of vehicles going across it.
4. It is similarly not clear whether the development has been carried out in compliance with the Arboricultural Impact Assessment/Statement and Tree Protection Plans of 4 October 2021, as they are not available on Havant Borough Council's planning portal to view. Please would you provide copies and your client's comments as to whether they have been complied with.
5. There is a section at the southern end which [REDACTED] has yet to start. This seems to be at odds with [REDACTED] frenzied activity to complete the rest of the Track. Perhaps you could explain why.

Those observations, if well-founded, have a significant impact on the ability to reach agreement: my clients are not, for obvious reasons, going to surrender their existing right of way and contract to use or, indeed, assume any maintenance liabilities for a Track whose original build quality is substandard and/or which is incomplete.

Against that background as a whole, my view is that, if your client really is committed to moving these negotiations forward, the sensible next steps would be:

- (i) Organising a without prejudice meeting between the relevant professionals involved, focussing on the draft Heads of Terms. I have in mind solicitors and surveyors and I am happy to host such a meeting at my firm's Chichester office. I do not, however, think that we are going to make any meaningful progress if the surrender and grant are not on a like-for-like basis: ie, at all times and for all purposes, with or without vehicles.

(ii) Your client to allow proper scrutiny by a civil engineer instructed by my clients of the works which he is undertaking. If the construction of the track has been strictly in accordance with the conditions in planning permissions APP/17/00207 and APP/21/00536, my clients would be pleased to have verification of that fact: it would likely represent a significant step forwards towards the consensual resolution of certain of the disputed matters between our respective clients. If your client is, however, unwilling to subject what he is doing to such professional scrutiny, my clients will draw the obvious inference.

Please would you take instructions and come back to me. Regards

James Pavey
Partner
Irwin Mitchell LLP

Existing Right of Way

The right of way reserved by the applicants for access to Tournerbury Woods as shown on relevant legal documentation, is 7 meters wide on the ground. The route is adequate in width, and has passing places (some of which have been recently unlawfully blocked by A G Phillips & Son Ltd). It is more than adequate to accommodate the use proposed, and this has been confirmed by transport consultants and highway engineers. There is no objection from the Highway Authority. The objectors' letter of 19th April 2022 states correctly that the right of way is "*identified by the black hatching on the deeds.*" This is correct but stops short of full disclosure and explaining that the black hatching as carefully drawn and conveyanced is a continuous width of 1.4mm on the conveyance plan at a scale of 1:5000. As such, the available right of Way width, available to the applicants is 7 meters wide on the ground and therefore claims made by the objectors of trespass, lack of available passing ability or the right of way being "*a single track*" are legally incorrect.

Physically the right of way has been altered over time, both as a result of use and also as a result of deliberate change, issues that relate directly to private law matters. The applicants have the right to maintain and access the drawn and described width at all times and any suggestion to the contrary, or that the route is single track along its length or is unsafe, is incorrect. Please see original 1987 conveyance map and measurements of the right of way (black hatching) from the end of Tournerbury Lane to Tournerbury Woods in Figs 3, 4, 5 & 6 below.

The objectors letter states "*From the woods to the highway, it was a single track.*" This is incorrect and is incongruous with not only the width of the right of way on the conveyance map but also the wording of the conveyed right of way which refers to the right of way in the plural "*tracks*" –

*"EXCEPT AND RESERVED unto the Vendor a right of way in favour of the Vendor and his successors in title being the owners or occupiers for the time being of Tournier Bury Wood Tournier Bury Plantation and Wood Cottage and their tenants agents licensees and others authorised by them at all times and for all purposes with or without vehicles over and along the **tracks shown hatched black on the said plan.**"*

This situation has been set out fully in previous submissions (now at appeal) and is well known to the local planning authority.

The applicants have written statements from staff and guests confirming their experience from third parties of unnecessary aggression, comment, frequent obstruction and harassment when using the right of way. These statements are ready to be provided if required.

There is considerable suggestion in the [REDACTED] letter of 19th April of how the right of way is used or could be used, much of it suggesting a lack of safety and a difficulty of use. This is pure conjecture and no evidence is provided to suggest otherwise.

All historic incidents now referenced as being indicative of the unsatisfactory nature of the access, were not raised as issues at the time they allegedly occurred, and these have been refuted by evidence provided by the applicants and proven to be fabricated. There are no recorded instances of harm or safety breaches over the 35 years of the right of way's existence, and [REDACTED] bedroom does not appear to "face the yard" as quoted (please see plans of [REDACTED] in the additional documents below, Figs 7 & 8).

Use of the right of way, while already subject to guidance, is to be brought under greater control through the mitigation measures now proposed and before the planning authority for approval.

The use of Tournerbury Woods as proposed, is spread over the majority of the year between March and October. While it is acknowledged to peak during the summer months, use is not as concentrated as objectors claim.

The Tee Caddy Café

We can find no evidence of this structure and use benefitting from planning permission (the planning permission for this building was for a driving range and pro shop), but it does benefit from a licence to supply alcohol to the general public from 9am to 9 pm each day (2am on New Year's Eve) and is not precluded from providing entertainment including live or recorded music (e.g Wave festival – up to 2999 persons attending). This venue is not subject to any planning controls, nor any mitigation proposed by the operators. Users (members of the general public) arriving and leaving the premises taking advantage of the takeaway service offered and also delivery drivers to and from the premises also pose a potential loss of amenity to residents at Tournerbury Farm. The Tee Caddy Café is immediately adjacent to one residential receptor in Tournerbury Farm and 50 meters from the second residential receptor in Tournerbury Farm. The waste bins for this café, takeaway and food delivery business are in the centre of Tournerbury farmyard. We can find no evidence of the 75 square meter outside dining terrace at the Tee Caddy Café benefitting from planning permission.

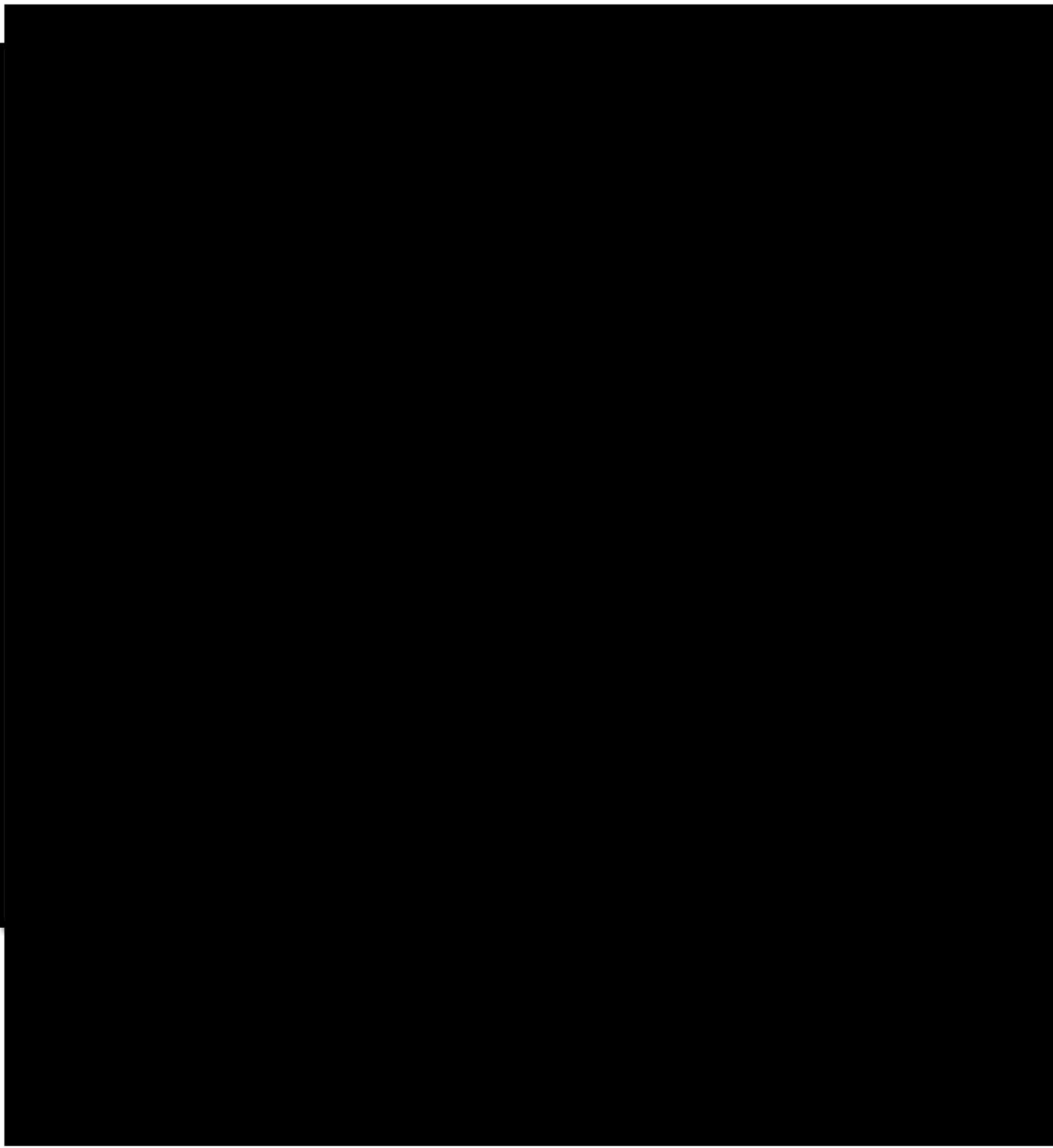
Tournerbury Farm

There is no disagreement that A G Phillips and Son Ltd operate Tournerbury 'Farm' and that very limited agricultural activities take place throughout the year (circa 30 grazing cattle on a 250 acre land holding). Like many farming enterprises this operation diversified immediately upon purchase, (with most of the arable fields being turned into a golf course and driving range) and more so over the years, with agricultural activity discernibly lower than under previous ownership, to the point now where agricultural use is de-minimis. New uses have been introduced that have no direct relationship with agriculture. This diversity is referenced in their own correspondence from Thrings LLP as a "business enterprise." We believe some of the uses and structures at Tournerbury Farm require planning permission and we have drawn these to the attention of the planning authority, and to the Environment Agency and Historic England in relation to the Scheduled Ancient Monument where we suspect harm is caused to environmental interests.

Within the context of claimed 'amenity' the council should be aware that since at least 2018, A G Phillips & Son Ltd have been promoting (to the council) the development of land immediately adjacent to their two dwellings for a new build housing estate of up to 150 dwellings in conjunction with Hayling College. This was allocation H30 in the previous submitted Local Plan and it is reasonable to assume that such a sizeable and valuable scheme will be re-submitted upon consultation by the council for the new Local Plan going forwards. Please see documents below (Figs 9, 10 & 11) showing part of the plans for this development as submitted to HBC and Google Earth imaging. It is perverse to be claiming 'amenity protection' from the council whilst at the same time applying to the council to substantially develop a sizeable housing estate immediately adjacent to [REDACTED] dwelling.

Fall back and economics

██████████ seek to add considerable weight to their position by claiming potential issues that might arise in the future, but without any evidence to substantiate their claims. In contrast, there is no commentary on the valuable and evidenced economic role played by Tournerbury Woods within the local area, both in terms of direct employment and multiplier effect and the economic reality and necessity of funding the present and future sound environmental management of Tournerbury Woods, one of the only Favourable Condition Status SSSI units in the Chichester Harbour AONB. The objectors fail to also acknowledge the factual fall-back position applicable to the application site and its use, should the proposed development not proceed. This position is set out clearly in the application and will not be subject to any planning controls or mitigation, but will utilise the same right of way.





Your Ref: RWJ/A4274-3
Our Ref: 17197/17197/A8099604-8/29711957-1

Things LLP

James Pavey
Direct Dial: 01283 742748
james.pavey@irwinmitchell.com

07 March 2022

BY EMAIL ONLY: rjames@things.com

SUBJECT TO CONTRACT

Dear Sirs

[REDACTED] Right of Way over Tournurbury Farm
Offer letter

We write further to previous correspondence and discussions aimed at trying to resolve disputed issues between our respective clients on a consensual basis, in particular centred on the reservation of the right of way which your client agreed to in the 17 November 1987 Conveyance.

As our clients have reminded us, these discussions are not new; rather, they go back as far as c.2006. Indeed, the writer was engaged in extensive negotiations with Andrew Bays of BCM LLP and [REDACTED] on behalf of AG Phillips & Son Ltd and [REDACTED] between 2015 and 2017, before you were instructed. It is clearly a moot point whether the most recent draft Heads of Terms, sent by Simon Blandford of Savills on your client's behalf on 23 July 2021, amounted to an attempt to "ransom" our clients against the backdrop of Havant Borough Council's decision not to approve our clients' application no.APP/18/00943. It is equally clear, however, that the negotiations have not progressed in recent years as they have been complicated by a number of peripheral issues: for example, seeking the release of restrictive covenants, such as would facilitate residential development.

Against that background we have reviewed the matter thoroughly with our clients, and make the following offer on their behalf – that:

- 1 Our clients will enter into a Deed to surrender the right of way to your client, so that it no longer runs through Tournurbury Farmyard.
- 2 In consideration for our clients' surrender, your client will in the same Deed grant a right of way for the benefit of our clients' title SH14945 at all times and for all purposes, with or without vehicles over and along the track which has been partially built out on your client's title HP342493 pursuant to planning permissions APP/17/00207, and APP/21/00536.

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In commercial terms, simply expressed, that is a straightforward exchange of "like for like" It enables your client to take a simple step to resolve what is – or is said to be – at the heart of your client's and [REDACTED] concerns about our clients' use of their title SH14945.

The offer is made on an open basis, but necessarily subject to contract: a Deed will be required to effect terms 1 and 2 above and to deal with ancillary issues, such as your clients' completion of the alternative access to a satisfactory standard and future maintenance liability.

Please let us know by close of business on Monday 21 March 2022 whether your clients are willing, subject to contract, to enter into such a Deed.

Yours faithfully

IRWIN MITCHELL LLP

Sent electronically
Read and approved by James Pavey but not signed

Fig 2: Irwin Mitchell LLP Letter to Thrings LLP – 7th March 2022

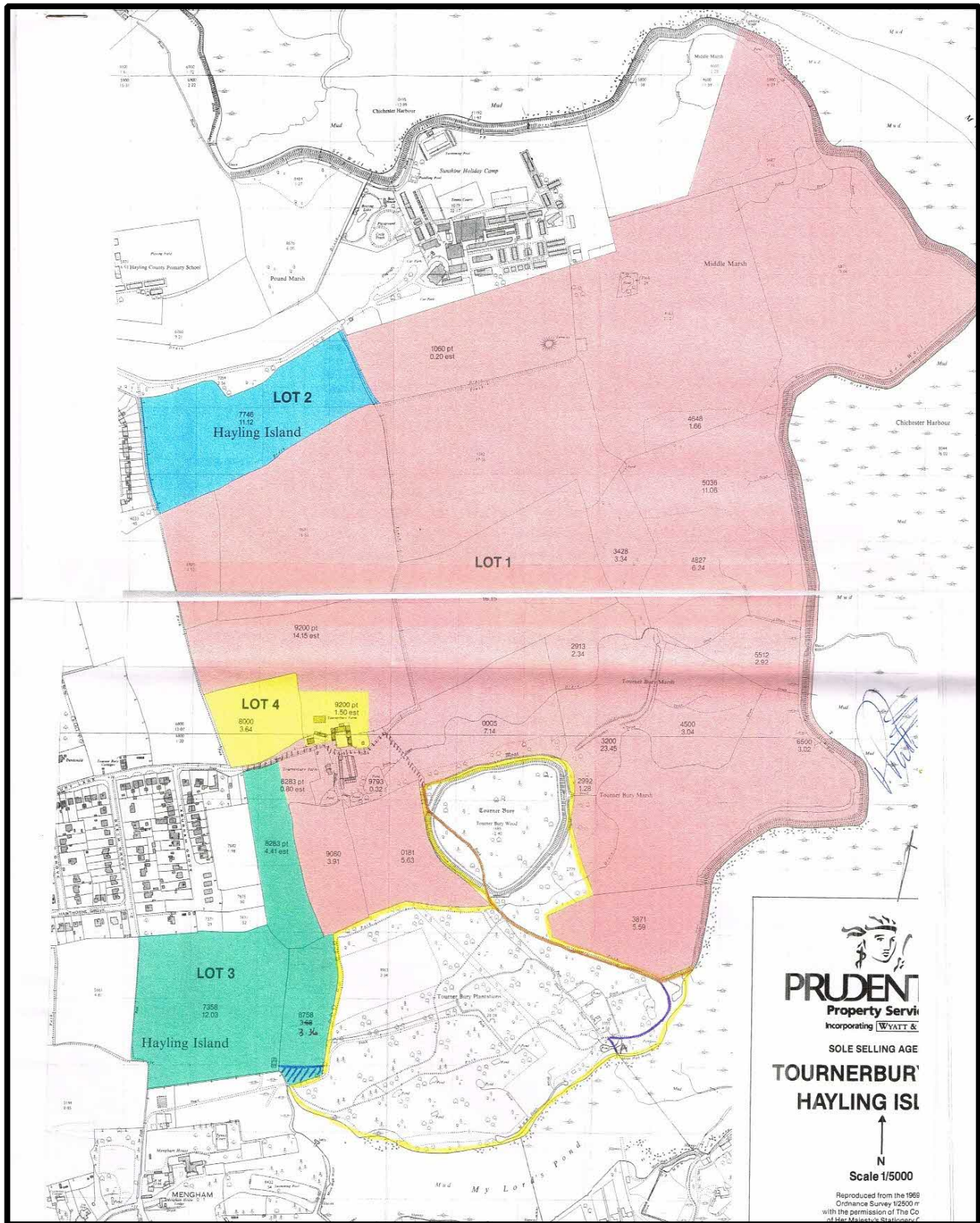


Fig 3: Original signed conveyance map of sale of Tournerbury Farm to A G Phillips & Son Ltd in 1987. Source: Snell family legal files.



Fig 4: Original signed conveyance map of sale of Tournbury Farm in 1987. The photograph above shows a close up of the Right of Way to Tournbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.41 mm (just over 7 meters on the ground) across the north / south section in between the two ponds created by A G Phillips & Son Ltd.



Fig 5: Original signed conveyance map of sale of Tournbury Farm in 1987. The photograph above shows a close up of the Right of Way to Tournbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.40 mm (7 meters on the ground) through the centre of Tournbury Farm.

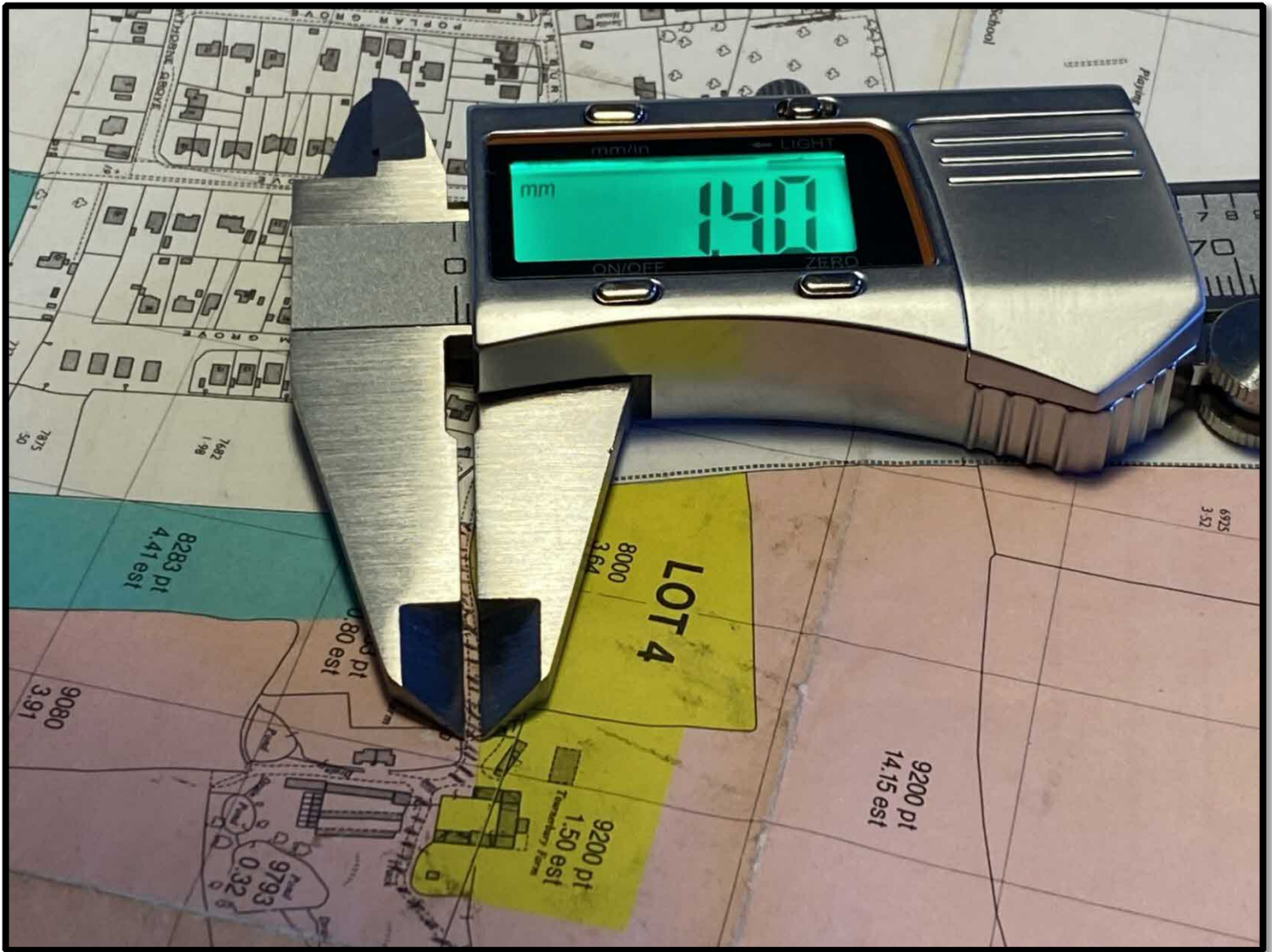


Fig 6: Original signed conveyance map of sale of Tournbury Farm in 1987. The photograph above shows a close up of the Right of Way to Tournbury Woods as drafted on the original signed conveyance map (The Right of Way is hatched black). Width measurement is 1.40 mm (7 meters on the ground) running from Tournbury Lane past what is now the two entrances to Tournbury Golf Centre.

Even if it could be proved by A G Phillips & Son Ltd, in a Court, that the passing places were not included within the Right of Way as reserved, they have been used by those lawfully exercising the Right of Way, their agents and visitors without force, secrecy or permission continuously for such period of time that they enjoy a prescriptive right of way with vehicles and pedestrians and a right to park for a limited time on it (if not an ancillary easement to the right of way) by the doctrine of lost modern grant and/or pursuant to the Prescription Act 1832.

For the avoidance of doubt the digital measuring caliper used in the photographs is accurate to a tolerance of ± 0.01 mm, which equates to ± 5 cm on the ground.

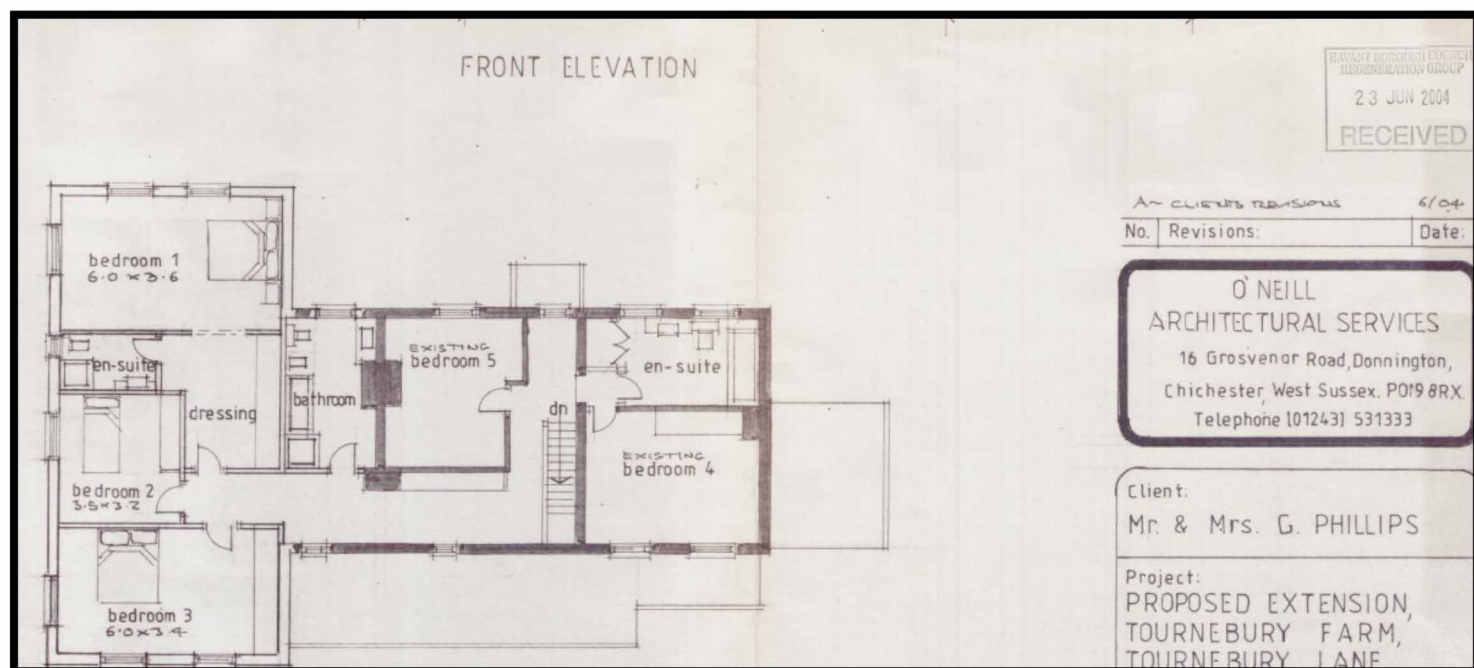


Fig 7: Plans of southern extension to [REDACTED] house in 2004 showing the master bedroom suite including walk in dressing room and en-suite bathroom to be located in the south-west of the property overlooking fields and not overlooking the farmyard and right of way as stated by [REDACTED] letter of 19th April 2022. Source: HBC Planning Portal

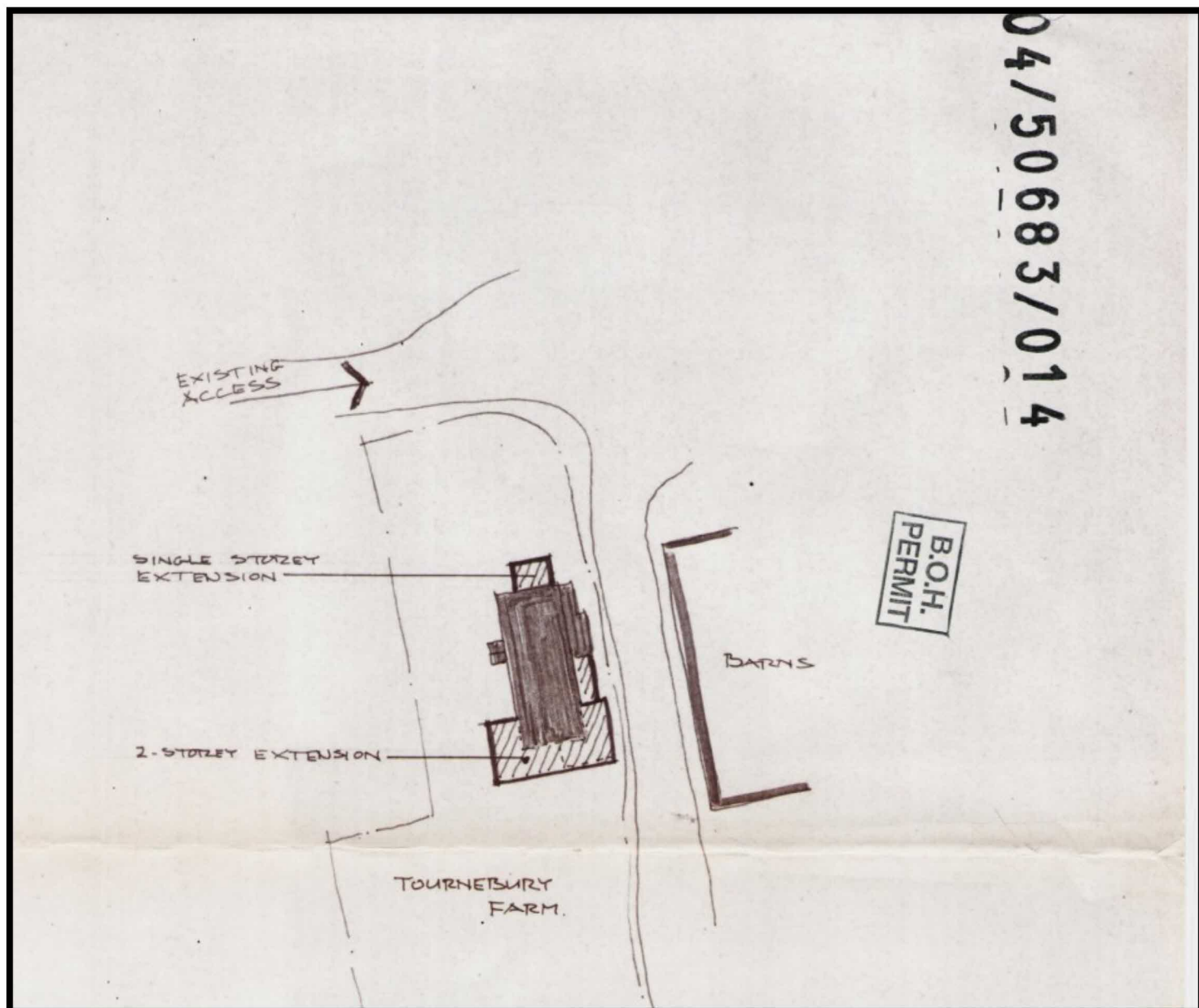


Fig 8: Approved site / location plan of extension to [REDACTED] house in 2004 shows the master bedroom suite located in the south west corner of the building with no views of the farmyard and right of way through the farmyard as stated in [REDACTED] objection letter of 19/04/2022 where they state "our bedroom faces the yard.....the lights from wedding guests vehicles light up our bedroom as they are leaving". Source: HBC Planning Portal



Fig. 3 Extract from Pre-submission Local Plan Hayling South Policies Map, showing land to be added to proposed housing allocation H30

Fig 9: Source: Havant Borough Council - DP/19/02036 – Havant Borough Local Plan 2036 consultation, proposal submitted on behalf of A G Phillips & Son Ltd (& Hayling College) – R111.

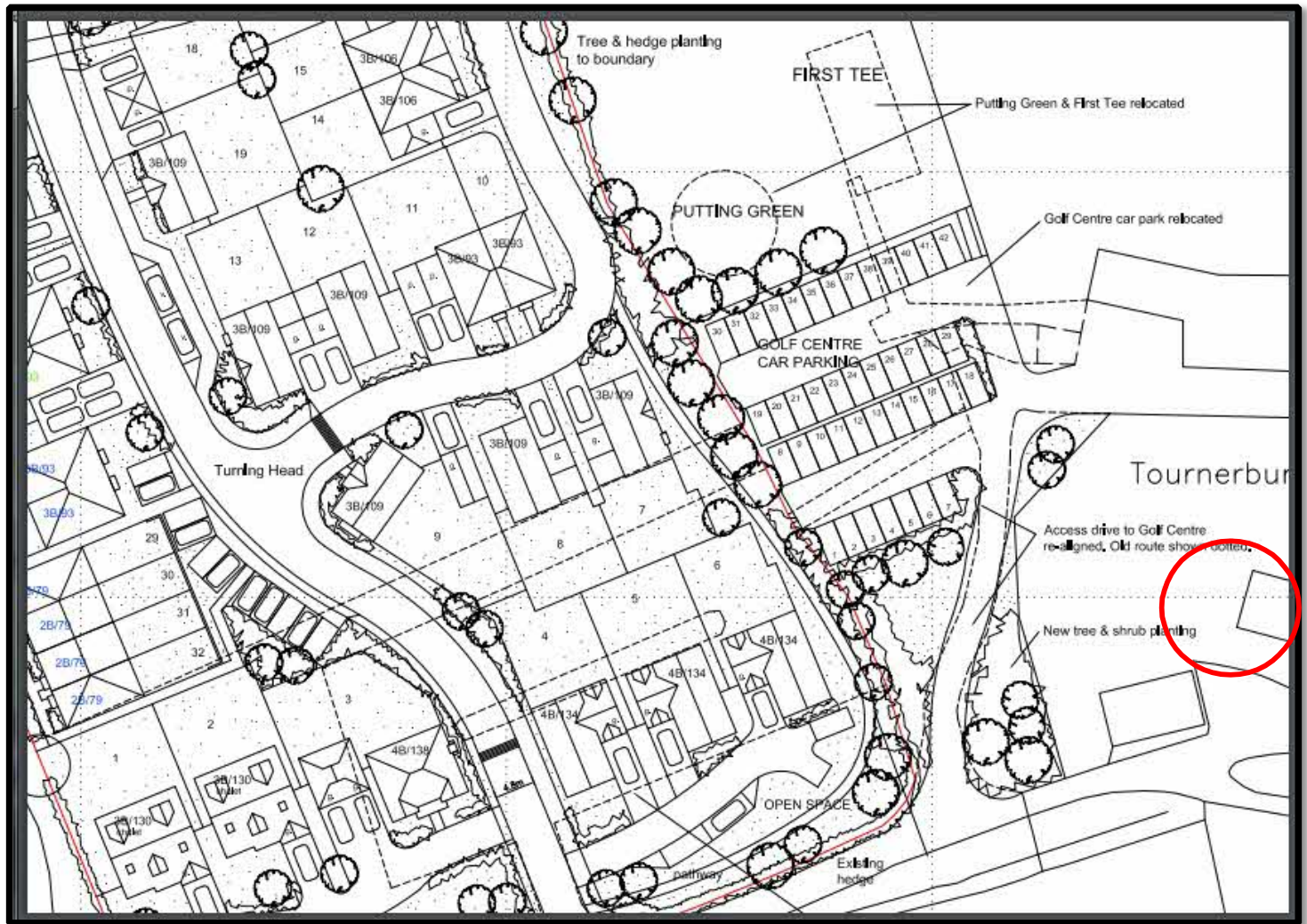


Fig 10: Source: Havant Borough Council - DP/19/02036 – Havant Borough Local Plan 2036 consultation, proposal submitted on behalf of A G Phillips & Son Ltd R110. Tournurbury Farmhouse is on the far right of the plan under the word 'Tournurbur' (and marked by the red circle) and within 25 meters of the access to the golf centre and Tee Caddy Café new access and new car park. The Tournurbury Farmhouse garden is immediately adjacent to the public access to 'The Tee Caddy Café' & the golf center's car park. The southern end of the proposed 150 dwelling new housing estate covers the existing golf center car park and is immediately adjacent to both residences at Tournurbury Farm.



Fig 11: Source: Google Earth. A G Phillips & Son Ltd proposed 150 dwelling development (in conjunction with Hayling College) is in the red line, the orange & light blue polygons show the two dwellings at Tournbury Farm – Tournbury Farmhouse (blue) & 1&2 Farm Cottages (orange).

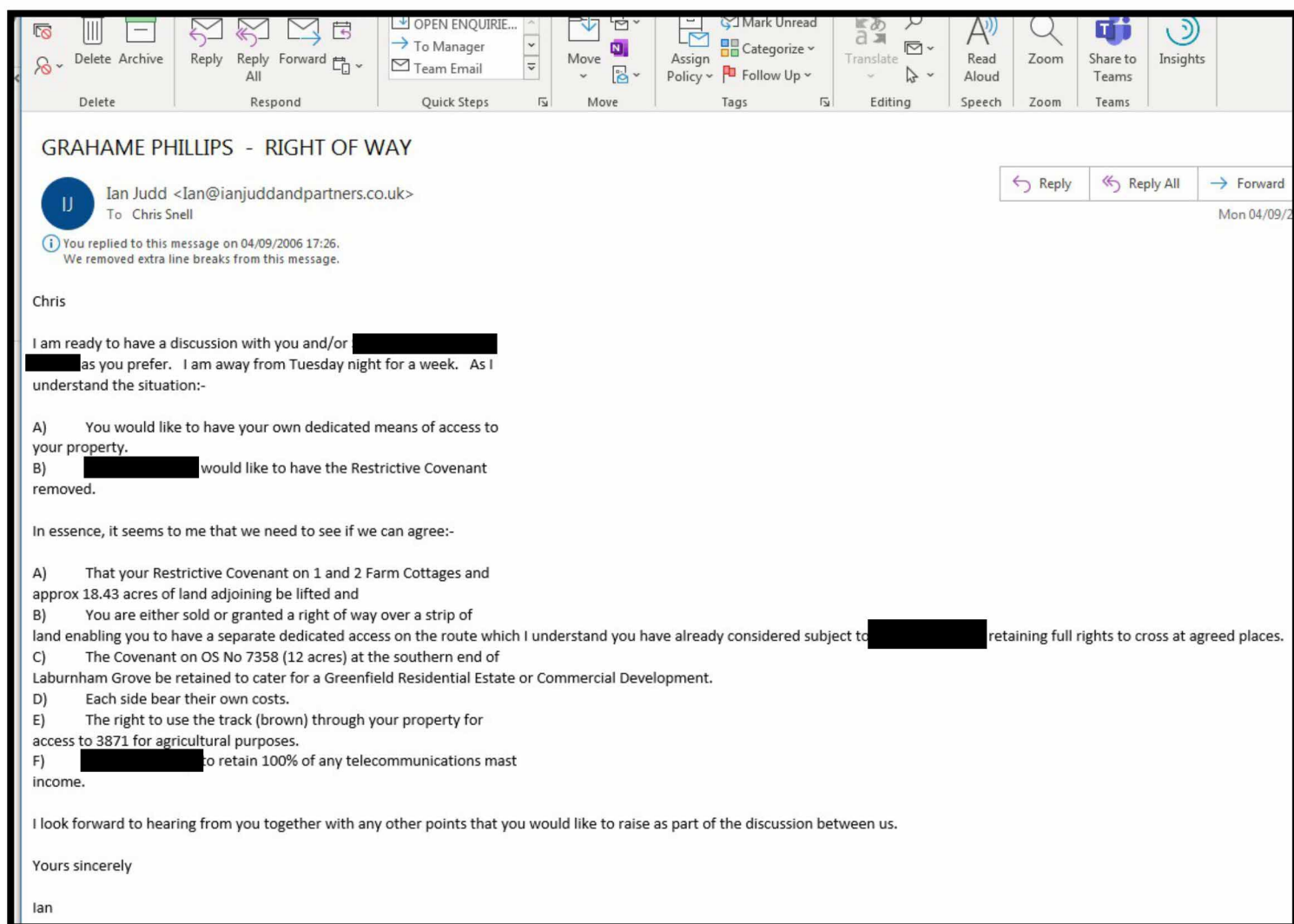


Fig 12: Email from Ian Judd (Land Agent) on behalf of [REDACTED] / A G Phillips & Son Ltd, 4th September 2006 stating the single objective of [REDACTED] around any rights of way discussion is the removal of the applicants' ownership of restrictive covenants on Tournerbury Farm, and not the protection of 'amenity' of Tournerbury Farm as continually stated in opposition to TWE planning applications. That situation is no different today.

The [REDACTED] letter of 19th April 2022 makes much of their commitment to Health and Safety citing the HSE and saying at point 8 "*we ensure our employees are trained to minimize these risks to our own and employees health and safety. It is a matter we take extremely seriously.*" However, on the ground, the reality is somewhat different to the position taken by [REDACTED] in correspondence to the Council. This has included unlawfully restricting passing places on the Right of Way by the placement of large concrete barriers for no discernable reason than to create difficulties (see Irwin Mitchell correspondence with Thrings LLP) and other matters such as taking down a useful sign at the entrance to the farmyard to deliberately create confusion for wedding guests, taxi drivers etc and to hopefully create a situation that may lead to a negative narrative in the planning process. See Figs 13, 14, 15, 16 & 17 below.



Fig 13: Historic sign at entrance to Tournerville Farm guiding visitors to Tournerville Woods along the Right of Way. Photograph date 30th October 2019.



Fig 14: In February 2020 a new gate and fence were erected. Photograph date 18th February 2020.



Fig 15: Over a year later (March 2021), no Health and Safety signage has been erected and the old sign directing guests along the Right of Way has not been re-installed. Photograph taken 16th March 2021.



Fig 16: Finally, in May 2021 [REDACTED] do erect signage at the entrance to the farmyard, however neither sign is helpful from a Health and Safety perspective and indeed could be viewed as having been placed to cause deliberate confusion to guests using the Right of Way. The old sign asking guests to drive slowly and giving directions to Tournerbury Woods has not been replaced. Photograph date 1st May 2021.



Fig 17: The old sign that worked well to direct guests safely and easily along the Right of Way was not thrown away by [REDACTED] but is still sitting in their workshop barn (and can be seen here upside down) a full 31 months after it was removed by the [REDACTED]. It is hard to acknowledge any veracity in the statements made by [REDACTED] throughout this application process and in their 19th April 2022 letter in regard to Health and Safety when they appear to have no regard to such matters on the ground. Photograph date 9th August 2022.