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21st November 2021

Team E1
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol BS1 6PN

For the attention of Mr Nick Manley

Dear Mr Manley

Town and Country Planning Act 1990
Appeals by Mr Christopher Snell, The Tournerbury Holdings Ltd, and Mrs Alice Snell
Site Address: Tournerbury Lane, Hayling Island, Hampshire, PO11 9DL

Appeal Reference: APP/X1735/C20/3248610

Linked appeals: APP/X1735/C20/3248611
APP/X1735/C20/3248612

I refer to our previous correspondence relating to the above planning appeals and your most recent email dated 19th October 2021 in which you ask for any final comments on the appeals to be submitted to you by 22 November.

The appellants' statements of case have been provided to PINS and we have copies of statements submitted by the local planning authority and the two Rule6 (6) parties A.G.Phillips and Son Ltd and Chichester Harbour Conservancy. There is no new matter raised in those submissions to which we need comment for the purposes of the appeals and we will address all matters arising through our Proofs of Evidence which we will prepare for six-weeks in advance of the inquiry.

The final comments we need make in respect of the appeals is to notify the Inspector of the dialogue maintained with the local planning authority regarding its position on the proposed development, and the single reason for refusal attached to planning decision 18/00943, which is subject to the above appeal.

This is a minor application, despite its site area, comprising a change of use and relatively minor operational development. The claim by opponents this is not the case will be demonstrated at appeal to be erroneous and a means by which they have sought to introduce matters of limited weight to the proposal but on which they rely for objection.

The local planning authority by limiting the refusal to the single matter of the potential for loss of private amenity through the continued use of the existing access, for which some concerns are

raised as to its suitability, many of the matters raised by third party in objection have been addressed to the satisfaction of the Council. This is confirmed by the officer report accompanying the determination of application 18/00943; a copy of which is attached to this letter for ease of reference.

These recent discussions have now appropriately considered the matter of the status of the site should no planning permission be forthcoming, either through a new submission or via the appeals. This represents a fall-back situation which is material to the planning balance, which was not previously considered by the local planning authority. Also, we have further discussed the use of conditions and or a legal agreement to further control activities, matters raised at our first meeting with officers but not taken forward to any demonstrable degree.

As part of the appeal inquiry and applying the presumption in favour of development, the Inspector will consider if any harm arising from the proposal can be mitigated appropriately through the imposition of conditions or agreements. Since that early meeting it has always been accepted that conditions and agreements could go a considerable way to satisfying local concerns and imposing controls and making what they see as an unacceptable development acceptable. It is unfortunate that matters raised during the considerations of submissions detracted from the consideration of appropriate conditions and agreement, but the submission of a new application, responding precisely to those matters remaining unresolved, will allow such conditions to be attached appropriately to any planning permission, and allow for the completion of a legal agreement accommodating matters agreed with Natural England and site management discussed with the planning authority.

To date it has not been possible to discuss in detail the content of such an agreement with the planning authority. Heads of terms for an agreement will be submitted with the new application and discussed and redrafted as appropriate for inclusion within any planning permission issued. This agreement will apply to a specific area(s) as defined through the permission. This definition will address and clarify any confusion over curtilage that has arisen through the overlapping submissions (and consequent appeals). It must be noted that as part of the clarification, Woods Cottage which has given rise to the most confusion, is omitted from the new application to continue in its lawful use.

Planning History

From our correspondence and statements of case, the Inspector will be aware the site has a considerable and recent planning history, but one which should be very near a positive conclusion. As indicated through our statements of case, the appellants are due to submit a further planning application this month (November 2021) as a conclusion to the many discussions, submissions and decisions relevant to the site and its use. The application addresses positively the single remaining issue contained in the reason for refusal following further discussion with the local planning authority. Details of the application and its determination (should it be necessary to continue with the appeals – if the application is approved the appeals will be withdrawn) will be included in our Proofs of Evidence and will be referenced by the appellants during inquiry.

We believe, with reference to the planning officer's report, the latest refusal demonstrates robustly that many of the matters associated with our client's development (and which are to be reconsidered through the appeals) have been addressed positively. The remaining linked issues, if now found acceptable, and we believe following further discussions with the local planning authority this should be the case, will negate the need to pursue the appeals. Our clients have confirmed if this happens, they will withdraw their three appeals. It is our view that approval of this application will enable the three appeals to be withdrawn and the significant amounts of time, effort and money likely to be spent by the planning authority, Rule 6 parties, and our client on unnecessary appeals, will be saved, and the Inspectors' time not wasted.

When first meeting the planning authority to discuss the site, its use and operational development, there was no dispute that use of the land for events had taken place and that structures had been erected without the benefit of planning permission. There was debate as to how long the use and structures had existed at the site, with the possibility that all, or some might be immune from enforcement action. This was followed up in due course with a CLUED submission (now subject to appeal)

At that first meeting, while we discussed the possibility of submitting for a certificate of lawfulness, it was deemed preferable to all parties, to seek planning permission thereby avoid any potential for misunderstandings or misinterpretations and offer the planning authority opportunity to apply appropriate and reasonable planning controls over the site to mitigate local concerns.

This approach was acceptable to our clients, despite the possibility that a Certificate of Lawfulness might be granted without restrictions. Our clients believe it is right to have some controls imposed to assist site management and to reduce the potential for nuisance generation through operation, and indicated a willingness to prepare a site management agreement for the site and operations.

Applications were duly submitted, but additional matters were identified consequently that required further investigation, some going to the heart of the application purpose, such as potential environmental impacts. The authority will be aware that rather than simply push forward with a certificate of lawfulness, where such considerations would fall away, the agreement to progress an application and investigate all matters needed to support it, the appellants displayed a true understanding and concern for the locality within which they have carried out the business for many years and on which they rely for much of their support.

Ecology and Environmental Matters

From early days the appellants recognised the unique characteristics of the site, using these to 'better the offer' in response to keen competition from many other venues. The environment and setting are key to the site's attraction, and therefore its conservation and enhancement is a key element of the business plan. To think of compromising the product through damaging the environment and setting is simply perverse.

While there is a requirement to seek Bio-diversity Net Gain through development proposals following change to the NPPF (paragraphs 174 – 178) and the new Environment Act, the appellants propose and are already undertaking, environmental enhancement as part of building the business. Many of these enhancements do not require planning permission and as the application is to regularise operational development which has already taken place, future enhancements do not form part of that submission. Nevertheless, the appellants have been in contact with Natural England for some considerable time, since long before the project was first introduced, to identify:

- areas of the site which are particularly sensitive,
- those parts offering potential mitigation to offset increased activity,
- areas for appropriate new habitat creation,
- areas where activity could take place without harm and
- suitable management tools for reducing any harmful impacts.

The appellants have tested with Natural England many of the previous assumptions and understandings upon which the development had been developed and these include all environmental matters raised by third parties in opposition to the proposal. Whilst concerns

about possible impacts from the development are understood and it is correct these are raised, it has been proven there are no concerns arising from the proposals relating to the environment individually or in combination, or which could not be further enhanced through the measures already put in place or proposed by the appellants.

Despite reassurances given by the environmental experts at Natural England, as accepted correctly by the local planning authority, the two key opponents of the proposal, the Chichester Harbour Conservancy and A G Phillips and Son Ltd. continue, amongst other matters, to claim environmental harm through the appellant's proposals. Yet, in the case of the former, such comment appears inconsistent with other developments around the harbour, and in the case of the latter, they have potentially caused greater environmental harm through their own actions, with or without planning permission, a situation now under planning and environmental investigation. It is not unreasonable therefore for our client to feel singled out for opposition for personal reasons rather than sound planning considerations; particularly as there is a long-standing neighbour dispute in existence regarding matters of private law with A G Phillips and Son Ltd, and a Restrictive Covenant owned by the Appellants over A G Phillips and Son Ltd's wider landholding.

We are grateful to see acknowledgement of the considerable effort made by our client to provide the additional information, evidence and reassurance required by the Council through the officer report. Despite comments to the contrary by the remaining two opponents of the scheme, and which in the absence of any new evidence, we believe should now be given limited weight in any future planning decision, all relevant planning matters have been identified and addressed positively. We say this particularly following the lengthy discussions with Natural England regarding environmental matters, and Environmental Health in respect of noise and other potential disturbance. A new application will allow all matters to be reconsidered, but recent planning history is material and cannot be set aside in the absence of any material change of circumstance. If there are changes of circumstance relevant to the new submission, it is the agreement, reached through on-going discussion with the planning authority, culminating at the meeting with officers on 14th September 2021, that the appellant imposes voluntarily further restrictions on the operation of the site. In addition, there is the continued and inappropriate activities of A G Phillips and Son Ltd to unlawfully restrict and impede our client's lawful means of access to the site.

You will appreciate, after the considerable effort undertaken by our client to provide considerable amounts of evidence, all of which has found to be acceptable in planning terms, that it is frustrating to see continued opposition to the proposal; objection which we believe may have been instrumental in the Council's original decision making. However, we find it totally unreasonable that objectors continue to believe the expert decisions reached by bodies such as Natural England, the Council's Environmental Health Department and the Highway Authority are unacceptable. Given that for much of the development proposed we believe planning permission is not required for reason of the effluxion of time, and that other matters have been addressed, continued opposition must be afforded little weight unless demonstrably linked to the mitigated proposal to be presented and changed material circumstance identified.

It remains our belief, evidenced by the recent actions of the closest neighbour to the site, A G Phillips and Son Ltd. that objection is maintained for reasons other than planning; for personal rather than public benefit. This will be exposed fully through current civil legal action and the appeals should they be progressed.

The planning authority is aware of the significant issues surrounding unlawful and polluting uses at Tournerbury Farm and the on-going debacle thrown up by A G Phillips and Son Ltd in respect of the existing and potential alternative accesses. We request that any third-party representations made to these appeals are treated with caution in the knowledge of the on-

going dispute. Weight should be appropriately afforded only to any planning merit raised in respect of new issues or directly relevant material considerations.

The new application is made following the refusal of application 18/00943 and responds to the single reason for refusal which states:

"Having regard to the nature of the activities being applied for, which include celebratory and social gatherings into the late evening; the high number of participants proposed; and the limitations of the access track which do not allow for two-way flow over all of its length through the adjoining Tournerbury Farm holding, the Local Planning Authority considers that it is not appropriate in planning terms for the wedding and events venue to rely on this route. To do so would bring an ongoing risk of noise and disturbance to occupiers of the Farm dwellings; and the risk of conflict between visitor movements and the safe and satisfactory functioning of the farmyard activities as a whole.

As such the development is considered contrary to Policies CS16 and DM10 of the Havant Borough Local Plan (Core Strategy) 2011, Policy AL1 of the Havant Borough Local Plan (Allocations) 2014 and the National Planning Policy Framework."

The description of development refused comprised: "A material change of use of Land as a wedding and events venue, and ancillary operational development to the material change of use". This covers all use and other operational development at the site, subject to previous submissions including retrospective application, enforcement notice and Certificate of lawfulness.

The reason for refusal, amplified by the reasoning in the officer report, demonstrates clearly that the majority of planning matters associated with the submissions have been resolved and the remaining issue is the suitability and use of the existing access and its potential for the generation of nuisance to the property immediately adjoining, in particular 2 residential units at Tournerbury Farm.

At the first meeting (on site) to discuss the proposal, use of the existing access and the potential for nuisance generation through its use (passing 2 residential properties) was raised as the primary planning concern for the council. It was accepted that other matters would have to be considered and assessed, but from experience it was the movement of visitors to and from the site that was most likely to give rise to concern. Consequently, forms of management were discussed to mitigate any adverse impact but these were not progressed with any level of detail or certainty because consideration of the application was diverted by other concerns raised, (Council and third parties - some spurious, which have since been addressed positively as confirmed by the officer report).

In response to the specific reason for refusal and set against the background of potential lawful use of land and the lawful, unencumbered, use of the access by the appellant for any form of activity, the appellants find themselves, full-circle back to the issue highlighted as being of concern at that early meeting, having addressed all other material considerations positively. Through the new application it is therefore necessary to find a satisfactory planning balance to this remaining concern in order to allow the proposal to proceed; that balance being an appropriate mitigation of the appellant's lawful activity, to provide an appropriate and reasonable, level of private amenity for the 2 residential units at Tournerbury Farm.

Amenity and Access Issues

Whilst any resident is entitled to a reasonable level of private amenity, that which might reasonably be expected by residents at Tournembury Farm must be tempered by the property being ostensibly located on a "working farm" (as claimed by the occupiers) in an urban fringe area directly beside a densely residential built up site, and is subject therefore to differing ambient noise levels than a normal residential dwelling; the threshold of reasonableness is therefore higher than "normal." In addition, the level of farming activity has changed significantly in recent years, taking alternate commercial forms, including public gatherings and licensed activities, not all lawful, but again with levels of potential unregulated disturbance, including that of third parties.

To this must be added the recognition by A G Phillips and Son Ltd. when purchasing the farm, that the retained access through the yard and passing the residence, would continue to be used by the appellant and successors in title for all purposes and at all times. It is not unreasonable to assume therefore any purchaser would acknowledge the potential for disturbance. Any consideration of an appropriate level of amenity to be protected in planning terms must be adjusted accordingly. It is totally unreasonable for the purchaser of Tournembury Farm to suggest a level of amenity loss of the magnitude now claimed when, it was not an issue previously despite the activity taking place for many years as we have evidenced, and the purchase was entered into in the full knowledge of continued and potential increase in the use of land at Tournembury Estate.

Although not directly a material planning matter it can be no coincidence that objection to our client's activities has only arisen at the time when the development aspirations of the owners and occupiers of Tournembury Farm have been frustrated by the failure to reach agreement with the appellants on matters of restrictive covenants on other land forming part of Tournembury Farm beyond this application. It is reasonable for the appellants to believe pressure is being brought to bear through continued objection to planning applications in the misguided belief it will achieve a resolution of that dispute.

The appellants acknowledge that despite the lawful use of the access route, the amenity of Tournembury Farm should be afforded an appropriate level of protection from undue loss of amenity. It was for this reason a virtual meeting was held with the local planning authority on 14th September 2021. During that meeting the limited differences which now exist between the planning authority and our client were discussed and it was agreed a revised application should be submitted for approval, which demonstrated a resolution of the remaining differences and provide an appropriate level of mitigation for Tournembury Farm.

The meeting considered an appropriate level of mitigation provided through a limitation of on site activity which could be monitored and therefore enforced as necessary by the local planning authority. Such limitations could include, the number and frequency of events, the numbers attending and their duration, and the introduction of revised event management to limit direct impacts on the neighbouring property. Following the meeting the mitigation was further considered and offered formally through the revised planning application. Subject to minor detailed consideration we believe the arrangement should be acceptable to the Council.

New Application Proposals

The proposal seeks to consolidate all applications and the Certificate of Lawfulness submissions which precede it. It regularises the use of the appeal site for weddings and events and provides planning permission for all associated structures and operational development associated with that use. In the absence of any material change of planning circumstance, evidence previously presented to the council and remaining up to date is re-provided with new evidence to address the reason for refusal to application 18/00943, the issue remaining in dispute between our client

and the council.

The appellants continue to believe access to the venue is appropriate over all of its length for the uses and scale of operation now proposed, as previously confirmed by Statutory Consultees (in respect of considerably enhanced event numbers) and that the private amenity of properties passed by that access will not, as a result, be unreasonably impacted. There are no other matters in dispute between our client and the council and agreement to the measures now being promoted will allow the site and its use to continue in a managed and enforceable manner, bringing about the positive social, environmental and economic benefits for the area identified in the officer report.

The revised proposal limits the number and frequency of events, imposes limits on the number of persons attending events, and introduces a management regime which offers safeguards to local community amenities, additional to the 'normal regulations' applied to such events and activities.

We acknowledge that the principal opponents to the project, are likely to again raise objection to the revised proposal, reiterating their same concerns. While we accept the right of anyone to comment, these matters we suggest have already been assessed by experts and found not to be substantiated. While it is possible new matters of planning concern will be raised in respect of the changes now proposed, it is unlikely. We say this because even though we have addressed concerns through agreement with the appropriate bodies, such as Environmental Health, Historic England and Natural England, the opponents continue with their objections and we can assume only that whilst presented as material planning concerns, opposition is raised for personal or subjective reasons.

The new application seeks consent for development which was subject to previous submissions, and therefore, in the absence of any material change of circumstance that material and the decisions reached upon it, can be brought forward to the consideration of this application. We see no reason why Consultee decision makers should reach a decision different from that confirmed previously and to do so would be perverse.

For ease of reference we list those decisions below:

Trees:	No Objection
Conservation and Heritage:	No objection
Archaeology:	No objection
Environmental Delivery:	No impact on the integrity of international designated sites and unlikely to have any significant effect of site ecology
Environmental Health:	No objection subject to noise limitation conditions
Contamination:	No objection
Fire and Rescue:	No objection
Highways:	No objection
Landscape:	No Objection
Flooding:	No Objection
Natural England:	No objection subject to mitigation
Planning Policy:	No in principle policy objection, subject to operational considerations
Clinical Commissioning:	No objection
Drainage:	No objection subject to conditions
Traffic Management:	No objection

Building upon the firm conclusion the proposal is acceptable to all but a few opponents, the decision on the revised proposal, and we suggest to the appeals also, must turn on the acceptability of the appellant's response to mitigation requested by Natural England and the operational considerations raised by the planning authority.

The Inspector will also be aware from our submitted evidence to date, the appellants have secured consent for an alternative access route which negates the need to pass through Tournerbury Farm altogether. This route has been implemented but cannot progress due to the lack of a further agreement now required by A G Phillips and Son Ltd. to complete the road. Terms very recently offered to the Appellants are opportunistic, highly unreasonable, unrealistic and punitive to the Appellants; it is little more than a ransom demand.

However, whilst agreeing event limits at this time, the appellants are content to also provide a cap on usage, even if the alternative access is available. The limits suggested must continue to be economically viable and operate at a level which allows for continued maintenance and enhancement of the existing woodland, environment and heritage assets at the site, plus providing local employment and to support the many local suppliers. The compromise now offered represents a significant reduction in numbers to those originally sought and which, from the comments received were greatly misunderstood by third parties. Assessment indicates that these levels of use allow for a viable enterprise with some headroom for growth

Whilst we are content for any permission (by application or appeal) to be limited to the number of events now sought, we wish to retain, through the application of condition, the ability to exceed those numbers with prior approval, in certain circumstances. We suggest therefore a condition that will allow the operator the opportunity to add a limited number of additional events in any calendar year, in exceptional circumstances, providing details of the event are available to the Council at least six weeks in advance for approval (with weddings most will be known at least a year in advance and the likelihood of an event at short notice will be an exception). The number of exceptions considered annually will be limited to not more than 3. These could, for example, be for local community events or charity fundraisers.

The limitations now imposed are based on the appellant's assessment of capacity and management. It must be recognised that economic circumstances and demand may change in the future requiring an adjustment to operations. Accordingly, if those changes fall outside of the planning permission sought, they will be subject to further planning submissions. Should this arise a new application will be required allowing the planning authority to maintain appropriate levels of planning control over the site.

With continued use of the existing access we request the minimum number of events per annum comprising:

- Up to 10 weddings / events at no more than the marquee dining capacity (250 guests)
- Up to 10 weddings / events at no more 200 guests
- Up to 30 weddings / events at no more than 150 guests
- Up to 15 weddings / events at no more than 90 guests.

Submitted with the revised application will be a draft site management plan (as described above) which serves two purposes: firstly, to impose operational controls over the site to ensure that environmental concerns are protected and where possible enhanced, in accordance with the requirements of Natural England; and secondly, to impose management on the running of

events, including the areas to which patrons will have access, noise limitations, the distribution of activities across the site, controls on how patrons arrive and leave the site; and operating hours and conditions. It is proposed that following further discussion on the draft document submitted with the application (to allow public consultation and feedback), a final management plan is requested through condition to be submitted and approved by the local planning authority within a specified timescale (before the next peak wedding season April – October). The management plan will be provided with proofs of evidence in advance of the Inquiry.

Detailed matters relating to traffic, raised very late in the determination of the previous application now subject to appeal, will be considered as part of the new application but will also be addressed through proofs.

I shall be grateful if you will please draw this letter to the attention of the Inspector as Final Comments to the appeals submitted and to complete the statement of case on which we will progress the appeals.

Yours sincerely



Haydn Morris
For and on behalf of HMPC Ltd