APP/23/00076 Shadow Officers Report v1

Saving Tournerbury Woods

1. Executive Summary 3
2. Site Description 3
   2.1. Preamble 3
   2.2. General description 3
   2.3. Application form review 3
   2.4. Relevant Legislation, Regulations, Guidance and Disclosures 4
   2.5. Site geography 6
      2.5.1. Mapping and imagery baseline 6
      2.5.2. Ownership and site redline 7
      2.5.3. Topography covered by the application 8
      2.5.4. Domestic curtilage 18
      2.5.5. SSSI and AONB boundaries and the 'Business amenity area' 20
   2.6. Designation & Policy areas 20
      2.6.1. SSSI and AONB boundaries 20
      2.6.2. Natura 2000 sites (SPA/SAC) and Ramsar 21
      2.6.3. TPO 22
      2.6.4. NE Priority Habitats 22
      2.6.5. Havant Borough policy areas 23
      2.6.6. Flood Zones 2 & 3 23
   2.7. Access and rights of way 25
      2.7.1. Route section 1: farm bypass track 26
      2.7.2. Route section 2: crossing into the woods 28
      2.7.3. Route section 3: woodland track 31
3. Planning history 37
   3.1. Previous applications 37
4. Policy considerations 38
   4.1. Development plan 38
   4.2. NPPF 38
   4.3. EIA 39
   4.4. CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough 39
   4.5. CS12 Chichester Harbour Area of Outstanding Natural Beauty (AONB) 39
   4.6. Nature emergency 41

5. Consultations....41
5.1. To be added once all received....41
6. Planning considerations....41
6.1. Curtilage and planning units....41
6.2. Permitted development....42
6.3. Access....44
6.4. HRA/AA....45
6.4.1. Habitats Regulation Assessment/ appropriate assessment process....45
6.4.2. Previous HRA/ AA consideration....48
6.5. Section 85....49

1. Executive Summary

2. Site Description

2.1. Preamble

This Shadow Officers report is submitted by the residents association Saving Tournerbury Woods (STW), which is an Unincorporated Association set up to monitor the designations that apply to this highly protected woodland, and we have over 100 supporters on Hayling Island. We have within our association and supporters extensive knowledge of the history of this location, the legal designations and the biodiversity of this site. Our position and the work we have done to document the history of Tournerbury Woods can be found on our website at: https://savingtournerburywoods.org.uk/

This is a very complex application, and it is essential that officers have established the correct baselines and history to be able to identify the material considerations in the decision. This section (and the appendices) contains key data drawn from the application, submitted evidence, public registers, Freedom of Information disclosures and court proceedings.

Officers must satisfy themselves of the veracity of this information in order to determine the application correctly and before completing the Officers Report or sending the application to Committee. Disregarding information that is material to the decision risks judicial review or an appeal, as has previously been the case at significant cost to the applicant, interested parties and Havant Council taxpayers.

2.2. General description

This application is to give retrospective planning consent for a change of use of land and construction of buildings in Tournerbury Woods, Hayling Island from agricultural/forestry use to commercial use by an event venue. The site stands on the northern shoreline of Chichester Harbour along an inlet known as My Lords Pond and is covered by a variety of nature conservation designations.

2.3. Application form review

The application form for this development contains the following declarations:

Application number:	APP/23/00076
Application description	Change of Use of land and woodland (retrospective) as a wedding and events venue, including retention of permanent ancillary buildings and structures, the erection of removable structures (including marquees and temporary facilities), and the use of the land as a campsite in association with events. Construction of vehicular track from the public highway to the proposed wedding and events venue at Tournerbury Woods.
Date of first submission:	01/02/2023
Retrospective?	Yes
Change of use started	28/8/2008
Current use	Agriculture and Forestry. Previously a brick pit and inert waste tip. The existing site has been used as a wedding and events venue since 2012.
Proposed use case	D2 - Assembly and leisure
Development area	5.38ha

Commercial processes?	Yes
Contaminated land?	No
New access?	Yes
New parking?	Yes
Protected and priority species?	Yes
Designated site?	Yes
Risk of flooding?	Yes
Type of Certificate	B (part of the development requires consent from third party)

Table 1 Application form data

These declarations engage a wide range of baselines, policies and statutory consultation responses and therefore they must be validated first by Officers before further consideration.

Review of the information supplied in the form indicates certain errors/ ambiguities that must be examined for this report:

1. Use class declared: the use class stated on the form (D2) is one that the form explicitly states should not be used as it has been revoked under the Use Classes (Amendment) Regulations 2020. Officers will need to clarify which Use class was accepted when the application was validated.
2. Contaminated land: in planning application APP/01/62340 the Officers report in 2001 refers to the use of 'spoil' and 'demolition waste' as source material for land raising authorised for land to north of Woods Cottage extending within the redline of this proposal. In the records of the Natural England Enforcement visit to Tournerbury Woods on 26th July 2013, a photo log is provided with captions to several photos as 'Piles of recently imported waste'. The operator of events in Tournerbury Woods 'Deck Events Ltd' holds a current Environment Agency U1 waste exemption for 'Use of waste in construction' and D7 'Burning waste in the open', which dates back to at least 2020. These reports of waste at the site and licence exemptions for current waste production must be fully transparent in the application and should be considered in the HRA/AA.
3. Campsite: inclusion of a campsite with a fixed boundary and ongoing, all-year-round operation engages the need for a Schedule 2 Environmental Impact Statement as the site is in a sensitive area (Chichester Harbour SSSI) and there is no minimum size. The EIA screening must be conducted before the Officers Report is completed.
4. Date for the start of change of use: the form states 28/8/2008 as the change of use date. However, the application form says that '[t]he existing site has been used as a wedding and events venue since 2012, and this mirrors the description of the proposal ('a wedding and events venue'). Hence, there may have been a change of use from 28/8/2008 until "2012" that was different to that occurring after "2012". Officers must determine the applicable date as a baseline must be constructed for the Habitats Regulation Assessment that enables the establishment of the conditions before the unauthorised development.

2.4. Relevant Legislation, Regulations, Guidance and Disclosures

The following events have implications for the determination of this planning application and will be referred to in this shadow report:

Year	Planning event	Relevance to the current application
1964	Chichester Harbour Area of Outstanding Natural Beauty notified	Legal basis for AONB protection of the site
1970	Chichester Harbour Site of Special Scientific Interest notification	Legal basis for SSSI protection of the site by Natural England

1971	Chichester Harbour Conservancy Act	Responsibility for AONB management given to CH Conservancy
1971	Woodland Tree Preservation Order (TPO) 448 notification by Havant BC	Protection for trees in Tournerbury Woods from unauthorised operations
1984	SSSI re-notified under Wildlife and Countryside Act 1981 (W&CA81)	Management powers for SSSI sites given to English Nature (now Natural England)
1990	Town and Country Planning Act (T&CPA90)	Clause 206 Requirement to replace trees removed in a Woodland TPO
1996	Chichester and Langstone Harbours Special Area of Protection notification	Addition of Tournerbury Woods to the protection of the Natura 2000 programme
1997	Site Management Statement with English Nature (now NE) for Tournerbury Woods	Agreement of a Management Scheme under W&CA81 for Tournerbury Woods
2000	Countryside and Rights of Way Act 2000	Section 85 Duty to 'have regard' to AONB plans
2002	R (Lebus) v S. Cambridgeshire	Updated Wheatcroft 1982 judgment on retrospective applications to require baseline assessment of lost habitats
2004	Deed of Agreement regarding Mengeham access to Tournerbury Woods	Agreement with neighbour to SW that no commercial traffic would enter by this route
2004	Planning and Compulsory Purchase Act 2004	Requirement to determine planning applications according to Development Plan unless material considerations apply
2005	ODPM Circular 6/2005 Biodiversity & Geological Conservation- Statutory Obligations and their impact in the Planning System	Clauses 75-77 restricting Permitted Development in SSSIs without NE authorisation (referenced in NPPF 2024 clause192)
2011	Havant Adopted Core Strategy	Current Havant Local Plan adopted
2011	Localism Act	Amendments to T&CPA90 relating to enforcement and concealment of development
2012	Town and Country Planning (Tree Preservation) (England) Regulations	Re-notification of TPO under new Regulations
2014	Havant Adopted Allocations Plan	Local land policies with maps
2014	Chichester Harbour SSSI Feature Condition Tables published	List of Chichester Harbour features monitored by condition surveys
2017	Joint Supplementary Planning Document (Chichester & Havant)	Statement of material considerations for planning applications within AONB
2019	Habitats Regulations 2019	Updated post EU Exit Regulations on protected sites and habitat assessment
2020	Whistleblower objection to APP/21/01262 (OBJECT_RECEIVED-13_02_2020-1366570.pdf)	Extensive disclosures by self-declared family member relating to unconsented Tournerbury development
2021	Havant Borough Local Plan 2036	Withdrawal of Local Plan 2036 after Inspectors identified traffic congestion on A3023 as a key planning constraint
2022	Non-Prosecution Agreement with Tournerbury owners	Assurance that no enforcement will be undertaken by HBC at Tournerbury
2022	Natural England Condition Survey of Tournerbury Woods	Natural England issue 'Favourable condition' review

2023	Levelling-up and Regeneration Act 2023	Amended clause 85 of CROW 2000 to 'further the purpose of AONB plans'
2024	Office for Environmental Protection ruling on Tournerbury complaint	OEP 'recognise the weakness' of the Management Scheme for Tournerbury
2024	National Planning Policy Framework (NPPF)	Clause 11(d) presumption of sustainable development except for protected assets such as SSSI and AONB
2025	New Havant 'Building a Better Future Plan' Local Plan	Evidence base studies published for the emerging plan
2025	Judicial Review leading to the quashing of APP/23/00076	High Court quashes the grant of permission in APP/23/00076 on 15/9/23
2025	Havant declaration of a Nature Emergency	Declaration on 18/6/2025 with support for nature recovery
2025	STW complaint to Local Government Ombudsman	After completion of complaint procedure, submission of TPO failures by HBC in Tournerbury

Table 2 Legislation, Regulations, Guidance and disclosure timeline

2.5. Site geography

2.5.1. Mapping and imagery baseline

The Tournerbury Woods site has a complex history and is located in a part of Hayling Island with no public access. It is therefore necessary for officers to scrutinise the topography, history, ownership, formal designations, planning policy areas and the domestic curtilage of Woods Cottage in order to understand the scope and constraints for the retrospective application for planning consent.

The application supplies the following maps of the retrospective development at a range of scales, and no single map shows all the relevant features.

Date created	Filename	Scale	Features shown
December 2012	LOCATION_PLAN_FOR_NEW_ACCESS_APP 1700207-1729629.pdf	1:2500	Access track over adjoining land
May 2018	TOPOGRAPHIC SURVEY WITH PARKING ANNOTATED.pdf	1:500	Topography, access, trees, buildings
January 2023	LOCATION_PLAN_WITH_ACCESS_TO_PUB LIC_HIGHWAY-1729649.pdf	1:6675	Redline, access, camping, buildings
July 2023	CONNECTION TO EXISTING ESTATE TRACK (REV 1) - July 2023.pdf	No scale	Access
August 2023	LOCATION PLAN WITH BIRD AND BAT BOX LOCATION PLAN NO.1.pdf	1:6675	Habitat mitigation map

Table 3 Application mapping details

The two Location Plans at 1:6675 are very small scale and key features of the application cannot be discerned at this scale e.g. exact boundaries of the camping area. No plan is supplied of the woodland track that is to take all venue traffic showing width, height restrictions, passing places and the crossing of the channel at the boundary of the woods. Officers must request more information on the camping area and track width to enable appropriate recommendations to be made.

In order to set out all the geographic factors of relevance to the application on a common map base this report uses the official Havant Borough 'Where I live' map and aerial photography as a base for current status. Details from the application mapping showing boundaries, siting and access listed below have been transposed onto to the base map using the geographic information system QGIS. By using QGIS it has been possible to bring together the application data with mapping that is directly integrated from official government sources such as Magic Map, Historic England, Environment Agency, Forestry Commission, Natural England, Land Registry, Ordnance Survey along with historic air photography from the National Collection for Air Photography, Ordnance Survey, ESRI, Bluesky and Google.

2.5.2. Ownership and site redline

The land extent of the Tournerbury Woods title in SH14945 encompasses:

5. The ancient semi-natural woodland in The Tourner Bury Scheduled Ancient Monument in the north, and
6. The Tournerbury plantations in the south, now including the venue area.

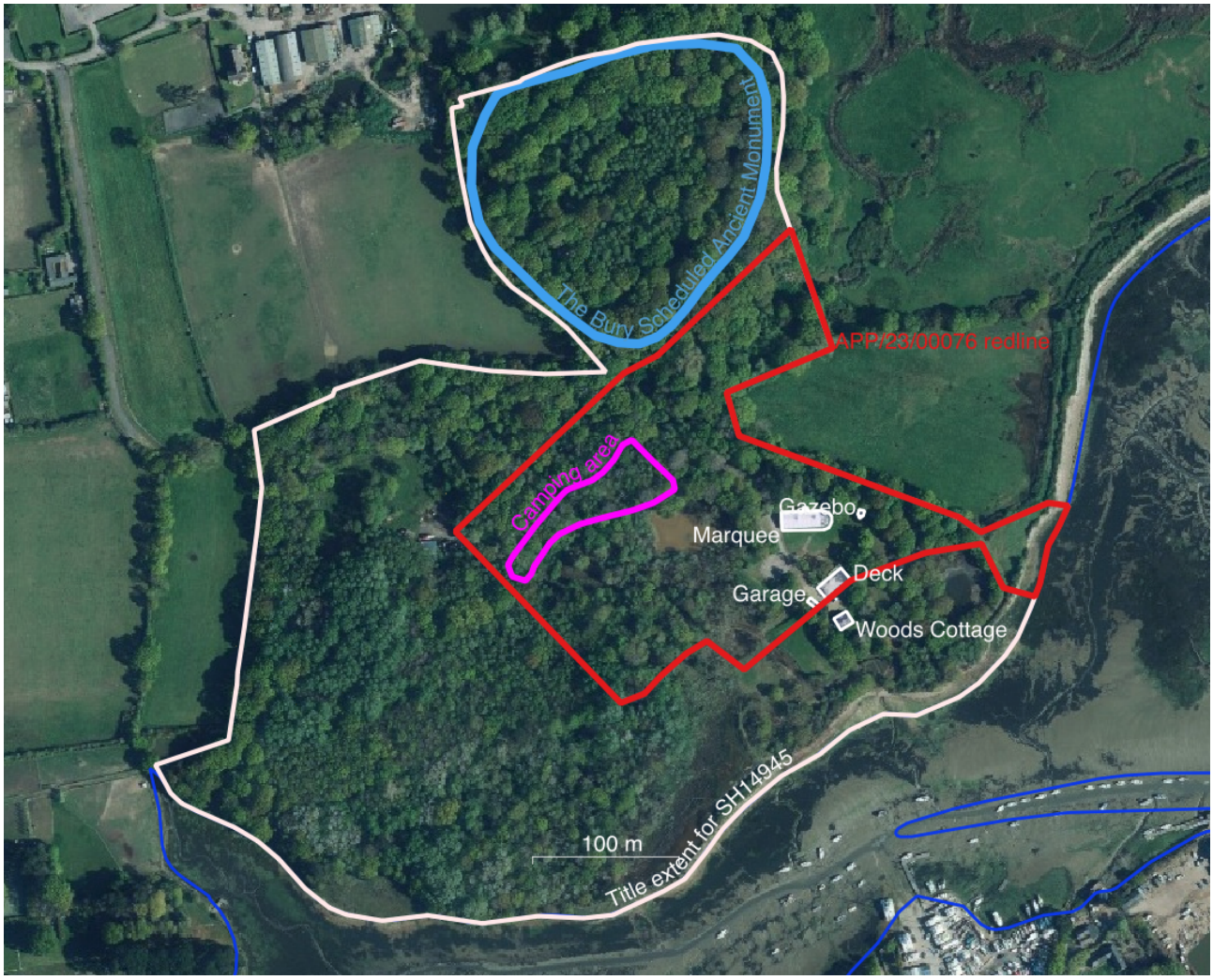


Figure 1 Site red line, title extent (white), Ancient Monument (Blue), camping area (pink) and buildings (white) shown in current Havant Borough 'Where I live' aerial photography

Buildings

This application has drawn the red line to reach the foreshore in the SE, to extend into a clearing in the NW of the woods, and to directly abut the Scheduled Ancient Monument in the north. This area

includes the following buildings:
- Marquee: erected in 2013 with additional internal structure added in 2019;
- Gazebo: erected in 2015; and
- Deck: extended from a log cabin in 2011 and enlarged in 2017

This red line of this application differs from the two previous retrospective applications APP/18/00943 and APP/21/01310 by excluding Woods Cottage (Victorian era house not in residential use), which has been used as a holiday let since 1998, although no planning consent for the change of use has been obtained.

If planning consent was obtained for the use of these three buildings as a venue, then it would be unlawful for Woods Cottage to be used by the venue, for example, to accommodate guests without separate planning consent and this would need to be conditioned in any grant of permission.

Jetty

The proposal includes a temporary use of a jetty extending from the SE lawned area into the intertidal area. Officers should note that this would require a Marine Management Organisation (MMO) licence and a Works Licence from Chichester Harbour Conservancy in what is a Special Area of Conservation (SAC)/ Site of Special Scientific Interest (SSSI). In the Officers report for APP/19/01262 the Conservancy stated that 'The Conservancy is unlikely to grant a works licence for such a structure described… as it is its policy not to do so, given the ecological importance of the intertidal mud it would rest upon/cover in the SPA/SAC/SSSI/Ramsar designation' p8. Note also that the Tournerbury Foreshore in the location of the jetty is Unit 005 of the SSSI and its condition is currently 'Unfavourable- Declining'.

As this is a retrospective application officers should know what development is to be regularised and what impact the development has had against the pre-development baseline. A jetty was constructed without planning consent or MMO/ CHC licence (according to public registers) by 2018 as can be seen in a Bluesky air photo dated 23rd July 2018. A photo subsequently appeared on the BBC website showing the jetty from the air in 2021 after it had fallen into disrepair: https://www.bbc.co.uk/news/uk-england-hampshire-68952960

At least 15 piles supporting the remaining structure can be seen in this picture. This structure crosses an area mapped by Natural England's Priority Habitats Inventory as 'Coastal Saltmarsh', which is one of the special interest habitats for which Chichester Harbour SSSI is notified in the citation:
http://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1003245.pdf

Use of a temporary Versadock floating jetty in this location in the future would damage the special interest as it would rest upon the saltmarsh at low tide.

As this structure has damaged the coastal saltmarsh in the Special Area of Conservation and the Site of Special Scientific Interest (where the habitat is 'Unfavourable- Declining'), this impact should be included in the baseline Habitat Regulations Assessment.

2.5.3. Topography covered by the application

Early history

Until c.1930 the south-central area of Tournerbury Woods was cleared for use as a Brickworks as can be seen in the 1935 oblique aerial photo in figure 2. Woods Cottage is the prominent detached building in the foreground of the woods close to the shoreline. The White arrow points from Wood cottage to the approximate modern location of the venue marquee. It can clearly be seen that this area was thickly wooded at that time.

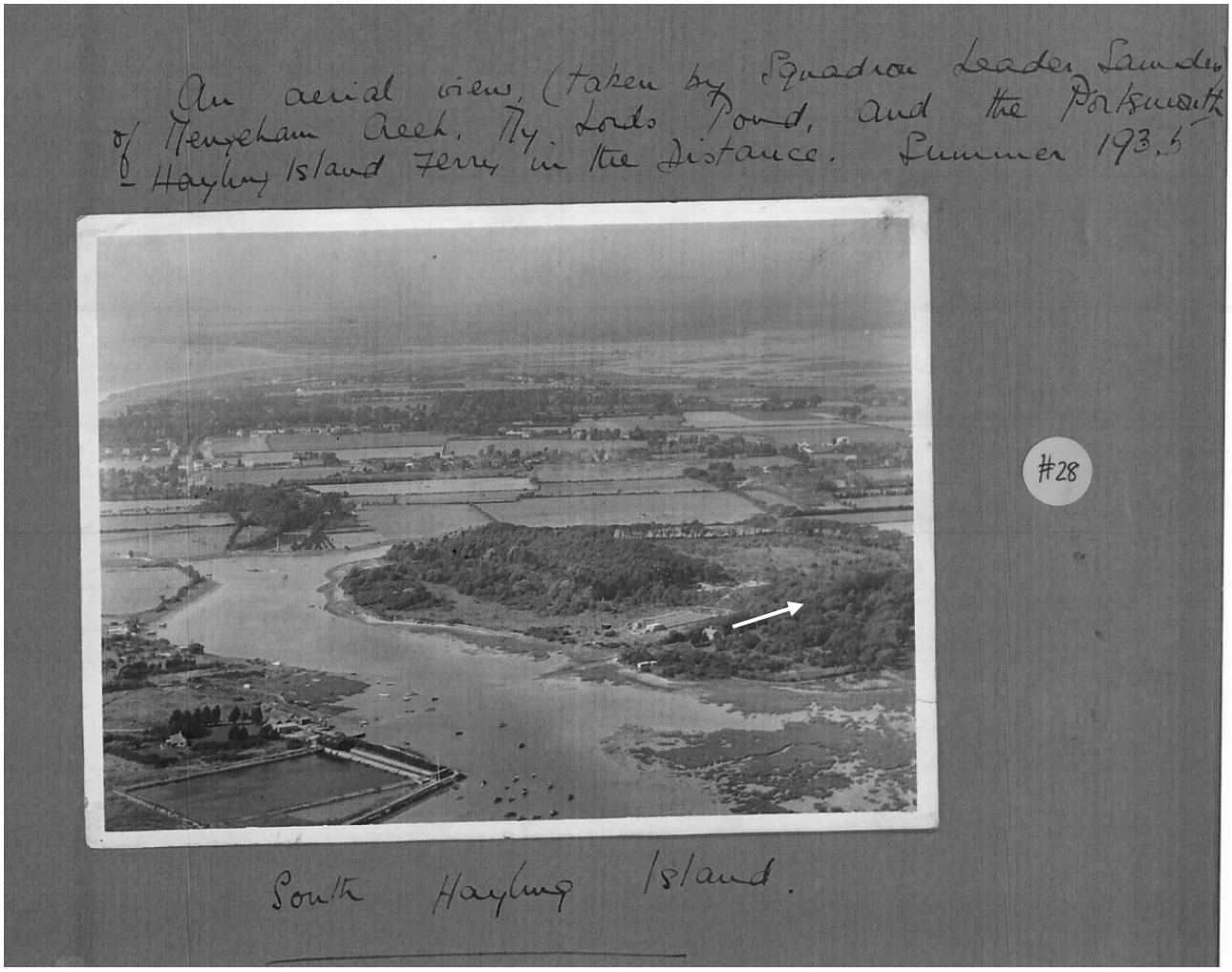


Figure 2 Oblique aerial photo taken of Tournerbury Woods in 1935

The Tournerbury brickworks is recorded in the Historic England Historic Environment Record No: 64992 and a mapped boundary is available. When this boundary is laid over the 1976 air photo taken 6 years after notification of the SSSI, and 5 years after the Tree Preservation Order covering the whole woods was notified, we can see a true baseline for the woods before the natural and development changes of the last 50 years (figure 3).

Note that this Historic England mapped boundary in figure 3 places the marquee, the gazebo and the camping site outside the boundary of the former brickworks when they are added in their modern position. Officers should note that these buildings are therefore not on former industrial land, even though the cessation of this production was a century ago. The area in the extreme SE of the site was being used as a dump in 1976 to infill a former tidal lagoon.

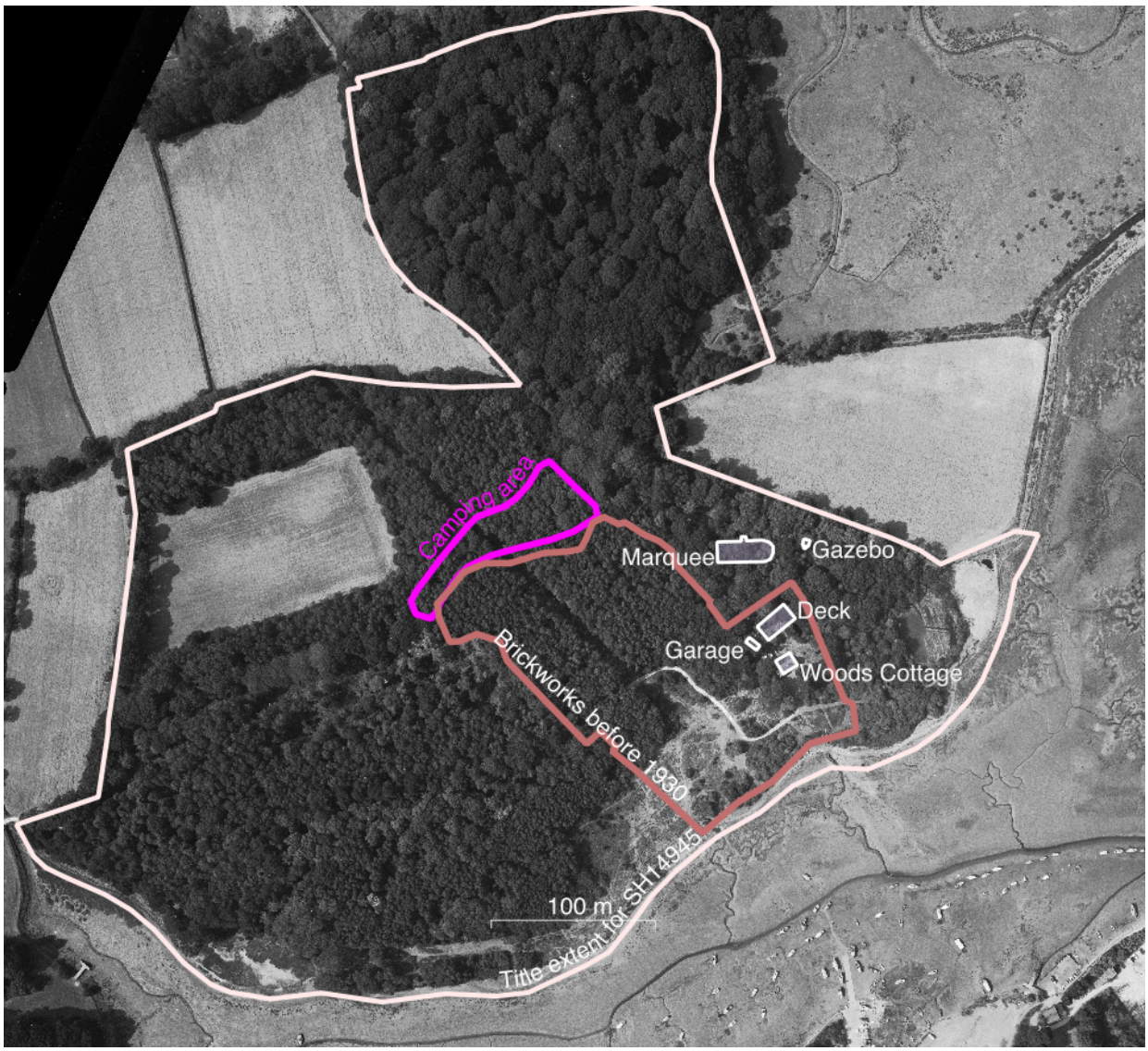


Figure 3 National Collection of Air Photography air photo taken on 11th July 1976

Since 1976 approximately 15% of the topography of Tournerbury Woods within title extent of SH14945 has been altered by earthworks, dumping, excavation, pond infill, tree loss and track construction. Two periods of specific landscape change occurred between 1994 and 2001 and between 2012 and 2016. The first period is relevant to the establishment of a baseline for the 2008 date of first 'change of use' put forward in the application. The second period saw significant changes to the landscape as development occurred.

First period of land alteration: 1994-2001

Work to transform the landscape of Tournerbury Woods began in the mid 1990s with the excavation of a 1000m sq metre pond to the north west of Wood Cottage for wild fowling use. This pond was given retrospective planning consent in APP/97/62340.

By 1996 dumping and land raising was under way to the west of Woods Cottage as can be seen in the Sealand air photo in figure 4. This photo shows the light green boundary of the 'domestic curtilage' agreed between Tournerbury and English Nature (now Natural England) in 1997 (see xx below) and one area of material outside the curtilage (Y) and another formed into a raised lawn within it (X) both shown with brown boundaries.

This land raising work was the subject of a second retrospective application for planning consent (APP/01/62340) in 2001. The Officers report said:

> ‘Large area of demolition waste to west of cottage - unauthorised; we and E. Nature have been seeking removal.' (Officers Report §2)’



Figure 4 Sealand air photo taken on 4th December 1996

Officers granted permission for the retrospective land raising of area X using material outside the curtilage in area Y. Officers placed a condition on consent:

> Condition 6: ‘The area of land currently covered by the material [Y] to be used for the raising of the lawn areas [X] shall be restored to its original state of a wetland habitat within 3 months’

This restoration did not occur, and area Y was also landscaped into a raised lawn after 2001.


Figure 5 Waste dumped in area Y & Z in February 2001 showing wetland habitat lost

The planning consents given for land raising in APP/01/62340 are shown as purple areas in figure 6 numbered 1 to 3 (from the application), with 4 and 5 being pre-existing lawns dating back to when the Brickworks was operational. Area 2 and 3 consents were greatly exceeded by the final raised lawn in Area X, and areas Y and Z were not consented (shown in brown).

Essentially, the whole area inside the domestic curtilage and the adjacent areas Y and Z were altered to create raised lawns by 2007. The causeway created in Area Z was used for access to the sea wall. Figure 7 shows area north of Woods Cottage remained forested in 2001.

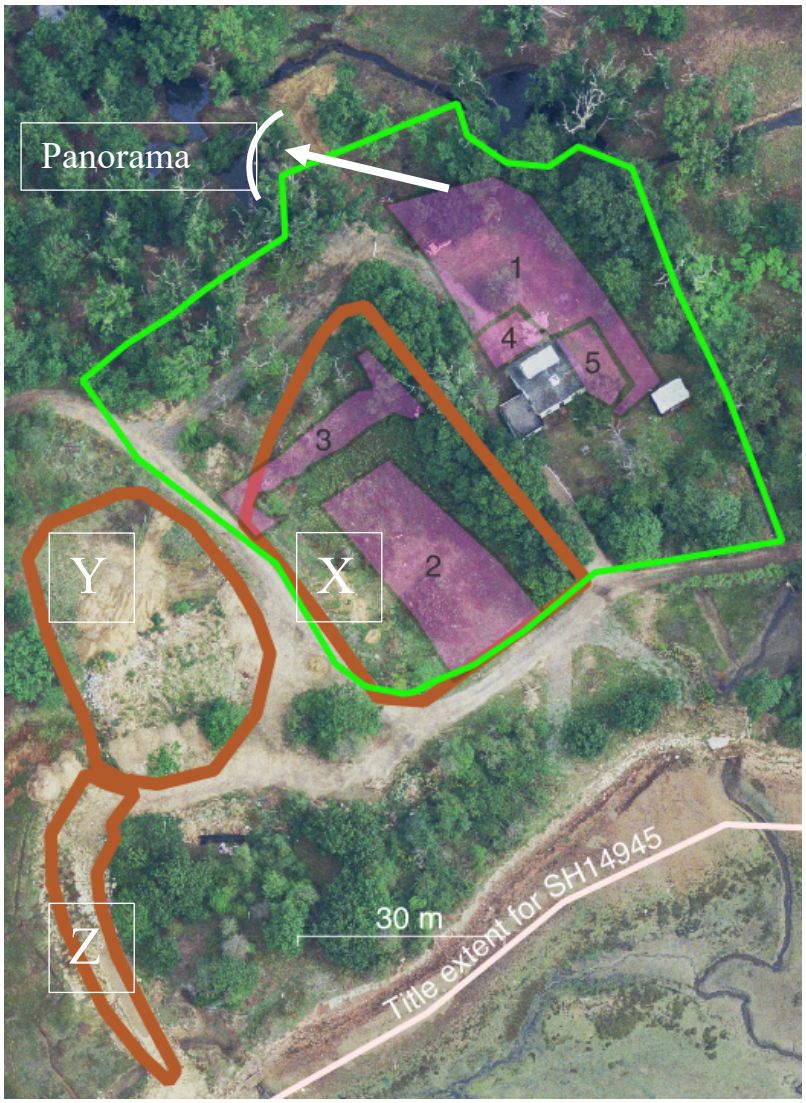


Figure 6 Figure 3 National Collection of Air Photography air photo taken on 15th August 1999



Figure 7 2001 Panorama spanning from W to N (behind boat) from north edge of area 1

Looking at the air photo in figure 8 officers can view the landscape baseline in the year before the date supplied by the applicant for change of use in the retrospective development (28th August 2008). The key features from the first period of land alteration are that:

1. Significant area of habitat has been destroyed without planning consent: Area Y and Z combined are c.1300 sq metres of lost wetland habitat in breach of planning condition 6 of APP/01/62340.
2. Habitat loss represents a breach of the SSSI Operations Requiring Natural England Consent (ORNECs)
3. No significant tree loss has occurred excepting a triangular area of trees north of Area X, which did not have the benefit of a root protection zone as specified in BS5837 and trees died in the few years after the construction of area X as seen in the time between figure 6 (1999) and figure 8 (2007).
4. Activities pictured in the application APP/19/01262 that are associated with the change of use from agricultural to events are shown taking place on Area X lawn

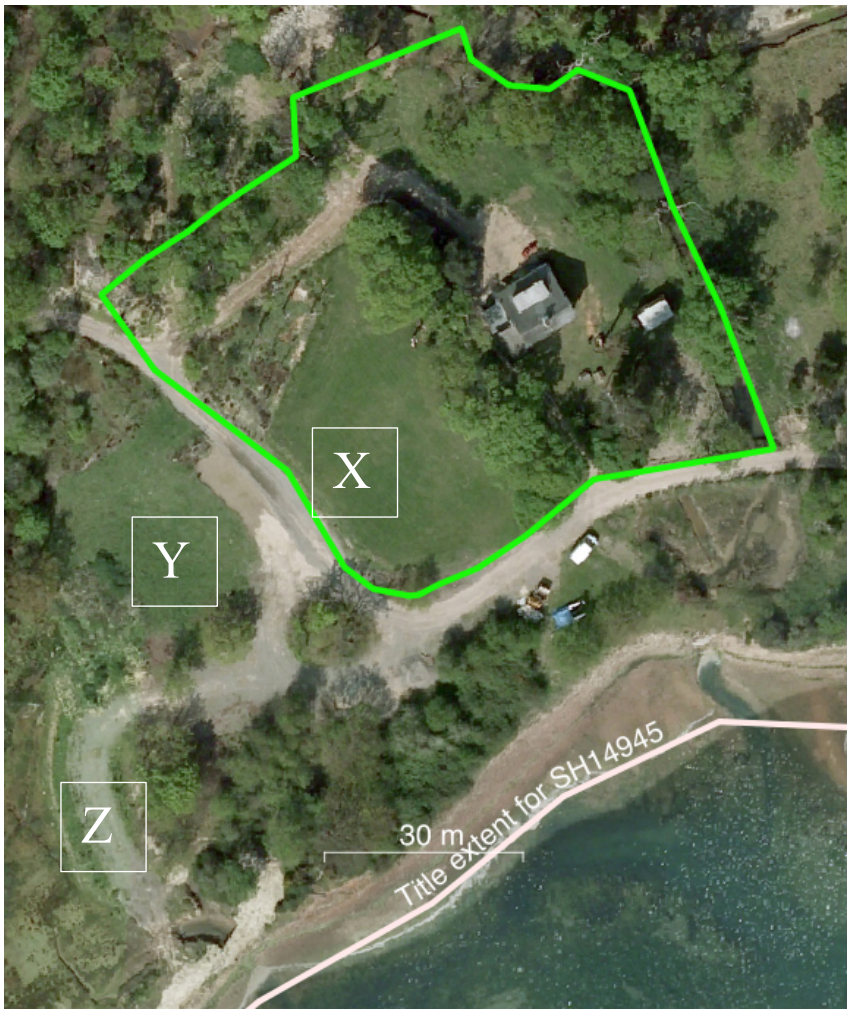


Figure 8 Bluesky air photo taken on 21st April 2007

Significantly, the area to the north of Woods Cottage has not been developed and it remains forested in 2007 before the change of use occurred in 2008.

Second period of land alteration: 2012 and 2016

In the witness statement by the applicant in APP/19/01262 it is stated that:

‘In 2011, [we] decided to focus business on the Estate towards wedding events to pick up weekend business and complement the existing successful corporate hospitality business centred on Woods Cottage’ p10.

In the consolidated table of events by year prepared by Officers after submission of APP/19/01262, the first wedding events are shown occurring in 2012, which aligns with the 2012 date given by on the application form. These events took place in a moveable marquee, which was pitched on at least one occasion (20th September 2012) in a small existing clearing 75m by 15m to the north of Woods Cottage (shown at M in figure 9).

This area became the focus of development after 2012 associated with the change of use of this land from agriculture/ forestry to a wedding venue.

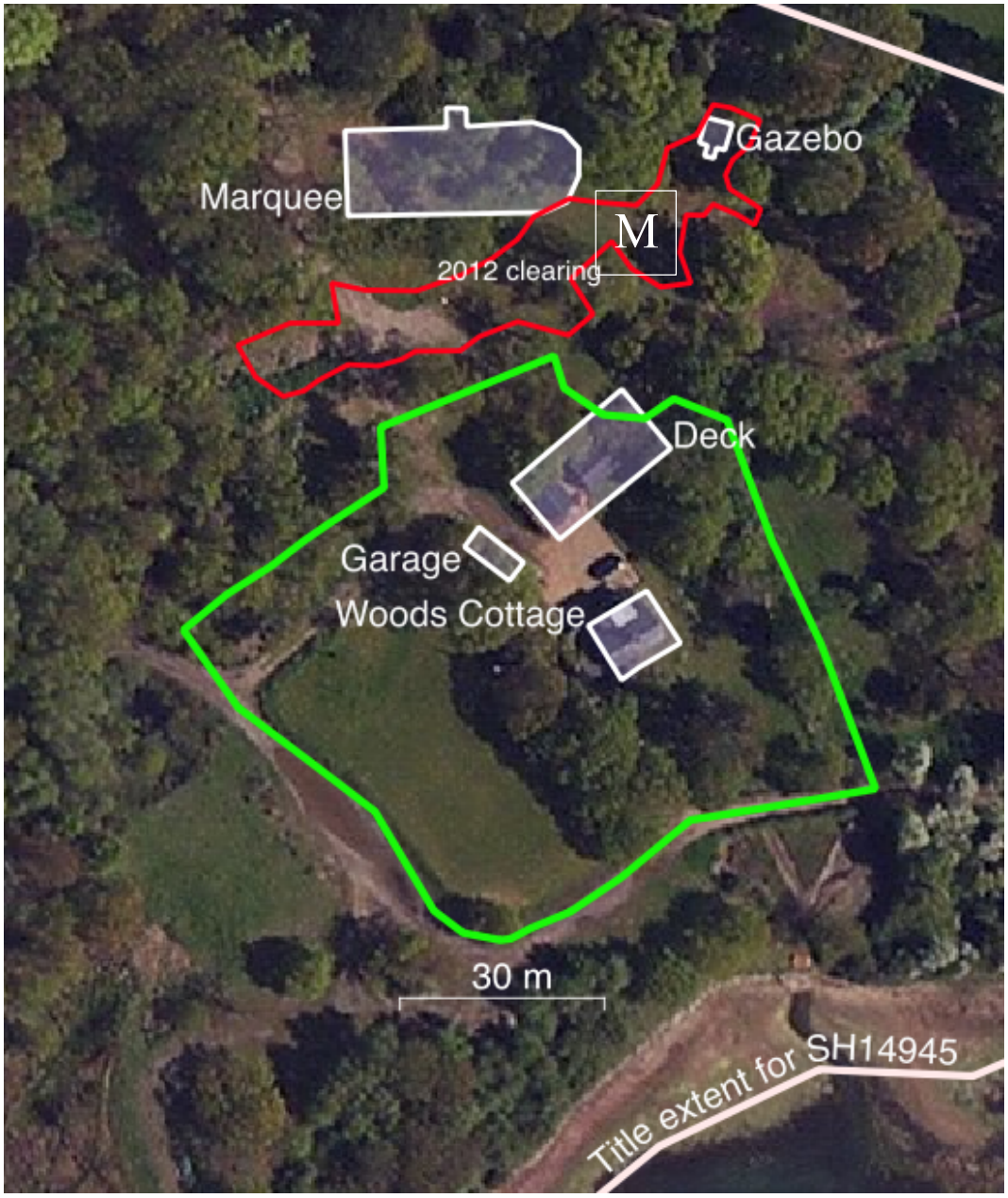


Figure 9 ESRI Wayback air photo taken on 16th May 2012

Natural England conducted an enforcement visit on 26th July 2013 at which they photographed the immediate aftermath of the creation of an earthwork platform that

contains 1000 cubic metres of material (see figure 10 where the turf sides of the new platform are clearly visible).



Figure 10 Natural England photo DSCF0608 (2).JPG taken on 26th July 2013

By 2015 the platform had been enlarged towards the SE and areas of car parking have been created by spreading over 3000 m^2 of gravel under the trees to the NW of the marquee as can be seen in figure 11 below.



Figure 11 Google Earth air photo taken on 22 April 2015

Analysis of aerial photos (see above) and land surface height data (see below in figure 12) showed that an earthwork platform with a volume of c. 1000 cubic metres was constructed in the clearing where the marquee is located between 2013 and 2015 (dark green= low in 2005 and light green = 1.2m higher in 2013/2020).

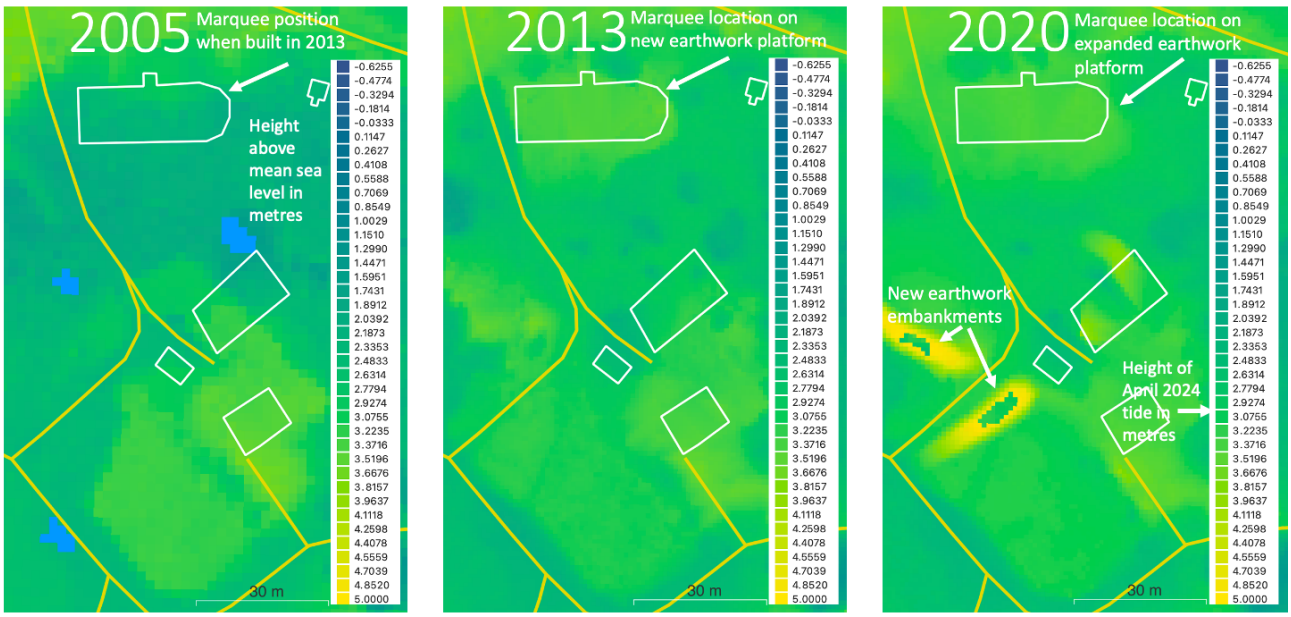


Figure 12 Environment Agency LIDAR data for the venue area

All this construction was Recorded by an eyewitness and submitted to the council as an objection to the Certificate of Lawfulness application in APP/19/01262:

> 'The next and most significant alteration to the curtilage did not take place until 2011/2012 when the decision was taken to diversify away from mainly short-term holiday lets and into the wedding market. A large area of previously undisturbed woodland to the north and north west of Woods Cottage was subjected to heavy duty excavation, raising the ground level and landscaping, including the felling of mature trees, ground cover clearance, levelling and infilling the previous clay pit, drainage stream and pond depressions, and the subsequent import of thousands of tons of gravel, scalpings and top soil (all through Tournerbury Farm and Tourner Bury in endless streams of heavy goods vehicles) to create the new car parks, tracks to them, the marquee base and extensive, open, marquee lawn.
> APP_19_01262-OBJECT_RECEIVED_13_02_2020-1366570.pdf

None of these earthworks in the marquee clearing have been included in the retrospective application for development. Officers should review the evidence for these earthworks and consider whether some of the development that has occurred at this site has not been declared to the council.

Habitat baseline for the retrospective application

The extensive damage to the original habitat associated with the venue development from 2008 onwards demonstrated above means that the current site condition cannot be the baseline from which the Habitats Regulation Assessment (HRA), Environmental Impact Assessment and Nutrient Neutrality analyses should proceed.

This was recognised by Havant officers when discussing the earlier APP/18/00943 application in a communication of 14th February 2020 from the Senior Planning Officer to the then

Hampshire County Ecologist, released to Saving Tournerbury Woods under Freedom of Information (FOI) regulations:

> 'With no historic ecological surveys of the site, the agent's proposition is that no assumptions can be made about the previous ecological condition of the site, and so no proof of any effects either positive or negative. I take from this that the assessments will offer no analysis as to the impact of the development that has occurred other than to record its current state, the current state of ecology on the site, and what controls might be necessary to maintain that state. From your point of view, is there precedent for a retrospective application effectively avoiding any analysis of the site's condition prior to the unauthorised development?'

In the judgment in Lebus vs S.Cambridgeshire [2002] it was found that retrospective permission cannot bypass environmental assessment in sensitive areas. If habitat loss occurred before the environmental assessment takes place, the authority must still consider what was lost, not just what remains after the development has taken place.

Officers must therefore give consideration to the following when preparing the required environmental assessments:

- Evidence of the true baseline status of the retrospective development applied for on the date of the change of use (28/8/2008), which we have supplied in this report as provided for in The Conservation of Habitats and Species Regulations 2017 (as amended) in §63(4);
- Detailed findings of the applicants' Ecological Assessment and Habitat surveys for the surviving part of the woods, which address the assemblage of species that could be supported (e.g. UPDATED_PHASE_1_HABITAT_SURVEY for APP/18/00943, section 7.10.2)
- Academic studies of the site before the retrospective development occurred e.g. The Wildlife of Hayling Island' by Pete Durnell and John Walters published in 2001, which has an ecological description of Tournerbury Woods before the change of use date.

Given that up to 10% of the site's original habitat has been altered or destroyed by the change of use, review of these sources can provide an indication of what species capacity has been lost on the site and thus affected the site's integrity.

2.5.4. Domestic curtilage

The extent of the domestic curtilage of Woods Cottage in Tournerbury Woods, the Victorian age building used as a holiday let (without planning consent), is an important planning matter for APP/23/00076 given the relationship to permitted development rights and, therefore, fallback.

Woods Cottage was used as a permanent dwelling until 1990 and then as a second home by the applicants until 2008, when it was refurbished and used subsequently as a holiday let (SIGNED WITNESS STATEMENT 09.12.19.pdf for APP_19_01262 Certificate of Lawfulness application).

The domestic curtilage was first defined formally in 1997 within the Natural England Management Scheme for Tournerbury Woods made under W&CA81 (called a Site Management Statement-SMS). Map 1 of the SMS shows the boundary (shown in figure 13 in green), which in 1997 was delineated by a drainage ditch to the east and trees on the north and south. An area beyond a line of trees on the western side of Woods Cottage was included, which received planning consent for land raising into a lawn in 2001 in APP/01/62340.

An application was made for a Certificate of Lawfulness for the change of use that had taken place in the woods in the ten years before APP/19/01262 was submitted on 19/12/2019. In this application the size of the curtilage is 5.4ha and extends out to the boundary mapped in orange in figure 13 (referred to as Area 1 in the application). This curtilage is 10 times larger than the 0.5ha curtilage in the Natural England SMS in 1997 and includes a corridor through which to access the deep water channel in My Lords Pond tidal inlet to the south.

In the application a case is made that the larger curtilage had always been in existence as an area of land in the residential use of Woods Cottage and since this area of the woodland was qualitatively different from the rest of Tournerbury Woods. However, the period from 1997 to 2019 involved substantial land alteration as documented in this report and the larger claimed curtilage aligns closely with the venue area for which immunity was claimed.

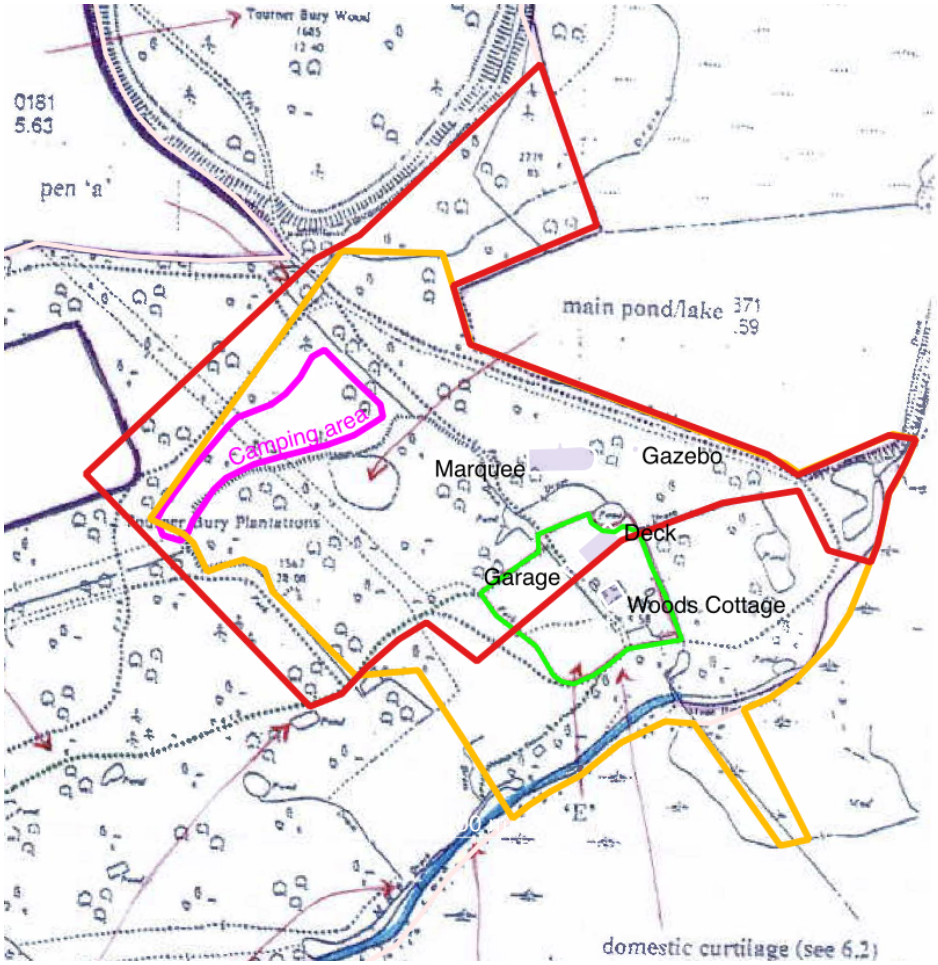


Figure 13 SMS Map 1 showing current application redline, 1997 domestic curtilage in green and the claimed curtilage in APP/19/01262 in orange along with the proposed camping area

The application was refused by the Council for the following reason:

> '[O]fficers are not persuaded that a distinct planning unit constituting Area A (orange outline on figure 13) as applied for could be said to have existed 10 years prior to the making of the application. The available evidence would suggest that Woods Cottage had a small curtilage round it within Area A... which were recognised by the applicant and the Council in relation to Application APP/01/62340, and which continue to govern management activities at the site between the applicant and Natural England. Whilst the occupiers had use of the rest of Area A and the estate, the rest of Area A is

considered to have fallen as part of the wider agricultural/ forestry use associated with the remainder of the estate, as indeed is suggested by APP/12/00584.

'From this, it can be seen that Elements 3 and 4 (the gazebo and marquee) the subject of the application, fall outside of the identified curtilage of Woods Cottage; Element 2 (the log cabin and deck) lies within.' Officers Report §7.16 & 7.17

The refusal of this application has been appealed and is the subject of a Public Inquiry by the Planning Inspectorate starting on 24th February 2026.

2.5.5. SSSI and AONB boundaries and the 'Business amenity area'

The boundary of Chichester Harbour SSSI includes all of Tournerbury Woods except for Wood Field, an area that was clear-felled during the Second World War and which is now partially wooded with a large clearing. The redline of this application extends into the corner of Wood Field where a woodland track enters from the SSSI (figure 14). Wood Field is still inside the Chichester Harbour Area of Outstanding Natural Beaty (AONB), now called a National Landscape.

Unit 003 of Chichester Harbour SSSI known as Tournerbury Plantation (excluding Wood Field) has a Management Scheme defined under the Wildlife and Countryside Act 1981 (W&CA81). This agreement

Natural England manages the Chichester Harbour Site of Special Scientific Interest (SSSI) and it agreed with the owners to follow the terms of a protective management plan for nature conservation in Tournerbury Woods in 1997.

Section 6.2 of the SMS contained a Domestic curtilage consent, which was prefaced by the statement:

'The house and its immediate surroundings should have been excluded from the original designation. Consultation with English Nature is not required, subject to the following conditions:'

2.6. Designation & Policy areas

2.6.1. SSSI and AONB boundaries

The application redline and the proposed access to the site across the adjacent Tournerbury Farm both fall inside the Area of Outstanding Natural Beauty (AONB), now known as the Chichester Harbour National landscape.

While most of the application site is within the Site of Special Scientific Interest (SSSI) Officers should note that the application redline has an area of around 500 m^2 outside the SSSI at the point where an access track enters an area known as Wood Field. Although this area could be used for activities prohibited within the SSSI, we would like to point out that all access to this area would involve transit through the SSSI itself.

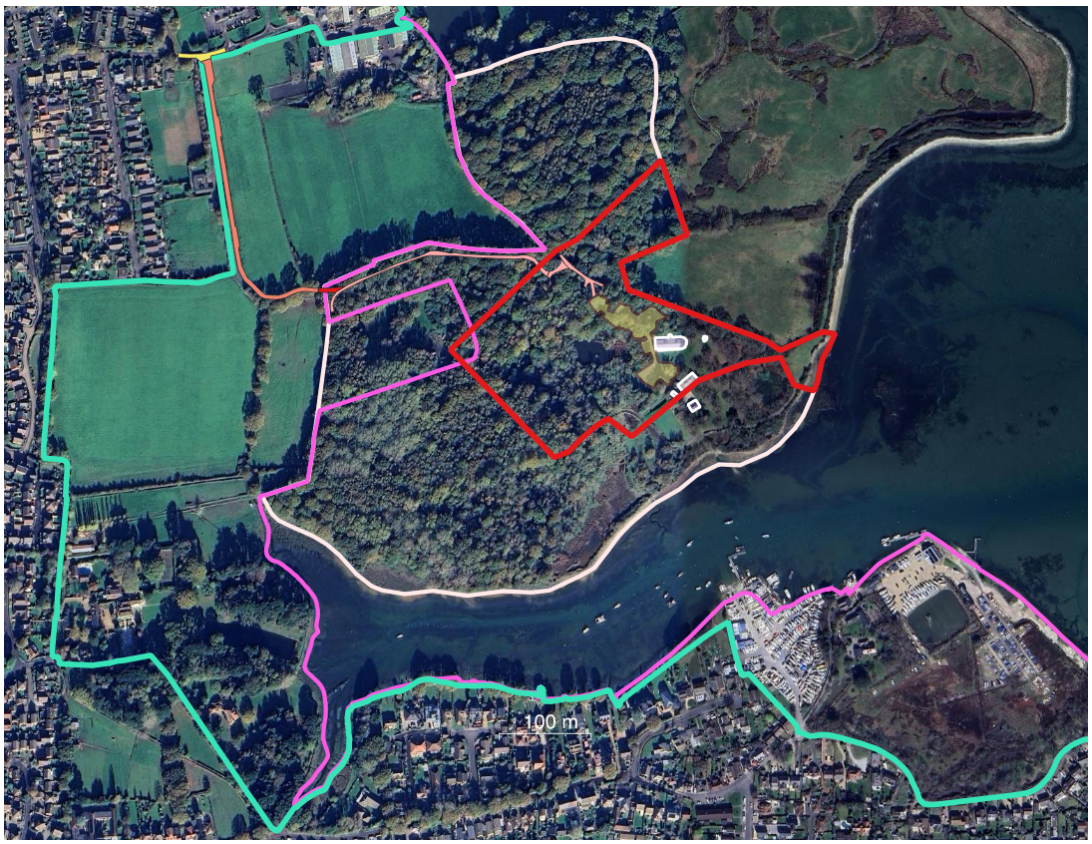


Figure 14 Site redline with AONB (green) and SSSI (pink) boundaries plus access, parking and venue buildings

2.6.2. Natura 2000 sites (SPA/SAC) and Ramsar

Special Protection Area (SPA) and Ramsar sites match the boundaries of the SSSI as shown on the government MAGIC mapping. Note however that the Special Area of Conservation (SAC) is a marine area and only the jetty that extends over the foreshore falls into this area.

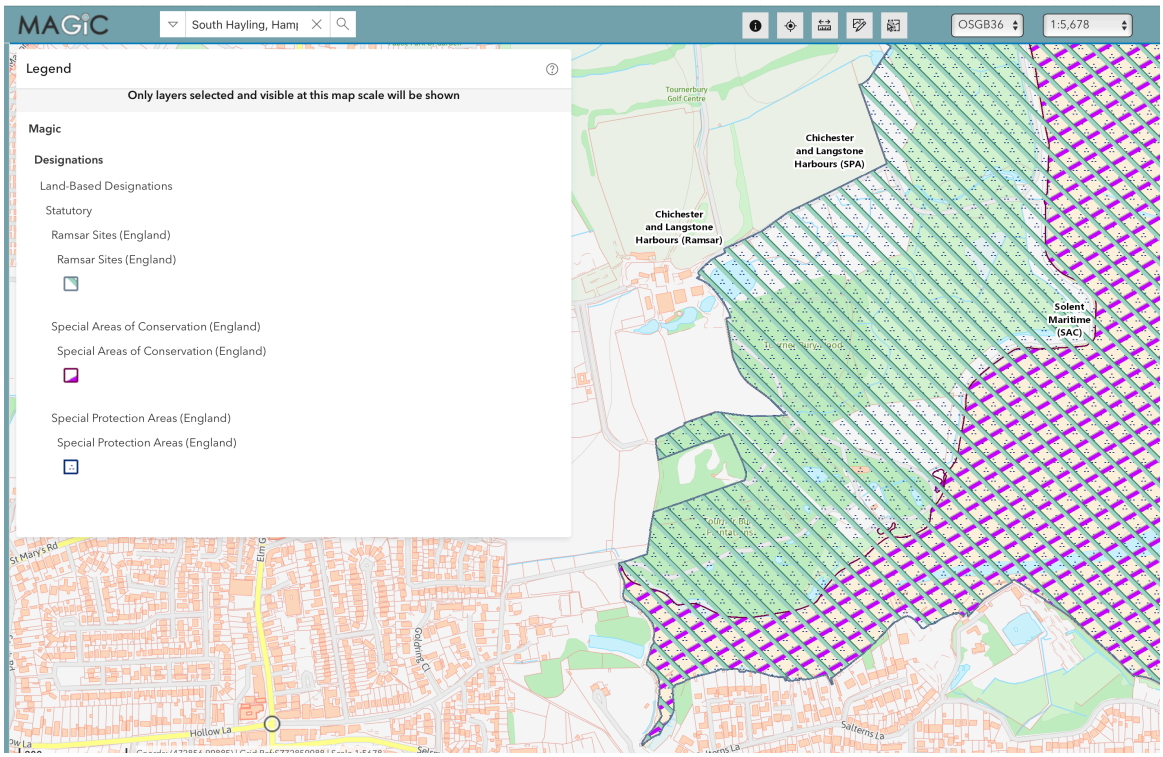


Figure 15 boundaries of SPA/Ramsar and SAC designations

2.6.3. TPO

Tree Preservation Order (TPO) 448 was made in 1971 for the area shown in figure 16 by the bright green boundary. All but two parts of the application redline are within the TPO and subject to the 2012 Tree Preservation Regulations: i.e. a small area of the former brickworks in the south and the area in the SE of the site known as Harbour Lawn up to the edge of the foreshore.

This map also shows the area of trees lost in the 1987 storm subsequently replanted by the owners at that time, and a small area of salt marsh shown in purple along the shoreline and outside the boundary of the TPO where a number of trees have died due to salt intrusion and inundation in extreme high tide events



Figure 16 Tree Preservation Order

2.6.4. NE Priority Habitats

The map of the Natural England Priority Habitats (figure 17) shows that the entire redline of the application is within priority habitats for Lowland Deciduous Woodland (green), Deciduous Woodland & reedbeds (brown-pink) and Saltmarsh (brown).

This map also has the parking areas (olive), earthworks (pink), buildings (white) and track access, thus showing how much of the expected habitats have been removed. This is clear

evidence of the loss of integrity at this site and illustrates the smaller habitat size and range available to the wildlife.



Figure 17 natural England priority habitats with all forms of altered land overlaid

2.6.5. Havant Borough policy areas

The application redline falls within the following Havant Borough policy areas:

- Policy CS 11
- Policy CS12
- Policy DM9 Development in the Coastal zone

These are the key policies in the development plan that should determine how the application is assessed.

The part of the proposed access that is the bypass track across Tournerbury Farm is within the following additional Havant Borough Policy area:

- DM23 Uncertain sites: Brent Geese and/or waders

2.6.6. Flood Zones 2 & 3

The flood risk for the Tournerbury Woods site is very high with almost all of the site in Flood Zone 3, and only areas artificially raised such as the earthwork platform on which the marquee stands and Woods Cottage are in Flood Zone 2. Notably, the one higher area that is in neither flood zone has been allocated to camping as required (figure 18).

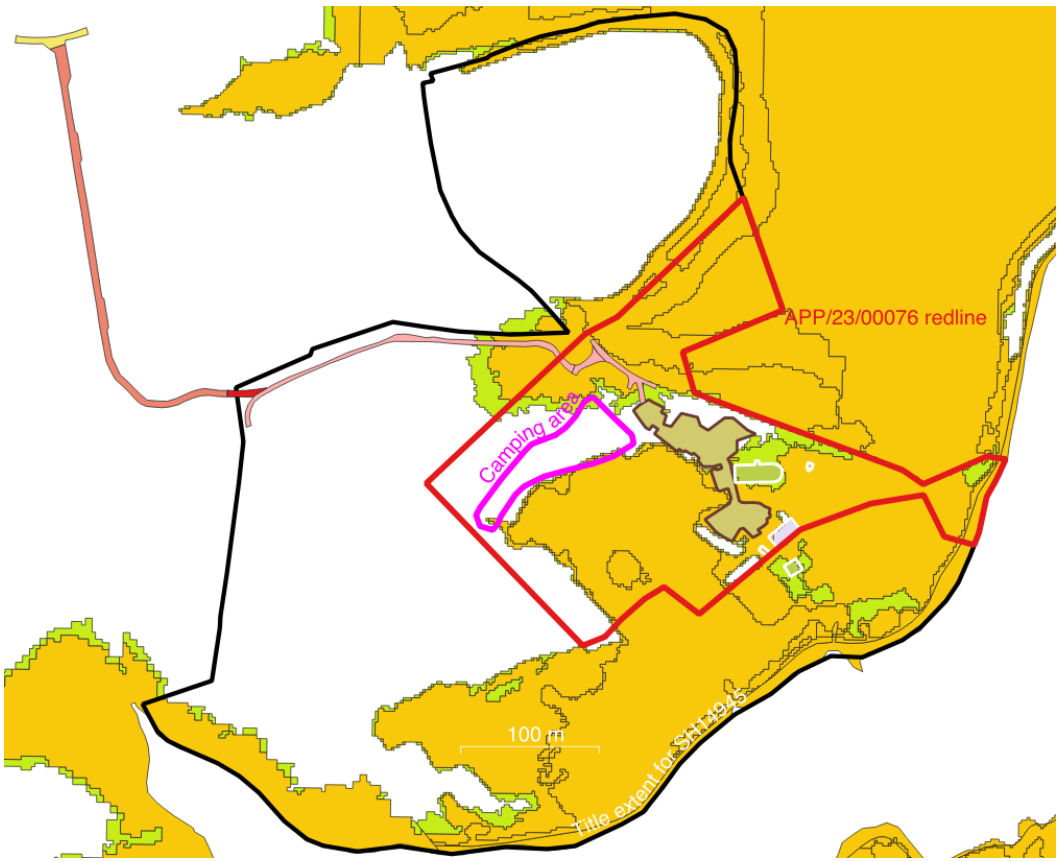


Figure 18 Flood zones 2 (green) and 3 (orange) for Tournerbury showing redline and access

The theoretical flood zones were validated on the night of 8th/9th April 2024 when the area experienced its highest ever title surge on top of a high spring tide that reached 3.02m Ordnance Datum in My Lords Pond, based on height measurements made that night. The map below in figure 19 shows those floodwaters laid over the official modelled flood zones and indicates that almost all of Flood Zone 3 was inundated, including most of the venue site.

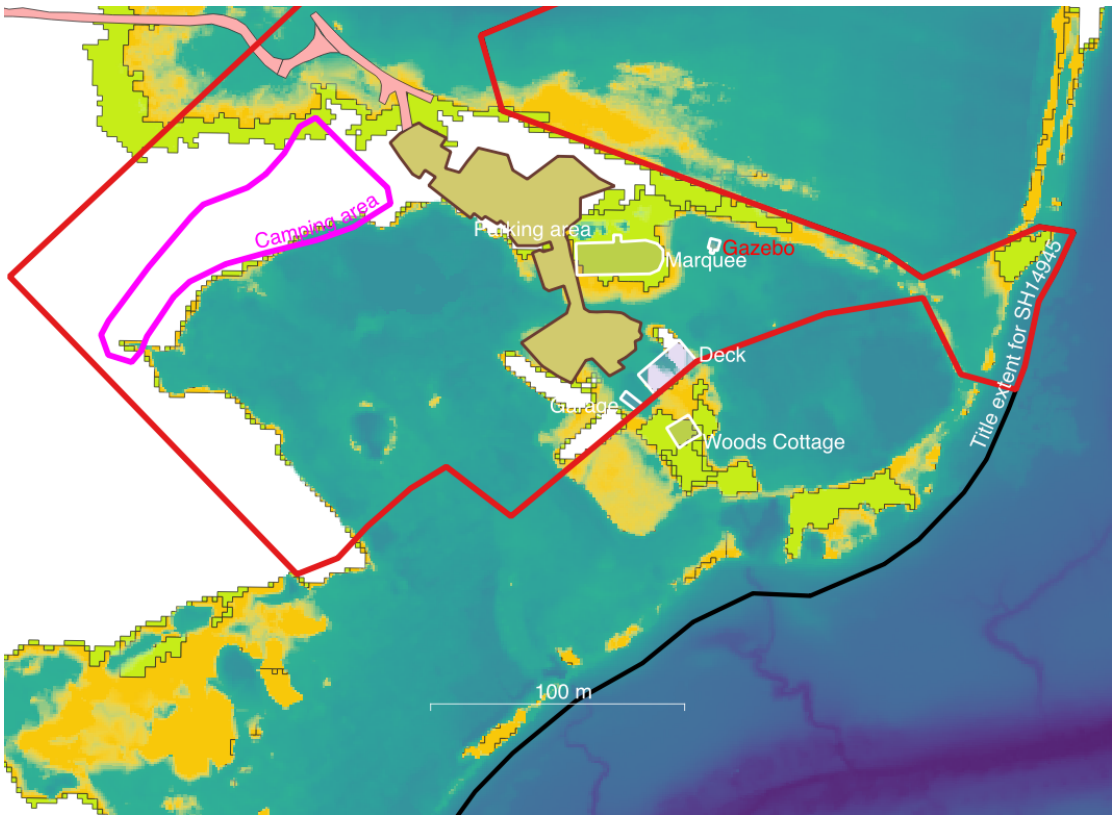


Figure 19 Actual flood water level at highest ever tide of 8th/9th April 2024

We would expect officers to weigh the emerging local plan into the planning balance to some extent. One policy where this may be important is the new Policy 28 Development on the Coast (in which area the application redline falls) which says:
'Development proposals will not be permitted, unless it can be demonstrated that the development specifically requires a coastal location, and
b) It meets the provisions of criterion C of this policy
Criterion C of the policy requires sensitive coastal design and compliance with the shoreline management plan.

2.7.Access and rights of way

Tournerbury Woods does not have a direct connection to the adopted highway network. Of the three possible routes to the venue area:

1. A route from Mengeham Lane that has been closed to commercial traffic by legal agreement;
2. A private right of way for Tournerbury Woods passes through a farmyard and is the subject of a deferred planning application with a recommendation of 'Refuse', and
3. A new track that could bypass the farm included within the current application is only partially built and would need a connection across a boundary channel to a woodland track within Tournerbury Woods.

These routes are shown diagrammatically in figure 20 below.

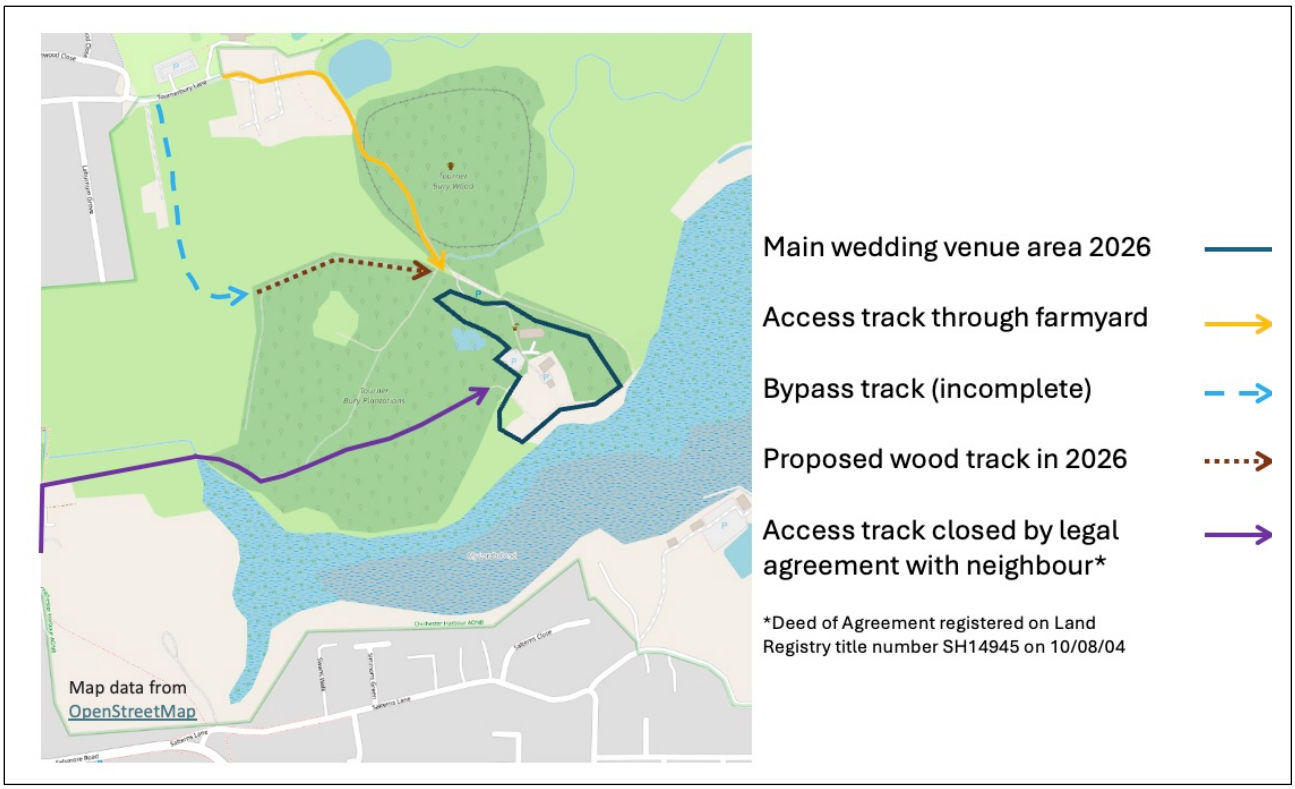


Figure 20 The three alternative routes from the adopted highway to the venue

This application seeks to use the third option with the intention to bypass the farm. However, this route is not extant throughout, faces legal obstacles and is missing key documentation to assure officers of what they would be approving should consent be given.

The proposed 'bypass' access route has three distinct parts:

1. A section of previously constructed but incomplete track that benefits from the planning consent in APP/17/00207, modified by APP-21-00536, which runs over part of the adjacent Tournerbury Farm to within 50m of the boundary of Tournerbury Woods
2. A crossing of a bank and channel that are present just within the boundary of the SSSI
3. A section of woodland track

Each of these sections will be profiled to assess their viability and availability for this application.

2.7.1. Route section 1: farm bypass track

Approval was given to Tournerbury Farm in February 2017 for the construction of a track that could be used to access Tournerbury Woods across fields to the NW of the application site in APP/17/00207. This application was accompanied by the following documentation (with Planning portal file names):

- PLAN_SHOWING_PROPOSED_NEW_ROAD
- SITE_PLAN___SECTION (plan for the new track)
- TREE_PROTECTION_PLAN

The approval was given with 8 conditions including those covering:

- Drainage pipes
- Materials to be used to surface the track
- Hedge protection
- Tree protection
- Construction management

These conditions were discharged in May 2020 by the council.

However, upon beginning construction on the approved plan in May 2020 Tournerbury Farm found that the position of a tree at the bellmouth entrance onto Tournerbury lane designed for coaches needed redesign and they decided to propose a new hedge and verge for the track. This led to the submission of APP/20/00626 in August 2020 to vary conditions to allow these changes.

Extraordinarily, Tournerbury Woods submitted severe objections to this application designed to create an access option for them in APP/20/00626 'OBJECTS - DATED 28.8.20 APPX 1.pdf' e.g. Para 7, Contravention E. These objections were concerned with methods of construction and root protection, and this application was not progressed.

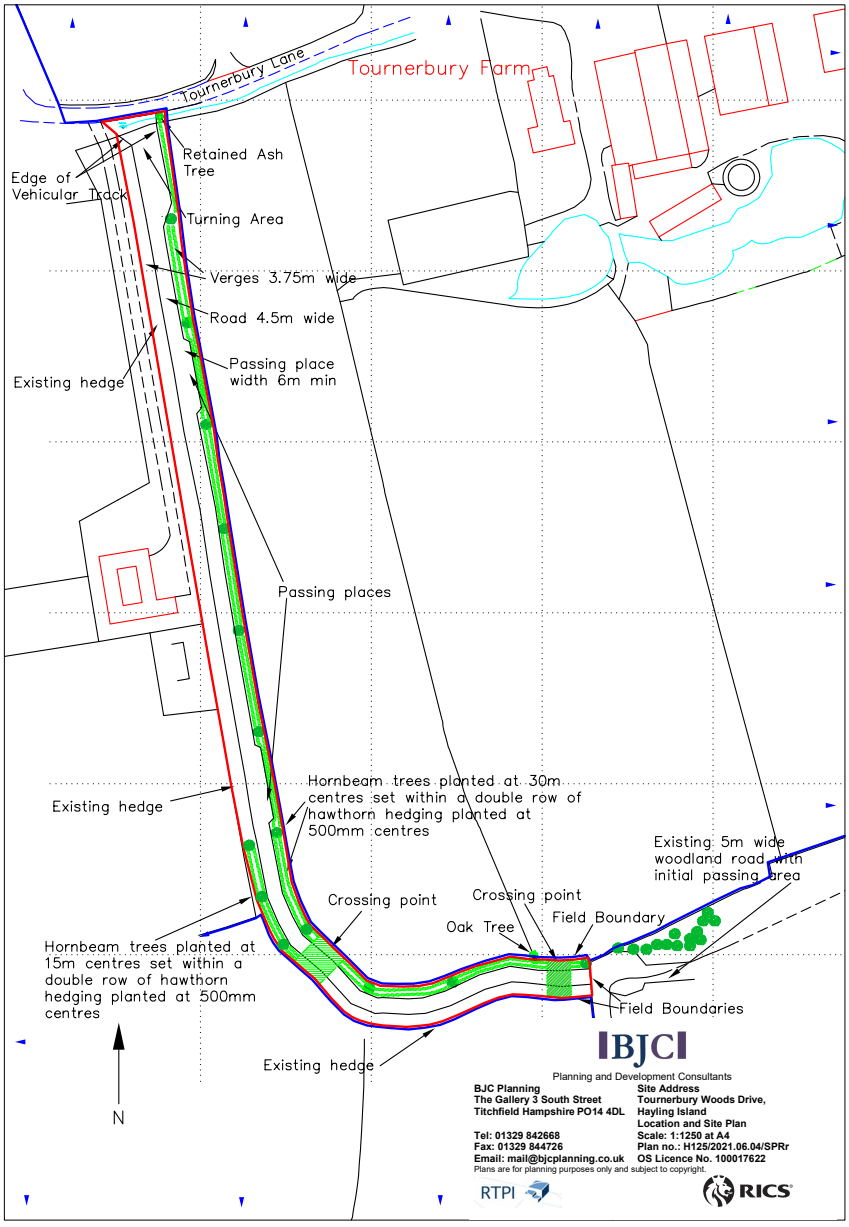


Figure 21 Farm bypass track LOCATION_PLAN

A further application APP/21/00536 was then submitted in May 2021 with a more comprehensive set of design documentation (with Planning portal file names):

- LOCATION_PLAN (figure 21)
- APPROVED_SITE_PLAN
- COACH_VEHICLE_TRACKING

- TOPOGRAPHICAL_SURVEY
- TREE_PROTECTION_PLAN_A_ENTRANCE
- TREE_PROTECTION_PLAN
- TREE_REPORT_-_TOURNERBURY_WOODS (refers only to farm track)

This was approved by the Council on 22nd October 2021 with 8 conditions including:

- Compliance with Arboricultural Impact Assessment
- Hedge protection and new hedge planting plan
- Construction management
- Materials to be used to surface the track
- Drainage provision

Construction of the road has only been part-completed due to further disputes over the construction, design and tree protection and therefore these conditions have not yet been discharged by the Council.

A document prepared for Tournerbury Estate was uploaded to APP/21/01310 (ACCESS_ROAD_REPORT_9.8.22) concerning this stretch of the farm bypass track. The introduction says:

> 'The purpose of the report is to confirm the construction build up and construction techniques used for the access road are satisfactory to guidance on the design and construction of such access roads.'

This document refers to National House Building Council (NHBC) 2023 Guidance, Chapter 10, Table 2a on access road construction, and comments unfavourably on the construction of this track based on the use of California Bearing Ratio Testing and particle size analysis of the surfacing materials. Its conclusion is that this road in its current constructed form is not suitable for use for the purpose for which the Tournerbury estate intended.

2.7.2. Route section 2: crossing into the woods

This section of the route to the venue in the current application is entirely missing as can be seen in figure 22 below.



Figure 22 Current end of the farm bypass track

Beyond the fence visible in figure 22 above there is a drainage channel running from left to right (north to south), which drains into My Lord's pond. This channel (see figure 23 below) would have to be crossed by any route connecting the farm bypass track to the woodland track and in the long-term, this would need to be culverted or bridged in order to be able to carry heavy traffic such as fire appliances or the coaches for which the bellmouth of the bypass track was designed.



Figure 23 View of the drainage channel at the edge of the woods before May 2024

The Approved Document B5 of the current Building Regulations covers access to commercial premises for fire appliances, and it requires the following minimum specifications for new access:

- Minimum width of road between kerbs 3.7m.
- Minimum turning circle between kerbs 16.8m
- The roadbase can be designed to 12.5 tonne capacity.
- Structures such as bridges should have the full 17-tonne capacity.

This drainage channel was filled in by clay and aggregates in May 2024 (see figure 24) following the grant of planning permission that was given in September 2023, thereby beginning the implementation of that consent, though it was quashed later by the High Court. Clearly this channel infill could not meet the specifications in the Building regulations and it has already subsided without any traffic use in the intervening period.



Figure 24 Channel infill at the edge of Tournerbury Woods

Significant work would be required to connect the access track across the gap as can be seen in the plans and cross-sections in Figure 25. Officers conceded in the discussion in the Planning Committee on 31st August 2023 in response to a question that 'there is no drawing showing the very small sliver of land connecting the two points'. It is however an important matter and no compliance with Building Regulations of NHBC Standards has been provided.

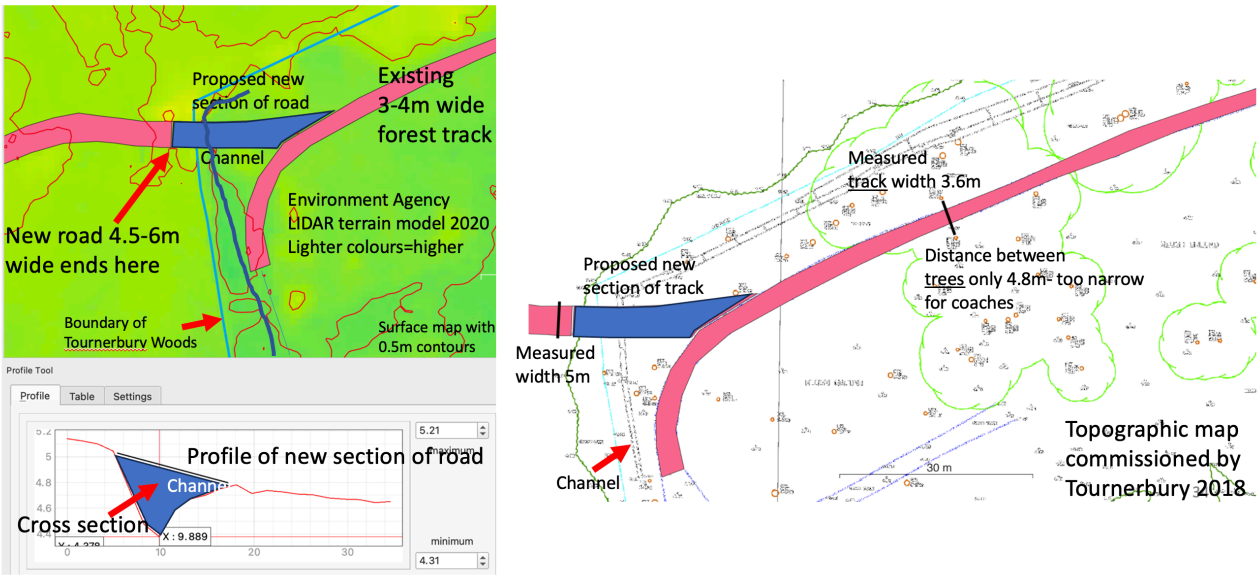


Figure 25 Plan and cross section drawn up by STW

As the work has to be conducted within the SSSI, Natural England requested information on 21st June 2023 about how this connection could be made. The applicant responded by posting

a Construction Environmental Management Plan (CEMP), which is largely designed to ensure that safe, environmentally- friendly working practices are used.

The entirety of the specification for the work to be undertaken to cross this channel and provide an adequate base for a track built to carry 17.5 ton loads as required in the Building Regulations is shown in the screen grab in figure 26 below. By comparison with the documentation required for the new bypass track across the farm this information is manifestly inadequate to specify the work or assure the council that safe and correctly designed construction would be carried out at this location.

Ditch infill

2.3 A redundant ditch at this location of approximately 6.5m in length, 70cm wide and 30cm deep requires infilling. Infill material is already present in the adjacent non SSSI field and comprises Type 1 recycled sub-base and 6F5 recycled granular capping, screened and approved by Hampshire County Council. The hard core will be compacted to finish without the need for top dressing.

2.4 Works are anticipated to take 3 no. labourers approximately 1 day to complete using hand-held tools.

Removal of earth bund

2.5 An earth bund lies adjacent to the ditch and this is required to be removed as part of the works. The bank is approximately 6.5m in length, 90cm wide and 40cm high. The volume

of bank for removal is estimated to be approximately 2.5m^3 and material will be removed to the adjacent non SSSI field. Additional information related to this bank has been provided at the request of Natural England[3]

Figure 26 Description of work required to construct a connection across the woods boundary

2.7.3. Route section 3: woodland track

The third section of the proposed access route to the venue consists of a woodland track from the NW corner of the SSSI Woodland east to the venue site. The map in figure 27 shows the actual width of the built bypass track across the farm (orange), the missing connection across the boundary (red) and the narrow woodland track along the northern edge of the site (pink). This track leads via several tight corners to a large area of gravel parking adjacent to the marquee and deck buildings in the venue area.



Figure 27 Air photo showing the proposed access route to the venue

As this access route has to run through the SSSI, Natural England approval was required for this work. In their consultation response on 27th February 2023 (CONSULTEE_RESPONSE_-_NATURAL_ENGLAND-20230227' they set out their concerns and criteria for any work to be undertaken:

> 'We note this application differs to the previous application with a different access route proposed through the SSSI. The proposals include construction of a new track which joins the SSSI in the NW corner meeting an existing track which is located within the SSSI along the northern boundary. The existing track is described as 5m wide however no survey of this section is included within the supporting ecological appraisal. It is our understanding that the surface of the existing track is a soft woodland floor bordered by woodland bank. It is also not certain how this track is proposed to be used, e.g. is it intended for vehicle use or pedestrian only. We have concerns about the use of this track for use by coaches and other vehicles, potential impacts from vehicle use include; tree root damage, soil compaction, damage to the tree canopy and vegetation. Clarity is required as to how this existing track is to be used and [1] if any works required to upgrade this track to make it passable for vehicles. Also [2] if any vegetation or tree canopy along the track will be removed. Natural England would not support [3] importation of materials into the SSSI to upgrade the track.

These three underlined points represent conditions set by Natural England for the use of this woodland track.

When Natural England say that their understanding is that this track is 'soft woodland floor', they have taken this from the 1997 site management statement which says:

> '6.1.b Woodland tracks: 'These are all earth tracks but where waterlogging and rutting occurs, limited infilling… is acceptable. Gradual change or upgrading of tracks is not

acceptable from a nature conservation point of view & the earthen/ unimproved character of the tracks should be retained'

<u>6.5 Tracks (other than woodland earth tracks):</u>

'The tracks marked in green on the accompanying map [see figure 28 below] have been up-graded with limestone scalpings… Further up-grading of these tracks will not be carried out. Repair and maintenance of the track to the house to the existing specification is acceptable.'

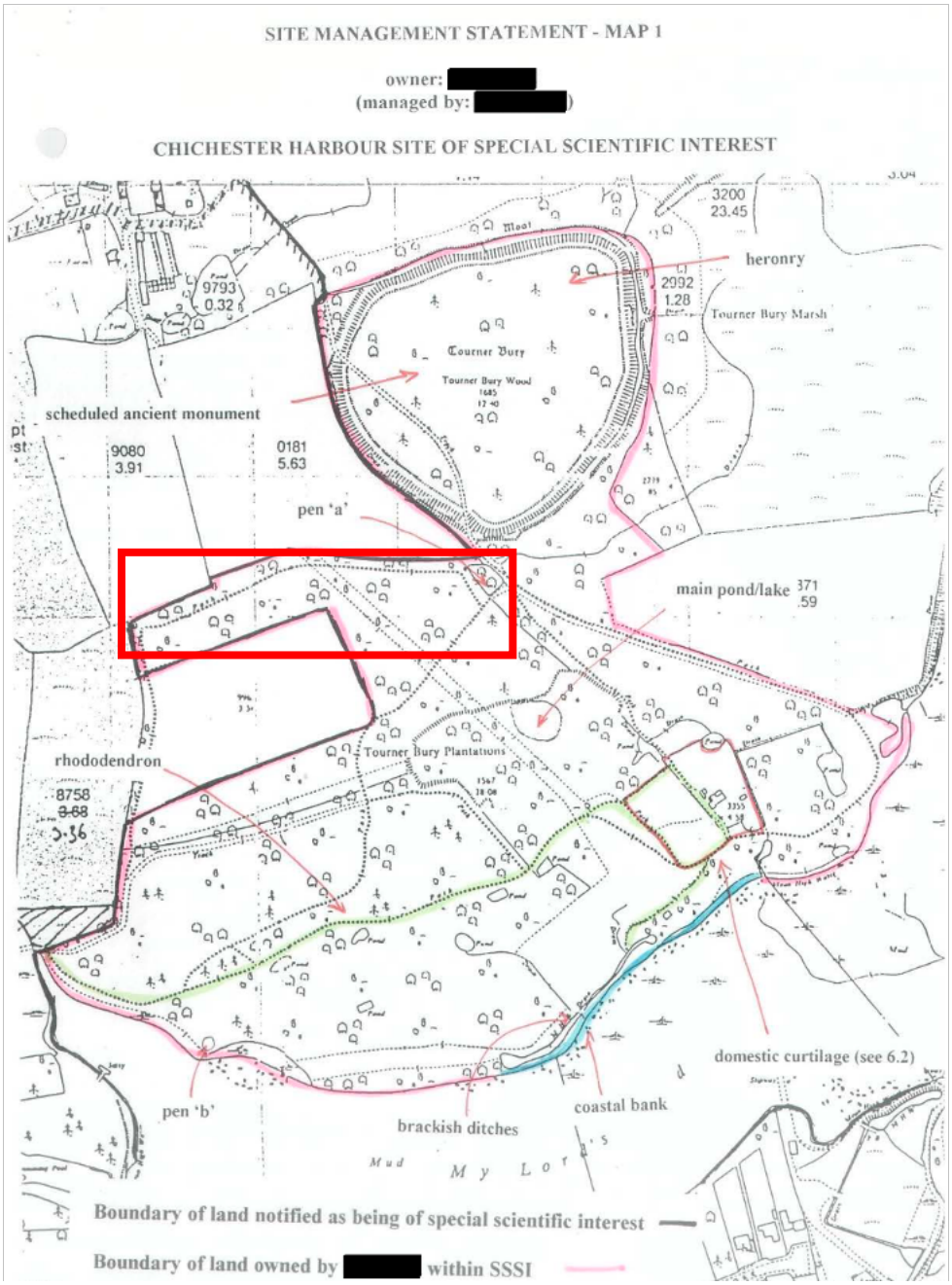


Figure 28 Map 1 in Natural England SMS showing status of tracks

In 2014 Tournerbury wrote to Natural England regarding the tracks enclosing a map (see figure 29 below) (with our addition of red box to highlight the location of the woodland track forming part of the access for this application APP/23/00076):

'Please find attached a map which shows …the tracks in brown which need to be resurfaced and repaired' 9th April 2014

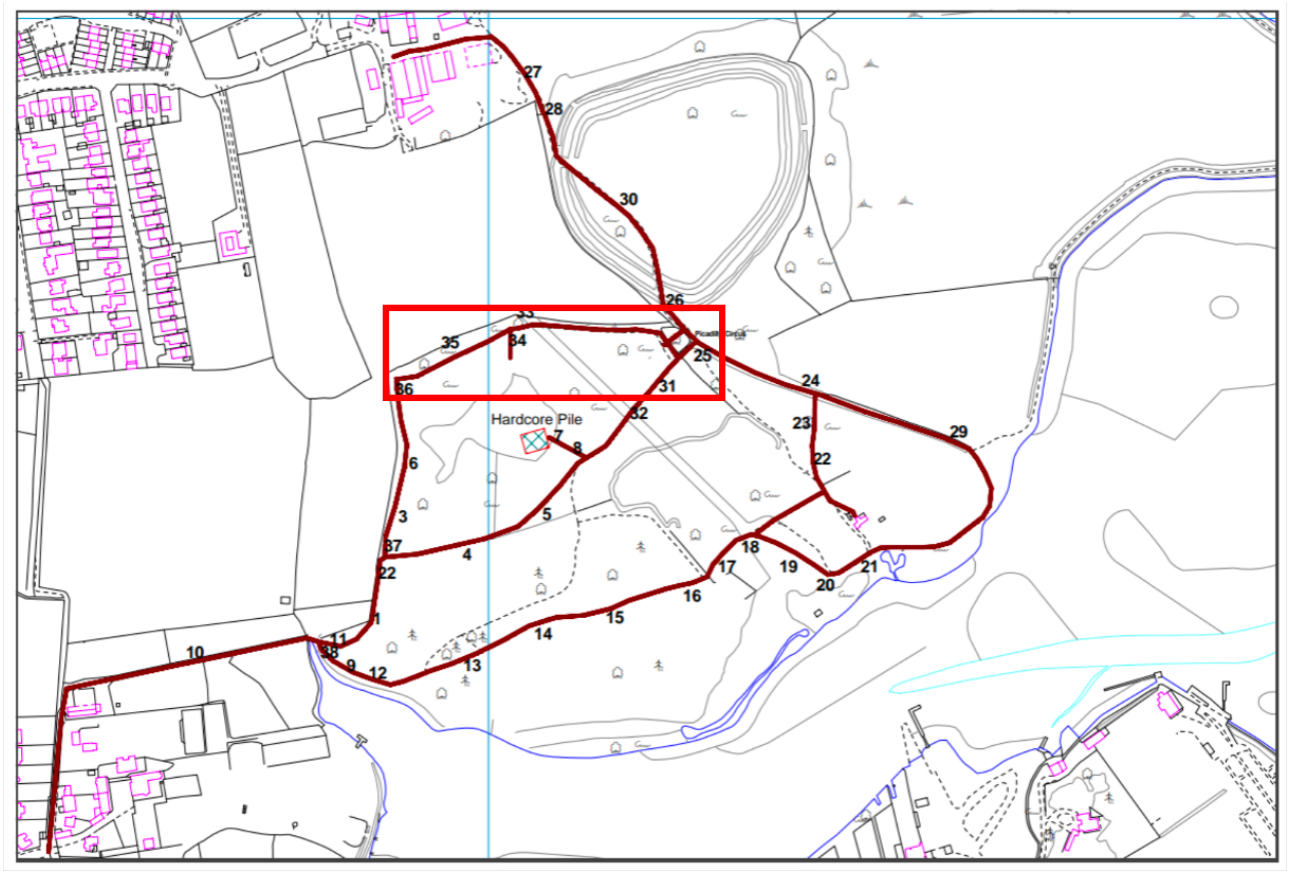


Figure 29 Map of tracks in 2014 supplied by Tournerbury Estate

Natural England replied on 11th July 2014 to say:

> 'We are happy for you to proceed with the track repairs as you have assured us that they will be carried out in line with the SMS'.

The SMS clearly stated that '6.1b 'upgrading of tracks is not acceptable… and the earthen/ unimproved character of the tracks should be retained'. Therefore, if this track has been upgraded, this would be in breach of the Natural England SMS.

On the subject of current track condition, the application quotes Holbury TECHNICAL_NOTE-20230302 (name on the Planning Portal) about this section of the woodland track in response to the 3 Natural England conditions:
'Tournerbury Woods Estate has confirmed that:

1. No further works are required to make the track passable and useable to vehicles. The track exists and is fully available for vehicular use and is in regular use within the estate at the current time.
2. No materials will be imported to the woodland for any works to upgrade the existing track, as no works are necessary. The existing track is fit for purpose and does not require upgrade.
3. No works to trees or other adjacent vegetation is required for use of the track by vehicles.



Photo 2: Hand dug trial hole



Photo 3: Trial hole showing rubble and old bricks beneath surface of track.

Figure 30 Photos of the trial pit contents in the Holbury TECHNICAL_NOTE-20230302

This same Technical note includes two photographs taken by council officers in the summer (see figure 30) showing mud and bricks under the surface in two trial pits dug in the track at random. This material does not meet the requirements in either the Building Regulations or the NHBC standards, which is the requirement imposed on the adjacent stretch of farm bypass track.



Figure 31 Picture of the woodland track in spring 2024 showing muddy rutted surface

Officers must therefore consider whether there would be a breach of SSSI operations requiring Natural England's consent (ORNECs) if this track were to be included in the access route to the venue in the current application. On the available evidence, this is an informally constructed track with an unknown capacity to bear heavy loads at all times of year (figure 31). There would be an unacceptable safety hazard for coaches, fire appliances and other heavy traffic to be using a woodland track of informal construction to a venue.

Since Natural England will not permit the track to be further upgraded by importation of materials or with removal of trees/branches to create the appropriate headroom, there is a significant risk that the track cannot serve the purpose for which it is being proposed. Simply put, the need for a development to obtain access to a commercial site cannot lead to the flouting of environmental protections.

3. Planning history

3.1. Previous applications

	97-62340	01-62340	APP/18/00943	APP/19/01262	APP-21-00006	APP/21/01310	APP/23/00076
Applicant	Tournerbury Estate	Tournerbury Estate	Tournerbury Estate	Tournerbury Estate	Havant Borough	Tournerbury Estate	Tournerbury Estate
Type of application	Development	Development	Development	Lawfulness Certificate	Enforcement notice	Development	Development
Submitted/served	26/06/1997	22/03/2001	18/09/2018	24/12/2019	13/01/2021	02/12/2021	01/02/2023
Validated	24/09/1997	09/11/2001	06/11/2018	09/01/2020	14/01/2021	20/12/2021	01/02/2023
Consultation expiry	N/A	N/A	06/11/2018	09/01/2020	N/A	N/A	N/A
Recommendation	APPROVE	APPROVE	REFUSE	N/A	N/A	REFUSE	APPROVE
Extension of time	N/A	N/A	28/02/2019	N/A	N/A	N/A	N/A
Committee date	N/A	N/A	24/06/2021	N/A	N/A	01/12/2022	31/08/2023
Decision notice date	30/09/1997	18/12/2001	25/06/2021	02/06/2020	17/01/2021		15/09/2023
Decision	APPROVE	APPROVE	REFUSE	REFUSE	SERVED		APPROVE
Number of conditions	4	9	N/A	N/A	N/A		17
Appeal date/ court date	N/A	N/A	09/07/2021	09/07/2021	09/03/2020		02/05/2024
Public Inquiry date	N/A	N/A	28/06/2022	28/06/2022	28/06/2022		N/A
Appeal/ court decided/ withdrawn	N/A	N/A	13/05/2022		13/05/2022		28/01/2025
Appeal/court decision	N/A	N/A	APPEAL WITHDRAWN		APPEAL WITHDRAWN		COURT QUASHED
Status	DECIDED	DECIDED	Decided	AT APPEAL	In force	Deferred	Consultation
Retrospective application	Yes	Yes	Yes	N/A	N/A	Yes	Yes
Change of use found by officers	No	No	Yes	Yes	N/A	Yes	Yes
Multiple Planning units found by officers	Woods only	Curtilage, Woods	Woods only	97 Curtilage, rest of Area 1	N/A	Redline only	Redline only
Major project category by officers	No	No	Yes	N/A	N/A	No	No
Contamination referenced by officers	No	Yes	No	No	N/A	No	No
Parking relevant box on form (spaces)	N/A	N/A	Yes (120)	N/A	N/A	Yes	Yes
Size of domestic curtilage claimed	0.51Ha	0.51Ha	4.2Ha	5.4Ha	N/A		
Access available	N/A	N/A	Yes via Farmyard	Yes via Farmyard	N/A	Yes via Farmyard	Yes via Farmyard
No of events 15-500 people	N/A	N/A	100-200	N/A	N/A	N/A	N/A
No of events up to 90 people	N/A	N/A	N/A	N/A	N/A	15	15
No of events up to 150 people	N/A	N/A	N/A	N/A	N/A	30	30
No of events up to 200 people	N/A	N/A	N/A	N/A	N/A	10	10
No of events up to 250 people	N/A	N/A	N/A	N/A	N/A	10	10
Woods Cottage included	N/A	Yes	Yes	Yes	N/A	No	No
Jetty included	N/A	N/A	Yes	No	N/A	Yes	Yes

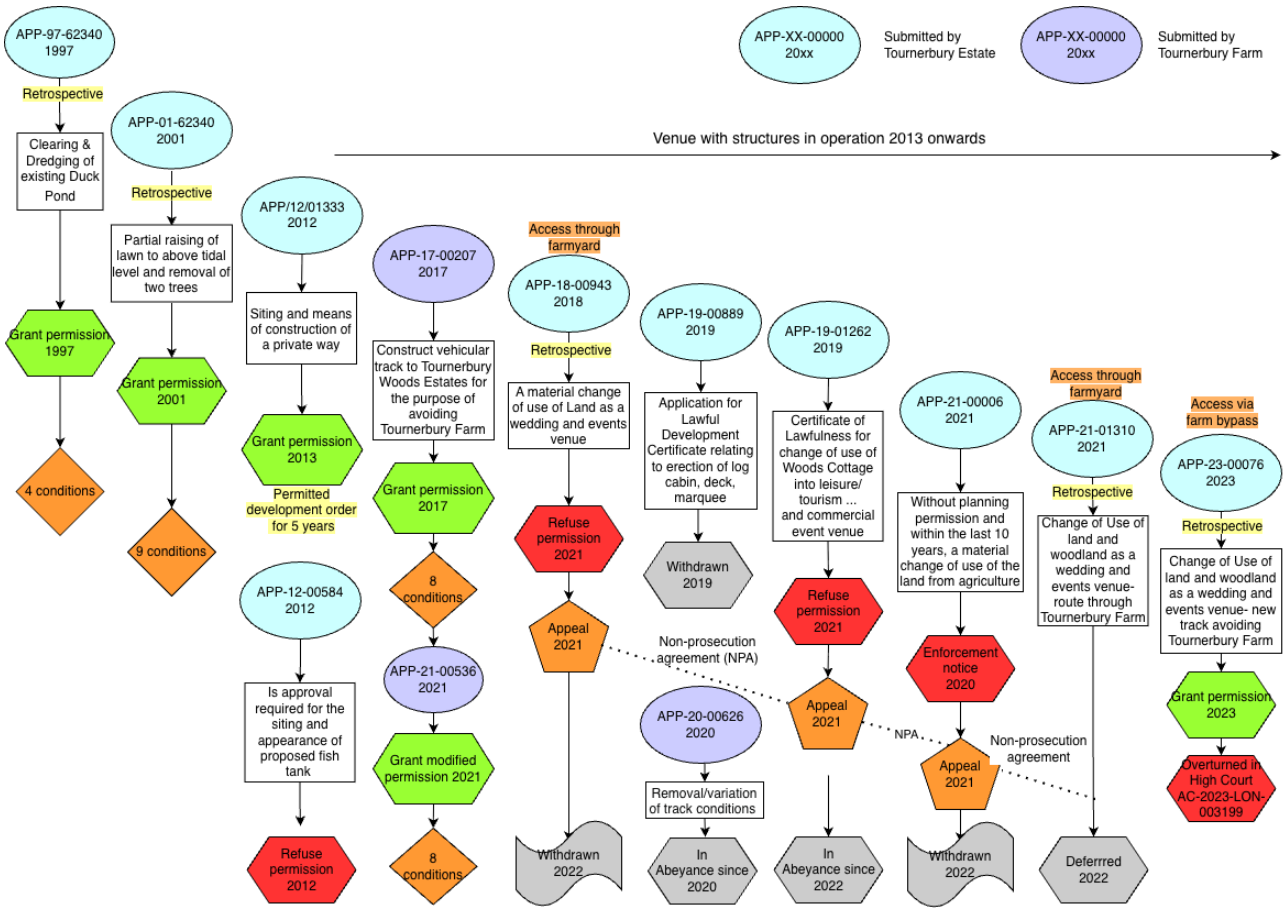


Figure 32 Diagram showing all the planning applications submitted at Tournerbury Woods

4. Policy considerations

4.1. Development plan

Applications for development consent should firstly be determined by reference to the development plan and its policies. Since the previous emerging local plan had to be withdrawn in 2021 after criticism by the government appointed Inspectors, the council has developed a new plan (Building a better future') for 2026 to 2036 timeframe. New plan has emerging plan status and the evidence space for the plan is relevant to current applications though the policies in the emerging plan can only be weighed to a limited extent in the planning balance.

Therefore, we review below the policies in the 2011 Havant Local plan that we believe should be material considerations in the assessment of the proposed development in APP/23/00076.

4.2. NPPF

We note the weight that Officers have given in previous reports on this site to the presumption in favour of sustainable development that is found in para 11(d) of the National Planning Policy Framework (NPPF). In this regard officers have applied the so-called 'tilted balance' to the weight given in the assessment of an application according to economic, social and environmental considerations. The tilt applied has been towards the realisation of economic benefits through the grant of planning permission unless the harms outweigh the benefits.

However, this presumption in favour of sustainable development in the NPPF §11(d) only applies when there are no relevant development plan policies and whether there are no assets of particular importance. Tournerbury Woods qualifies as an asset of particular importance because it is a Site of Special Scientific Interest. Therefore our submission to Officers is that this application should first of all be determined by reference to development plan policies, of which a number are relevant, and only if these do not sustain a reason for refusal should sustainable development considerations come into play.

4.3. EIA

We are surprised that Officers have not considered that a screening exercise should be conducted under the Environmental Impact Assessment Regulations due to the inclusion of a campsite within this application. Under Schedule 2 column 1 of the Regulations Permanent campsites are very clearly listed under section 12 Tourism and leisure. As the site is in a sensitive area (Chichester Harbour SSSI) there is no minimum size threshold.

The campsite proposed in this application will operate year-round and has a fixed boundary adjacent to a car parking area. The Council has recognised that the campsite requires a nitrogen budget, and substantial payments will need to be made to buy offset credits for this site. We believe that an EIA screening must be conducted before the Officers Report is completed.

4.4. CS11 Protecting and Enhancing the Special Environment and Heritage of Havant Borough

This policy sets out very clear protections for sites within international and nationally designated conservation sites in §7.05:

> 'The internationally designated habitats in the borough, the Special Protection Areas (SPAs); Special Areas of Conservation (SACs) (collectively called 'Natura 2000' sites) and Ramsar sites have high levels of protection. Development will not be permitted that would cause harm to their designated interests. Nationally designated Sites of Special Scientific Interest (SSSIs) and the National Area of Outstanding Natural Beauty (AONB) designations enjoy
> protection as set out in government guidance.'

In this report we have set out comprehensive and objective evidence demonstrating substantial loss of integrity of a protected site in Tournerbury Woods that cannot be mitigated by management measures. The damage that has been done to these sites can only be reversed by the cessation of development and restoration of habitat

4.5. CS12 Chichester Harbour Area of Outstanding Natural Beauty (AONB)

Policy CS12 indicates that development will be permitted in the Chichester Harbour AONB where it satisfies five criteria:

> Development will be permitted where it:
> 1. Carefully assesses the impact of individual proposals, and their cumulative effect, on the Chichester Harbour AONB, and its setting.
> 2. Is appropriate to the economic, social and environmental wellbeing of the area or is desirable for the understanding and enjoyment of the area.
> 3. Conserves and enhances the special qualities of the Chichester Harbour AONB (as defined in the Chichester Harbour AONB Management Plan).
> 4. Meets the policy aims of the Chichester Harbour AONB Management Plan and

5.Provides mitigation of any detrimental effects including where appropriate the improvement of existing damaged landscapes relating to the proposal.'

Counsel for STW in the High Court Judicial Review case wrote in our statement of Facts and Grounds for the case that 'The use of the conjunctive 'and' at the end of criterion 4 indicates that the criteria are cumulative.' However, we see the Officers previously considered these criteria selectively:

> 'Policy CS12 does not distinguish economic considerations to be subordinate to environmental concerns and thus the economic benefits of the scheme are, as set out at Paragraph 7.22 above, a matter to be weighed in the overall planning balance.' APP/23/00076 Officers Report 7.33

It is our submission in this report that if these five criteria are applied cumulatively to APP/23/00076 in Tournerbury Woods it is not possible to determine this application favourably in at least two respects:

1. The site lies within the Chichester Harbour AONB, and Paragraph 176 of the NPPF states: "Great weight should be given to conserving and enhancing landscape and scenic beauty". The total loss of habitat and replacement by a synthetic parkland of up to 10% of the site in this application contradicts point 3 of this policy in the most comprehensive way possible as the development has in fact removed the special qualities at a large scale.
2. In 2017, Havant Council and Chichester District Council, adopted the Joint Supplementary Planning Document (SPD) for Chichester Harbour AONB. Paragraph 2.1 of the Joint SPD identifies four principles that should guide development in the AONB in order to protect, conserve, and enhance natural beauty and wildlife. One of those principles requires the Council not only to consider the visibility of development in the landscape, but also whether and "how any adverse impacts have been positively mitigated to conserve and enhance the AONB". The white marquee is highly visible in the landscape from the south as the picture in figure 33 taken from the south side of My Lords Pond clearly shows.



Figure 33 View of the Tournerbury Woods white marquee from the south

Finally, we would like to draw attention to the legal opinion commissioned by Chichester Harbour Conservancy on the issues raised by this retrospective planning application, focussing especially on policy CS12:

‘This policy [CS12] refers to the conservation and enhancement of the special qualities of the Chichester Harbour AONB (as defined in the Chichester Harbour AONB Management Plan Management Plan). This is most helpful as it draws into the planning balance the policies in the CHC Management Plan and leaves no doubt that these policies are material considerations.'

'The recent case of Monkhill Limited v SoS HCLG and Waverley Borough Council [2019] EWHC1993 is most instructive and concerns the protection of trees within the AONB and the application of the AONB policy in the National Planning Policy Framework(NPPF) para 172.'...'the Inspector was very concerned about the potential loss of trees within the AONB as a result of the development and refused. The Court upheld this decision, in effect confirming the importance in Government planning policy of protection to the AONB. At para 53 the Court confirms that paragraph 172 of the NPPF is capable of sustaining a clear reason for refusal in the general exercise of development management powers. Therefore, in this case, the damage to the woodland, loss of trees, introduction of buildings etc which do not conserve or enhance landscape and scenic beauty of the AONB is sufficient to support a refusal of this application.’ Chichester Harbour Conservancy Legal Opinion p16 CONSULTEE_COMMENTS_-_CHICHESTER_HARBOUR_CONSERVANCY_-_LEGAL_OPINION

We believe that this is the reasoning that officers should apply when considering the application in the light of the development plan policies, and in particular policy CS12.

4.6. Nature emergency

Havant Council declared a nature emergency on 18th June 2025 in order to ‘recognise the local, national and international pressures placed on flora, fauna and habitats’. In this retrospective application for development consent, it is our view that we see an example of the destruction of habitat on a large scale in a highly protected area, and that this is an example of the nature emergency to which the planning system must respond.

5. Consultations

5.1. To be added once all received

6. Planning considerations

6.1. Curtilage and planning units

In the various planning considerations that are material to a decision on this application, the size and extent of the domestic curtilage of Woods Cottage is foundational to the planning units that exist at the site.

Firstly, in the Certificate of Lawfulness application APP/19/01262 Officers determined that the 1997 curtilage defined in the Natural England SMS was a distinct planning unit in 2009 surrounded by a distinct and different planning unit in agricultural/forestry use. The Officers report in §8.1 concluded that:

> ‘Within the last 10 years that has changed, and Woods Cottage has become associated with a larger area, thereby creating a different planning unit. Furthermore, over the 10 year period… there has been a material change in the mix and balance of uses undertaken at the site'

Although this Certificate of Lawfulness is yet to be determined at appeal, this determination by officers raises an important question about the planning units now in existence in Tournerbury Woods. If the planning unit originally associated with Woods Cottage has expanded to create a new planning unit extending across the land altered to create a venue area, then the originally separate planning unit around Woods Cottage must no longer exist by following the judgment in Titchfield vs Secretary of State for Housing [2025]. The separate accrued use rights of Woods Cottage would have been lost.

However, the redline of this application excludes Woods Cottage despite it being currently part of the ‘unit of occupation’ usually understood to define a planning unit, in this case, for the venue area. Approximately 40% of the 1997 Woods Cottage domestic curtilage extends into the redline of the current planning application, and this includes one of the building (the Deck’) for which retrospective permission is requested. Meanwhile, 73% of the redline area of the current application is within the claimed 2009 curtilage at the start of the claimed change of use in APP/19/01262 (3.6ha out of 4.94ha).

Officers should establish whether or not Woods Cottage is to be physically and functionally severed from the event venue in order to understand whether the applicant is now requesting permission for only part of the enlarged unit created by the unauthorised development. If this separation is occurring and any grant of permission is considered, the exclusion of Woods Cottage from Venue use should be secured by condition.

It should also be noted by officers that if approval is given for the construction or use of a floating jetty this would necessarily extend the development into a further planning unit on the foreshore and intertidal area. This would require further work on the Habitats Regulations Assessment to establish the change of use in this planning unit, whether there are significant effects and whether the harms can be mitigated.

6.2. Permitted development

The proposition at the heart of this application for retrospective approval of development is that the change of use that has occurred since 2008 was justified through the use of legitimate permitted development rights available to the applicant. However, officers should consider whether such permitted development rights exist, and if they do what the scope of those rights are, given the designation of Tournerbury Woods as an SSSI.

The potential basis for permitted development of the agricultural land within Tournerbury Woods is set out in the General Permitted Development Order (GPDO) 2015 Schedule 2, Part 4, Class B for the temporary use of open land for up to 28 days a year. Council officers have briefed councillors in the past that permitted development rights exist for the wedding venue activities in Tournerbury Woods, e.g. when briefing the Tournerbury Site View Working Party on 23rd June 2021. They have given this advice despite knowing that the structures built on the site were not removed after the first 28 days of their existence.

Helpful Guidance from the Country Landowners Association (CLA) (GN03-24) indicates that all structures and construction must be removed after the 28 days permitted use per year:

> 'Any buildings, bins or other paraphernalia, associated with Classes B, BC and E, which are left on the land will be counted as part of the eligible days… Creating a road, track or hardstanding for a temporary use of land will also be counted as part of the eligible days- a hardstanding is permanent and effectively will be in situ for 365 days of the year – it will thus require planning permission.' P5

It is thus clear that the development of a venue that has occurred involving buildings, earthworks, access tracks, parking areas, pond infilling and tree loss extending to 365 days a year cannot rely upon temporary permitted development rights under GPDO 2015 Schedule 2, Part 4, Class B.

There are two important further restrictions on the exercise of permitted development rights in Tournerbury Woods:

1. Permitted development rights under GPDO 2015 Schedule 2, Part 4, Class B are not available if the development is within the curtilage of a building. This means that no permitted development rights can be exercised either within the 1997 domestic curtilage of Woods Cottage defined within the Natural England SMS (which includes the Deck building), or within the much larger area encompassing the entire venue claimed as domestic curtilage of Woods Cottage in 2009 in the Certificate of Lawfulness application in APP/19/01262.
2. The temporary use of land for camping is also excluded from the permitted development rights under GPDO 2015 Schedule 2, Part 4, Class B. Camping has been part of the development associated with the venue despite this restriction.

Meanwhile, there is also guidance on statutory obligations relating to permitted development within the National Planning Policy Framework (NPPF) 2024. The NPPF clause 192 on p55 says that development plans should

> 'identify, map and safeguard components of local wildlife rich habitats and wider ecological networks, including the hierarchy of international, national and locally designated sites of importance for biodiversity' (note 68).

Note 68 references Office of the Deputy Prime Minister Circular 06/2005, saying that it 'provides further guidance in respect of statutory obligations for biodiversity and geological conservation and their impact within the planning system'.

Paragraph 75 of Circular 06/2005 says that:

> 'Where an owner or occupier wishes to exercise permitted development rights on an SSSI, and the works involved are listed on the SSSI notification as operations likely to damage the special interest features, then they must apply to English Nature [now Natural England] for consent under section 28E of the Wildlife and Countryside Act 1981.'

The construction, earthworks, access tracks, parking areas, pond infilling and tree loss undertaken in the development used to create the event venue are all operations that damage the special interest features of the Chichester Harbour SSSI.

We asked Natural England if they had received and granted such a request for permitted development rights in Tournerbury Woods. We received the following reply from?Louise Crothall, Principal Officer- Thames Solent Area Team on 19th December 2025:

> Our question: Has the owner of Tournerbury Woods requested explicit permission for permitted development rights in the SSSI under ODPM Biodiversity and Geological Conservation Circular 06-2005 para 75, referenced as statutory Guidance in NPPF on page 55?
>
> Natural England Answer: *As you are aware, permitted develop is a matter for the LPA. Natural England is not aware of a request for explicit permission for permitted development rights by the owner of Tournerbury Woods, unit 3 of Chichester Harbour SSSI.*
>
> *In a situation where an owner/occupier (acting in their capacity of a developer under the planning legislation) has secured a prior approval from a Local Planning Authority in relation to operations that they intend to carry out under permitted development rights, they still require section 28E consent from Natural England if the operations are on the ORNEC list for that SSSI.*

On the basis of the analysis above, it would seem that there is no avenue by which the event venue constructed within Tournerbury Woods could obtain permitted development rights. This would mean that after 28 days, all of the development required formal planning permission, and this has not been obtained as this retrospective planning application demonstrates.

The absence of permitted development also has a further significant consequence: no fallback is available to the applicant and therefore officers should be under no obligation to consider the fallback position when assessing the merits of the application.

Officers should therefore calibrate their assessment of the planning balance by characterising the development at the site as entirely unlawful over a period of between 15 and 20 years, and that this is a very serious breach of planning control. There is therefore nothing to regularise at this site.

6.3. Access

The access that is proposed to the site in this application consist of three components viz.

1. A part-constructed new track,
2. A missing connection across a drainage channel and
3. An existing muddy woodland track.

The part-constructed new track requires significant work to complete and following unsuccessful discussions between Tournerbury Woods and Tournerbury Farm, this access route has been withdrawn and is not now available to the application. This is a serious obstacle to the determination of this application.

The missing connection across the drainage channel and the unsuitability of the muddy woodland track for coaches fire appliances and other heavy traffic means that the access proposed for this application is demonstrably unsuitable and under-documented.

Meanwhile the Tournerbury event venue continues to function by the use of its private right of way through the farm, which has no planning consent for change of use to commercial usage. From our meeting with the CEO of the Council in April 2025, we understand that the Non-

Prosecution Agreement entered into with Tournerbury estate in 2022 will continue to allow the venue to operate without enforcement until the determination of a planning application. After nearly 4 years of this arrangement to bypass planning law, this has become a serious breakdown in planning control in Havant Borough.

Officers should consider whether it serves the public interest to determine an application that could not have planning consent for access to the site. Should officers decide to determine the application favourably using the proposed route despite its withdrawal, it will also involve the imposition of conditions on a third-party against their wishes. Unenforceable conditions may not be imposed as a matter of law.

There are also severe complications to this application as a consequence of its retrospective nature with a change of use date in 2008. In one of the objections to APP/20/00626 (OBJECTS - DATED 28.8.20 LETTER.pdf) from the Tournerbury Woods planning agent, the following correspondence with the Council's planning officer dated 11th June 2020 was quoted, apparently referring to the first retrospective application APP/18/00943 that was being considered at that time:
'You will also be aware the application was made retrospectively and therefore the access being provided at a much later date, cannot form part of the proposal.'

The current application APP/23/00076 being considered by officers gives a change of use date from which development is being requested for regularisation of 28th August 2008. This track across Tournerbury Farm was not constructed until May 2020, and thus 12 years of the retrospective development occurred without the benefit of this track. Between May 2020 and the date of the application in February 2023 this track was not complete, and it has never been used for access to the venue.

Therefore, there must be a question for officers as to whether this track can function as a form of access to the site in the current application covering a retrospective period of development when the track did not exist, and a recent period when, although the track has been part-completed it was not available for use.

Hence, officers must consider the plain fact of this case: there is no access to the site either functionally or legally. In a previous meeting between STW and the Council's previous Head of Planning (HoP) in June 2024, the HoP commented that if denial of access to the site was "so central" to the application that its absence made the application unviable, then officers would have to determine the application unfavourably and we concur with this view.

6.4.HRA/AA

6.4.1. Habitats Regulation Assessment/ appropriate assessment process

As the application site is within a Special Area of Protection (SPA) and the foreshore is within a Special Area of Conservation (SAC), the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations') §63(1) require the local authority to carry out an appropriate assessment of whether the development 'is likely to have a significant effect' on the site 'in view of that site's conservation objectives'.

Habitats Regulations 63(5) says:

> ‘In the light of the conclusions of the assessment… [the] authority may agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the European site’

Habitats Regulations 63(6) says:

> ‘In considering whether a plan or project will adversely affect the integrity of the site, [the] authority must have regard to the manner in which it is proposed to be carried out or to any conditions or restrictions subject to which it proposes that the consent, permission or other authorisation should be given.’

Conducting a Habitats Regulations Assessment (HRA) means meeting certain key requirements:

- The assessment must be carried out on a proper evidential footing
- The test is precautionary
- The authority must be certain of no adverse effect on integrity
- Certainty must be based on complete, precise and definitive findings
- The comparison is against the site’s conservation objectives and baseline condition

Officers refer to studies carried out by the applicant as a basis for the HRA, however, in the Officers Report these are mostly quoted directly from the non-specialist planning agent writing the Design and Access Statement and not referenced to the more explicit subject experts in the full reports as follows:

- APP_18_00943-UPDATED_PHASE_1_HABITAT_SURVEY.pdf (Habitat survey)
- ECOLOGICAL_ASSESSMENT_REPORT_JUNE_2020.pdf (EAR report)

Species area	Summary statement in Officers report	Quote from report/consultation
Botany	‘In general terms the Assessment Report concludes that the habitats and plant species observed on the site itself have been found to be common species of no particular nature conservation value from a botanical perspective. §7,44	‘the ecology report states that ‘cudweed’ was recorded on site. The scientific name provided for this plant is that of the nationally-rare Jersey cudweed.’ Consultation comment by the Hampshire County Ecologist in December 2018
Zoology	‘[The report] concludes that [key] species are either not present on the site, or the habitat supporting them within the Estate as a whole is not affected by the proposals	'Of the notable species recorded within 1km of the site, five are amphibians; two are reptiles’ EAR Report p28 (Tournerbury Woods falls inside 750m circle)
Birds	‘With regard to other bird species, the breeding bird survey undertaken by the applicant’s ecological consultants has identified the value of the site to birds as relatively low’ §7.50	'The breeding bird surveys carried out in 2014 found that a total of 27 bird species were using the site. Seven of these are on the Amber List of Birds of Conservation Concern, whilst two species (Song Thrush and Starling) are on the Red List of Birds of Conservation Concern. Of the 27 species recorded, seven were confirmed as breeding on site and this included two Amber List species (Little Egret and Stock Dove) and one Red List species (Starling).

The Habitat survey undertaken for the applicant acknowledges the carrying capacity of Tournerbury Woods for an assemblage of fauna at the baseline:

> 'the complex of habitats i.e. broadleaved woodland with adjoining open habitats such as wetland, grassland and salt marsh has the possibility of supporting a range of notable and protected fauna including groups in addition to birds such as invertebrates, reptiles and bats.' 7.10.2 Habitats survey

The development at this site since the claimed change of use began in 2008 has clearly reduced the capacity of this site for nationally rare species as the baseline habitat has been replaced by raised earthwork platforms composed of demolition waste and lawned by non-indigenous perennial Rye grass as set out above.

In the final Ecological Impact Assessment Report (EIAR) (dated October 2025) the two ecologists responsible for the report actually classify this artificial environment dating to 2013 as one of the natural habitats of the site! (referred to in Appendix 6 Baseline habitats as 'mown, neutral grassland').

The Officers report also quotes the Natural England condition survey at §7.55

> 'There is no evidence that the activity associated with the business amenity area is resulting in direct or indirect adverse impacts on the special interest of this part of the SSSI'

It is possible that the EIAR ecologists and the Natural England surveyors were not told of the history of major earthworks at this location, and they may not have had access to, or sought out, aerial photography and records of activity such as the Natural England Enforcement visit of 26th July 2013 where the recently completed 1000 cubic metre marquee platform was visible in pictures (see figure xx above).

However, this failure to recognise an area of c. 1ha where the baseline has been entirely removed through destruction of the original habitat must compromise the HRA process. Officers must review the available evidence for the baseline and set aside assessments of areas of parkland that have been created as part of the development for which retrospective consent is requested.

This recognition of the true baseline is vital for the correct conduct of the HRA and appropriate assessment. In Sweetman v An Bord Pleanála [2014] the opinion of the Advocate General stated:

> 'measures which involve the permanent destruction of a part of the habitat in relation to whose existence the site was designated are, in my view, destined by definition to be categorised as adverse. The conservation objectives of the site are, by virtue of that destruction, liable to be fundamentally—and irreversibly—compromised.'

In Tournerbury Woods up to 10% of the site existing at the change of use date has been entirely destroyed as demonstrated evidentially in this report, and thus by definition, the integrity of the site has been compromised and the conservation objectives for this part of the site cannot be achieved. This change cannot be mitigated by planning conditions on use and therefore the application cannot be granted approval.

6.4.2. Previous HRA/ AA consideration

Our fundamental submission to officers is that the loss of site integrity covered by the Habitats Regulations cannot be cured by mitigation measures. Only of the refusal of application would allow the development to cease and the habitat to recover.

Officers will be familiar with the recent case in Cornwall where a landowner was prosecuted for importing builders waste to raise land levels within an SSSI: https://www.gov.uk/government/news/landowner-to-pay-31000-for-landscaping-cornish-sssi-with-waste

There are very significant parallels with the case at Tournerbury, where U1 Environment Agency waste exemption is also in place. Judge Smith commented that

> 'The SSSI should have been a big red flag. There is the potential to destroy the site if restoration is not successful.

The court has ordered the landowner to remove all the waste and return the site to its previous state as wet grassland and woodland. The refusal of this application would be the first step in a process that would allow natural England to recover control of this site and begin nature restoration in line with the councils declaration of a Nature Emergency in 2025. The council's previous HRA methodology was to look at the current operational impact of a site within an SSSI as if it functioned within the existing habitat. For the record, we also see some significant flaws in the way that the council has conducted the appropriate assessment into recreational pressure, water quality and noise pollution, and we wish to comment on them here.

Recreational pressure

Officers argued in their previous report on APP/23/00076 that recreational pressure could be effectively managed using a visitor management strategy (VMS), which would use signage, rope barriers and limitations on dogs. As residents of the immediate area opposite the site we are aware of:

- The frequent occasions on which venue attendees have breached the safeguards and walked on the beach despite officers saying that there was uneven rubble that was less attractive to event attendees
- At least two occasions for which we have photographs when a dog off the lead was running on the shoreline
- One occasion reported to counsellors when an individual nearly drowned in a body of water after leaving the venue at night having consumed alcohol

We wish to point out that it would be impossible for the enforcement team at Havant Council to monitor and assure this VMS when events take place late at night and at weekends in an un fenced area of woodland. Given the previous failings in this regard and the infeasibility of enforcement, we believe that officers do not have sufficient assurance that this control on disturbance to wildlife would be effective.

Nutrient neutrality

Given the well documented eutrophication problems in the Solent and, in particular, in Chichester Harbour, all new development with overnight accommodation (here, camping) must be net nitrogen neutral. Where they are not so they must contribute to a strategic offsetting scheme involving the purchasing of credits.

A Nitrogen budget was calculated for the redline application site in Shadow Appropriate Assessment Final (dated October 2025).pdf and updated in UPDATED NITROGEN BUDGET.pdf (names on the Planning Portal). In Box 2 on page 3, there is a calculation of the nitrogen load from 'land prior to use as a wedding and events venue'. This shows in step 2 that there is an 'Area of previous tracks, formal gardens & hard standings etc' with an area of 0.92ha. However, in 2008 at the declared date of the change of use in the retrospective application the whole red line site including the buildings and the camping area was woodland (see figure 34 below showing the site on 21st April 2007).

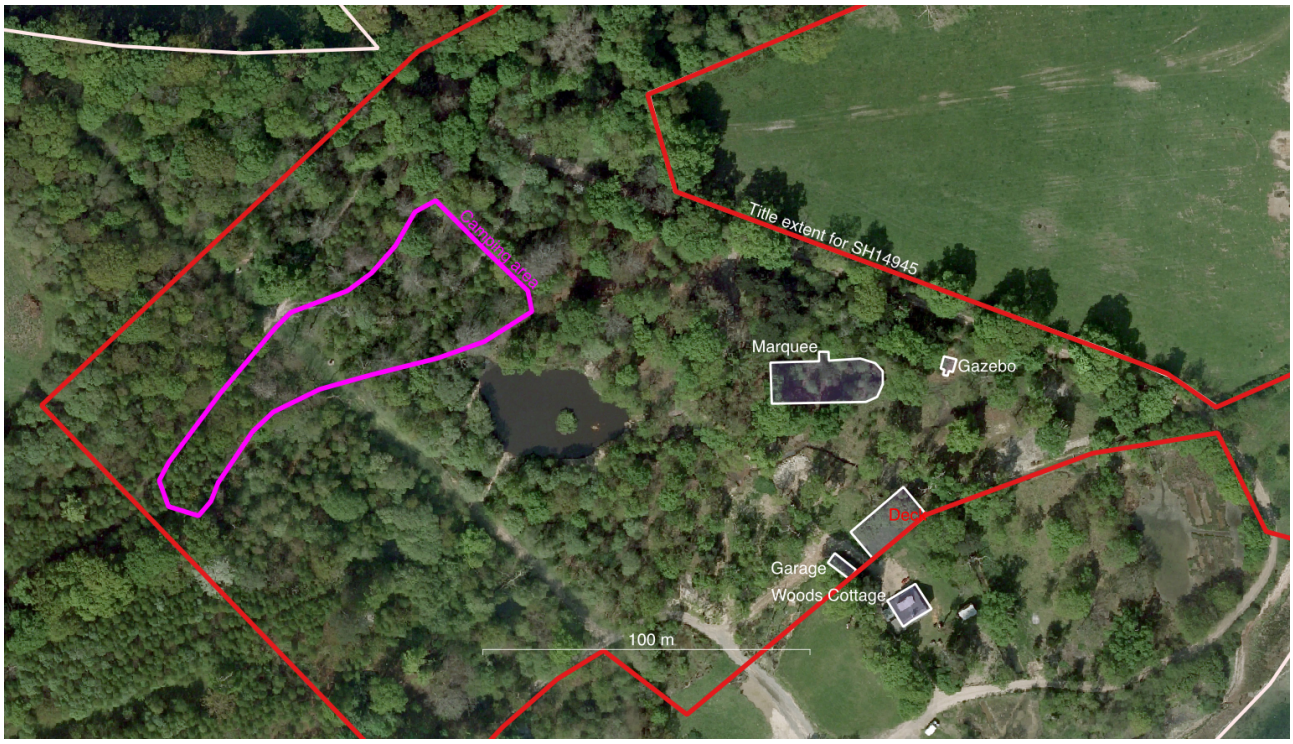


Figure 34 Bluesky a photo showing red line area on 21st April 2007 before change of use

We would therefore recommend to officers that the nitrogen budget be adjusted to place or 4.98 ha of the red line application area into the woodland category. This would lead to revision in the calculation of nitrogen load to 25.0 kg TN/year. With this revision the difference between Box 2 and Box 3 would be 10.409 kg TN/yr, which when added to the nitrogen load from waste water makes 10.529 kg TN/yr. With the addition of a 20% precautionary buffer this figure becomes 12.634 kg TN/yr Nitrogen budget. At a cost of £1235 per credit his would require a fee of £15,602.99 to be paid. This is a significantly higher nitrogen load than the one calculated and shows that the impacts of this venue are even high when just considering their current operational impacts.

6.5.Section 85

We would like to note the guidance that has been produced by the National Landscapes Association on the new Section 85 Duty at:
https://national-landscapes.files.svdcdn.com/production/assets/images/Documents/Briefings/CRoW-s.85-duty-guidance-for-LPAs_NLA-Briefing-Nov-24.pdf?dm=1731077355

Section 85 of the Countryside and Right of Way Act 2000 (CRoW Act) (as amended by the Levelling-up and Regeneration Act2 in December 2023) requires 'relevant authorities', in exercising or performing any function that affect AONBs in England, to 'seek to further the

purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty.'

This is a statutory duty, which has been in force since December 26, 2023. The use of the word 'duty' in the legislation means that it is something all 'relevant authorities' must do; it is not discretionary.