

HMPC Ltd

8 Charborough Road
Broadstone
Dorset
BH18 8NE

Office: 01202 690488
Mobile: 07887 772082

Email: haydn.morris@hmpcltd.co.uk

VAT Reg No: 246 5560 93

25th April 2022

Director of Planning
Havant Borough Council
Public Service Plaza,
Civic Centre Road,
Havant, PO9 2AX

For the attention of Mr S Weaver

Dear Mr Weaver

Tournerbury Woods – Application APP/21/01310

Following the conclusion of the formal public consultation and prior to the Statutory determination deadline, we wrote to you on 24th February 2022 setting out our responses to the representations made in respect of the above planning application. Since submitting our response, we note that further comments have been received from consultees, and we are pleased to see they continue to raise no objection in principle to our proposal.

Amongst the comments and to assist with long-term enforcement of noise controls, the Environmental Health Officer has requested we submit details of event contracts for inclusion on the public file. Whilst these details are already with you and do not add any new evidence in support of our application, we have also submitted these in redacted form for publication.

A further letter of objection after the public consultation period finished and dated 17th March 2022, has been submitted by Thrings LLP on behalf of the owners of neighbouring Tournerbury Farm. This follows an earlier representation dated 2nd February 2022, and responds to our 24 February 2022 letter. The letter adds little, if anything, to the comments already made. No new material planning considerations are raised. The letter largely repeats earlier comment and offers a selective and self-serving reading of matters, which are not pertinent to the application. Much of the comment is inappropriate and therefore must not be given weight in any planning balance or in the authority's determination.

We see no merit in tit-for-tat comment in respect of immaterial matters. However, it is necessary to respond on certain relevant issues: (a) notification of the application, (b) the availability of alternatives, (c) enforcement and (d) other matters.

(a) Notification of the application

The objector has not been prejudiced in any way by the submission of this application. The objector has been aware of the current application from the start, submitting representations at every opportunity, including outside formal consultation periods, as it did with its predecessors. It is a party to the appeals arising from the decisions of the Council on previous submissions and enforcement. Our clients continue to engage with the objector on private law matters through which their intentions for, and actions in respect of, Tournerbury Woods are continuously rehearsed.

We have made clear our position relating to the serving of formal notice in respect of ownership of land to which the application relates. We are seeking permission only on land in our clients' ownership. We acknowledge that the access right extends over land owned by third parties but that is not the land on which we seek permission. [REDACTED] disagree.

With regards this disagreement, the applicant has sent Notice to [REDACTED] and Things LLP with the requisite Certificate B presented to the Council, in order to remove any possibility, following the requisite 21 day notice period (now concluded) and any further comment taken into consideration, that this wholly technical point could be raised later against either the applicant or the local planning authority. As of the date of this letter, there has been no further representations made by [REDACTED] [REDACTED]

(b) Alternative access

It is unacceptable that Things LLP seek to devalue comment on rights of access presented in our letter of 24th February and raised previously in respect of other applications and the extant appeals, due to the suggested opportunity of an alternative access. We do not consider it helpful to offer a running commentary on the private law dispute concerning the potential alternative access, which is not material to the application, but it is important to say that there is currently no reasonable prospect that an alternative access to an appropriate specification or on an equivalent legal basis will become available. Our clients continue to engage with AG Phillips & Son Ltd about the possibility of an alternative access across their land, but the most recent proposed Heads of Terms they presented on 18 March continue to be wholly unacceptable, punitive and self-serving. While consideration of an alternative access is a matter of planning judgement for the planning authority, there is no lawful alternative access before the local planning authority. Against this context, the applicant submits that no weight can be given to the possibility of an alternative access, however desirable, in the current circumstances. For Things to suggest otherwise is erroneous.

You will be aware that our clients made an application for the alternative access, reference APP/17/00207, but that permission could not be implemented by our clients because agreement could not be reached with [REDACTED] AG Phillips & Son Ltd for its provision, specification and appropriate use by our clients. While an access route was partly implemented by [REDACTED], we assume to secure the permission, all works then stopped. Subsequently, no suitable agreement for its specification, completion and use is available to the applicants.

We note construction activity has taken place most recently and at pace on the route of the approved access (APP/17/00207), but without any communication with our clients as to its purpose. The materials and construction specification being used do not appear to comply with the planning permission, as conditioned by HBC in APP/17/00207 and it would be reasonable to suggest the route is being constructed to agricultural standard for associated use. However, as the works are being fenced to separate it from the adjoining agricultural land and, in the absence of any clear alternative stated purpose, we must assume the route will be presented to the Council as a potential alternative access route to bolster the opponent's claim of an alternative route being available which [REDACTED] will say should be given weight. Should such a claim be made, however, it would be incorrect.

We say this, and as you will readily appreciate, not only for the reasons outlined above, but also because we cannot recommend to our clients the use of a development which is in potential breach of planning permission and for which they could become liable. The Council would be correct to investigate and enforce any breach arising from this recent activity, and our clients' application should not be determined (or delayed) on the basis of an unlawful development. Consequently, the application before the Council for determination can only currently be that which continues to use the existing right of way through Tournerbury Farm.

If it would be of assistance to the Council, particularly to members of the planning committee when the application is presented, we can provide a short, factual statement relating to our clients' existing right of way and their right to use it for all purposes and at all times, explaining the unsuitability of any alternative access likely to be presented by the objector and the proposed terms for use of such an alternative.

We need not remind you of our clients' preference to use an alternative route on a like-for-like basis, a view likely to be shared by the Council for sound planning reasons. Unfortunately, such an opportunity is not available due to the continued inappropriate and unhelpful actions of the objector, on what continues to be a private law matter.

c) Enforcement

We reference in our submissions the context within which the claimed loss of private amenity, perceived conflict and safety must be considered, and the many unauthorised activities and uses at Tournerbury Farm, which are being investigated by the Council's Enforcement Team. It is normal practice for enforcement investigation to be kept out of public view until such time as formal action is taken. If [REDACTED] Ltd wishes to have this evidence in the public realm we raise no objection. However, we do not rely on the body of enforcement evidence to justify our application, which is a separate matter.

Enforcement action is raised only in the context of Tournerbury Farm and its environment; that it is not the rural idyll the objector would have the planning authority believe, but a site of mixed business enterprise uses, including the storage and burning of waste, the operation of non-agricultural businesses (potentially without planning permission) and the operation of its own licensed premises open to the public daily. We acknowledge that some agricultural activity takes place on a few occasions during a year, but its frequency and intensity are both ad hoc and very limited.

(d) Other Matters

Two minor points are raised in the Thrings LLP letter that warrant a simple response. With regard to the SSSI, its presence is fully acknowledged by the applicants and also by the Officer in his previous report. The potential implications of the proposal on its integrity have been considered fully by Natural England as statutory consultee. Substantial weight must be given to its response in terms of likely impacts on the SSSI.

Secondly, reference is made to the fall-back position. We have discussed and agreed with the local planning authority that had the unauthorised use for which we seek approval, not taken place the lawful use of much (but not all) of the applicants' land would be for agriculture and forestry. However, this is without prejudice to the applicant's case at appeal that lawful use has become established at the site with the passage of time. [REDACTED] Ltd's position is without foundation.

We note a further response has been submitted by the County Ecologist regarding "ownership of land." This is incorrect. There is no disagreement between the applicant and adjacent landowners regarding "ownership of land" – both parties are fully cognisant of their respective landholdings and do not dispute these. The long-running issue to which the County Ecologist refers relates solely to the use of a lawful right of way.

Thrings LLP letter, at point 15, seeks to repudiate the legal basis of our letter of 24th February 2022 and thereby claim reduced weight in the planning balance. We politely draw the Council's attention to the fact that our clients are legally represented and advised by 39 Essex Chambers and Irwin Mitchell LLP. HMPC Ltd advises on planning matters. Our proposal, and its justification, is sound on both legal and planning merit. Thrings LLP claim is incorrect; any inference our case is legally challengeable is without foundation.

To conclude, no new evidence has been presented to the planning authority by Thrings LLP's letter of 17th March 2022. In our view, the letter demonstrates a significant change of stance by [REDACTED]. Originally attempting to object on grounds of possible material planning considerations, [REDACTED] approach is now to delay or defer determination through unfounded and unrealistic legal technicality and the publication of material for further public comment. The applicants have been able to overcome previous areas of objection and limit the scope of the application, removing the grounds for objection previously raised. We are confident that the planning authority will not be deflected from consideration of the planning merits of our proposal by such comment.

Should you require clarification of any matter raised above, please let me know.

Yours sincerely



Haydn Morris
For and on behalf of HMPC Ltd