Change of use of land and woodland (retrospective) in Tournerbury Woods

Havant application APP/23/00076

Shadow Officers Report

Saving Tournerbury Woods

V2 after statutory consultation responses available

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1. Executive Summary

APP/23/00076 is a retrospective application for an unauthorised development in a nature reserve. If approved, it would set a major precedent for the development of protected areas across the country. However, this reports sets out reasons why it should be refused based on material considerations.

The unauthorised development began with extensive construction work between 2013 and 2016 to alter the protected landscape from a woodland to a landscaped parkland. Buildings and car parking were constructed without consent on the modified landscape after trees were removed, and the venue has grown to offer more than 50 events per year. The site is currently accessed by a track through Tournerbury farmyard using a private right of way, but this route has no planning consent for use by commercial venue traffic.

Starting in 2018, the owners of Tournerbury Woods have sought planning consent for this site, and they have made 5 applications in 8 years without success. Their proposition is that the venue should be regularised as a going concern since any operational harms to the nature reserve could be offset. However, these applications have not declared the construction and the landscaping that occurred at the site between 2013 and 2016 and this has meant that most of the reports and assessments have been carried out to the wrong baseline.

The national conservation regime that applies to the Site of Special Scientific Interest (SSSI) completely prohibits the construction work and events that have taken place at this site. However, documentation errors by Natural England (NE) in 2014 led them to accept the creation of a custom 'Business Amenity Area' zone, within which nature protections were lifted. Natural England cannot therefore object to development in this part of the SSSI even if it is harmful for nature. NE can still raise concerns relating to the access and the camping that fall outside the 'Business Amenity Area', as they have done for this application as the unaltered part of site still hosts several key NE Priority Habitats.

The international conservation regime that applies to the Langstone and Chichester Harbour Special Protection Area (SPA)/ Special Area of Conservation (SAC) requires a Habitats Regulations Assessment (HRA) for any development affecting the conservation objectives such as maintenance of tree cover and species richness. The HRA must assess the impact of the loss of c. 15% of the site habitat including trees through the construction of a landscaped parkland as well as the displacement and habituation of species (including bats and herons). The impacts must be measured from the date immediately before the 'change of use' occurred, which in this case is 2008 according to the applicant, and not the application date.

The previous HRA prepared by officers only measured the ongoing operational impacts of a venue with traffic, music and entertainment within a nature reserve, considering only wildlife disturbance, noise/light pollution and waste production. However, as there has been significant habitat loss this means that the integrity of the SPA/SAC site has been compromised, and this must lead to a refusal of an application, even if the damage has already occurred.

Under the planning regime the unauthorised development has no legal standing under 'permitted development' rules. The venue cannot benefit from temporary permitted development because this requires the removal of buildings, car parking etc. after 28 days, and this development has been continuously present since at least 2016. The venue cannot benefit from general Schedule 2, Part 4, Class B permitted development rights because statutory guidance states that Natural England permission is required in a SSSI, and NE confirmed to STW in December 2025 that they have not granted such permission.

This all means that the existing development present on the site required full planning permission 28 days after it came into existence, and thus everything on the site, including the construction work that has not been declared, is unlawful. Furthermore, inclusion of a campsite within the proposal requires an Environmental Impact Assessment because the site is in a 'sensitive' area, and this has not yet been prepared.

There are great difficulties with the site access that is proposed for this development. The owners of Tournerbury Farm have declined to give permission for the part of the access that would cross their land. The crossing into the woods has not been built. Natural England have said that the access track within the woods cannot be upgraded (which is necessary to meet the required standards) and thus their position is an effective veto on the use of this track. Hence, there is no access to the site either functionally or legally at the present time. STW believe that it is a waste of public money to consider an application that cannot be implemented.

Taking this essential context on board, officers must consider the material considerations in the determination of this planning application. In the previous Officers report for APP/23/00076, the starting point was the presumption of sustainable development in the so-called 'tilted balance' defined by the National Planning Policy Framework (NPPF) §11(d). However, the 'tilted balance' in §11(d) does not apply when the development is within an 'asset of particular importance' such as an SSSI and/ or where there are relevant development plan policies. Therefore, the material considerations that officers must consider are the policies of the development plan, which contain specific protections for the SPA/ SAC/ SSSI and the Area of Outstanding Natural Beauty (AONB) covering Tournerbury Woods.

The Havant Local Plan Policy CS11 says that 'Development will not be permitted that would cause harm to [the] designated interest' [of SPA/SACs] in Tournerbury Woods, and Policy CS12 says that 'Development will be permitted where it… conserves and enhances the special qualities of the Chichester Harbour AONB'. The proposition in this application is that the current use of the site does no harm to these interests. However, this ignores the removal of trees and wetland by large scale construction and the substitution of peace and tranquility with traffic disturbance, machine operations, and noise and light from entertainment.

Natural England (NE) and the Chichester Harbour Conservancy (CHC) have taken different approaches in their statutory consultation responses. NE has acknowledged the damage to the designated interest (wildlife and ecology) and the loss of integrity in the site but has not objected to the impact of current operations. This position owes a great deal to the inability of NE to object to activity in the 'Business Amenity Area'.

However, CHC has strongly objected to this development on the grounds that Paragraph 176 of the NPPF states: 'Great weight should be given to conserving and enhancing landscape and scenic beauty in … AONBs'. The 2025-2030 adopted CHC Management Plan says in Planning Principle 4 that 'New tourism, commercial or agricultural development will be supported where it is demonstrated there will be no harm from visual intrusion, noise, increased activity nor erosion of rural character'. Development of an event venue in Tournerbury Woods generates all of these harms.

Officers must also act consistently with previous decisions on the planning balance. The Council served an Enforcement Notice on the site in 2020 requiring that it ceased operations and remove the buildings erected on the land. A very similar previous application with more events and using the access through the farmyard (APP/18/00943) was refused in 2021. The Council also refused an application for a Certificate of Lawfulness relating to the 10 year period of use between 2009 and 2019 and the appeal will be held at a public inquiry in February 2026.

STW recommends the REFUSAL of this retrospective application on the basis that it:
- Is an entirely unlawful development without permitted development rights
- Has damaged the site's integrity by construction of a landscaped parkland from a woodland
- Has displaced and habituated wildlife to the detriment of the site's conservation objectives
- Breaches the development plan policies to protect the landscape and character
- Has no functional or legal access to the site and could not comply with fire safety access
- Has current operational impacts such as nitrogen loading and light pollution
- Is located in the most severe flood zone and has already been flooded on 9th April 2024

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, with 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 planning balance. 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 a tidal 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. Further powers for SSSI 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 2017 (2019 update)	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 Woods 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 Woods

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_APP17 00207-1729629.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_PUBLIC _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 List of application maps provided

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 maps of 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.

Air photography for 1976, 1999, 2007, 2012, 2015 and 2018 with all landscape alterations overlaid is shown in the Appendices.

2.5.2. Ownership and site redline

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

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

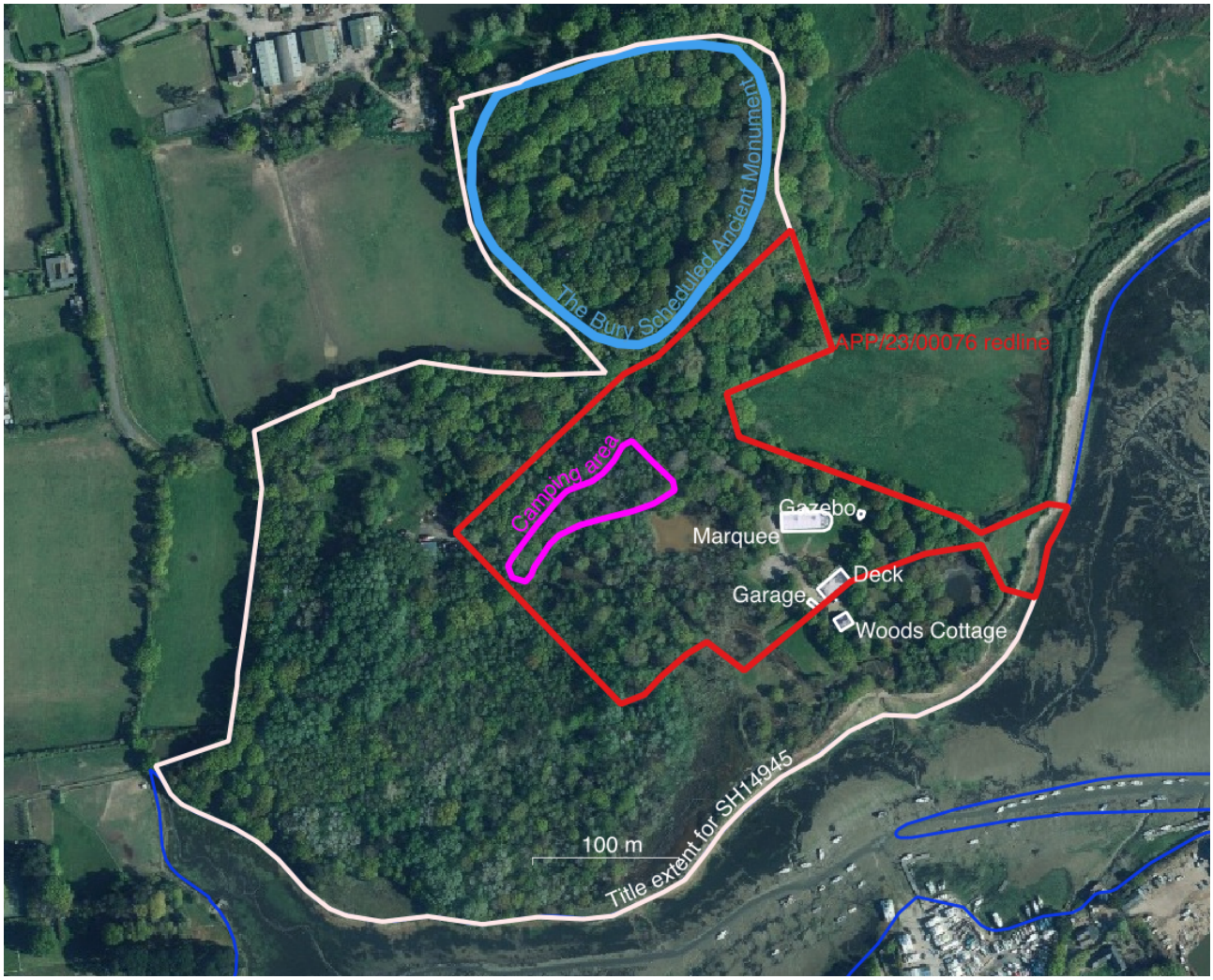


Figure 1 Site red line, title extent (white), Ancient Monument (Blue), camping area (pink) and buildings (white) shown in current Havant Borough 'Where I live' aerial photography

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 Woods Cottage would be excluded from the venue consent.

Jetty

The proposal includes the 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.

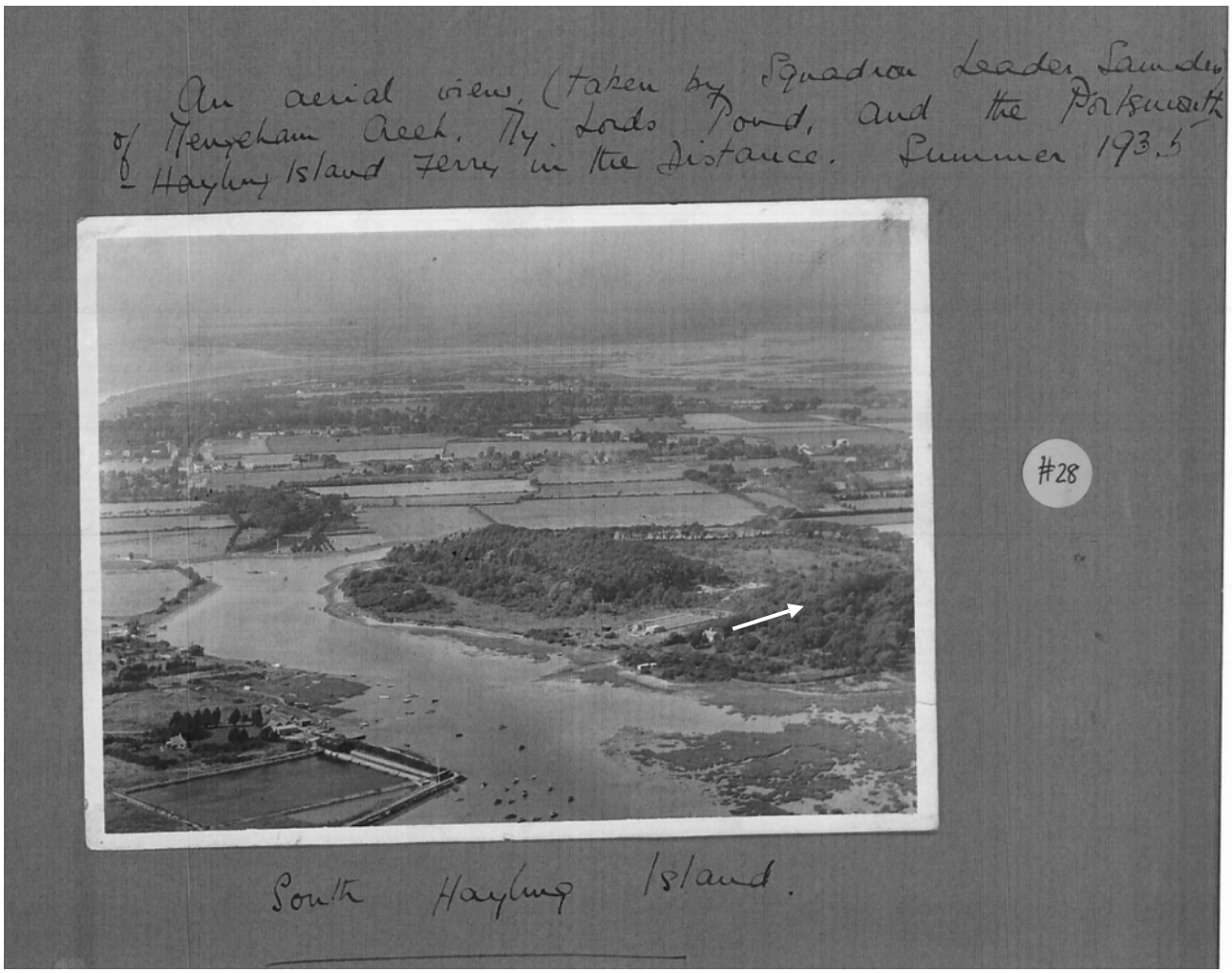


Figure 2 Oblique aerial photo taken of Tournerbury Woods in 1935 (arrow points to the current venue location)

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.

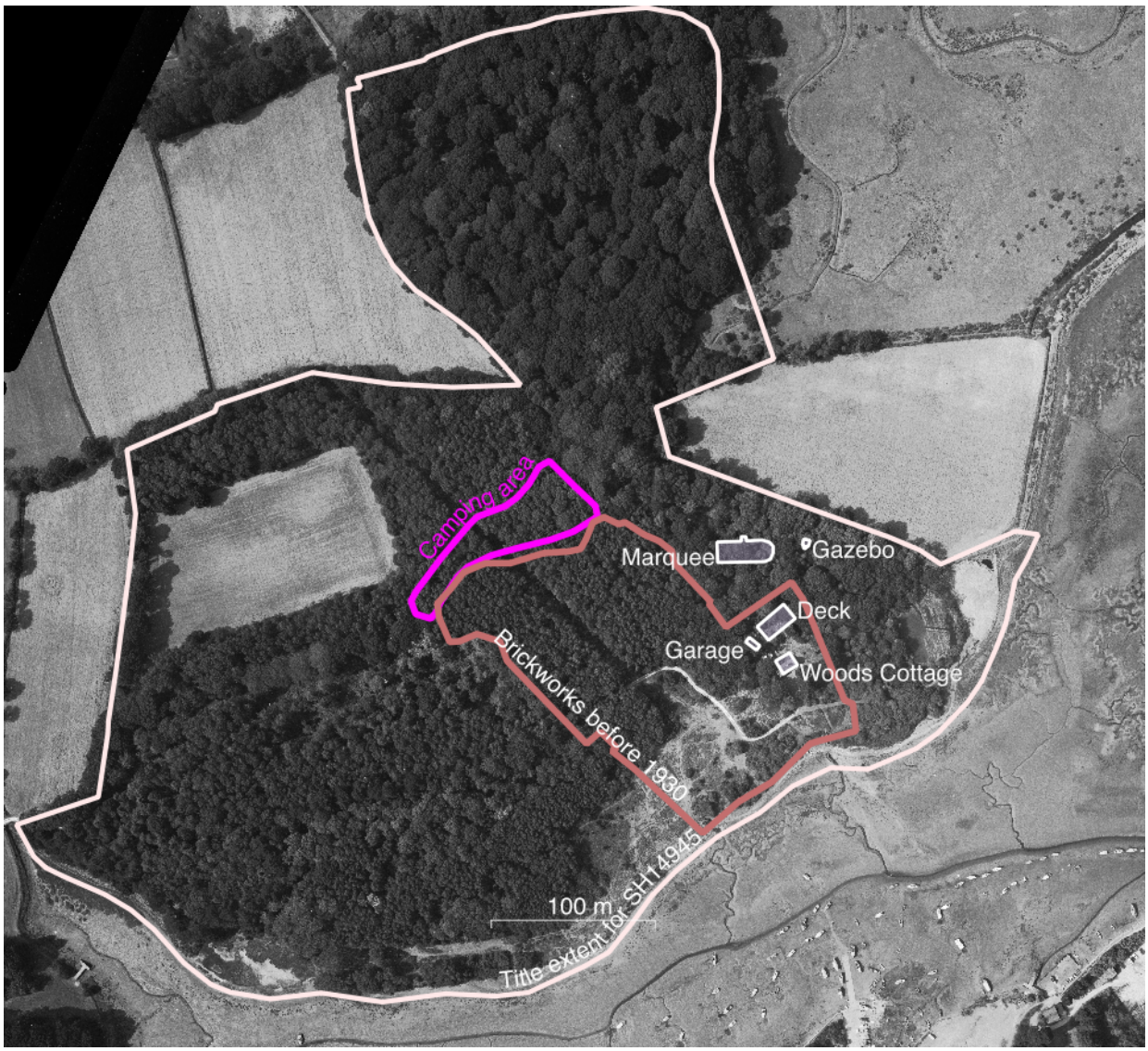


Figure 3 National Collection of Air Photography air photo taken on 11th July 1976 with former brickworks boundary (brown), camping area (pink) and buildings (white)

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, 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)’

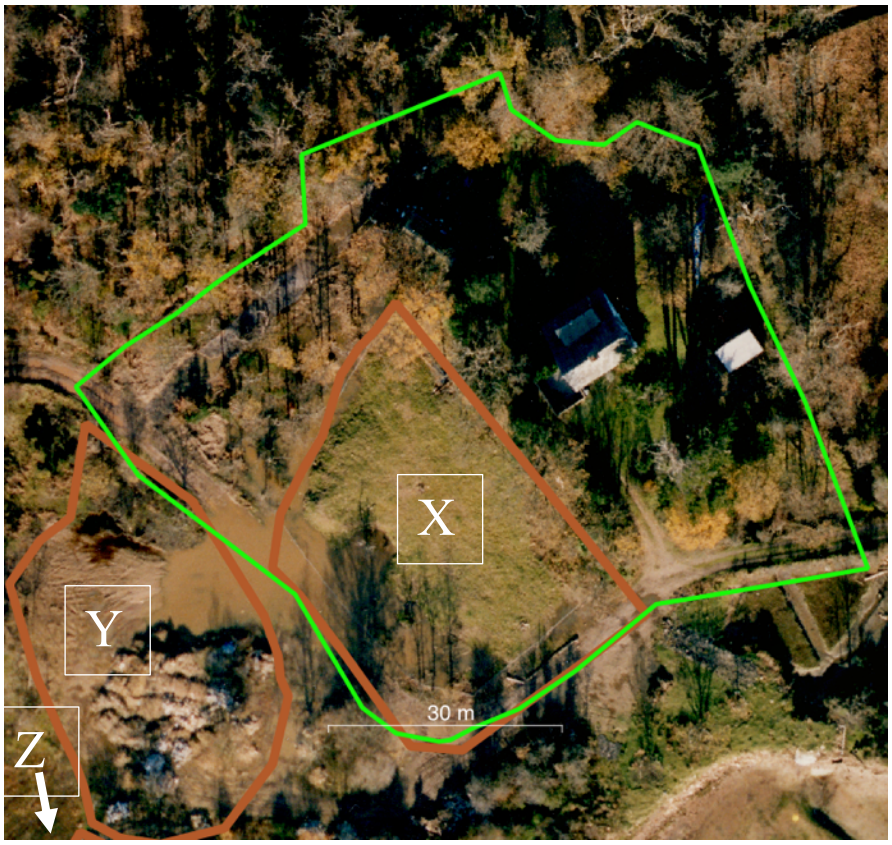


Figure 4 Sealand air photo taken on 4th December 1996 showing land raising work

Officers granted permission in 2001 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’ (figure 5)

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



Figure 5 Waste dumped in area Y (back) & Z west of Woods Cottage 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. Area 2 and 3 consents were greatly exceeded by the final raised lawn in Area X, and areas Y and Z were not consented (actual built extent shown in brown).

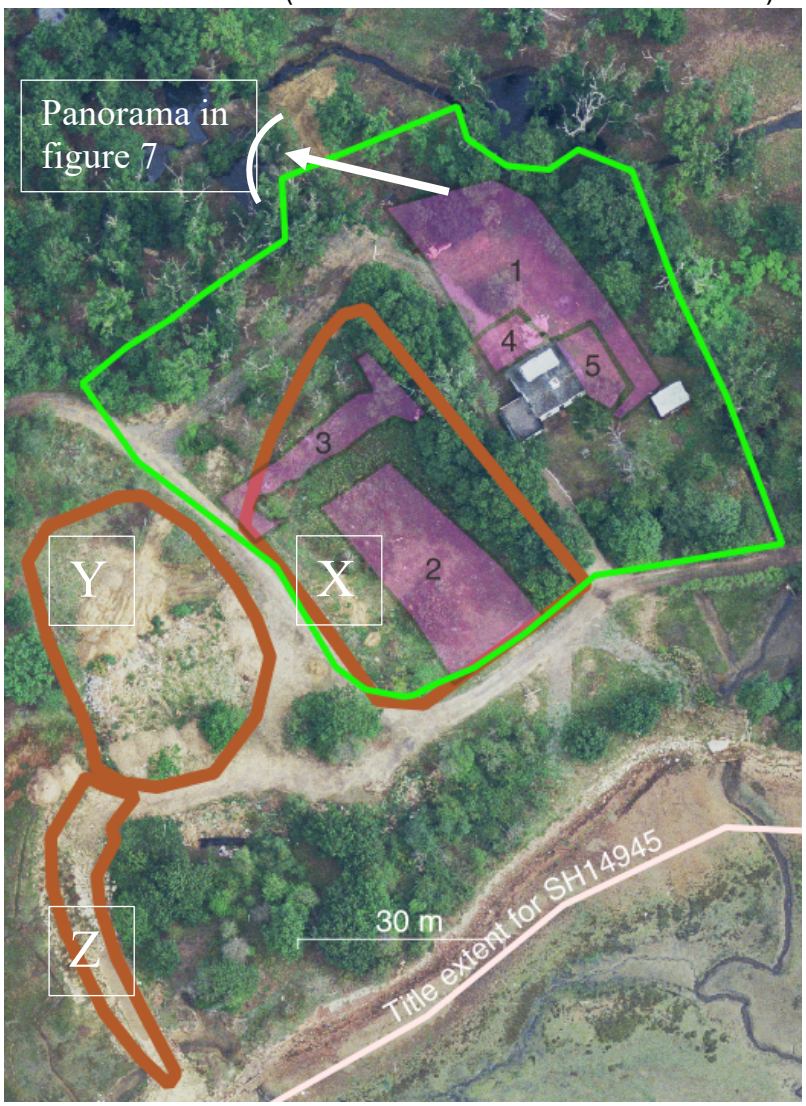


Figure 6 Figure 3 National Collection of Air Photography air photo taken on 15th August 1999 showing land raising progress W of Woods Cottage

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 the area north of Woods Cottage remained wooded in 2001.



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) and a loss of site integrity for the Special Protection Area (SPA)
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. Venue 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 the Area X lawn.

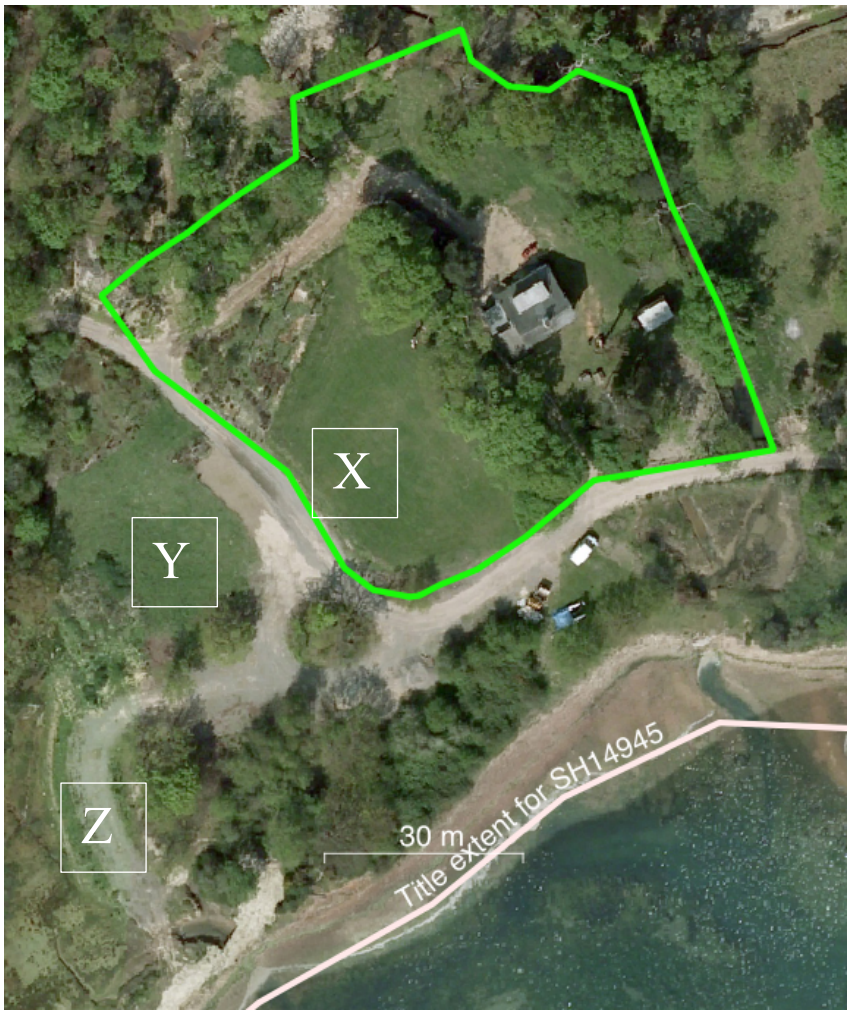


Figure 8 Bluesky air photo taken on 21st April 2007 with 3 areas of completed land raising

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

Second period of land alteration: 2012- 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 in a letter of 10th March 2021, 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) at location M in figure 9 within in a small existing clearing 75m by 15m to the north of Woods Cottage.

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.

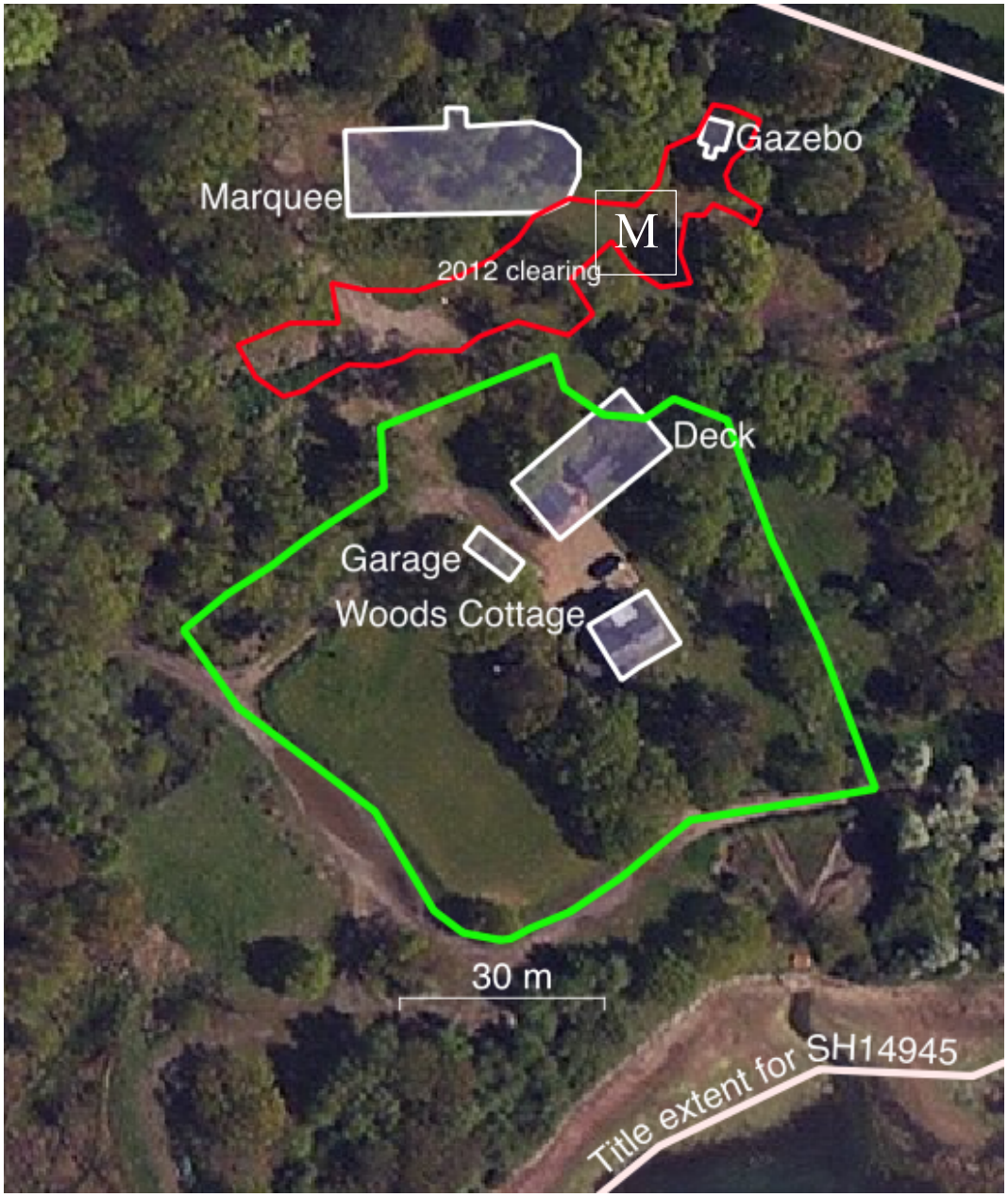


Figure 9 ESRI Wayback air photo taken on 16th May 2012 before main construction work north of Woods Cottage

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 alongside large pieces of cut wood).



Figure 10 Natural England photo DSCF0608 (2).JPG taken on 26th July 2013 looking SE and showing the new marquee platform

By 2015 the platform had been enlarged towards the SE and car parking areas 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 after start of main construction work north of Woods Cottage

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.

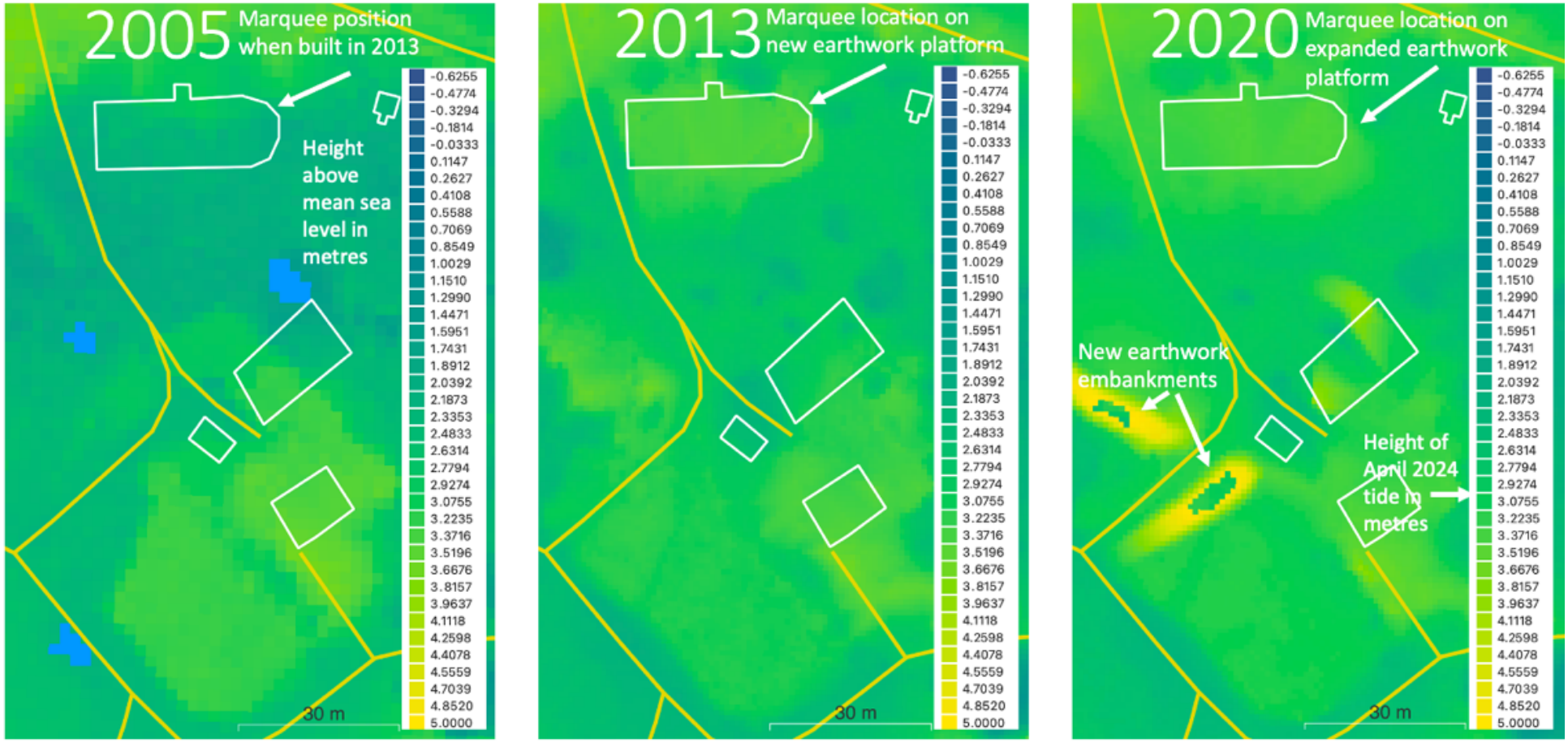


Figure 12 Environment Agency LIDAR data showing changing land height for the venue area north of Woods Cottage (dark green= low in 2005 and light green = 1.2m higher in 2013/2020)

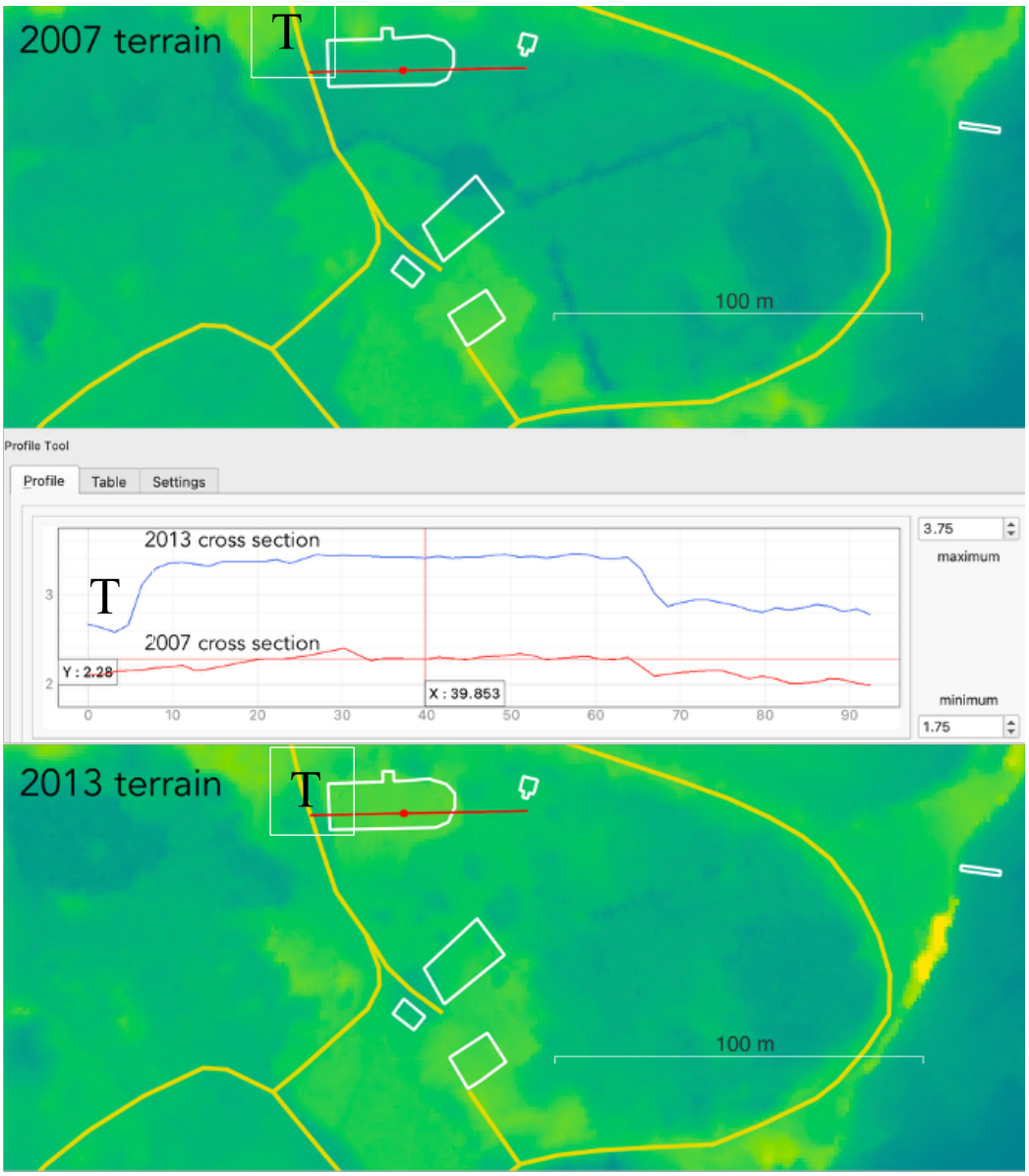


Figure 13 Environment Agency LIDAR data with cross section of the constructed platform

This marquee platform can be seen in cross section for 2007 (before construction) and 2013 (after construction) under the red line on the terrain maps in figure 13). The letter T is at the location in figure 10 where the turfing can be seen on the side of the new platform. All this construction was observed by an eyewitness and submitted to the council as a 2020 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 15% 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 damaged 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 14 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 (although the scope of the consent was apparently exceeded).

An application was made for a Certificate of Lawfulness for the change of use that had taken place in the woods associated with the venue 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 14 (referred to as Area 1 in APP/19/01262). This curtilage is 10 times larger than the 0.5ha curtilage in the Natural England SMS in 1997 and includes an intertidal 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 in the large area as documented in this report and the larger claimed curtilage aligns closely with the newly developed venue area for which immunity was claimed.

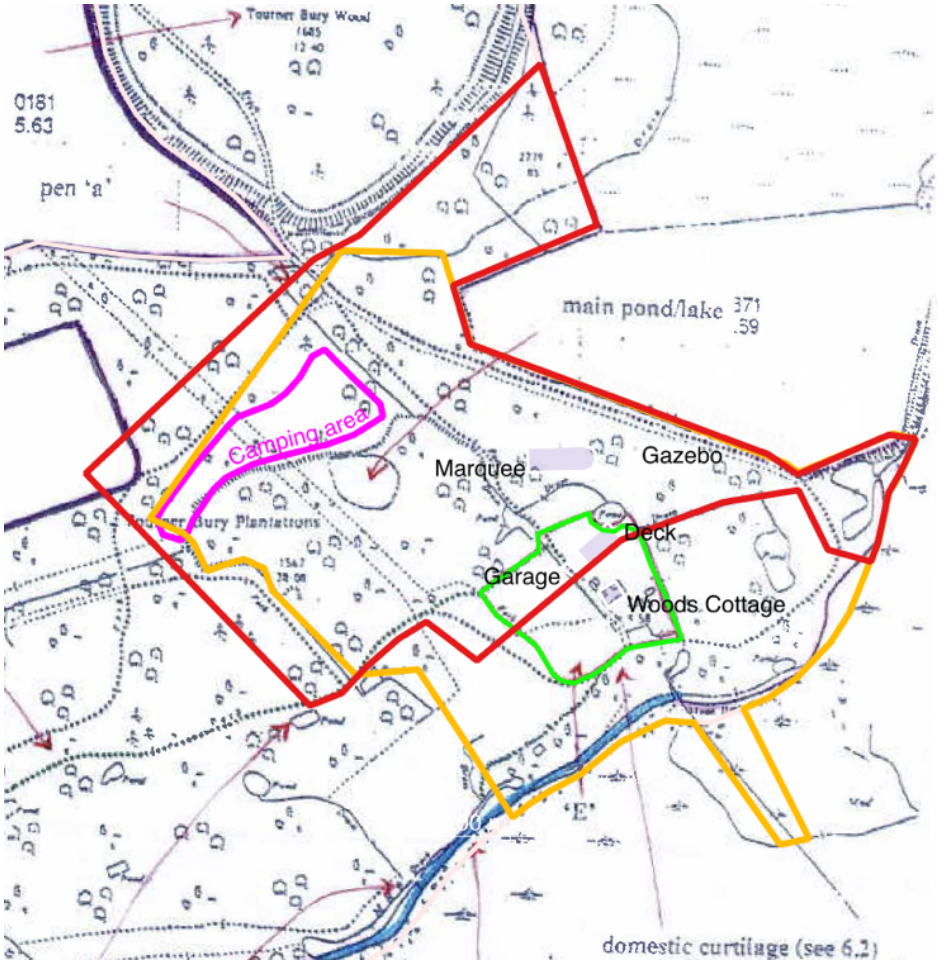


Figure 14 SMS Map 1 showing current application redline, 1997 domestic curtilage in green and the claimed curtilage in APP/19/01262 in orange along with the proposed camping area

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 14) 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. 'Business amenity area'

Unit 003 of Chichester Harbour SSSI covering the title extent of Tournerbury Woods (excluding Wood Field outside the SSSI- see 2.6.1) has a Management Scheme (also known

as a Site Management Scheme – SMS) defined under the Wildlife and Countryside Act 1981 (W&CA81) that was agreed between the owners and Natural England 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:'

Despite this remark in 1997, it should be noted that no change was made to the formal designation, and therefore the domestic curtilage remains subject to SSSI regulations.

After reports of breaches of the Management scheme to construct the event venue, NE made an enforcement visit to Tournerbury Woods on 26th July 2013. Following the visit, the owners of Tournerbury Woods produced an alternative, undated, unauthenticated version of the 1997 management scheme to NE on 11th October 2013. This differed from the dated, authenticated version in NE archives in one vital respect as it had one additional point in 6.2:

> '(vi) all land to the east of point 'c' is the business amenity area, consent is not required for operations… however this area excludes the 'Bury' and heronry'

In effect this addition lifted all protections to the special interest over the eastern third of Tournerbury Woods (see light shaded area on Figure 15). This correspondence was released to us under a Freedom of Information request to NE.

NE responded on 24th October 2013 to the owners saying that they had not been aware of this version of the Management scheme i.e. they had been using the version in the NE archives for 17 years without challenge. In further correspondence on 23rd April 2014 NE stated that the 'version recently shared with us…has the extremely unusual feature in that one dot on the map is used to demarcate a "business area". This is clearly insufficient' and 'There is no permission for events to take place in the SSSI'.

Notwithstanding this correspondence, on 25th May 2014 NE agreed to accept the owners' version of the management scheme as the 'later version' to be used 'going forward'. Note that 'Business Amenity Area' is a term unknown to environmental law.

In 2023 STW complained about the failure of NE to protect the SSSI. NE responded to the complaint with the following admission:

> 'There have been failures in our historic documentation archiving in relation to this SSSI, which is regrettable. We are aware that these failures can have an adverse effect on our ability to provide information to interested parties such as yourself and I apologise for that. It may also have implications for management of the site and therefore the natural environment.'

STW then asked the Office for Environment Protection (OEP) to rule on which management plan was valid, and they said in their response in 2024 'there was insufficient evidence to say conclusively which version of the SMS was the original to be modified', and therefore both should be considered valid. This means that the additional provision relating to the 'Business Amenity Area' is accepted operationally by Natural England, and it significantly inhibits their ability to manage this site in line with the conservation objectives.



Figure 15 Title extent, redline, access, camping and retrospective development in green and pink. Light shaded area is the 'Business Amenity Area'

Since the 'Business Amenity Area' provision in the owner's version of the Management scheme removed all SSSI protections Natural England have also not been able to object to any breaches of the Chichester Harbour SSSI operations requiring Natural England's consent (ORNECs) in any of the planning applications received for the area.

This has left Tournerbury Woods unprotected against operations that would normally be entirely prohibited by the Wildlife & Countryside Act 1981. The development that took place between 2013 and 2016 consisting of earthwork construction, gravel spreading for tracks and car parking, tree removal, infilling of watercourses and ponds have destroyed the original habitat of Lowland Deciduous Woodland present at the site before the construction of the venue. The landscaped parkland that is now present has replaced the original habitat for up to 15% of Tournerbury Woods and therefore the site integrity of the SPA and SAC areas has been compromised. This must be the starting point for any Habitats Regulation Assessment.

However, this immunity from the ORNECs in the 'Business Amenity Area' under W&CA81 does not confer any development rights under T&CPA90 (see Section 6.2). Hence, the full details of the retrospective development at the venue must be declared in the application and considered within the Habitats Regulations Assessment.

Finally, we note that the camping area falls substantially outside the 'Business Amenity Area' and thus the ORNECS for Chichester Harbour SSSI apply to this area. Natural England have hitherto not requested details of the facilities to be provided at the campsite, though they have already noted that the landscape has been altered in this area (see section 2.6.1 below).

2.6. Designation & Policy areas

2.6.1. SSSI and AONB boundaries

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 (Figure 16). 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.

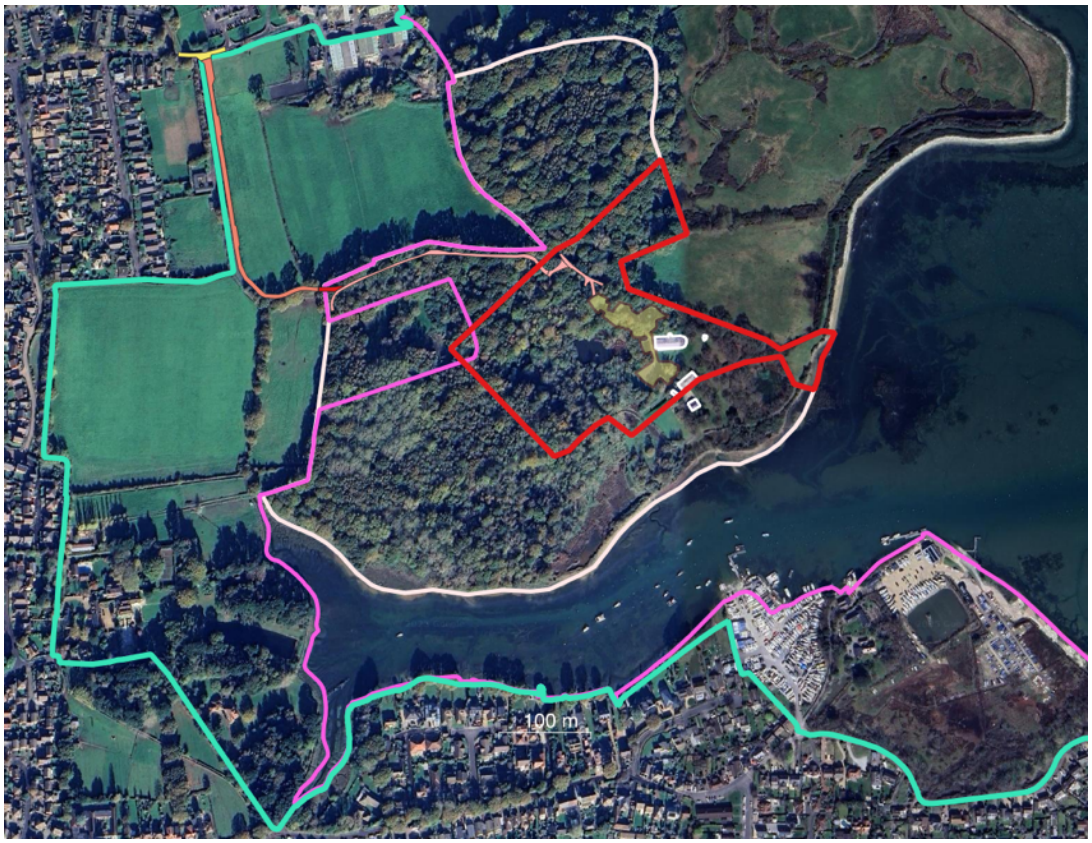


Figure 16 Site redline with AONB (green) and SSSI (pink) boundaries plus access, parking and venue buildings over Google Maps

Condition surveys

Unit 003 of Chichester Harbour SSSI also has a Condition statement required under the Habitats Regulations. In 2022 NE conducted a Condition survey and graded the site as in Favourable condition. Officers must consider how a site where 15% of its original habitat has been destroyed and replaced with a landscaped parkland can be given this status.

STW have corresponded with NE and the Joint Nature Conservation Committee, who are responsible for the Common Standards Monitoring (CSM) Guidance across the UK countries, and documents have been released by NE under FOI. Several different explanations have been given for this apparent mis-reporting:

Firstly, the Chichester Harbour Feature Condition Table (FCT) dated 2014 containing the definitions of favourable condition says 'No extant surveys of Tournerbury Wood' on p55 indicating that there was no recorded baseline for NE surveyors before the date of change of use for the development in this application. NE surveyors actually say in the 2022 report:

> 'The area referred to as the business amenity area has been modified... but still has a number of open-grown, mature oak trees and there is no evidence of recent felling of mature trees in order to expand the extent of the activity taking place here.'

Section 2.5.3 of this report presents the evidence for the total removal of the pre-2012 habitat in the areas now occupied by earthworks, car parks, infilled ponds and buildings along with an eyewitness account of the construction work undertaken after 13. There are, of course, still many of the original trees present: the issue is not those that remain, but those that were removed between 2013 and 2016 and the effect on habitats and site integrity.

It would seem that in 2022 the surveyors saw a site that had experienced a decade of grooming as a landscaped parkland, and without the evidence from historic air photos and data they could not see this habitat destruction. Surveyors also referred erroneously to the venue development being within the boundary of the old brickworks, which is shown not to be the case in figure 3 from Historic England records.

Secondly, we requested access to the comments made by the NE Protected Sites Senior Adviser on the November 2022 Condition Report, and we have been supplied with the draft version of the report with the comments as a FOI response. The following comments indicate several concerns as follows:

- 'Comment AD5 'What is the enterprise that has been formally consented? The wedding venue business was not named with the 1997 Site management statement and there is no mention of it '
- 'Comment AD9 'I think this is part of the area used for camping ... It was a bit compacted [and] it did seem relatively denuded of ground flora and shrub layer'
- 'Comment AD12 'Should we acknowledge the reprofiling and landscaping that has clearly occurred in the commercial zone e.g. bunds, reseeding, carpark consolidation? This is the crux of the case being made by complainants'
- 'A sentence that appears in the final report: "The woodland is confirmed to remain intact and there is no evidence of loss of extent of woodland.' Comment LC19 'This statement will be challenged, can you include how this was concluded... I assume the Business Amenity Area was always regarded as site fabric and did not support the interest feature given the historical modification due to use as brickpit and works therefore ancient woodland cleared at this time"'

These comments do not appear in the final report and yet they clearly show that NE did know that the special interest had been lost due to 'reprofiling and landscaping' in the development of the venue as well as damage in the camping area.

Comment LC9 goes to the heart of the misunderstanding by NE staff of the history of the site. This statement essentially says that the NE Protected Sites Senior Adviser believed that the venue area had been developed on part of the old brickworks where ancient trees had already been cut down, when this is not the case as the 1935 photo in figure 2 shows.

Comment LC9 also refers to the 'Business Amenity Area' as 'site fabric' nor supporting the [special] interest feature. This remark suggests that if part of the designated site is occupied

by access and facilities like car parks and buildings then it may be excluded from the condition survey. In correspondence with STW on 20th January 2025, JNCC agreed to refer this issue to the Inter-Agency Working Group on Common Standards Monitoring.

Meanwhile, the Statement on Common Standards for Monitoring Protected Sites says on p3 that surveyors should assign the 'partially destroyed' feature condition status in condition surveys where 'the feature itself, or the habitat or processes essential to support it have been removed or irretrievably altered'. The 'CSM: Introduction to the guidance manual' says in the definition of 'partially destroyed' (p18-19) that:

> 'It is important that the extent of a partially destroyed feature is reported even though it would not be subject to monitoring. This means that partially destroyed features will be reported as two separate elements (including when the first assessment at which the feature is discovered to be damaged), one a constant partially destroyed element, and the second the condition of the remainder of the feature'.

NE said in communication with STW on 9th December 2025 that:

> 'Formally recording this area ['Business Amenity Area'] as "partially destroyed," would exclude it from future condition monitoring. However, because it still supports mature oaks, our professional view is that it should remain part of future assessments to ensure it continues contributing to the SSSI features.

We note that the CSM Manual actually says that the extent of 'a partially destroyed feature' should still be reported, and we ask NE to do this. The presence of some mature oaks within an area that has extensive landscaping and habitat loss is not a reason to avoid accurate recording.

Finally, there is a sense in the approach taken by NE that there is an implicit statute of limitations on habitats loss when they replied to NE recognising that work had been undertaken in the 'Business Amenity Area':

> 'We acknowledge that a small part of unit 3 was modified approximately 13 years ago, our 2022 condition assessment reported no evidence of recent felling of mature trees. We consider recent to be an activity which has taken place within the last 12 months.'

However, in planning application assessment the relevant date of consideration is the date of the change of use occurred as decided in Lebus. This date is not one year ago, but 2008.

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.

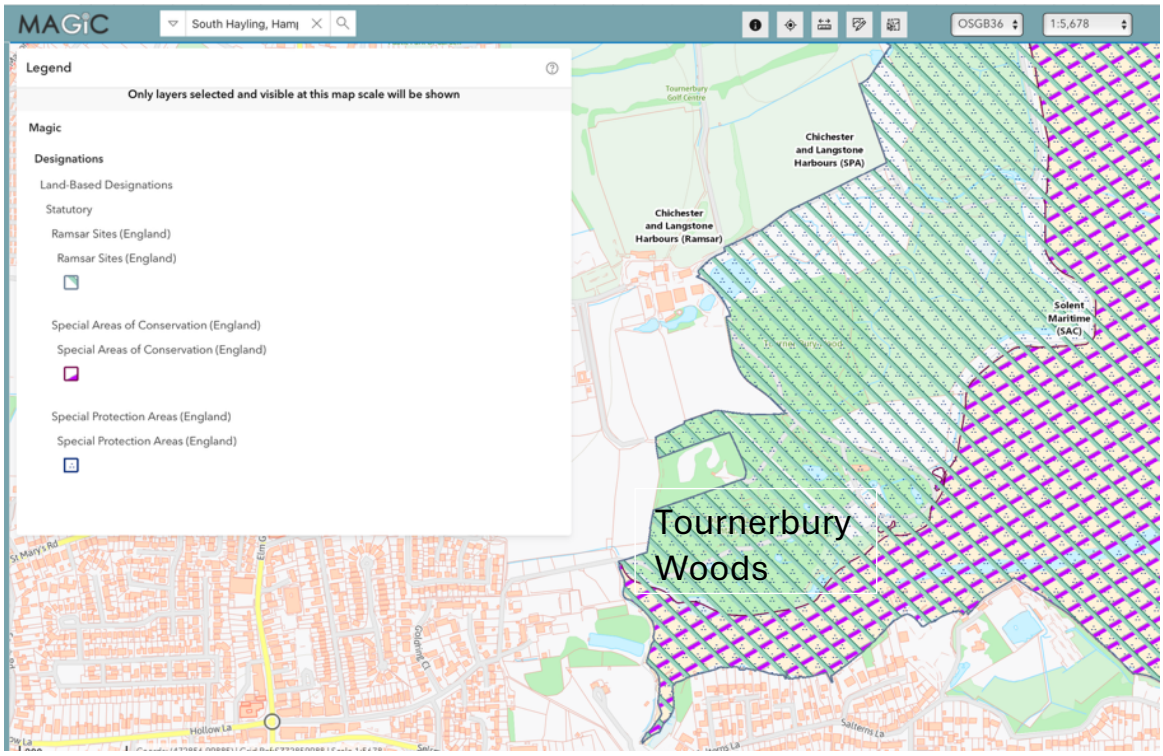


Figure 17 boundaries of SPA/Ramsar and SAC designations

2.6.3. Tree Preservation Order

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.



Figure 18 Tree Preservation Order boundary with 1987 storm damage (green) and salt marsh with naturally deceased trees (purple) over Google maps

This map in figure 18 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 naturally due to salt intrusion and inundation in extreme high tide events.

In the core venue area developed between 2012 and 2016 an area north of Woods Cottage has lost almost all the trees that were present in 2012. As a consequence, Saving Tournerbury Woods has been engaged in a stock-taking exercise since 2022 to establish the fate of trees in the venue area around the marquee building, which is now a landscaped parkland. The trees could have died naturally, been affected by work taking place around them, been blown down or have been removed.

Since trees in Tournerbury Woods have been protected by Havant Council Tree Preservation Order (TPO) 448 since 1971, and the Council has only given consent for the removal of two trees in 2001, neither of which are in the venue area, no trees should have been actively removed unless they were covered by legal exceptions. Under the TPO any trees that had died and were removed must have been reported to the Council, but it was confirmed by the Council that it had received no reports of this kind. The Natural England Management Agreement also requires that dead and fallen trees should be left in place as far as possible to provide habitat for invertebrates and fungi.

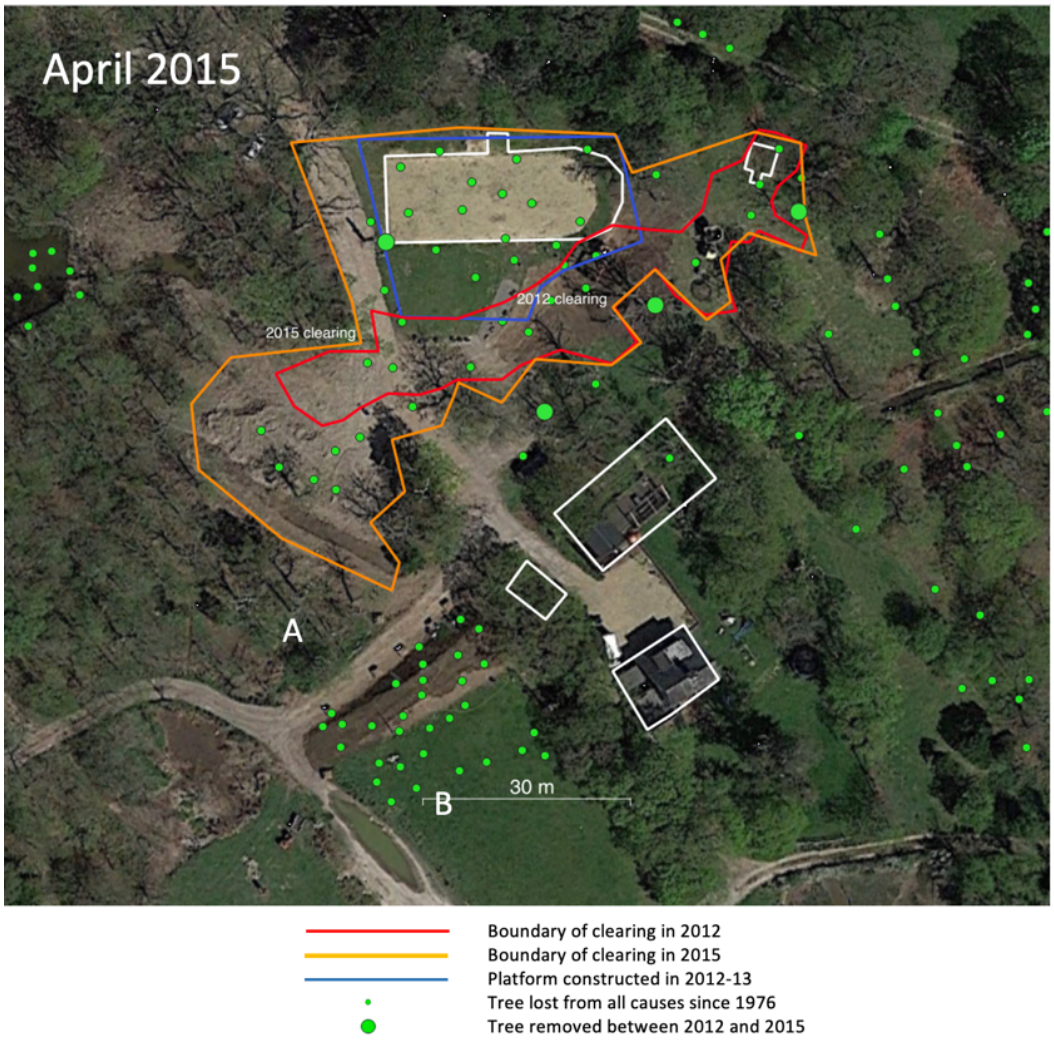


Figure 19 The venue area clearing in 2015 (orange line) showing trees lost there

The presentation of these concerns at a public meeting on Hayling in January 2024 lead to the issuing of libel proceedings against STW in August 2024 by the owners of Tournerbury Woods. After protracted legal argument over 14 months, the owners of the woods allowed the time limit for the formal serving of proceedings to expire bringing the action to an end. STW have now publishing the evidence collected, along with the answers given by the owners in open legal correspondence relating to four specimen trees on the edges of the venue area (shown with large green dots in figure 19).

In summary, the owners say that these four trees died naturally despite their efforts to save them despite the neighbouring construction of a 1000 cubic metre platform. When asked why they had not given the formal notice to the local authority required by the Tree Preservation Order before removing trees they say had died, they have told us that this was not necessary as they were relying on an exception allowed in the law relating to their Management scheme (SMS).

The owners say that the exemption in 2012 Tree Regulations 14(1)(a)(ii) means that the prohibition on 'cutting down, topping, lopping or uprooting of a tree' in the TPO does not apply if any Act of Parliament 'imposes an obligation' on the owners. They argue that as there are obligations in the 'legally required' Natural England Management scheme (SMS), therefore this exemption applies to all woodland management in Tournerbury Woods.

However, the 'obligations' relating to trees in the Management scheme (SMS) are actually very limited. For example, in the SMS section 6.6 says 'To conserve the [ancient monument] feature requires appropriate woodland management'. Mynors says in his famous 'Law of Trees' book that 'for this exemption [14(1)(a)(ii)] to apply, the legislation in question must impose an obligation, not merely authorise something to be carried out'. It is therefore likely that the TPO still applies everywhere where there is no specific obligation in the Management agreement.

Finally, we ask officers to note that the exemption in 14(1)(a)(ii) only covers 'cutting down, topping, lopping or uprooting of a tree', and does not cover two other prohibitions in the TPO saying 'no person may… 'wilfully damage' (13e) or 'wilfully destroy' (13f) any tree in a TPO. We have shown above in 2.5.3 that a large earthwork platform now stands where number of trees stood in 2012, and we show how 3 out of 4 specimen trees around the edge of this platform had their roots covered to a depth of 1.2m by this earthwork platform and they died within a few years. These actions may engage these 2012 Tree Regulations 13e and 13f that are not covered by the exemption in 14(1)(a)(ii) meaning that the death or removal of trees that were wilfully damaged or destroyed must still be reported to the local authority, and this was not done.

Further details of the fate of the four specimen trees can be found at:
https://savingtournerburywoods.org.uk/trees-removed/

2.6.4. NE Priority Habitats

The map of the Natural England Priority Habitats (figure 20) 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 20 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 Protecting and Enhancing the Special Environment and Heritage of Havant Borough
- Policy CS12 Area of Outstanding Natural Beauty
- 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 unauthorised 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 21).

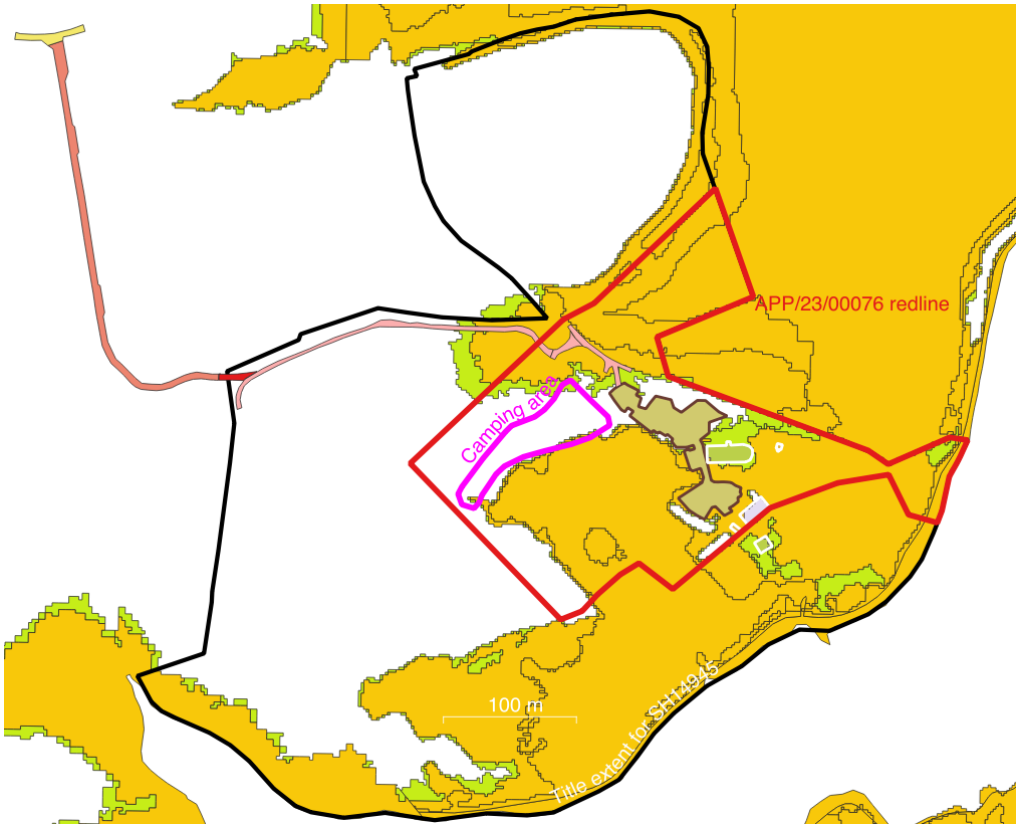


Figure 21 Flood zones 2 (green) and 3 (orange) for Tournerbury showing redline and access

The theoretical flood zones were validated on the night of 8th/9th April 2024 when the area experienced its highest ever tidal 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.

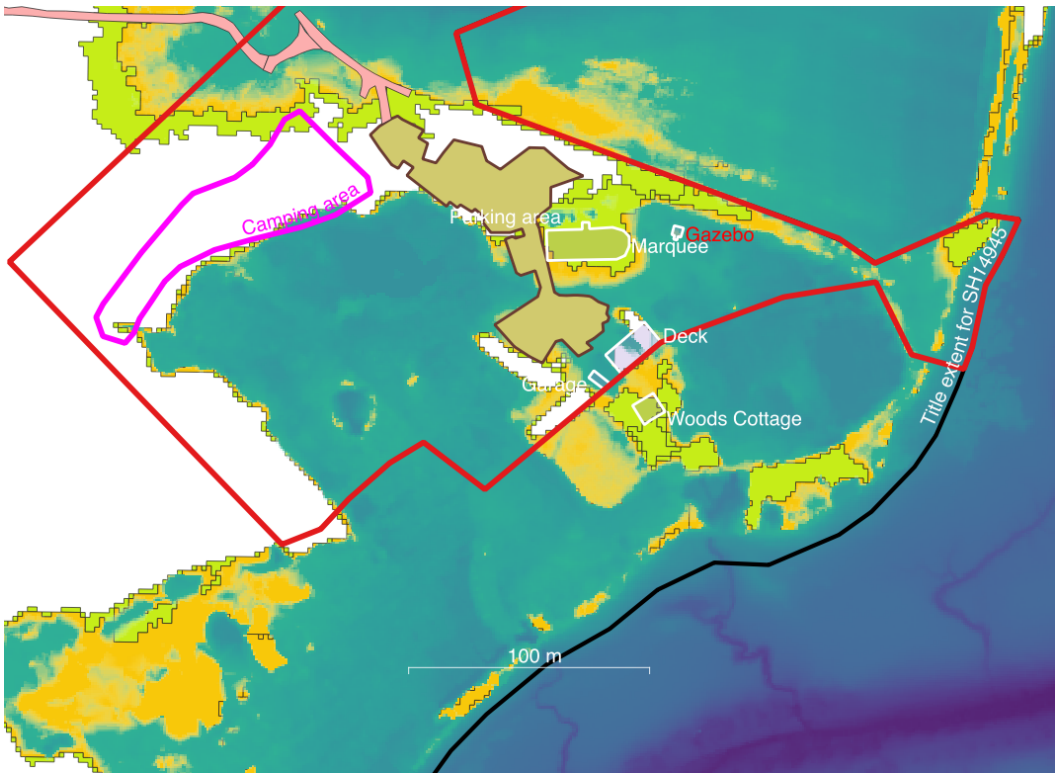


Figure 22 Actual flood water level at highest ever tide of 8th/9th April 2024

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. Clearly this location does not 'require a coastal location'

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 an unsuitable woodland track within Tournerbury Woods.

These routes are shown diagrammatically in figure 23 below.



Figure 23 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 plus 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.

No root protection was given for the construction of the earthwork platform over the roots of trees in the venue area.

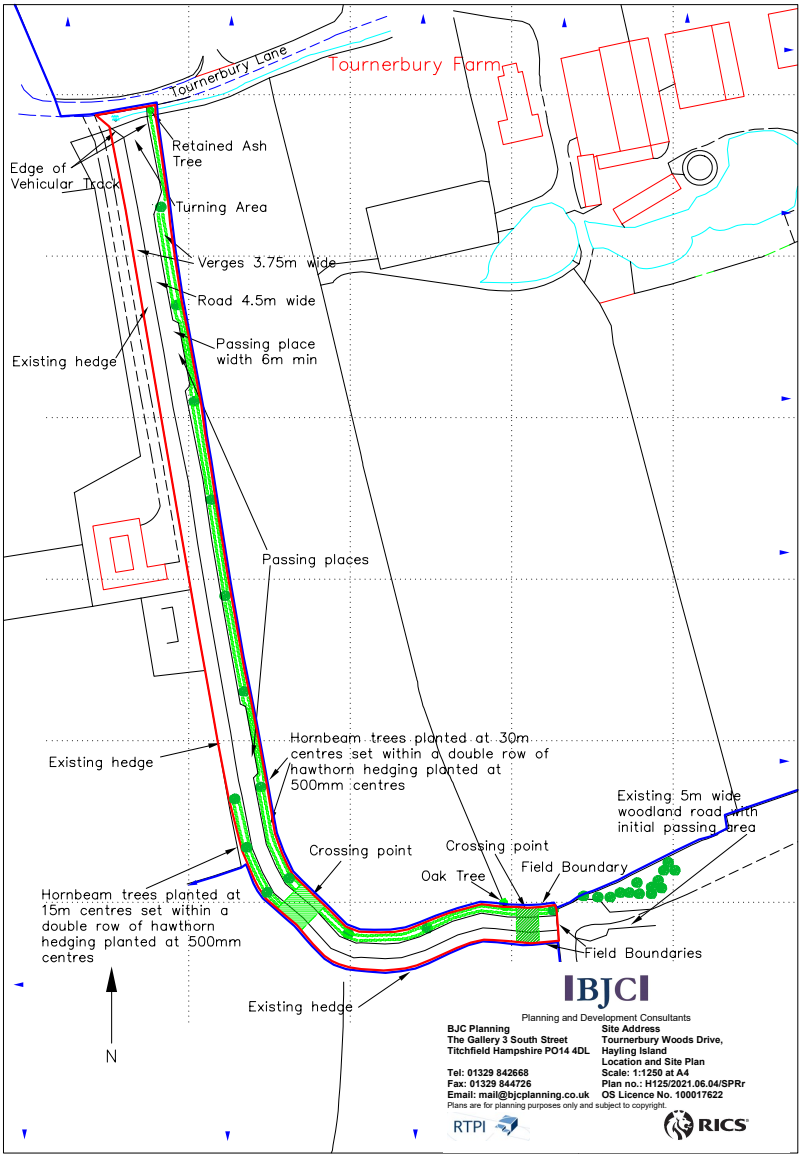


Figure 24 Farm bypass track LOCATION_PLAN for APP/21/00536

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) (figure 24):

- LOCATION_PLAN (figure 24)
- 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 Woods venue intended. Thus, the applicant has seemingly objected to the new access track they had themselves sought.

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 25 below.



Figure 25 Current end of the farm bypass track looking east into the Woods

Beyond the fence visible in figure 25 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 26 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 26 View of the drainage channel at the edge of the woods before May 2024

Approved Document B5 of the current Building Regulations covers access to commercial premises for fire appliances, and gives 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 27) 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 27 Clay and rubble channel infill at the edge of Tournerbury Woods in May 2024

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 28. 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.

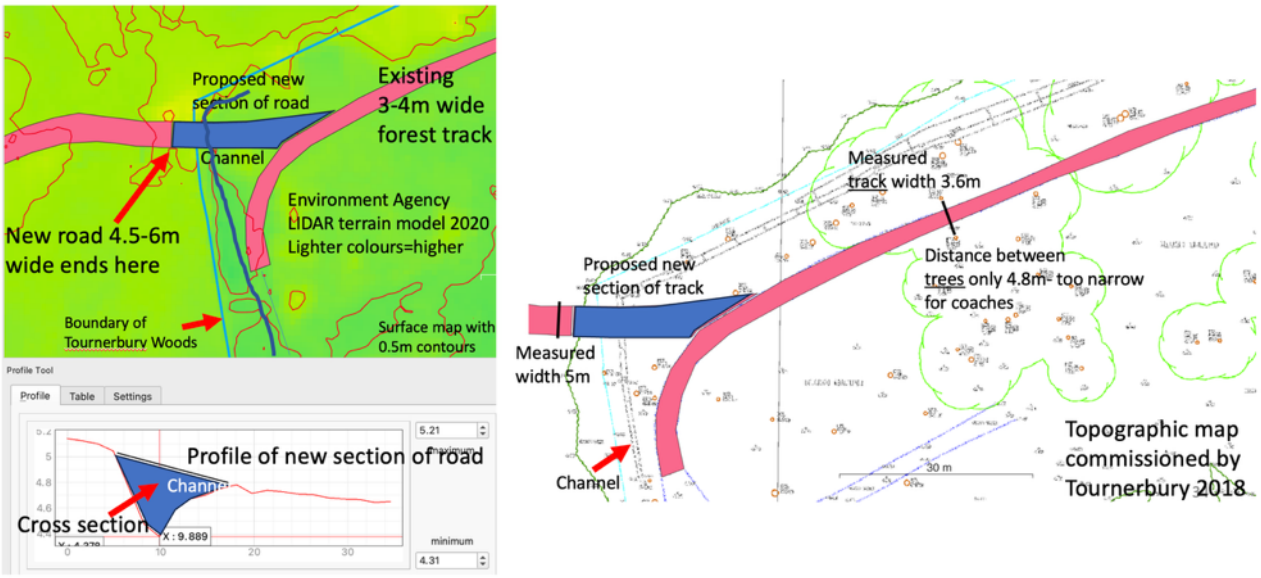


Figure 28 Plan and cross section for the boundary channel crossing drawn up by STW

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

Page 2

Tournerbury Woods Estate
Hayling Island.
Connection to Existing Estate Track

of bank for removal is estimated to be approximately 2.5m³ 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 29 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 30 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 30 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 (our emphasis) 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 and the earthen/ unimproved character of the tracks should be retained'
> 6.5 Tracks (other than woodland earth tracks):
> 'The tracks marked in green on the accompanying map [see figure 31 below] have been upgraded 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.'

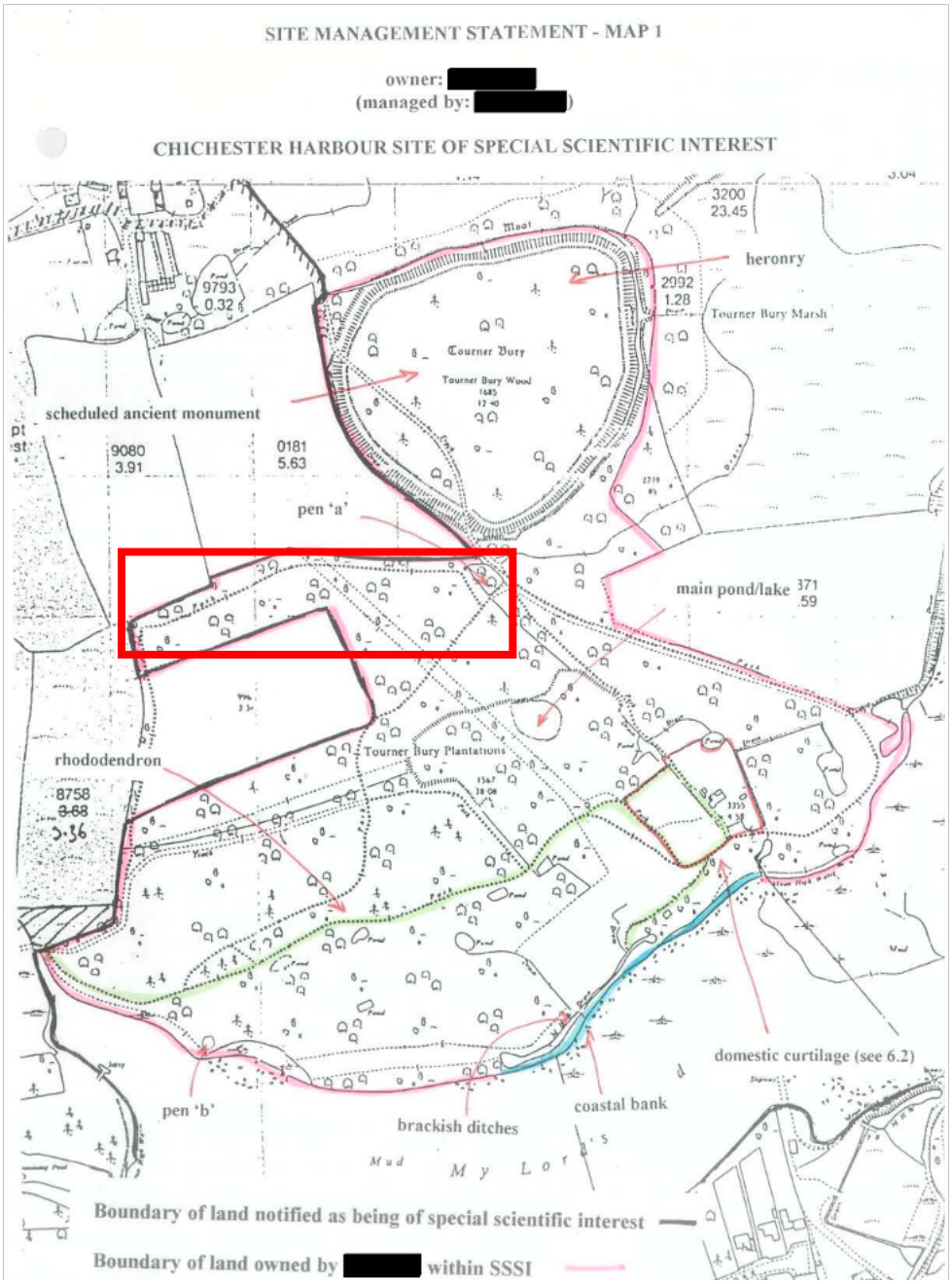


Figure 31 Map 1 in Natural England SMS showing status of tracks (gravel in original green)

In 2014 Tournerbury wrote to Natural England regarding the tracks enclosing a map (see figure 32 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

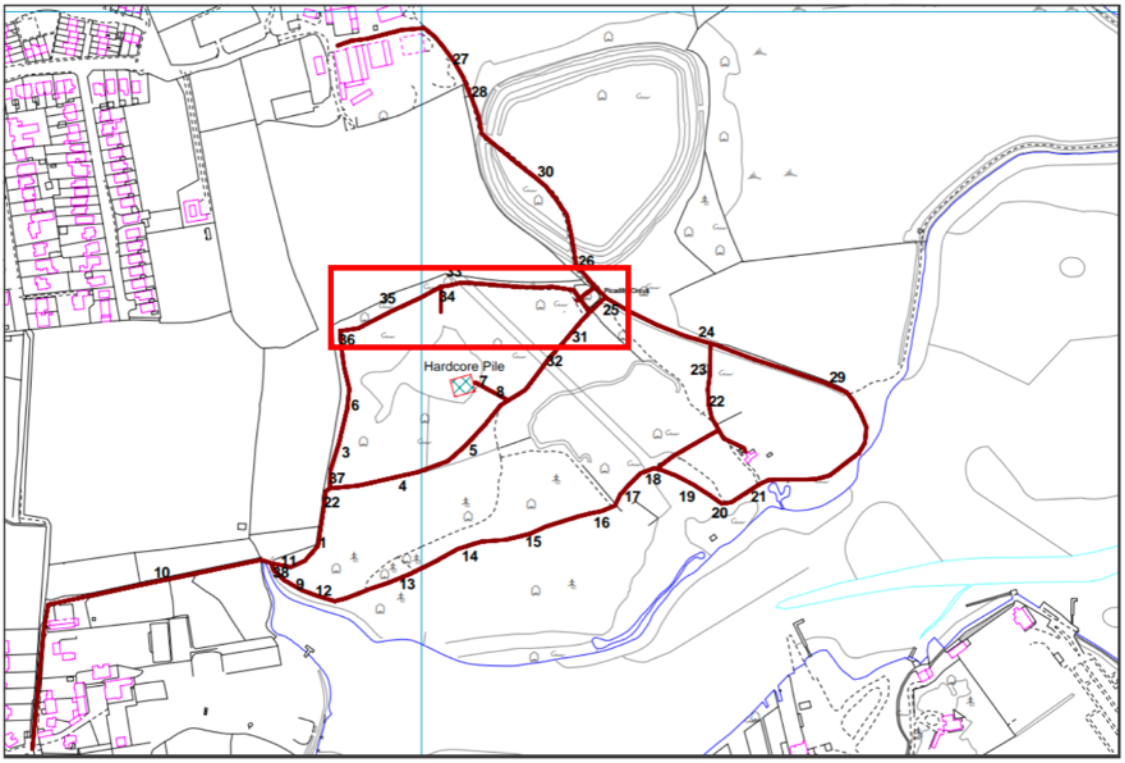


Figure 32 Map of tracks in 2014 supplied by Tournerbury Woods venue

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 33 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 33) 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 the applicants themselves imposed on the adjacent stretch of farm bypass track.



Figure 34 Picture of the woodland track in spring 2024 showing muddy rutted surface unsuitable for heavy traffic

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 34). 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. Hence, the NE requirements will operate as a form of veto on the possibility of using this track as part of the access to the venue.

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

Table 4 Planning applications/ Certificate of Lawfulness applications for Tournerbury Woods development

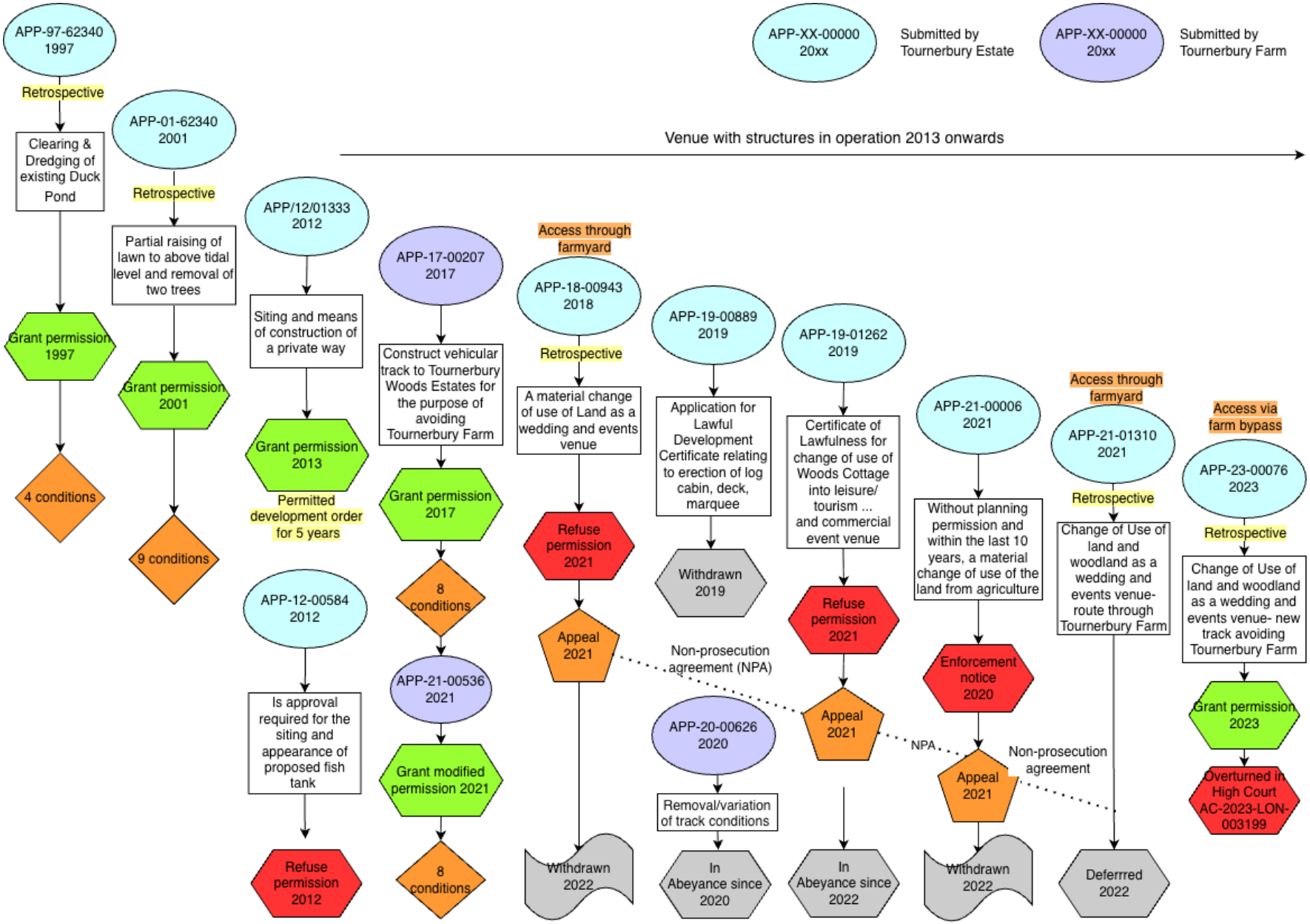


Figure 35 Diagram showing all the planning applications submitted at Tournerbury Woods

3.2. Previous planning decisions

In total, the owners have submitted five planning applications or certificates of lawfulness applications since 2018 seeking retrospective approval for the construction and venue operations since 2013 in these highly protected woods (see figure 35 above). One of these was withdrawn (APP/19/00889), two were refused (APP/18/00943 & APP/19/01262), one was overturned (APP/23/00076) and one was deferred (APP/21/01310). Given appeals and legal action, three (1262, 130 and 76) are still to be decided.

The construction of the originally intended bypass track over farmland to the edge of the woods in APP/17/00207 was given planning consent in 2017 and an updated consent in 2021. These consents are for construction only and not for use to access the venue, but this track was not fully completed when built in 2019. This track has now been withdrawn by the owners as a means of access to Tournerbury Woods.

The Council took action against the owners of the site in 2020 by serving an Enforcement Notice (APP/21/00006) requiring the removal of buildings and the cessation of events. The owners appealed against this decision but withdrew their appeal in May 2022 when the Council changed their position and agreed a Non-Prosecution Agreement with the owners.

This Non-Prosecution Agreement committed the Council not to enforce the lack of planning consent while the owners were given time to make a further retrospective planning application (APP/21/01310) for the same venue and access route, but a reduced number of events compared to APP/18/00943. The Planning Committee considered, but then deferred, a decision on APP/21/01310 in December 2022 and have not yet made a decision on it.

However, the terms of the Non-Prosecution Agreement bind the Council to maintain the protection of the site from enforcement until a planning application is decided, and the Non-Prosecution Agreement has in effect bypassed the planning system for nearly 4 years without any formal end date, and could continue to do so for even longer so long as the Council do not decide at least one planning application. Note also that the Non-Prosecution Agreement gives the owners one more year after all applications and any appeals are settled before the protection from planning law expires. It remains unclear on what statutory basis this agreement was made. The Havant Borough CEO told STW on 29th May 2025 that ‘This is not a letter issued pursuant to section 172A of the Town and Country Planning Act 1990.’

Despite the failure to obtain planning consent, the venue has continued to operate. Saving Tournerbury Woods met with the CEO of Havant Council in April 2025 to request that the Council used a Stop Notice to prevent the events continuing until or unless planning consent had been obtained. We believe that to allow discretion to operate under the current circumstances clearly fails the public interest test of non-enforcement under para 13 of the government's Planning Enforcement Guidance.

This complex situation has arisen because the Council has allowed multiple applications to be made without deciding them, it has served an Enforcement notice but not stopped operations at the venue, and it has facilitated ongoing operations through the Non-Prosecution Agreement when there is no planning consent, and this has 'fettered the councils discretion'. It is now very difficult for the council to do the simple thing, which is to stop all activity, unless and until, a planning decision is made on the substance of the development.

4. Policy considerations

4.1. National Planning Policy Framework

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 'areas of particular importance'. Tournerbury Woods qualifies as an area of particular importance because it is a Site of Special Scientific Interest. There are also relevant development plan policies and thus this application must be determined by reference to them as found in the Gladman v Canterbury City Council [2019] Appeal Court judgment.

We note that the previous Officers report on this application resolved these issues as follows (§7.25):

> 'the site lies in a sensitive environmental setting and the application argues that the income derived from the business activities at the site help underpin the conservation of the habitat and the environment...HRA appropriate assessment has been carried out, as set out above, which has concluded that subject to the avoidance and mitigation packages proposed being secured, these are sufficient to remove the significant effect on the SPAs which would otherwise have been likely to occur.'

STW is challenging this assessment by pointing out that this retrospective application does not include details of major construction that was carried out at the site to create a landscaped parkland, which hugely increases the harm to the integrity of the site that the HRA should be weighing in the balance. We have also noted that from 24 suppliers to the venue shown on its website only 4 are based in the Borough, which means that there is limited economic benefit to the local community in jobs and it adds to the traffic on the bridge in the summer months when it is most congested. These two considerations make for a different planning balance.

Therefore, our submission to Officers is that this application should be determined by reference to development plan policies, of which two are specifically relevant. STW believes that the sustainable development considerations do not come into play.

4.2. Environmental Impact Assessment

We are surprised that Officers have not considered that a screening exercise should be conducted under the Environmental Impact Assessment (EIA) Regulations due to the inclusion of a campsite within this application. Under Schedule 2 column 1 of the EIA 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 of area.

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.

4.3. 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 the 2026 to 2036 timeframe. The 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.

4.3.1. 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 by unauthorised construction 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 through a refusal of consent and the restoration of habitat.

4.3.2. 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 landscaped 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 in 2024 clearly shows.



Figure 36 View of the Tournerbury Woods white marquee from the south in 2024

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). 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] 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 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.

4.4. 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, especially by nature restoration.

5. Consultations

5.1. Natural England

5.1.1. Scope of the NE consultation advice

Natural England (NE) advice states at the outset that the development will:

- ‘have an adverse effect on the integrity of Chichester & Langstone Harbour Special Protection Area (SPA), Chichester & Langstone Harbour Ramsar and Solent Maritime Special Protection Area (SAC)’
- ‘damage or destroy the interest features for which Chichester Harbour Site of Special Scientific Interest has been notified’

Officers should note that NE provide no timeline, map or scope description of these adverse effects or damage.

However, it follows this assessment by saying:

- In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures should be secured: Implementation of the Construction Environmental Management Plan (CEMP) submitted following approval in writing by the district ecologist/biodiversity officer.



Figure 37 Title extent, redline, access, camping and development- red circle is location of unbuilt crossing with approved CEMP. Light shaded area is the Business Amenity Area

Hence, despite the huge scope of the retrospective development within the redline of this application, the only mitigation mentioned by Natural England in its response relates to the CEMP for the unbuilt 25m channel crossing on the access route shown in the red circle shown in figure 37. No mitigation of any kind is suggested for the 'adverse effects' and 'damage' that have occurred in the 6.1ha Business Amenity Area where extensive habitat destruction has occurred. On the face of it, therefore, no mitigation is available for the venue site development that has occurred in this highly protected site and hence the 'effect's must predominate.

Given the FOI releases and correspondence from NE to STW set out in 2.6.1 regarding condition surveys and previous damage to habitat in the 'Business Amenity Area', it is clear that NE's consultation advice only relates to 'present-time' marginal impacts of the proposed development such as the potential construction of a crossing over a channel into the woods (to which the cited CEMP applies). Their 'No-objection -subject to mitigation' response is therefore only referring to this one 'current time impact' on the proposed channel crossing and not the acceptability of the whole development where major habitat loss has occurred as they confirm.

This limited and 'current-time' consultation focus should be read alongside this wide-ranging exclusion on their advice:

> ‘A lack of objection does not mean that there are no significant environmental impacts. Natural England advises that all environmental impacts and opportunities are fully considered and relevant local bodies are consulted.’

The majority of this development application is a retrospective one, and the Habitats Regulation Assessment process requires reference to an environmental baseline before the change of use occurred. Natural England concede that habitat has been removed but do not set out the scope of this as their consultation process only relates to recent events defined as ‘within the last year’ (NE correspondence with STW 19th December 2025).

5.1.2. Limitations on NE’s consultation advice

It is also important for officers to understand the context within which Natural England can respond to this consultation as they are constrained in an unprecedented way due to the 2014 concession they made in the recognition of the legal immunity of the ‘Business Amenity area’ (see section 2.5.5).

In practice, this means that Natural England do not object to operations that would breach the rules anywhere else in the Chichester Harbour SSSI, as it cannot object to these operations in the venue area at Tournerbury. STW asked NE to ensure that they declared this context in their consultation response on this application, but they have opted to omit any context statement and thus officers must consider what NE do not say. Our submission to officers is that this granted ‘Business Amenity Area’ immunity and its constraints on NE are very much a material consideration for those reading the NE response and this explains NE’s silence on this historical habitat loss.

Despite this silence on the ‘Business Amenity Area’ baseline at the change of use, Natural England has said to STW in correspondence (19th September 2023) that it has not, and will not, remove SSSI status at this location. This means that other legal provisions relating to SSSIs still apply, such as the status in the Local plan and we believe the Council should protect what is left of this site and promote nature restoration in line with the Council’s Nature Emergency declaration. There are also some provisions in the Tournerbury Woods Management scheme that apply everywhere in the woods such as rules on the retention of dead wood in situ and a ban on upgrading earth tracks.

It should be noted that NE do comment on the woodland track within the SSSI:

> ‘Please note that our advice is based upon the assumption that the track within the SSSI that the new access track is joining is fit for purpose, ensuring that there is no damage or future proposals to amend the track within the SSSI boundary.’

This current advice references their previous advice on 27th March 2023:

> ‘In our previous response dated 27th February 2023, Natural England requested further information regarding the use of the access track along the northern boundary. Whilst the supporting ecological assessment did include descriptions of this area as plantation it did not include specific detail on this access track. Clarification has now been provided in the Technical Note (Holbury Consultancy Service 2nd March 2023) that this track, whilst vegetated by grass, is long established and is underlain by brick/hardcore. The report confirms that:

- 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.
- 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.
- no works to trees or other adjacent vegetation is required for use of the track by vehicles.'

Direct observation of this track from adjacent land calls into question what Holbury Consultancy have said, perhaps because they have only had a short-term involvement in this matter.

We have set out in section 2.7.3 of this report the reasons why NE's conditions mean that this section of woodland track cannot function as part of the access to the venue site. Officers should not consider recommending a grant of permission including this form of access. NE's conditions operate like an effective veto as it would inevitably be activated by the minimum upgrades to this section of track that would be necessary for it to meet NHBC 2023 Standards and the Building Regulations Approved Document B on fire access.

5.2. Chichester Harbour Conservancy

Chichester Harbour Conservancy (CHC) have submitted a substantive response to the consultation that strongly objects to the application, and STW only wish to highlight certain key points that align with our analysis. It should be noted that one of the STW trustees Jonathan Raper was appointed as the Vice Chair of CHC's Planning Committee on 1st December 2025. To avoid any conflict of interest, he recused himself with respect to the Conservancy's response on this application and he has played no part in its production.

CHC have recommended that the application be immediately refused, the Non-Prosecution Agreement rescinded, that a Stop Notice be served and that the Enforcement notice be implemented. This recommendation is made on the basis of the ecological impacts on the site and its environs.

Specific points relating to this consultation (numbering according to the CHC consultation response):

Introduction section

1.8 We wish to highlight the fact that a decision by Havant officers to accept a Non-Prosecution Agreement in May 2022 drafted by the applicant's planning consultant was done without the knowledge of CHC (a Rule 6 consultee to both the undetermined development applications APP/21/01310 and APP/2300076). This document contains significant flaws and wider scrutiny would have enabled the consequences to be anticipated.

1.11 There is a reference in correspondence with Havant officers to 'fallback'. We wish to note here that we have demonstrated in section 6.2 why no permitted development rights exist, and therefore, why there is no fallback available to the applicant.

3.6 We wish to point out that from the south side of My Lord's Pond the white marquee stands out clearly from house and garden and that to these residents it is not 'glimpsed' but standing in plain sight and stark contrast to the natural environment of the woodland in the SSSI and SPA.

3.7 The statement made in the 'Visitor Management Strategy' (VMS) that 'No vegetation management is permissible by either users of the camping area or the operator'. We wish to point out that Natural England have already said in comments on the 2022 condition survey that:

> 'I think this is part of the area used for camping … It was a bit compacted [and] it did seem relatively denuded of ground flora and shrub layer (see section 2.6.1 above). This is pointing out that damage has already been done in this area, and yet the Council has not yet commissioned an Environmental Impact Assessment as it should do for this camping area.

3.13 The CHC response covers the lighting report in great detail and makes an important observation that local residents can endorse from their own experience:

> 'prior to the wedding events business being operated at the site, the site was in an intrinsically dark part of the Chichester Harbour National Landscape'

We wish to report to officers that at the current time there is a light at canopy level above the event venue that is illuminated 24 hours a day, presumably for security purposes. This light has been installed within the last 12 months and can be seen outside the site. This light represents a further reduction in the darkness that is one of the special qualities protected by the CHC Management plan.

3.33 We note that CHC has called attention to the diminished presence of birdlife in the vicinity of the site. We wish to point out that this is one further component of the loss of SPA/ SSSI site integrity. It should also be noted that 5–6 shooting events are allowed per year in the 1997 Management scheme (SMS) and residents have recorded a shooting party standing on the beach while shooting was going on.

CHC comment section

3.13 we note that CHC indicate that their policy is to refuse applications for new jetties as indicated in this report at 2.52 above.

4.2.8 We note that CHC question the failure of the applicant to furnish receipts for contractors carry out tree management work, which has clearly occurred on the site as we set out in section 2.6.3 on Tree Preservation Order 448 covering the site.

4.2.10 With respect to comments about the visibility of lighting outside the site, local residents can confirm that this lighting is clearly visible outside the site to the south.

4.3.3 With respect to night time photography contrasting the presence of lighting on the south side of My Lord's Pond and comparing this to the lighting visible from Tournerbury Woods, we wish to point out that it is the SSSI and AONB areas that have been set aside to be dark areas through their designation of this nature reserve. It is not a competition… there should be no light generated within a highly protected nature reserve, properties on the south side of My Lord's Pond also have planning conditions restricting the use of lighting.

4.4.3 We note that CHC point out to officers that there is a conflict between the Enforcement notice citation stating that there has been environmental harm at the site and the Shadow Habitats Regulation assessment which has alleged that there is no harm to the special interest features of the site. Once again, we would like to put it to Officers that the proper

date for the assessment of harm to the site is the 'change of use' date of 28th August 2008, and not the date of the Ecological Impact Report.

5.3 We believe that officers must consider the comments made by CHC on impacts on the Heronry and the claim that wildlife has become habituated to disturbance. It is clear in the Lebus judgment that a retrospective development cannot avoid negative appropriate assessment conclusions by relying on the fact that unauthorised development has already destroyed habitat, which includes the habituation or displacement of wildlife from the site.

As CHC state very clearly in their conclusion:

> 'The precautionary protection of the SPA/SAC/SSSI/Ramsar/AONB should be afforded the greatest weight by the Council in its decision'.

5.3. Environment Agency

We note that the Environment Agency have a concern about the proximity of the camping area to the margins of predicted flood zones 2 and 3. We wish to point out that the tidal surge of 8/9th April 2024 has already reached this location and thus the longevity of this camping site must be in question.

5.4. Hampshire Fire & Rescue

The consultation response by Hampshire Fire & Rescue strongly recommends that roadway layouts be considered by planning authorities at the application stage. However, we note that in this case, as it is a retrospective application, these roadways are already in place and they currently cannot meet the requirements of the Building Regulations Approved Document B e.g. 'Minimum turning circle between kerbs 16.8m' (see figure 38 below). Superimposing the tracks and parking areas over the 16.8m turning circles shows clearly that there is not adequate space for a fire appliance to turn or manoeuvre, especially when cars are parked.

This is a further example of the limitations design in a retrospective application.



Figure 38 Mapped 16.8m diameter turning circles in purple shown under the tracks and gravel parking area in yellow

5.5. Havant Borough Ecologist

We have read the consultation response by the Havant Borough Ecologist with concern, as we note the cautious and limited comments that are made, including:

> Para 2 'I am content that the proposals present no additional ecological constraints… Habitats at the site have not materially changed since the previous round of surveys'
> Para 3 'I am unable to provide meaningful comment on past management of trees'

We would expect an analysis of the absolute impacts of the development on the site's integrity, rather than a statement that differentiates the current resubmission from the previous submission.

STW wrote to the Havant Borough Ecologist in August 2025, setting out the detailed evidence of tree loss that had emerged from our research and disclosures made during legal action over the TPO and it is disappointing that the provision of factual evidence and testimony to the loss of trees has not been remarked upon in this report.

This is especially notable as the Ecologist wrote in an internal Council memo dated 13th March 2024 and released to STW under FOI referring to a complaint made by us to the Council that:

> 'Unfortunately, now that I've look at this in more detail I think he has a point here. Whilst there are lots of reasons why tree cover might change over the span of 50 odd years (Dutch Elm disease, natural death/decay, Ash Dieback), and we can't really say with any certainty that the majority of trees (seemingly) missing between years have been deliberately removed, there are evidenced examples of what clearly seems to be deliberate removal. Not sure what else I can say…'

We would ask officers to consider this point and seek an understanding from the Ecologist of what they meant in their internal memo, and how this should be considered in the light of our assertion that the site's integrity has been compromised in various ways including in relation to trees.

We would also like to note that the Havant Borough Ecologist's assessment is at variance with the Chichester Harbour Conservancy's ecologist advice as set out in the CHC consultee response:

CHC Ecologist is quoted as saying in 3.11 CHC Consultation response that:
'The current strategy for management of numbers of events, and the visitors at those events is extremely unlikely to be enforced in the future and thus has a strong likelihood of negative impacts on breeding birds and bat activity, due to noise, visual disturbance and lighting.'

CHC response 4.2.3 'The report plays down the significance of the heronry by stating not one of 30 notified features which led to SSSI being designated. Your Ecologist takes a contrary view. Survey data 2015 & 2019 shows number of heron nests halved during that time from 8 to 4 nests.

Finally, it is of central importance to consider the Havant Borough Ecologist's assessment of the scope of the Habitats Regulations Assessment appropriate assessment as follows:

> 'I am content that the scope of the HRA is appropriate. Of these pathways only noise, recreational disturbance, sightline disruption, and water quality (nutrients) are taken forward to the later stages of HRA. The HRA goes on to assess these potential impact pathways in detail and to conclude that impacts to the integrity of the European sites

> will not occur as a result of the proposals. I am content that the assessment of impacts is appropriate and that its conclusions are well-evidenced. As such, I concur that – with appropriate avoidance and mitigation measures in place and secured – impacts to European site integrity will not occur.

In this report we have set out in great detail to an evidential standard the substantial harms that have occurred to the site's integrity that occurred in the 10 years after the date declared for the change of use in 2008. It is our very strong assertion that it is not possible to proceed to the consideration of noise, recreational disturbance and sightline disruption impacts because up to 15% of the entire habitat at the site has been removed and this is the material consideration when conducting the HRA appropriate assessment.

It is absolutely clear in the landmark Sweetman v An Bord Pleanála Habitats Regulation case [2011] that:

- Permanent habitat loss is in itself an adverse effect on integrity
- Assessment must address what is lost, not merely what remains

Thus, we submit that the Havant Borough Ecologist's assessment of the scope of the Habitats Regulations Assessment appropriate assessment is in error, and only refers to the period after permanent habitat loss has occurred and being landscaped into a parkland.

We look to officers in this case to make a full formal evaluation of the appropriate baseline for the HRA appropriate assessment baseline, and if this is missing, we would consider this to be a serious procedural error in the consideration of this application.

5.6. Shadow Ecological Impact Assessment

We have read the Shadow Ecological Impact Assessment (SEIA) with a great deal of concern as the authors state on page 1 that:

> 'As this is a retrospective planning application, the associated impacts have already taken place.'

Since the judgment in Lebus v S. Cambridgeshire [2002] it has been clearly established that environmental assessment obligations apply equally to retrospective applications and that the baseline must be before the unauthorised development has taken place. The date of the change of use claimed in this application is 28th August 2008, and thus the environmental impact assessment baseline must predate all of the unauthorised earthworks, car park construction, pond and filling, tracks surfacing and building construction.

It is perhaps to be expected that a Shadow report would reflect the brief given by the applicant, and that the applicant would wish to specify the scope that is most favourable to the application. The converse is also true, and this report takes a starting point that protected sites must be assessed according to law and the precautionary principle. We believe that Officers must consider whether the Shadow report can be weighed in the planning balance at all, as it refers exclusively to the status of the site after the principal habitat loss has taken place.

We note that a scoping exercise is undertaken by the authors to decide whether impacts to specific wildlife should be included or excluded in the assessment. It should be noted by Officers that in several cases the 'scoping out' of the wildlife impacts is due to the fact that the major habitat loss that occurred in the early years after the change of use date of 2008 now makes it impossible for certain species to exist on the site.

These examples of loss of site habitat leading to wildlife displacement include:

> 'The majority of the events area is within an area of regularly managed modified grassland, which is considered to be unsuitable for reptiles due to the lack of cover and risk of predation. The parking area is an area of shaded, formerly bare ground in open woodland close to the buildings. The habitats within the events area provide no substantial cover for the reptiles.' p13

This assessment, simply put, says that the modified landscape is unsuitable for reptiles. By implication if the original habitat was present, it might support reptile species.

> 'There is suitability for breeding great crested newt within the small ponds in South Wood' p13

The report goes on to say on page 14 that:

> 'As the ponds are all to be retained and no terrestrial habitat is to be removed, the previous Ecological Assessment concluded there would be no impact on great crested newt, should they be present'

However, we note that several ponds were filled in during the unauthorised development, including one under the current Deck building.

This shadow SEIS assessment comprehensively misses the point: the fact that there is no change in the current landscaped parkland modified from the original Lowland Deciduous Forest since the last planning application submission in 2020 is not the issue. The issue is that the original habitat in 2008 would have been 15% larger before habitat destruction and this would have increased the opportunity for the species to colonise this area. This is a case study of what the Habitat Regulations are intended to establish: that habitat destruction leads to a loss of site integrity.

Finally, we note that the CHC consultation response in 4.2.12 says:

> 'The ecological consultant says it is very unlikely that dogs would be present at a wedding or other event. Still, this cannot be ruled out or controlled by planning condition, so disturbance to birds at the shoreline might still result.'

We have reported in section 6.4.2 a case where a dog off its lead has been seen on the shoreline, leading to stress to nearby birds. Thus, this is not a theoretical concern.

5.7. Shadow appropriate assessment

We have a number of concerns with the methodology used in this Shadow appropriate assessment and the conclusions drawn.

Firstly, in section 4.8 the appropriate assessment suggests that the conservation objectives of the SPA are set out in a short list of qualifying features for site code UK9011011 at: https://publications.naturalengland.org.uk/publication/5789102905491456

However, this is simply a list of species and does not have the conservation objectives despite its title. The full conservation objectives are presented in the Chichester Harbour Feature Condition Table, which it appears that the appropriate assessment has not made reference to. This has the following aims for Tournerbury Woods:

> 'To maintain the Broadleaved, Mixed and Yew Woodland at Chichester Harbour SSSI in favourable condition, with particular reference to relevant specific designated interest features. Favourable condition is defined at this site in terms of the following site-specific standards'

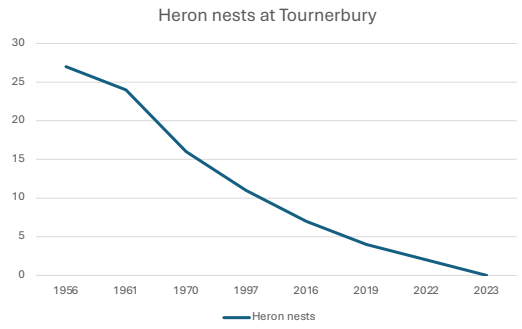
In ‘Structure and Natural processes’ for this woodland present in Tournerbury the key target is ‘A minimum of between 5% and 10% permanent open space (rides etc) and minimum of 10% temporary open space’. It is clear that due to habitat destruction and tree loss due to the development of the venue, this target cannot be met for Tournerbury Woods.

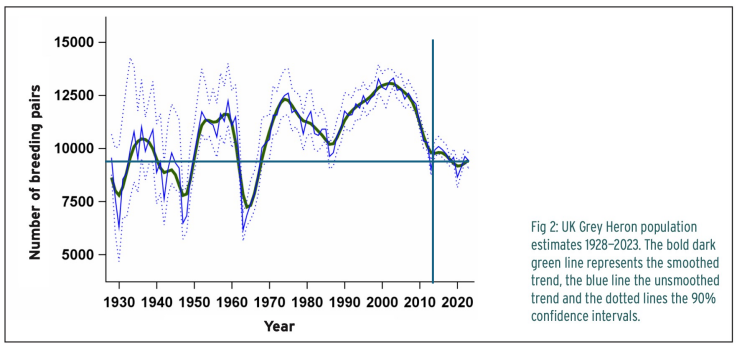
Secondly, the appropriate assessment document also states the following:
‘It should also be noted that the heronry is not a notified feature of the Chichester Harbour SSSI.’
This is not correct… the citation can be seen at
http://designatedsites.naturalengland.org.uk/PDFsForWeb/Citation/1003245.pdf
Under the heading ‘Reasons for Notification’ it states:
‘Semi-natural broadleaved woodland associated with the Harbour is important for breeding birds and supports two heronries’. Details of Oldpark Wood and Tournerbury Woods are given in the subsequence sentence.

In the re-notification under the Wildlife & Countryside Act (1981) it is stated that:
Site Name: CHICHESTER HARBOUR, WEST SUSSEX
‘Site qualifies under the Revised Policy Procedure Guidelines on the Selection of Biological SSSI's according to the following criteria’ p1… species list on p2 includes Grey Heron in the highest Rank 3.

By comparing Grey Heron population numbers since the 1950s from the British Trust for Ornithology (BTO) Heron census against the nest count at Tournerbury we can see that nationally Grey Herons are at the 100 year average, while at Tournerbury a once vibrant colony with 10 nests as recently as 2000 now appear to be extinct. We do not have detailed current figures as STW were informed by the BTO that the site owner has denied access for a heron nest count since 2019.

British Trust for Ornithology Heronries Census
2023 Summary Report & Tournerbury count of breeding pairs





Tournerbury: 1970-2023 fall from 16 pairs to zero from Savidge 1962 and BTO figures until 2019 access denied Large duck pond was excavated in 1992 and unauthorised dumping to raise lawns began in 1996 and major work from 2013-2018 in venue area on lawns and car parks.

Nationally, a decline in herons 1976-1988, growth 1988-2003, a decline from 2003 to 2013 and broadly level since 2013. Hence, in 2023 herons nationally were still nesting at the one-hundred-year long-term average level with a small rise since 2020.Herons have stopped nesting in Tournerbury when nationally herons have not declined over the same period

Figure 39 Tournerbury nest count and the National heron census

This is a further example of site integrity loss through wildlife disturbance and displacement.

Thirdly, in appropriate assessment Table 2: 'Disturbance from construction activities' it states that:

> 'All construction associated with the retrospective planning application has taken place. There is no possibility of further impact in this regard.'

Once again we must refer to the Sweetman v An Bord Pleanála Habitats Regulation case [2011] which found that:

- Permanent habitat loss is in itself an adverse effect on integrity
- Assessment must address what is lost, not merely what remains

Thus, we submit that the scope of the Habitats Regulations Assessment appropriate assessment is in error and only refers to the period after permanent habitat loss has occurred and been landscaped into a parkland.

5.8. Shadow Bat survey report

The Bat Survey Report December 2020 from Hampshire Ecological Services Ltd submitted as part of APP/18/00943 and re-posted in this application states that Common and Soprano Pipistrelles bats were observed at Woods Cottage in July and August 2020. Figures 8-14 show that bat commuting and foraging routes span the application site.

A further bat survey was undertaken in October 2025 and reported in the Shadow Ecological Impact Assessment (SEIA) figures 4a-c. This survey showed the presence of 5 species of bat including the Soprano Pipistrelle and the Brown Long Eared bat.

The Soprano Pipistrelle (Pipistrellus pygmaeus) and the Brown Long-Eared Bat (Plecotus auritus) are on Section 41 (S41) list of habitats and species which are of principal importance for the conservation of biodiversity in England. Conserving species on the Section 41 list is an important part of Havant Borough's compliance with the Biodiversity Duty in the Environment Act 2021.

It is notable that the transact routes that are shown in the SEIA skirt the venue area and do not cross it. That can also be seen that one of the transects currently runs along the long access of the camping area that would be brought into use.

In the CHC response it is stated in section 4.2.2

> 'Agreeing it can affect bats foraging … but implying that it has been there throughout use, then the impact is not adverse. Habituation to changed site is not acceptable legitimation'

The evidence of the bat survey does suggest habitation by avoidance and use of the fringe areas of the woodland. This represents a further impact to the site integrity through the displacement of wildlife.

5.9. Shadow Lighting Report

The CHC consultation response sets out in great detail the concerns that they have about the proposals in the lighting report. It is our position that the introduction of significant lighting, especially in the darker months is a serious breach of the dark sky objectives in the CHC management plan as detailed in the Supplementary Joint Planning Document for the Chichester Harbour AONB (National Landscape), to which no Council consultee refers.

We would like to point out one specific omission in the lighting report, which is the failure to refer to the headlights of vehicles accessing the site after dark. Typical halogen headlights of the kind in most cars, typically produce between 700 and 1,200 lumens per bulb, and the lighting impact from up to 120 cars per event has not been accounted for in terms of disturbance to wildlife. This is a serious omission that officers should rectify.

5.10. Shadow Landscape and Visual Appraisal

In common with some of the other consultation responses, the Shadow Landscape and Visual Appraisal (SL&VA) is not able to correctly summarise the landscape history and the topography of the application area. For example, the SL&VA says in 1.3.4:

> 'Tournerbury Woods has a considerable presence when viewed from the water, giving a natural character to the northern shore of ~~Mengham Creek~~ (My Lord's Pond). However, views of the site and of structures within it, such as the Marquee, are limited to winter months and are fleeting.'

As shown in figure 36 marquee is clearly visible from My Lord's Pond as a large white and alien structure within the woodland, and the view is not fleeting nor limited to winter.

The SL&VA report, like several other consultations, takes the existence of the site that has been built without consent as a status quo:

> 1.4.1 'There will be no change to the existing valued character of Tournerbury Woods. There has been no loss of any features of landscape value. The Marquee and Deck are in an area already associated with Woods Cottage and influenced by the former use of Tournerbury Woods for brickworks.'

We wish to say to officersthat the change that should have been considered is the change that has already occurred in 2013 when the marquee was erected without any planning consent. Regularising this retrospective development would actually execute the change to landscape value which should remain an unspoiled woodland area.

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 venue buildings (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 planning unit created by the unauthorised development.

It should also be noted by Officers that consideration of the construction or use of a floating jetty would necessarily extend the development scope 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 and fallback

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 any 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 be considered 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's integrity 'in view of that site's conservation objectives'. Integrity is about the site's ability to meet its conservation objectives which are set out in the Chichester Harbour Feature Condition Table.

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 previously referred 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).

Table 5 Fauna and flora in the Officers reports and shadow reports

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 introduced 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 previous 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 .. the SSSI’

It is possible that the EIAR ecologists and the Natural England surveyors were not told of the history of major earthwork construction 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 40 below).



Figure 40 NE picture DSCF0617 showing part of the earthworks covering the woodland floor

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 15% 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 the refusal of the 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 Council's 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 modified 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 councillors 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 unfenced 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 current buildings and the camping area was all woodland (see figure 41 below showing the site on 21st April 2007).



Figure 41 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 all 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. Countryside & Rights of Way Act 2000 Section 85, as amended

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.'

The implementation of this duty is currently set out in the Joint Supplementary Planning Document (JSPD) agreed between Havant Borough Council, Chichester District Council, and Chichester Harbour Conservancy (CHC).

The Chichester Harbour Conservancy has adopted a new Management plan for 2025 to 2030. In this new Plan the special qualities making up the natural beauty of the CHC AONB (National Landscape) are protected from inappropriate development through the seven Planning Principles. Development in Tournerbury Woods would affect:

- Landscape setting, especially the positioning of light-coloured buildings such as a white marquee within the wooded shoreline (Planning Principle 1 and para 16.1 of the JSPD)
- Tree cover and birdlife as trees have been affected by earthworks constructed at the site without planning consent (Planning Principle 1 and para 9.1 of the JSPD)
- Dark skies without artificial light, as venue lights are permanently lit and headlights of car passing through the woods causes disturbance to birds (Planning Principle 5 and para 30.1 of the JSPD)

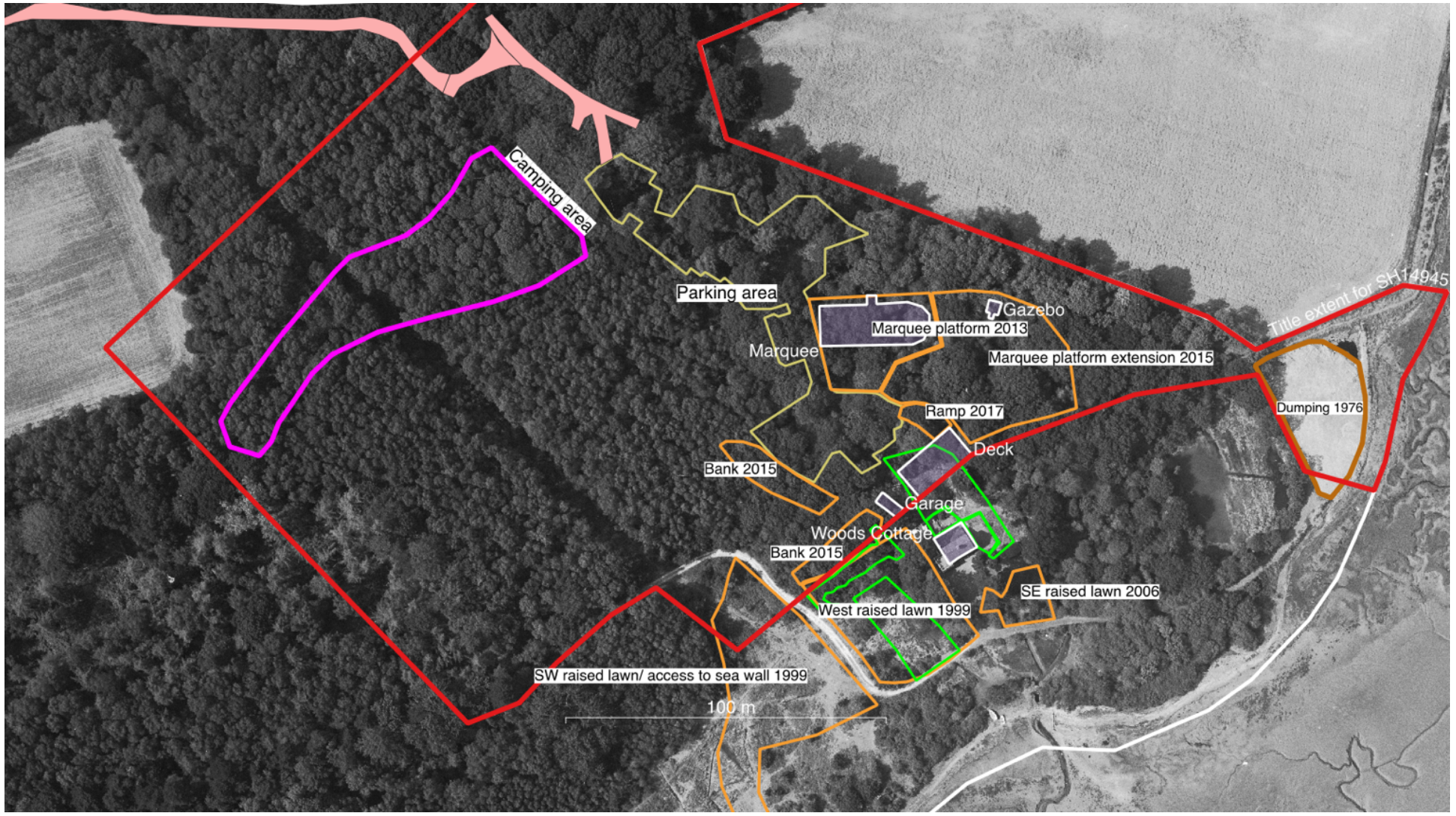
The CHC Management Plan says in Planning Principle 4 that 'New tourism, commercial or agricultural development will be supported where it is demonstrated there will be no harm from visual intrusion, noise, increased activity nor erosion of rural character. Development of an event venue in Tournerbury Woods generates all of these harms in this Planning Principle.

6.6. Recommendation

STW have set out a large number of reasons why this application should be recommended for refusal. This is an important application nationally: if consent were granted retrospectively for a large amount of landscape alteration to take place within an area protected by SSSI/ SPA/ SAC designations this would be the first time such a consent had been given in England and it would set a precedent with far reaching consequences.

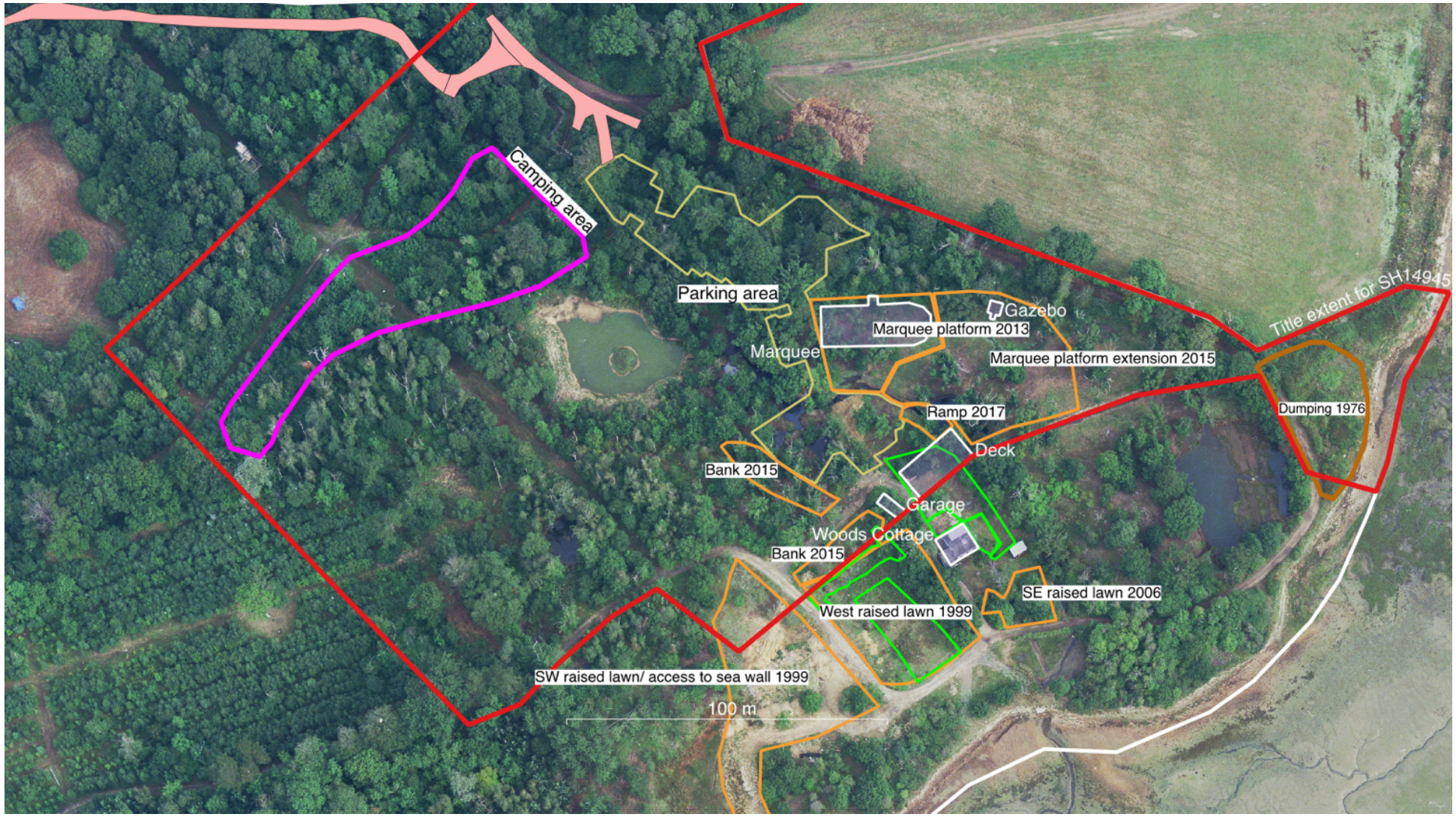
7. Appendices

1976 Air photo with all development



National Collection of Air Photography 11th July 1976

1999 Air photo with all development



National Collection of Air Photography 15th August 1999

2007 Air photo with all development



Bluesky 21st April 2007

2012 Air photo with all development



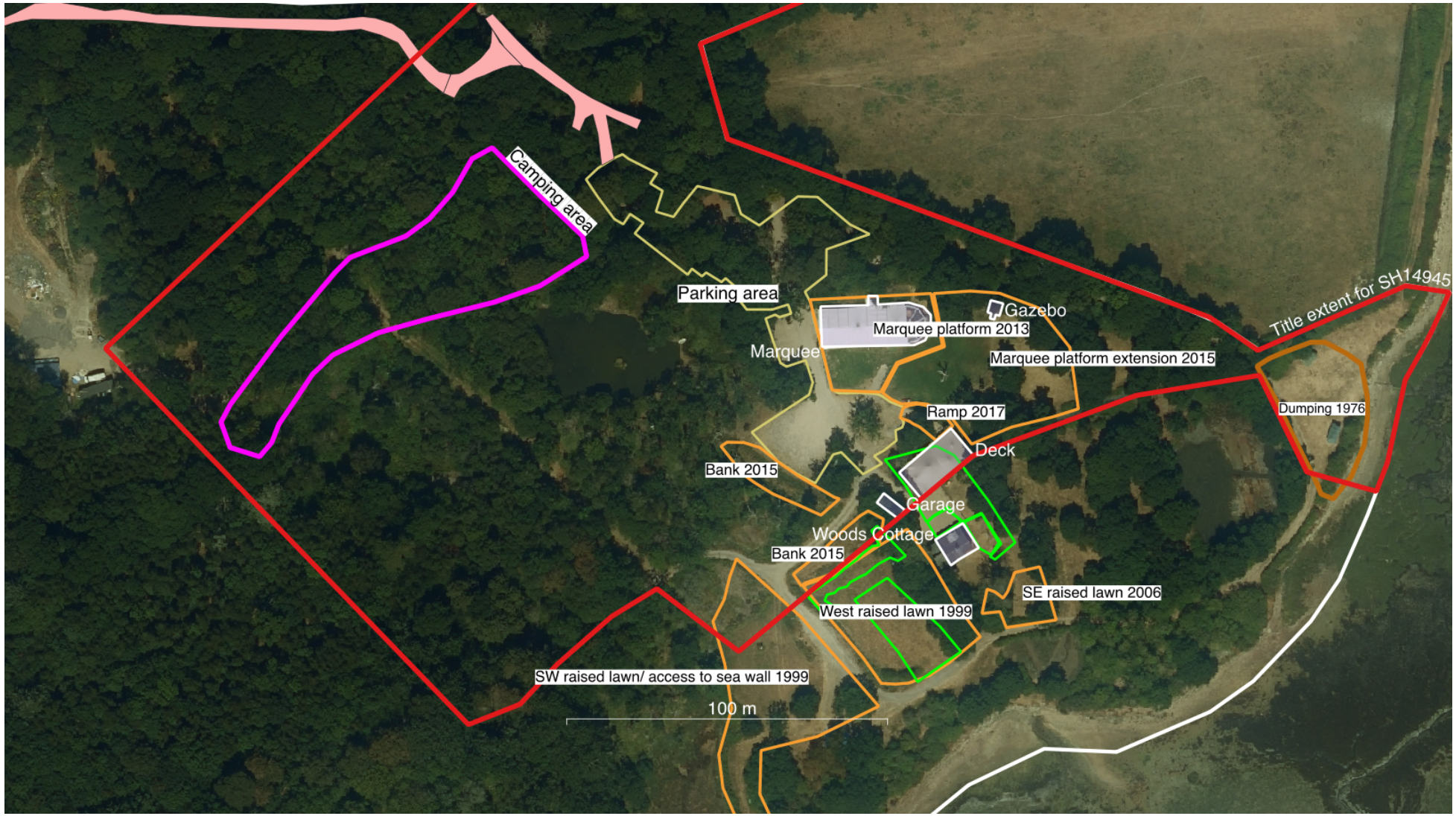
ESRI World Imagery 16th May 2012

2015 Air photo with all development



Google Earth 22nd April 2015

2018 Air photo with all development



Bluesky 23rd July 2018