

FAO Steve Weaver
Planning Officer
Development Control
Public Service Plaza
Civic Centre Road
Havant
PO9 2AX

21st July 2022

Your Reference: APP/21/01310
Our Reference: RST/A4274-4

Direct Line: 07816270476
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Dear Mr Weaver

RE: Tournerbury Woods, Tournerbury Lane, Hayling Island, Hampshire, PO11 9DL

Application APP/21/01310 ("the Application")

Our client: A G Philips & Son Limited (AGP)

The following representations on the Application are made on behalf of AGP of Tournerbury Farm, Tournerbury Lane, Hayling Island Hampshire P011 9DL. AGP have owned Tournerbury Farm neighbouring Tournerbury Woods, Tournerbury Lane, Hayling Island (the Application land) during the entirety of the period specified in the Application. Mr Graham Phillips is a director of AGP.

We have numbered the paragraphs below for ease of future reference.

1. Relevance of earlier representations

1.1. As you are aware, we have previously made representations on behalf of AGP in relation to the Application and the separate but related extant Lawful Development Certificate appeal (reference: 3278706) currently adjourned pending determination of the Application. We

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understand that the same will be dealt with at the committee meeting scheduled for 21st July 2022.

- 1.2. We refer to your e-mail correspondence with the writer of Thursday 9th June 2022, in relation to the above extant application. Your e-mail of 9th June specifies that: ‘in the circumstances it would be preferable for any relevant material to be re-submitted with a simple note explaining their relevance to the current application’.
- 1.3. Accordingly, this letter is written to accompany photographic and video evidence provided by AGP to the Council via Sharefile on 21st July 2022. These representations make highly material legal points and are additional to those on planning policy and material considerations made by Mr Michael Knappett BSc BTP of Messrs. BJC Planning and those of AGP.
- 1.4. We invite the Council to consider all the information that has already been provided on the appeals relating to the site subject to the Application because in our submission, it remains our client’s position that the Application should be refused. The current proposal is wholly unacceptable in terms of the living conditions and for the business enterprise AGP operate adjacent to the application site, for all the reasons previously articulated by the local planning authority in relation to the previously refused application in relation to the development:

“on-going 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”.

- 1.5. The Application is suggested to be a better scheme which builds on the previous application, but it does not deal with the amenity problems created by the previous application which directly impact our client. It also poses the possibility that the application site will be used for camping purposes, and the potential for further development in the event that the Application is approved. We would stress that AGP has not been consulted about their views by the applicants at any stage of the proceedings.
- 1.6. The Application therefore continues to present a serious amenity issue, a business risk issue and safety risk to AGP’s land.
- 1.7. In all the circumstances it would be far preferable that this application is refused and a renewed holistic application with the alternative route for planning permission be brought forward for fresh consideration by the local planning authority. The materials submitted with these representations go to providing evidence as to these issues: of the disruption and disturbance, on our client’s lives, home, and business by events in Tournerbury Woods.

2. Planning obligation

- 2.1. There is no effective manner in which controls over the access way can be imposed by planning condition because they will not be enforceable against the main landowner, nor may they be

adhered to by the applicant. To impose such conditions on our client would be to force them to adhere to conditions that they do not accept. Unenforceable conditions may not be imposed as a matter of law.

- 2.2. We refer you to our letter dated February 2022 from this firm which sets out a clear set of established legal propositions regarding the use of planning conditions and obligations.
- 2.3. We would urge you to consider the legal implications of your decision, you will note that the local planning authority lost at the court of appeal in the case of DB Symmetry precisely because of the consequences that followed on a grant of planning permission affecting third party land.

3. Alternative route

- 3.1. The planning authority identified and granted planning permission for an obvious alternative route which removes all the adverse effects - effects which the applicant and his professional advisors have acknowledged on many occasions in writing. The use of this alternative route, as it has already been constructed would not require planning conditions which interfere with the landowner's rights.
- 3.2. The alternative route is an exceptionally important material consideration as the applicant could implement his scheme without creating an unauthorised legal burden on AGP's land, impacting their amenity and livelihood.

4. Other issues

- 4.1. It is usually the case that a local planning authority will not grant planning permission that condones a development that has damaged an SSSI. In this case no permission was ever granted by Natural England or the local planning authority for the works included in the extant enforcement notice, or for the extensive parking hardstanding.
- 4.2. Whilst there has been no objection by Natural England to the application thus far, that does not preclude their subsisting responsibilities in respect of paragraph 180 of the National Planning Policy Framework which is a highly material consideration: national policy requires that in-combination development outside an SSSI resulting in unavoidable adverse effects on the SSSI should be refused planning permission. In that context, in my view the courts would, in contemplation of any challenge to a grant of permission for the application, expect the Council to carefully reconsider the degree of serious harm attributable to unauthorised development within an SSSI.
- 4.3. The corollary to that proposition is that until adverse effects are ruled out or retrospective planning permission is obtained unauthorised development of that nature should be subject to planning enforcement action.
- 4.4. The Council risks the continuation of further harm if it were to allow a continuing breach of planning control by awaiting the outcome of a prospective planning application for development.

The uncontrolled development of a nationally important SSSI is just one of the harmful implications we have identified elsewhere in this letter. That is in addition to a level of noise, traffic and disturbance that is irreconcilable with a working farm. The Council's attention in particular is drawn to our client's evidence of heavy goods vehicles and other traffic related to the proposed development moving in multiple directions across their farm after midnight and into the early hours.

- 4.5. This is an "in principle" obstacle to the grant of a retrospective planning permission, and ought to be treated as such by the local planning authority planning committee. Failing to deal with this issue will invite the opening of the floodgates to all landowners that do not take into account the procedures required to comply with the protections afforded to the Borough's most valuable and significant environmental designations.

5. New submissions relating to the Application

- 5.1. As you know, AGP own the land over which access is required for the Application development. The material forming these representations was all captured within land in the ownership of AGP.
- 5.2. In particular, the videos were taken for the purposes of ensuring the security of the premises. The still photographs have also been provided as pdfs. AGP asks the local planning authority to make provision at the planning committee meeting at which the Application will be dealt with for AGP to speak to the content of the video evidence, which provides important information about the operation of the AGP Farmyard and the activities that take place on the farm, the dwellings and the business.
- 5.3. The materials should form part of the online Application register on the Council's planning portal so that members of the public are able to make representations. If the Council's officers were to give advice to the Planning Committee without putting this "significant evidence" and information on the register or having AGP's representations in response to that material drawn to their attention (when they can be made in response to the publication), then in the event planning permission were granted there would be a legal error and a further failure to take into account a material consideration.

Please kindly acknowledge receipt of this letter and that you have been able to access the material (a catalogue of which is provided at Appendix 1 below) in provided via Sharefile by e-mail.



Rebecca Stanton

Solicitor

Thrings LLP

APPENDIX A - CATALOGUE OF REPRESENTATIONS AND DOCUMENTARY EVIDENCE

Many of these documents are likely to have already been supplied by the local planning authority to the Planning Inspectorate as they form part of the representations to the extant section 191 application (“the Certificate Appeal”) and in respect of the applicant’s appeal under section 195 of the Town and Country Planning Act 1990 (PINS Reference: APP/X1735/X/21/3278706), and the now withdrawn appeals under (1) section 174 of the Town and Country Planning Act 1990 (PINS Reference: APP/X1735/C/20/3248610) as well as (2) to the section 195 appeal (PINS Reference: APP/X1735/C/20/3248610).

AGP are content to continue to rely upon these and to maintain the analysis as it is set out here as above, subject of course to any further emerging submissions from the applicants. Folder and document references where used below refer to names and numbering given on Sharefile.

1. Document folder 1: Representations relating to extant appeal under section 195 of the Town and Country Planning Act 1990 PINS Reference: APP/X1735/C/20/3248610

Document reference	Document
AGPC1	Representation on certificate application by Thrings on behalf of AGP
AGPC2	photographs cited in AGPC1
AGPC3	Representation from Mr Phillips of AGP
AGPC4	Google image
AGPC4	Google image
AGPC5	Letter from Thrings LLP to Case Officer at Havant Borough Council
AGPC6	Unsigned witness statement of Sue Phillips of AGP and exhibits AGPC7A through to AGPC7C
AGPC7	Witness Statement
AGPC7A	Witness Statement
AGPC7B	Witness Statement
AGPC7C	Witness Statement
AGPC8	Representations from Thrings LLP dated 14 th April 2021

AGPC9	Outline statement of case (Thrings LLP) dated August 2021 submitted on behalf of AG Phillips and Son as Rule 6 party to the appeal
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2. Document folder 2: Documents relating to withdrawn appeal under section 78 of the Town and Country Planning Act 1990 (PINS Reference: APP/X1735/W/21/3278661)

Document reference	Document
AGP1	Objection letter from AGP dated 4 December 2018
AGP2	Objection email from AGP dated 2 February 2019
AGP3	Objection letter from AGP dated 6 December 2019
AGP4	Objection letter from Bryan Jezeph Consultancy Development Planning and Property Consultants on behalf of AGP dated 6 December 2019
AGP5	Objection letter from Thrings LLP on behalf of AGP dated 6 December 2019
AGP6	Transport Note from Evoke Transport Planning Consultants Ltd (Evoke) on behalf of Mr and Mrs Phillips of AGP dated 11 June 2021
AGP7	Letter from Christopher Snell dated 21/12/2012
AGP8	Letter from English Heritage dated 3/12/2012
AGP9	Decision Notice Town and Country Planning and Country Planning (General Permitted Development) Order 1995 Approval of Details dated 18 January 2013
AGP10	Plan dated 20 December 2012
AGP11	Cover letter dated 21 December 2012
AGP12	Site plan and section (undated)
AGP13	Planning statement dated 2 February 2017
AGP14	Officer report dated 4 May 2017
AGP15	Decision notice granting planning permission dated 4 May 2017
AGP16	Location Plan reference H125/2021.06.04/SPRr
AGP17	Planning statement by BJC Planning 30 April 2021
AGP18	Site photographs in 2020 and 2021
AGP19	Consultation response of Hampshire Local Highway Authority 5 July 2021
AGP20	Email from tenant of a dwelling on Tournurbury Farm to AGP dated 21 July 2021

AGP21	Outline statement of case (Thrings LLP) dated August 2021 submitted on behalf of AG Phillips and Son as Rule 6 party to the appeal
AGP22	AGP22 Supplementary GP letter.pdf

3. Document folder 3: content of videos and photographs submitted by A G Phillips & Son Limited to the Planning Inspectorate, as evidence of the disruption and disturbance, on the farmers lives, home, and business by events in Tournurbury Woods

Note: AGP have also provided this further information before to The Planning Inspectorate and the Council in relation to the now withdrawn planning appeals brought by the applicant and mentioned above, comprising photographs and video evidence under cover of a letter dated 19 August 2021. The evidence is to demonstrate the activities in the AGP Farmyard and impact on the dwellings occupied by AGP and its dwellings.

Document reference	Document
AGP36	File with summary of contents of sub files 1-8 with commentary provided by AG Phillips and Son Limited.
FILES 1-8	Video and photographic evidence

4. Document folder 4: July 2022 evidence of disturbance and damage to AG Phillips and Son Limited land

Document reference	Document
AGP22	Heavy goods vehicle on site
AGP23	Bus on site
AGP24	Bus on site
AGP25	Heavy goods vehicle on site

5. Document folder 5: July 2022 evidence of late-night disturbance on AG Phillips and Son Limited land

Document reference	Document

AGP26	Vehicles at farm complex after wedding
AGP27	Vehicles at farm complex on CCTV
AGP28	Vehicles at farm complex on CCTV
AGP29	Vehicles at farm complex on CCTV
AGP30	Vehicles at farm complex on CCTV
AGP31	Vehicles at farm complex on CCTV
AGP31.1-31.8	Vehicles at farm complex after weddings

6. Document folder 6: July 2022 evidence of disturbance to habitats and wildlife at AG Phillips and Son Limited farm access track

Document reference	Document
AGP 32	Nesting birds
AGP33	Nesting birds
AGP34	Water flanking access track
AGP35	Video of trespasser

7. Document folder 7: Documents relating to evidence of ongoing negotiations between AG Phillips and Son Limited, and the applicants, related to the alternative route

Document reference	Document
AGP36	Letter dated 23 April 2021 from Savills to the applicants
AGP37	Email response from the applicants to AG Phillips and Son
AGP38	Email exchange between October and November 2021 between Applicant's solicitors Mr Pavey Partner at Irwin Mitchell LLP, and AGP's solicitor Mr Robert James of Thrings LLP
AGP39	Letter to Irwin Mitchell LLP from Thrings LLP dated 18 th November 2021

8. Document folder 8: documents relating to written legal submissions opposing the Application from Thrings LLP and other professional advisors of and on behalf of AG Phillips & Son Limited

Document reference	Document
AGP40	23 December 2022 letter to Havant Borough Council opposing the application
AGP41	17 March 2022 letter from Thrings LLP objecting to the application, addressed to Steve Weaver in relation to appellant's agent HMPC Limited letter in support of the application
AGP42	Enclosures to AGP36
AGP43	Letter to Havant Borough Council objecting to the application dated 2 February 2022