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24th February 2022

Director of Planning
Havant Borough Council
Public Service Plaza,
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For the attention of Mr S Weaver

Dear Mr Weaver

Tournerbury Woods – Application APP/21/01310

With the formal public consultation period now completed, it is appropriate for us to reply to the representations received. We appreciate that many comments made are very emotive and wide ranging, introducing many matters, including private matters, which are not relevant to the application or its determination by the planning authority. In reply we restrict our formal responses to this letter and to material planning considerations. Through the appendices enclosed for information, we seek to correct material facts which have been misstated in representations to this application. We do not seek to instruct the Council in how it should reach its determination, nor do we offer any subjective views of objections made.

It is acknowledged that permission is sought retrospectively and some third parties will be aggrieved by this approach. It was not intentional, but a commercial response to a growing business that had to act quickly to the changing expectations of patrons. The business proved more successful than had been anticipated and continued to operate without complaint until around 2018 when the LPA requested the submission of an application to regularise activity on site. An application was duly made with the reference APP/18/00943.

Although an application was before the Council for consideration, an enforcement notice was issued which is currently at appeal. Following further discussion with the planning authority and a narrowing of areas of disagreement between it and the applicants (it is a local family business), there is a strong chance the appeal will be successful if limited solely to material planning matters. The need to appeal will fall-away, however, should planning permission be granted for the revised proposals before the planning authority in this application.

The applicants have positively sought to address the local planning authority's concerns in the reason for refusal of the previous application (APP/18/00943). This application addresses the primary reason for refusal, which is the potential loss of private amenity at Tournerbury Farm from a continued use of the existing site access, as set out in the single reason for refusal. Consequently, with demonstrable knowledge of the potential impacts of the business on site characteristics, planning constraints and the local community, having been tested and reviewed, they have now presented an appropriate revised response to address those concerns in this application. This current proposal is a positive and sustainable response to site issues, which will meet business needs and address the claimed amenity concerns proactively.

The Council will be well aware that any submission for planning permission carries with it a presumption in favour of sustainable development. Permission should be resisted only where the adverse impacts of doing so, significantly and demonstrably outweigh the benefits. The authority is required to apply weight to the planning balance in the public interest and did so with the previous submission; finding a relatively narrow area of perceived harm. That harm has since been carefully reconsidered and measures proposed to reduce or remove it. We submit that consequently much of the opposition to this revised proposal is for private rather than public preference, and to reject it does not serve the public interest in any demonstrable way.

We welcome the planning officer's comment that his planning judgement decision on the previous application was challenging, with a fine balance existing between the benefits of the scheme and the loss of private amenity.

Unlike the previous application, this submission seeks to impose limitations on use such that claimed amenity impacts on Tournurbury Farm are managed appropriately. The limitations are submitted as part of the application to be determined. It is for the planning authority to consider the effectiveness of the limitations and how they will be managed should it support the proposal. The proposed limitations are realistic, deliverable, enforceable and meet all relevant planning tests. The applicants have no objection to these limitations forming part of a legal agreement accompanying any planning approval. We believe the revised proposal resets the planning balance in favour of the benefits of the scheme.

Although time has elapsed since the previous application was made in 2018, it was determined mid 2021, there has not been any change of material circumstance applicable to the site since that decision was taken (June 2021). Consequently, it is reasonable to assume that much of the planning reasoning offered in the accompanying officer report remains applicable. No opponent of the scheme raises any new material considerations (all comment is a repeat of previous views) and the applicants have reassessed all technical considerations to identify any changes. The material change is the revised proposals with the limitations on use in order to address the amenity concerns expressed in the previous reason for refusal. As indicated through the formal consultee responses, importantly including all environmental considerations, there continues to be no technical objection to the proposal. The decision for the planning authority, as with the previous decision, is what weight must be applied to private amenity in response to the changes now offered. Given all matters pertinent we believe the extant proposal does address previous concerns positively and will result in a sustainable position that offers considerable public benefit.

The officer report for APP/18/00943 suggests the planning balance indicates that proposal to be sustainable, in economic, social and environmental terms. The report references the site as a 'hub' of activity providing benefits to the local economy and identifies both environmental and social benefits arising. This is a point of principle already accepted by the local planning authority. The report confirms that concerns raised by third parties, such as noise or environmental harm, have been addressed and concludes overall the proposal to be acceptable subject to changes being made to reduce the potential/claimed direct adverse impacts on Tournurbury Farm and its amenity. Following further technical consultation with the planning authority to understand fully its area of concern, this revised proposal is not only similarly beneficial as its predecessor, but it also addresses the primary area of concern effectively. We believe approval of the application is fully justified on sound planning grounds and will deliver sustainable benefits.

Much of the opposition comment seeks to stop activity at the site and effectively leave the land unused. This is somewhat of a naïve view, which cannot be brought about. If the proposal was to be refused and all activity and structures specifically associated with weddings and events removed from site, it will not result in 'no use', nor can it be considered to remain unaltered in perpetuity. Nor would such a nil use be of wider benefit. It is not the purpose of the planning system to sterilise the use of land and the planning authority cannot consider the site moribund; in fact, it has already acknowledged the site serves a viable, social and environmental purpose. What will happen if opponents secure precisely the lack of use they seek, is the very positive steps taken to sustain and enhance the environment at and around the site, by ploughing back money from the business, and the social and economic benefits which arise from a continuation of this local business, will be lost.

Setting aside the potential to promote alternative new uses, the starting point for the applicants, should permission be refused, would be to examine alternatives, including the utilisation of the land fully for its

lawful use of agriculture and forestry, and holiday letting, as appropriate, and to maximise the permitted development rights which apply. Woods Cottage is not the subject of this application, but if the latter is refused, the applicants will have to consider increasing holiday letting significantly from the current position of use only in association with weddings and events, to a full 365 day a year activity, as per its lawful use. Records demonstrate demand in excess of 200 holiday let nights a year, which would involve a considerable amount of daily traffic at all times along the right of way. This increased use would potentially be in combination with a more intensive agricultural use with associated vehicular use, noise and disturbance. This "fall-back" position, which was discussed during the pre-application discussions with the local planning authority, could legitimately, result in a greater amount of activity and use of the land, than is proposed through this application. Moreover, the planning authority would not be in a position to impose any controls over such development and activity, and the harm previously identified and which this amended proposal seeks to mitigate, would present in a different and uncontrolled form.

To assess the suitability of the proposed limitations in mitigating the remaining issue between applicants and planning authority, it is the difference between the proposal and the fall-back that must be reviewed. Tournembury Farm is already and will continue to be subject to lawful use of the right of way across its site. It is not an assessment of the proposed development against no development, but an assessment of the proposal against existing, viable and lawful use. We submit the difference is not so great as many third parties will have the Council believe. It is in fact a narrow difference. In addition, there is the true context of the proposal 'on the ground' and not necessarily as portrayed in some third-party comments.

We mention that many third parties raise matters that are not material to the application. Much is emotive, and there is a mix of inaccurate and somewhat misleading information contained, including that provided by the consultants representing the adjoining landowner. Some comments are very hurtful to the applicants, potentially defamatory, inappropriate and unnecessary in respect of an application for planning permission. We acknowledge that the comment is clearly important to third parties and, as stated above, we understand concern at the retrospective nature of this application. However, a planning application is not the place to settle personal disagreements or private matters as these cannot be material in any planning judgement. The planning authority must consider only matters which are material to the proposal and the applicants have specifically limited comment to those issues through this submission. We appreciate, even non-material comment can sometimes be influential, but trust the planning authority to weigh all comments appropriately, setting aside irrelevant, non-material matters, in the planning balance. The purpose of this letter and appendices is to refocus the application discussion and assist the planning authority with material matters.

For the benefit of third-parties raising matters which are not material, and to assist in clarifying those matters not material to the application, and what is truly in the planning balance, we append to this letter; a statement (Appendix 1) which refutes many of the factually inaccurate, purposefully misleading or inappropriately weighted comments of third parties. Through this statement we touch upon the suitability of the existing access, the extent of direct and ancillary rights and how these matters are being promoted by opponents purposefully to influence a decision based on private issues rather than on material planning matters. A summary (Appendix 2) of the previous officer report, provides confirmation of matters deemed material and the unresolved issues to be addressed through this proposal. It should not be necessary to take any of the matters appended any further in this application, but if further clarification is required, please do not hesitate to contact us.

Turning specifically to the existing access to the application site and its passage through third party land from the public highway, the officer report acknowledges the track and its use and makes a planning assessment of the effects of the proposed use. That assessment previously based on a level of usage claimed by the applicants as lawful (application for certificate of lawfulness APP/19/01262) was deemed as harmful and the application rejected. This is currently being appealed. This proposal contains a limitation on use and is therefore distinct from the previous proposal.

The track is in a fair and reasonable condition. It can be maintained to such a standard and has so been used, within defined limits, for over 20 years, without issue. Although third parties comment about the track itself and its suitability, the extent of rights of use, easements and potential conflicts along its length because of competing uses, there has been no substantive challenge from any party to its use as a means of access to the application site, or to the potential use level under a fall-back scenario. Current and potential use of the access under current arrangements is not without limitation imposed by the rights of use agreed between the applicants and the neighbouring landowner, but these are more than enough to accommodate the development proposed. Moreover, the defined rights of access (at all times, for all purposes and with or without vehicles) agreed by AGP itself in 1987 are supported by ancillary rights,

which are well recognised in law. This widely defined right of access, together with those ancillary rights, readily accommodate changes in frequency and types of use, as well as allowing works to surface the right of way. Taken in combination, rights to use the access are more than adequate for planning purposes.

The applicants do have a right to exercise their lawful use of the track safely and without obstruction, and such use is actively going to be made, whatever the decision on this application might be. The planning authority will be aware of many leisure activities and developments served by access routes that are not to a highway standard, primarily as a result of the physical nature of the venue site that provides reason for its attraction. It is not uncommon Nationally or locally (e.g. Mill Rytte Holiday Village, Hayling Island Sailing Club or Mengham Rytte Sailing Club) for attractions to be approached by narrow roads, routes with physical restrictions (landform) or restrictions imposed through adjoining land uses and activities, such as farmland or forestry.

This application proposes to impose limitations on use, whether or not established, through parameters set out in "Heads of Terms for a Visitor Management Scheme (VMS) forming part of the application (December 2021). These are limitations designed specifically in response to the amenity concern, which is now the sole remaining concern of the planning authority as confirmed by the previous officer report. This proposal is a very real and measured attempt by the applicants to reduce the impact of access use, which is lawful and potentially can be increased with no additional controls. The limitations represent a level of access use to which the applicants are willing to agree, following on-going pre-application discussion with the local planning authority. The pre-application procedure is an appropriate and correct form of pre-submission discussion with the local planning authority through which matters pertinent to a future submission can be discussed without prejudice. Discussion in this case included possible limitations on use and these were further considered by the applicants and included within the planning application. There is opportunity through the application determination process for the planning authority to discuss these matters further as may be appropriate. The local planning authority has advised that it is aware of the intense interest in this proposal from third parties, and has indicated it will make a balanced judgement based on the evidence provided by all parties and its relevance to the material planning considerations in question.

The planning authority will be aware and is reminded by third parties, that there is potential to provide an alternative access to this site; an access the applicants are very willing to use on the basis of a like-for-like exchange of access rights. It is commonly accepted that provision of an alternative access, avoiding Tournembury Farmyard, will allow all planning reasons for refusal to fall-away.

The applicants were, and remain, very happy to consider an alternative access route and obtained planning permission for the same (APP/17/00207) with the consent of the neighbour over whose land the new route would pass. Unfortunately, they have since been frustrated in its provision by that same neighbour not wishing to agree to appropriate terms, even though these have been subject to discussion continuously since 2006. Consequently, even if the neighbour was to now complete an alternative route as they have suggested he might do, this is not available to the applicants and there is no alternative access before the planning authority for consideration and therefore no requirement for the planning authority to consider such a possibility. The authority is correct to disregard any suggestion of alternatives as they do not form part of this application.

We note in the reason for refusal reference is made to local plan policies (specified) and the National Planning Policy Framework (unspecified). These are general Policies (CS16 High Quality Design, DM10 Pollution [noise] AL1 Presumption) to which the proposal will fall foul because of the key reason of loss of amenity. Having addressed the amenity matter positively, these policy objections fall away.

With reference to the attached appendices, which provide context, and correct and balance unjustified third-party comment, we believe the modifications made to the proposal contained in application APP/18/00943 and which are now before the planning authority for consideration, respond positively and appropriately to previously raised planning concerns. We believe the limitations on use now proposed present a balanced compromise between lawful activity, potential uncontrolled intensification and new development. The application represents a sustainable development in social, economic and environmental terms and provides a long-term beneficial use for the site.

In summary, the applicants are mindful of neighbour's concerns whether in agreement with them or not, and it is for this reason the applicants have afforded significant time to the concerns raised previously by the planning authority and has compromised significantly the position claimed in a previous submission as

lawful use, to impose strict limitations on their business activities. We request the planning authority, through the application of an appropriate planning balance, considers the limitations proposed as mitigation against the potential loss of claimed amenity, but also considers the levels of potential amenity harm arising from adoption of the 'fall-back' position (forestry, agriculture, holiday-letting and permitted development activities) should the proposal not be allowed, and the context of Tournerbury Farm and the ancillary uses undertaken thereon.

From the reason for refusal it is confirmed the matter outstanding between the applicants and the planning authority is the potential loss of private amenity at Tournerbury Farm arising from continued use of the existing private right of way to serve the proposed use. Despite claims to the contrary by opponents of the scheme all other matters material to the application's determination have been addressed positively, and through this application and its provision the same now applies to the outstanding matter. The applicants propose a suite of planning limitations to reduce amenity impacts to a level that is commensurate with, or indeed provides a betterment to, lawful use of the application site and its 'fall-back' position.

Opposition parties have raised many matters, including many that relate to private matters and are not material to the consideration of this proposal (see appendices). It is not the role of the local planning authority to intervene in a private dispute between neighbouring landowners or to treat either in a manner that is advantageous. We understand the planning authority will consider this application on its individual merit only and in the light of the material considerations applicable. We believe all material matters are covered by our submission and officers should be in a position to prepare a report to determine this application. However, should any further clarification be necessary before determination, we will be very happy to respond.

Yours sincerely



Haydn Morris
For and on behalf of HMPC Ltd

Appendix 1 Comments on matters raised through public consultation

At the time of writing, 24th February 2022, comments have been returned to the local planning authority from statutory consultees and a number of third parties.

As anticipated with no material change of circumstance the responses from statutory and technical consultees remains largely unaltered from those made in respect of application APP/18/00943, but acknowledge the benefits offered through the limitations on use to be imposed.

No consultation response has been received to date from the Council's Environmental Health Officer or Planning Policy Team to this application. Neither party raised adverse comments in respect of the previous application APP/18/00943, and in the absence of any material change it is reasonable to refer the Planning Officer to previous comments made by these teams, both of which were favourable and supportive of the proposal in its unlimited form.

With regard to third party comments, once again no new matters are raised, with much of the objection comprising a repeat of previous concerns. In our response to third party comment below, we focus only on factual inaccuracies, paltering narrative and the identification of matters not material to the consideration of this application. Our response to matters of planning judgement are more than covered by the application and need not be repeated.

It is often the case with planning applications that opposition representations out-number support, simply because those happy with a proposal feel no need to comment. In this case however, and we suggest because of the form of opposition and its justification, there are a large number of support comments on the file.

At the time of writing there are 19 objections and 130 supporting comments on file. Many of those persons offering support comprise long term residents of Hayling Island, local suppliers and local businesses who benefit from the existence of the venue, and the additional business attracted to the area as a consequence.

a) Statutory and technical consultees

Hampshire Fire	No Objection subject to appropriate fire protection provision
Hampshire County Archaeology	No objection raised
Havant Traffic Team	No adverse comment offered
Local Lead Flood Authority	No issue on which to comment. Provides recommendation for surface water drainage
Historic England	No comment offered – decision deferred to County Archaeologist
Landscape Architect	No adverse comment offered
Highway Authority	No Objection. The proposal will not have a detrimental impact on the wider highway network
Natural England	No objection subject to appropriate mitigation being secured
Arboricultural Officer	No objection
Southern Water	No objection
Hampshire County Ecologist	Sufficient detail has been provided to demonstrate that impacts are not likely to be significant.

b) Third Party comments

The most substantial commentary is provided on behalf of A G Phillips and Son Limited (AGP) through the planning consultancy BJC and legal advisor, Thrings. Our response to matters they raise cover many of the issues raised by other third parties, many of whom acknowledge support for the position adopted by AGP. Our commentary on AGP objections therefore also covers most third-party issues, although any additional matters are addressed further below.

No comments have been made by the Chichester Harbour Conservancy to this application, although it is a Rule6(6) party to the extant appeals at the site.

(i) BJC

Letter of representation dated 2nd February 2022

- Page 1 para 2 There is no objection to use of the site as proposed by AGP; it is only use of the right of way through Tournembury Farm which is opposed.
- Discussion with AGP has continued since 2006. It is incorrect to suggest there has been no engagement.
- The applicants have been very mindful of concerns raised by AGP and has addressed these positively by imposing significant restrictions on events and attendees. This was discussed with the LPA to address their concerns at a pre-planning meeting on 16 September 2021
- Page 1 para. 3 There is no dis-agreement from the applicants that the use of an alternative track to access the site would be beneficial to all parties
- The existing access is a right of way for the applicant for all purposes at all times.
- The existing access is suitable for the use proposed in terms of its width and condition.
- Page 2 para 1 Use of the track in the officer report references the potential form of use (celebratory and social gatherings, including unsocial hours), not its suitability for all uses, including those associated with the 'fall-back' position.
- This application imposes limitations on the uses, highlighted in the officer report, which are suggested to impact on amenity. Any adverse impact on private amenity will be reduced effectively as a result of these limitations.
- Page 2 para 2 The proposed limitations are very specific and can be enforced.
- This is a business responding to demand with each wedding and event being different. The limitations provide parameters to use to be applied in each and every case.
- It is appropriate for the applicant as a functioning business to seek some flexibility in limitations to respond to unexpected arisings. The provision sought is to provide limited flexibility to add or remove events in response to demand, but only with the full control and consent of the local planning authority. The need to make further submissions will notify third parties and provide opportunity to comment further.
- Page 2 paras.3,4 A 'fall-back' planning position exists at the site comprising lawful uses and activity that include forestry and agriculture, shooting and holiday lets, and permitted development activities. This position determines the 'base-line' situation against which any change to amenity at Tournembury Farm must be assessed. There is no inconsistency in the applicant's case.
- The recording of events, including guest numbers, is critical to the business and to provide a commentary to the planning authority to monitor, and if necessary, enforce compliance,

will be a straightforward process. The applicants will be happy to agree a reporting procedure.

Page 2 para 5

The previous application (APP/18/00943) was determined in terms of the development then sought. There were no formal limitations before the planning authority for determination.

Through representations to that application, AGP suggested limitations on use that the number of events held each year would be acceptable in amenity terms. Although proposed at a level less (not economically viable) than that now proposed, this indicates an acceptance in principle of new uses at Tournembury Woods being served via the existing access. The applicant has responded to this request by offering a significant reduction in event and guest numbers, but has applied a viable level of use, which not only supports the business, but is sufficient to also continue to support site conservation and environmental enhancement.

In representations to APP/18/00943, AGP raised no objection to the form or level of use proposed at Tournembury Woods through that application, if an alternative access route is used.

Page 2 para 6

While technically possible, the suggestion is highly improbable given walking distances and the nature of events. A round walking trip (in wedding finery) to the shops would be in excess of 1 hour. Ample food and drink is provided at each event so there is no need to seek the similar elsewhere.

Page 3 para 1

For most events cleaning teams attend the day following, except in the event of, infrequent, consecutive bookings. The latter is very much an exception rather than the norm.

To suggest events in 2021 were typical of site use would be incorrect. It was an exceptional year because of the Pandemic accounting for a double season of events rolled into a single season because no events were possible during 2020.

Page 3 para 2

The degree of change contained in this proposal, imposing limitations, is material and has been carefully considered and proposed in respect of the potential impacts on the current amenity enjoyed at Tournembury Farm. The proposals take account both of activities and businesses operating at Tournembury Farm and of the economic viability of Tournembury Woods and the conservation responsibilities held.

Page 3 para 3

The access track is a private right of way not a public highway. It is not unlike many private access routes to private venues or places of public attraction across the country.

The description of Tournembury Farm as a working farm in a traditional sense is misleading. Farming is part of a range of uses undertaken by AGP as a business and is de minimis. Use of the yard and buildings for 'traditional agriculture practices' including livestock is limited and claims that use of the track is unsafe are unfounded.

The local planning authority is actively investigating matters of unauthorised development and unlawful uses at Tournembury Farm through its enforcement team. Recent communications indicate the investigation is on-going and details are not yet in the public domain. Planning officers will however, be aware of the investigation, which we believe is material to this context within which this application, and in particular the claimed amenity loss, is to be considered.

The applicant, in providing justification for the development proposed and to rebut much of the amenity claims made by AGP, has provided significant evidence to the enforcement team on day-to-day activity at Tournembury Farm. This evidence demonstrates clearly the level of private amenity claimed by AGP to be incorrect, with the residential premises already subjected to a variety of daily activities.

An important element of this activity is the existence of the Tee Caddy Café owned by AGP. It is located close to the farmyard and is licensed for the sale of alcohol all week and can host events, with music late into the evenings and is open to the general public. Waste disposal facilities for this premises is in the centre of Tournerbury Farm and the associated car park is immediately adjacent to the farm dwellings. The application's impacts should be assessed against this amenity baseline and not an imagined tranquillity which does not exist at the farm.

Page 3 para 4
Page 4 para 1

The applicant has rights to maintain the access track and keep it safe. The applicant has always maintained the access track and has regularly trimmed vegetation to manage sight-lines.

AGP maintains, with reference to misleading matters and evidence, the applicant exceeds his rights to use and maintain the access route, despite clear evidence presented by the applicant to the contrary. This disagreement is at the heart of the objection from AGP but is a private matter and is not material to this planning application.

Page 4 paras 2,3, 4

There is no requirement for a review of the access track. The track is existing and has been used for many years, and is for all purposes and at all times. Whether or not it is resurfaced is a matter for the applicants. Maintenance of the track is regularly undertaken by the applicants.

Page 4 para 4
Page 5 para 2

Reference to construction of a new access road elsewhere is not material.

There is no third-party land within the application site, nor is there any proposal for an alternative means of access within this planning application.

It is for the planning authority to decide how it wishes to secure and manage the limitations on use offered through the application. The applicant is happy to enter into a legal agreement if required. There is no other landowner who needs to be party to any legal agreement.

Page 5 para 3

The track through Tournerbury Farm lies outside of this planning application.

There is no formal objection to the proposal from the local highway authority as statutory consultee.

Page 5 para 4

The limitations include controls on persons arriving and leaving the site.

The application does not include any proposals for lighting, resurfacing etc.

Rights exist for the applicant to maintain their lawful right of way and ensure it is safe for use.

Permission will be sought for any operational development required by the applicant which is not covered by this application.

Page 5 para 5

Statements implying the track might be altered substantially to accommodate the proposal are pure supposition. There are no proposals within the application to make changes to the access track. In any event the levels of necessary change being suggested are widely disproportional.

Page 6 paras. 1, 2

Issues of potential noise and disturbance will be addressed by the limitations on numbers proposed by this application, with further mitigation and control imposed through a VMS, secured as part of any planning permission by condition or legal agreement. The management will involve both physical elements (e.g. signage) as well as on-site management, and requirements on visitor behaviour controlled through booking contracts.

- Page 6 para 3 Cattle (less than 40) live on Tournembury Marsh and are brought to the adjoining yard on less than a handful of occasions during a year.
- At the time of writing (24 February 2022) there is no livestock within the farmyard or buildings, nor have any been observed in the farmyard on a daily basis since last September, contrary to claims by opponents (evidence of such will be provided at Appeal if necessary).
- Nonetheless, the September to April period coincides with an off-season for the Tournembury Woods with minimal events taking place. The opportunity for "conflict" within the farmyard is therefore limited.
- Evidence provided by AGP in respect of the extant planning appeals, indicates potential conflict incidents arising from livestock movements are of very limited duration, around 2 minutes on average. Cars and visitors to Tournembury Woods would not be inconvenienced by this movement. Consequently, there is no long-term conflict between the different users of the right of way
- The buildings referenced are used for other purposes as they are subject to enforcement investigations.
- Page 6 paras. 4, 5 Not material to the application. No direct evidence of impacts is provided by opponents to link these to persons or activities using Tournembury Woods.
- If incidents did take place there have been no complaints raised at the time or subsequent.
- Page 6 para 6 –
Page 7 para 4 No alternative access track is before the planning authority for consideration.
- Page 7 paras. 5, Details of the purchase of Tournembury Farm are not material to this planning application. It is appropriate to point out that the sale was undertaken with the proper legal advice at the time and discussion between the parties included future potential use of Tournembury Woods.
- AGP acknowledge the first significant Tournembury Wood event was held in 1990 with no objection because it was accepted that uses in Tournembury Woods would change and they had been advised accordingly.
- Page 7 para 7 –
Page 8 para 1 No comment is necessary, but the applicants are willing to discuss the potential for advance notice of events with the local planning authority, providing the publication of such information is not capable of misuse by objectors, and is proportional with other event hosting venues within the Borough.

(ii) Thrings

Letter of representation dated 2nd February 2022.

Many of the attachments accompanying the letter of 2nd February, and commentary within raise matters of private law, which are not material to the consideration of this application. This includes references to the character of the applicant, to Police visits, delaying tactics to reach agreement on an alternative access, activities by the applicant and AGP on or around the right of way, and a considerable amount of instruction as to how the planning authority should implement its responsibilities. It also includes the submission of "Heads of Terms" for use of an alternative means of access (Thrings Enclosure1). These terms issued in April 2021, are in any event incorrect as they were superseded by more onerous conditions proposed on 23rd July 2021 to the Applicants by Savills LLP on behalf of AGP.

We submit that much of the content of the Thrings letter is not material to the consideration of this planning application and is made for reason of advancing a private matter on behalf of a client.

Page 1, para.2 Page 2, para.1	Adds no new evidence for consideration. It is for the planning authority to decide what weight is given in this determination to its previous decision and the evidence submitted thereto.
Page 2, para.2	There is a distinct change of material circumstance, with a changed quantum and volume of use proposed.
Page 2, para.3	It is for the planning authority to determine how it wishes to secure controls on the use proposed. This could either be by condition or by way of legal agreement with the planning authority or both. Matters contained within the proposed Visitor Management Scheme are not untried or untested, but are measures in operation frequently across the Country at event venues. These would be controlled and enforceable under the terms of any planning permission and or accompanying agreement. There is no third party who needs be subject to any legal agreement. All mitigation proposed can be provided within the control of the applicant. In any event, third parties have already indicated they would not wish to consent to any legal agreement involving their land holding. This extends to matters which would address concerns raised in objection to the proposal.
Page 2, para.4	The legal matters referenced are primarily matters of private law and are not material to the consideration of this application.
Page 2, paras 5, 6	The matters referenced are primarily matters of private law and discussion between the applicant and adjoining landowner and are not material to the consideration of this application.
Page 3, paras.1,2,3	Reference to Enclosure 1 is incorrect and must be disregarded. The current "offer" is that issued to the applicant in July 2021. The applicants have considered the offer and discussions continue. The matter of the offer relates to the provision and use of an alternative access route which is not before the planning authority for consideration or determination. The discussion is a private matter, the outcome of which is uncertain and is not material to the determination of this proposal. Enclosure 2 relates to a private matter and should be disregarded
Page 3 para.4 – Page 5 para.3	The proposal includes use of an existing right of way as it exists. It is a safe and suitable route and has been used for many years without incident. There is no requirement for upgrading of the route to serve the development proposed, nor any need for consultation regarding upgrading. There is no need for the applicant to seek an easement and in any event, this is not a material matter. Incidents raised by third parties as evidence for consideration in this application are disputed by the applicant for sound reason but are not material to this determination. Limitations proposed through this application to mitigate loss of private amenity are contained within this application and, if approved, will be the subject of planning permission and or any accompanying agreement. These do not require any change to the existing access, nor is any additional planning permission required.

The applicant regularly maintains the RoW each year and informs AGP of the intention to do this. This includes regularly restoring sight-lines as deemed important by the traffic report commissioned by AGP.

There is no alternative access route before the planning authority for consideration or determination. It is not material to the determination of this proposal.

There are matters relating to the access, its extent and use which are in dispute between the applicant and adjoining landowner. These discussions relate to private law and are not matters material to this application.

AGP commissioned a traffic report akin to consideration of a development on a public highway. A detailed review of the report by consultants acting for the applicants finds many of its findings to be misplaced with regard a private right of way, and is therefore similarly misplaced as evidence against this proposal. The report contains a substantial number of inaccuracies and misleading statements and is not material to this proposal. The report should be given very little, if no, weight. There is no planning justification for the report prepared by AGP's highway consultant to form part of this application.

Page 5 para.4

No works are proposed beyond the application site.

Page 5 paras 5, 6

There is no proposal before the planning authority to construct a new track or access

Page 5 paras 7,8 –
Page 6 para. 5

The application proposes the use of an existing track for the use proposed. There is no proposal the route will become a public right of way, will be upgraded or be changed in anyway. Commentary on such changes, or the suggestion the adjoining landowner will be subject to requirements against his wishes are incorrect and are not material to this planning application.

There is no requirement for a legal agreement for works on land beyond the application nor any need to discuss use of a "Grampian" condition.

The proposal includes use of an existing right of way as it exists. It is a safe and suitable route and has been used for many years without incident. There is no requirement for upgrading of the route to serve the development proposed, nor any need for consultation regarding upgrading. The VMS measures are within the power of the applicant, to be secured by condition and/or agreement as necessary.

Page 6 paras 6, 7,8

Reference is made to correspondence with the local planning authority and Environment Agency dating from June 2021, which is being investigated. We assume this correspondence and accompanying evidence is available to the planning authority for reference as the matter is subject to Enforcement Investigation by the local planning authority.

Reference is also made to enclosures 3 and 4 (difficult to see because of the amount of redaction). This is superseded correspondence and does not represent the latest submissions sent to Things on 28 January 2022, in advance of the letter from Things to the LPA, and which should have been appended as enclosures 3 and 4.

The evidence can be provided specifically for this application if required, but it is not material to the authority's consideration of the application, beyond demonstrating that use of Tournurbury Farm in any "traditional form as may be recognised by the public" does not in fact take place.

The matters subject to the enforcement action have a direct bearing on the context within which the loss of amenity claimed by objectors, must be considered by the local planning authority. It is the applicant's contention, supported by significant amounts of evidence collected over many years and presented to the Council's enforcement team, that any private amenity enjoyed by residential properties at Tournurbury Farm, is already affected adversely by these unauthorised activities and uses. Furthermore,

neighbours have recently secured from the local authority, licenses for events and hospitality open to the general public, entertainment and the playing of music at their premises; activities not dissimilar to the activities to which they object at Tournerbury Woods, and which take place in closer proximity to the properties which are claimed to be affected by the current application.

It would be inappropriate for the planning authority to consider the amenity of Tournerbury Farm to be anything other than that evidenced "on the ground" today. It might be possible, if enforcement action was successful and Tournerbury Farm is returned to its original agricultural status after a number of years, to consider amenity levels differently. However, the planning authority must consider the application in the context of the site and surroundings as it is at the time of this application and not what it was in the past, or might be in the future.

Page 7, paras 2, 3, 4 The application must be treated on its own merit. Reference to any lawful use claimed is subject to a separate appeal and is not material to this application, nor does the appeal submission suggest that 'in law' a further, changed, application cannot be made, as is suggested in para 41.

Page 7 paras 5
Page 8 para. 1 It is the applicant's position that factual use of Tournerbury Farm is material to the consideration of impacts on private amenity.

Reference is made once again to the on-going enforcement enquiries at Tournerbury Farm by the local planning authority.

Page 7 para.6 Consideration of the proposal by statutory consultees responsible for environmental matters raise no objection.

Page 8 para.2 The applicant is the sole landowner of land subject to the planning application. No other landowner holds an interest. It is acknowledged the access right of way crosses third party land.

The application was notified in accordance with the planning authority's standard procedure. A site notice was erected at the site and all parties who commented on planning application APP/18/00943, including the adjoining landowner over whose land the right of way passes, were invited by the planning authority to comment further.

The adjoining landowner has made representations to this application through an appointed planning consultant and legal representative. The party has not been disadvantaged or prejudiced in any way.

Page 8 para.3 Legal obstacles claimed are matters of a private nature that are not material to this planning application.

(iii) Other third parties

As of the date of this appendix, 24th February 2022 the planning application website indicates that 138 bodies were consulted with 150 comments received. 19 comments oppose the proposal and 130 are in support, with 1 neutral comment

We seek to group our factual response to objectors by topic area rather than respond to each objector individually. We will not be drawn by statements of a defamatory nature, suggested opportunism on behalf of the applicant, or suggestions the lawful position or activities of the neighbouring landowner has been prejudiced by the proposal.

We do not comment on supporting representations, which we trust the planning authority will treat on individual merit, beyond repeating that many are from local suppliers and other businesses.

Opponent topics:

Noise:

Less than 5 opponents claim noise disturbance. There is little evidence to support the claims and no evidence to suggest the noise was not created by other venues in Hayling Island. Agreement has been reached with the Havant Environmental Health team, in respect of Noise. It is agreed that noise emanating from the site and generated by the proposed use can be adequately mitigated as to not generate a nuisance within the local community.

It is agreed with the local authority that noise emanates from a range of sources at Hayling Island and many complaints referenced are not generated by Tournerbury Woods.

Appeals:

There are extant appeals relevant to the application site. The application must be determined on its own merit. Should this application be allowed there will be little merit for the appeals to proceed. The application seeks to address the few remaining matters between the planning authority and the applicant and which are the primary focus of the appeals.

Mitigation:

The applicant acknowledges the potential for some impacts to arise from the proposal. It is a correct use of the planning process to determine the level of harm and where possible mitigate that harm through the application of planning conditions. The mitigation offered in this case and what differentiates it from earlier submissions is a limitation on activity to reduce a recognised and potentially harmful impact on private amenity.

Elements of the proposal comprising mitigation can be adequately conditioned or made subject to a legal agreement and will be enforceable.

A number of objectors support the provision of a visitor management strategy

The limitation terms offered through the Visitor Management Strategy are submitted for consideration by the planning authority as to their suitability to mitigate a level of harm as claimed. These can be discussed further and modified accordingly.

Enforceable conditions:

Conditions should not be applied to any planning permission unless they meet the required tests for use, including enforceability.

Environment and ecology:

No objection is raised by any statutory consultee on environmental or ecology grounds.

Fall-back:

The continuation of lawful uses at this site and potential for intensification is a material consideration for the planning authority in this application.

Unauthorised development:

The applicants acknowledge that recent development at the site is unauthorised, and this has given cause for concern amongst a limited number of opponents, who question why the

business continues to function despite a refusal and enforcement action having been commenced.

It is acknowledged that permission is sought retrospectively and some third parties will be aggrieved by this approach. It was not intentional, but a commercial response to a growing business that had to act quickly to the changing expectations of patrons. The business proved more successful than had been anticipated and continued to operate without complaint until around 2018 when the LPA requested the submission of an application to regularise activity on site. An application was duly made with the reference APP/18/00943.

Officers will understand fully the reasons why activity at the application site continues, and it is correct planning process that the proposal is sought to be regularised, ideally through this application, or alternatively by the Appeal process.

The continuing unauthorised use is not used as justification for the development proposed.

Suitability of access through Tournerbury Farm:

This is not within the application site. No technical reason/evidence is offered as to why the route is not appropriate.

The route is factually a right of way for use by the applicant at all times and for all purposes. This is being disputed by the adjoining landowner (with support from some objectors to this application) in respect of the applicant's proposals (current and proceeding applications) and is a matter of private law which is not material to this application.

There is no evidence to suggest the route cannot accommodate the levels of traffic proposed. There is no evidence of incident on the route to date (when use is unrestricted) and there is no reason to suggest a lesser level of usage will increase incident and risk.

Traffic- there is no objection to proposed traffic levels or the suitability of routes to and from the application site from any statutory highway consultee.

The applicant disputes much of the evidence presented by opponents on matters of risk as these are not attributable directly to the proposal – the choice of adjoining landowners to undertake their own development (authorised or unauthorised) or other works ostensibly as a result of activity at the application site is a private matter for them. Dispute between the applicant and neighbours is a matter of private law which is not material to the consideration of this application.

Alternative access – there is no alternative access before the planning authority for consideration. The applicant's response to the potential for an alternative access is well known to the planning authority and is in the public domain. An alternative access is not available and there is no requirement to provide one.

The fact planning permission exists for an alternative access must be acknowledged; indeed, it was the applicant who first secured the consent with agreement of the adjoining landowner. It is not available or deliverable by the applicants and cannot form part of this application.

The last application (APP/18/00943) was refused for reason of loss of amenity, a concern which could be removed through provision of the approved alternative. It is perverse therefore, in the absence of any other reasoning, for the neighbour to continue to object to the application on grounds of lost amenity if it is the actions of that same neighbour which frustrate a solution being provided. A 'like-for-like' exchange of rights of way would appear a very reasonable means to overcome the objector's concerns, rather than seeking commercial advantage on punitive terms.

Access to Tournembury Woods

There is no public access available to Tournembury Woods. Claims by opponents that they have enjoyed a freedom of access in the past are incorrect and unfounded. Legal cases quoted and rights granted by such cases are not accurate and hypothetical situations surrounding public access raised by some objectors have no relevance to this application.

There have been incidents historically of public accessing the site unlawfully, the woodlands, Scheduled Ancient Monument and shoreline, which have been challenged and this potentially has motivated objections to the application.

Many comments are raised about the condition of the track and it is not always clear as to which part of the route comment is made. The applicants have no restriction in their ability to make good the route to a fair and reasonable standard as required by the right of way agreement. It must be noted that the on-going private dispute has given rise to comments about obstruction and damage to the track and environmental harm. These matters are disputed and are not material to this application.

Furthermore, there are frequent comments about conflicts on the route, without substantive evidence or any clarity that incidents are associated with the normal activity of Tournembury Woods.

Context:

The application site is not without use and that use will have impacts on adjoining land. Determination of the application will not affect that use until such time as any permission is implemented.

We discuss elsewhere the claim Tournembury Farm is utilised fully as a 'traditional farmyard.'

There are many matters raised by objectors relating to activities at or within the ownership of Tournembury Farm (not part of the application) which are claimed to be harmed or frustrated ostensibly by activities of the applicant. There is no evidence provided to support these claims unequivocally.

Appendix 2 Salient points of officer report to application APP/18/00943

The following bullet points have been extracted from the officer report as presented to the Havant Planning Committee on 24th June 2021 (Item 32). The Planning Authority's planning consideration was a balanced judgement of key issues set out as:

- Approval of this application would authorise a new hub of activity at this site, and is considered to provide the potential for benefits to the local economy and local suppliers, as well as increasing visitor numbers to Hayling Island and the wider Borough.
- Supporting representations received point to previous wedding/event activities at the site as providing a high-quality offering.
- The site lies outside the urban area, within the Chichester Harbour Area of Outstanding Natural Beauty, and in a location, which is the subject of numerous national and international environmental designations.
- Natural England and the Council's Ecologist are satisfied the development can be controlled and mitigated in such a way as to ensure there would be no harmful impacts to the environment, ecology, protected habitats and species.
- A Habitats Regulations Assessment and Appropriate Assessment concludes that subject to conditions reflecting the applicant's proposed Visitor Management Strategy the likely significant effect on the Solent's European Sites can be mitigated appropriately.
- Whilst objections remain on both ecological and landscape grounds, the findings of the principal ecological consultees are considered to have addressed the former.
- Lighting matters, can be the subject of a requirement for further detail and a controlling condition.
- The visual impact of the built form of the development is considered to be limited, given its woodland setting.
- The Highway Authority raises no objections to the application as it is considered that capacity exists within highway network for the traffic flows associated with the proposed use
- There is potential to introduce significant levels of traffic movement through the adjoining Tournerbury Farm farmyard.
- Matters relating to legal rights for the applicants to use an access route through Tournerbury Farm for visitors to the facility is not a material planning consideration.
- It is material to consider the impact of the use of the track through Tournerbury Farm on the function and amenity of that property and those who live there.
- Having regard to the nature of the activities being applied for, it is inappropriate for a wedding and events venue to rely on a route through Tournerbury Farm due to the risk of noise and disturbance in residential amenity terms, and the risk of conflict between visitor movements and the safe and satisfactory functioning of the farmyard.
- The existence of a previous planning permission for an alternative route to the Tournerbury Estate, whilst not part of this application, appears to have acknowledged this conflict and in planning terms remains capable of implementation.
- Noise generation, including amplified music was picked up as a concern by the Council's Environmental Health team. The applicant has installed additional noise attenuation measures to the principal focus of activities, the marquee. The current set-up has been observed during events by the Environmental Health officer visiting the vicinity of the site prior to the Covid pandemic, and they have been able to conclude that with these measures in place there is unlikely to be a loss of amenity arising from noise at the site.

- Heritage; the use of the existing track leading through The Bury, a Scheduled Ancient Monument is not considered to give rise to any harm to this heritage asset.
- The site lies within Flood Zones 2 and 3, but the Flood Risk Assessment submitted with the application sets out appropriate flood warning and evacuation measures to deal with the risks arising.
- No permanent residential accommodation is created by the proposals.
- A number of issues raised by consultees and third parties have been addressed through the submission of additional information.
- The inherent challenges in continuing to rely upon the existing track through the adjoining farmyard are considered inappropriate for the scale and nature of activities proposed for the site. These concerns are, on balance, considered to outweigh the economic benefits that derive from the scheme, and in a challenging exercise of competing planning considerations the application is recommended for refusal.

Applicants' final comment:

There is no material change of planning circumstance that has arisen since the previous officer report was prepared, to suggest that any of the above considerations are not applicable to the current proposal. Moreover, the current proposal addresses positively the limited areas of concern listed in the officer report, comprising principally limitations on use and the introduction of a site-wide management plan.

The challenging planning judgement exercise referenced demonstrates the costs and benefits of the proposal to be finely balanced, and in terms of the original proposal were found to tip lightly in favour of the protection of private amenity. The revised application addresses the amenity concerns and resets the balance on this matter. Loss of amenity no longer outweighs other considerations.

Commentary on the officer report in so far as it is applicable to the latest application is contained in the covering letter, and appendices.