

**Tournerbury Woods Estate, Hayling Island, Hampshire**

**Appeal under section 174 of the Town and Country Planning Act 1990  
by Mr Christopher Snell, Mrs Alice Snell and Tournerbury Holdings Ltd  
against an Enforcement Notice issued by Havant Borough Council**

**Council Reference: 18/00051/CMP/UNCU**

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**STATEMENT OF APPEAL  
ON BEHALF OF THE APPELLANTS**

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## **1 INTRODUCTION AND SUMMARY**

- 1.1 This Statement is provided on behalf of Mr Christopher Snell, Mrs Alice Snell and Tournerbury Holdings Ltd (“the Appellants”) in support of their appeal against an Enforcement Notice issued by Havant Borough Council (“the Council”) dated 17<sup>th</sup> January 2020 in connection with the use of land at Tournerbury Woods, Hayling Island, Hampshire (“the Appeal Site”).
- 1.2 This Statement (together with the accompanying Appeal Form) specifies the grounds of appeal and sets out briefly the facts on which the Appellants propose to rely in support of those grounds, in accordance with Regulation 6 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002. It also addresses other procedural and administrative issues. The remainder of this Statement is structured as follows.
- 1.3 Section 2 of this Statement addresses the background. This is necessarily extensive, given the complexity of the issues in this case and the interrelationship between the issues under the Enforcement Notice and those under a planning application (reference APP/18/00943) and a Certificate of Lawful Existing Use or Development (“CLEUD”) application (reference APP/19/01262) by which the Appellants have sought to regularise the use of the site (both of which applications remain undetermined) following extensive discussions with representatives of the local planning authority. The Appellants’ position is the decision to enforce was premature given these outstanding applications, and the Council itself recognises in its Enforcement Report the Enforcement Notice will fall if the planning application was to be granted (and the same must be the case so far as the CLEUD application is concerned).
- 1.4 Section 3 of this Statement addresses the grounds of appeal. The Appeal is pursued by all Appellants on Grounds (b), (d), (f) and (g) and, in addition, by Mr Snell on Ground (a). The other Appellants support Mr Snell’s position on Ground (a), but do not pursue it themselves since to do so would incur a fee, as explained in the Introduction to Section 3. The position on each Ground is, in essential detail, as follows:
- Ground (a): The use of the site is appropriate, conforming to adopted local and National Planning Policy, and can be, and has been, undertaken without harm to acknowledged planning interests, including environmental considerations. Indeed, the use has considerable net environmental, social and economic benefits. The Appellants will discuss with the Council whether any conditions should be attached to any permission granted on the deemed application and/or whether any additional control through a legal agreement or undertaking should be provided (linked, for example, to a site operation management plan, previously discussed with the planning authority). To date the Council has not requested a legal agreement or undertaking.
  - Ground (b): The Notice is factually wrong to allege that the change of use occurred “within the last 10 years”.
  - Ground (d): The change of use is lawful, having continued uninterrupted for more than the requisite 10year period and has not changed character within that period. It is too late to take enforcement action.
  - Ground (f): The steps required by the Notice are excessive in various respects.
  - Ground (g): The 3-month period for compliance is unreasonably short and would harm the interests not only of the Appellants but also of those who have booked events at the site and the local economy. A period of at least 12 months from the date of the Appeal decision is appropriate for compliance.

- 1.5 Section 4 addresses procedural matters. For the reasons set out there, the Appellants contend that the decision on this Appeal should await the Council's decision on the planning and CLEUD applications.
- 1.6 Section 5 addresses choice of procedure. For the reasons set out there, the Appellants contend an Inquiry is necessary.
- 1.7 Section 6 addresses witnesses and inquiry length. As there explained, the Appellants currently intend to call six witnesses and consider a four-day inquiry will be required.
- 1.8 Section 7 addresses fee issues on the deemed application. As there explained, by operation of Regulation 10(7) of the Town and Country Planning (Fee for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, no fee is payable on the deemed application in this case.
- 1.9 Finally, Section 8 addresses health and safety issues relevant to any site visit by an Inspector.

## **2 BACKGROUND**

### **The Appeal Site and its History**

- 2.1 Tournerbury Woods Estate is located on Hayling Island, Hampshire and has been operating as a commercial business since 2000. The venue has operated more formally and substantially since 2008 with full public knowledge. The use has not been hidden, obscured or concealed, being publicised locally and nationally. Available to book and host events at any time from its opening, it operated in an informal manner from 2000 to 2008, but thereafter its popularity grew with frequent bookings and greater management and administration required. The site and events are managed by Tournerbury Holdings Ltd, one of the Appellants in this appeal (alongside the freehold owners of the site Mr and Mrs Snell).
- 2.2 The Appeal Site was originally part of a working farm but was of limited value to the wider agricultural operation because of its mudflats, woodland, and scheduled monument. Only a relatively small area of open land existed around the dwelling and this too was unsuitable for most agricultural purposes. The area of woodland, now comprising a significant element of the Appeal Site, was used for ad hoc shooting as part of daily farming activities, with pheasants reared in the woodland for sport.
- 2.3 The original holding was broken up and sold off with Tournerbury Woods, the Appeal Site, left as a single entity to the current owners from November 1987. They set up the holdings company and began to hold commercial events from 2000, benefitting from the site's character and available capacity, and its attractive setting on the shore of Chichester Harbour. The original access to the site from the public highway was retained, but following the sale, crossed land then transferred to third party ownership. Full rights of access were, however, retained and utilised in association with commercial activities at the Appeal Site. The access operated without significant issue until 2016/17 when, in response to increased usage, agreement was reached with the adjacent landowner (Mr Phillips) to seek permission for a new access to divert event traffic away from his property.
- 2.4 Use of the site for 'events' commenced in an ad hoc manner around 1990, with a change of use of the dwelling in 1998 for letting purposes. This was used initially for short term holiday lets, but increasingly it is used in association with activities arising from the commercial use of the land. The popularity of the venue grew and became well known, locally and within the London hinterland. Availability of the venue for corporate events was advertised and operated without hinderance for many years. The local community was well aware of the venue and minor issues arising from site activity, and drawn to the attention of the operator by local people, were addressed as and when they arose. This practice informed the ongoing management of the site.

- 2.5 With the growth in popularity of weddings, in locations other than churches or registry offices, the venue was approached by a limited number of people wishing to hold their wedding on the shores of the harbour. As time passed and word spread, the operators found increasingly that many enquiries for commercial events were in fact for weddings and the site was duly licensed with the local authority for civil marriages; a gazebo was erected to meet licensing requirements, along with the provision of a marquee for use when required. The first 'commercial wedding' took place in May 2003 since when the site has been enhanced as a venue in response to feedback from patrons. Although the site has not been altered physically (there has been no woodland clearance, planting or other physical change), ancillary structures, including the marquee, have been erected, allowing use of the site in a form recognizable today (but with the same character of use) originating from the beginning of 2008 when the existing cottage was refurbished and small-scale corporate events were hosted.
- 2.6 The business continues to operate as a commercial event venue hosting both weddings and other commercial events. Weddings operate at weekends generally with corporate or private commercial activities taking place on weekdays. The venue is not exclusive to weddings but with increasing popularity it has a full diary of wedding bookings for 2020, and a significant number already booked for 2021.
- 2.7 While the importance of weddings to the business grew in an ad hoc fashion, it was not the driving force behind setting up the venue, nor the manner in which it is today. Initially the increased popularity of the site for corporate events introduced a demand for camping and the use of the dwelling as a holiday let, weddings at that time being occasional. As the venue became increasingly popular the Appellants added structures to enhance the site offer, including the gazebo, referenced above, which allowed the site to become a licensed wedding venue (first licenced as a venue for marriages on 27/01/2016 by Hampshire County Council, licence renewed by Hampshire County Council on 27/01/2019), and a marquee, log cabin and deck, to offer weather protection and a focus for event activity.
- 2.8 The Appellants have invested significant time, money and effort into establishing a successful business at the site and have acquired all necessary operational licenses from authorities. Many people are drawn to the area as result of the commercial activity with considerable local economic benefit.
- 2.9 The Appellants have always sought to operate their business on the Appeal Site in an environmentally sensitive manner. Activity is managed within the sensitive areas of the site, with no 'development' on or adjacent to the scheduled monument, and access around the site during events is controlled. In respect of the various environmental designations, the Appellants have maintained a dialogue with Natural England, in part to examine if the SSSI designation is appropriate or justified, but more importantly, to ensure the body was aware of site activity and to ensure that no harm arose to environmental interests. A Site Management Statement was drawn up and agreed with Natural England in 1997 and has since been used as a key element of the site's management.
- 2.10 The cottage refurbishment and change of use, erection and retention of the marquee, erection of structures such as the log cabin and deck, and continuous use of the site for commercial purposes, were undertaken and operated without the benefit of planning permission. However, the planning authority chose not to take any action in respect of the site and its uses until 2018, despite its knowledge of the venue, available publicity and applications for licensing.

### **The Access Application**

- 2.11 Use of the Appeal Site, and therefore access to it, has increased year upon year, although the character of the use has not changed. During 2016 and 2017 this led to discussions between the Appellants and one of their neighbours (Mr Phillips) about an alternative to the existing access, which runs across his land. The Appellants and neighbour agreed to apply for planning permission for a new access route and the application was duly made (planning application reference 17/00207). The

current use of the site was made clear in the application documents, and the purpose and justification of the application were discussed fully with the planning authority. The application was approved on 4<sup>th</sup> May 2017.

- 2.12 Even when the access application was submitted, and the use of the site clearly explained as part of that application, the planning authority did not raise any fundamental questions about the use of the site or the lack of any planning control, nor did any statutory consultee or interested third party raise objection or comment in terms of adverse environmental impact or any other issue now subject to enforcement. There were two minor objections raised to the proposal by third parties but no issue relating to the general use of the site, the presence of any structures or wider planning and environmental impacts. The permission remains extant but unimplemented; steps have been taken recently to discharge conditions as a precursor to implementation. It will be referenced in this appeal.

### **The Planning and CLEUD Applications and the Decision to Enforce**

- 2.13 The extent of the Appeal Site, its use, past operations and planning and commercial histories are set out fully in a planning application before the planning authority to regularise the planning situation (Havant Borough Council reference APP/18/00943) and an application for a CLEUD (Havant Borough Council reference APP/19/01262). Both applications were made following extensive discussions with the planning authority and in advance of the enforcement action giving rise to this appeal. Both applications remain undetermined by the planning authority, the former awaiting updated environmental information which is due to be submitted shortly. The submissions and the material and evidence supporting them will be referenced in this appeal.
- 2.14 On 17<sup>th</sup> January 2020 the local planning authority (Havant Borough Council) issued an Enforcement Notice against the use of the land and associated operational development, which would (but for this appeal) take effect on the 13<sup>th</sup> March 2020, with compliance required by 13<sup>th</sup> June 2020. The Enforcement Notice, if effective, would cause the business to cease operation, the site to be cleared of associated buildings and structures, and weddings for 2020, 2021 and 2022 to be cancelled, alongside corporate events. The site would consequently have very limited beneficial use and management, with the loss of economic and social benefit the business brings to the locality.
- 2.15 With outstanding applications before the Council, the Appellants believe it premature for the Council to have chosen to take enforcement action at this time, particularly as it is in advance of decisions which (as the Council has recognised in its Enforcement Report) could render the Notice unnecessary and lead to its withdrawal. The Appellants believe the Enforcement Notice to be unnecessary and influenced by local pressure from a few specific sources, forcing the Council's hand politically, even though the concerns are being, and should be, addressed through the extant applications before the Council.
- 2.16 Given the Council's decision to enforce, the Appellants have no alternative other than to submit this appeal. This is disappointing given the extensive discussions held with the Council regarding the scope, form and content of the planning application submitted to regularize the use of the site and to introduce appropriate planning controls. At the time of those discussions the site's history and potential lawful state were examined and the application drawn up accordingly.
- 2.17 Local planning authorities have discretion to take enforcement action, when they regard it as expedient to do so, having regard to the development plan and any other material considerations. Such action should however, be undertaken in a proportionate way. In this case the Appellants do not believe the authority is acting proportionately; it appears to be acting for political expediency rather than on proper planning grounds. Moreover, the matter can be addressed appropriately and in the interests of both the Appellants and local community, through a continuation of the planning process already underway at the request of the planning authority; a request made at a time when the council might have chosen to commence enforcement action.

- 2.18 Examination of the site's planning history indicates that local opposition to site use was driven initially by noise concerns. As a result, the Appellants undertook extensive noise monitoring and discussion with the Council's Environmental Health Officers to determine the level of noise disturbance arising directly from site activity. The Council also undertook its own monitoring independently. Where an unacceptable noise level was identified to arise from the site, mitigation measures were introduced and the situation, following further noise monitoring, declared acceptable. Many noise complaints raised by opponents about the site were proven to arise from other locations and activities over which the Appellants have no control.
- 2.19 With evidence that noise from the site was not a significant concern and could be managed appropriately (the Environmental Health Officers closed their noise complaint file on 22<sup>nd</sup> July 2019) most opposition on noise grounds decreased. However, it appears opponents then switched objection to environmental matters, despite these not being raised previously as substantial concerns. The Appellants consider the environmental concerns to be misconceived; indeed, the site has been operating for many years without demonstrable harm to adjoining sensitive areas and without objection from the managing bodies and/or those monitoring environmental matters. None of the opponents have provided demonstrable evidence through representations to prove any link between operations at the site and any harm to environmental interests. Most objections provide anecdotal comment at best, and bodies such as Natural England request a further assessment of likely impacts before commenting further or requiring mitigation. The Appellants are currently preparing a detailed environmental report to provide the assessment now requested and this will be submitted as part of the planning application shortly. It will be referenced in this appeal.
- 2.20 The Appellants' environmental report will include full consideration of habitats issues. Although the Council (as competent authority on the planning application under the Conservation of Habitats and Species Regulations 2017) did not originally request shadow Habitats Regulations Assessment, it has changed its mind. This additional information, which will provide the requested assessment, is to be submitted to the planning authority in the coming weeks as part of the environmental report and will be referenced in this appeal.
- 2.21 The Council first approached the Appellants with regard to use of the Appeal Site and its planning status in early 2018. The Appellants believe this was as a direct result of complaints from the neighbour about access issues during 2017, which could not be addressed amicably through commercial negotiations in regard to 17/00207, and the receipt at around the same time, of two complaints of unacceptable noise generation by the Council with the Appeal Site cited as the source.
- 2.22 It was easily proven that the noise complaints, made after the end of the wedding season (October 2018) when there was no activity at the site, did not originate from Tournerbury and they were dismissed. Nevertheless, the possibility of enforcement action being considered in respect of a change of use and associated structures was raised in respect to the potential loss of amenity claimed by the neighbour; this despite planning approval having been granted (APP/17/00207) to overcome such issues, but a reluctance on behalf of the neighbour to implement.
- 2.23 During April 2018 discussions between the Appellants and Council officers took place to specifically examine the planning status of the site and with a view to bringing it under appropriate long-term planning control. The Council acknowledged the site had been in use for some significant time, and the possibility that operational development and a change of use of land had occurred sufficiently in the past for it to have become lawful. Options for taking the site forward through the planning system, to accommodate both current use and potential future changes of use or wider operations in the future were discussed, alongside the benefits a formal planning application would have for the introduction of improved planning controls due to the site's sensitivity and sensitive location. This was an appropriate and pragmatic response by the planning authority to local concerns and an approach the Appellants were willing to embrace.

- 2.24 At the time of the discussions, it was acknowledged that a CLEUD application could be submitted to determine if existing use and operational development was lawful. However, it was decided, because the planning authority had acknowledged the existing use of the site as a reason for supporting the access permission, that it was preferable to enlarge the focus of planning control through a retrospective permission which would cover site use and the structures that existed thereon. Local concerns over noise generation, loss of private amenity and environmental concerns could be subject to controls imposed by condition and if necessary, legal agreement or undertaking. The Council officers did not suggest that site activities were inappropriate per se, or there should be any immediate cessation of operation, but that activity and its potential to give rise to a reduction in private amenities, should be subject to limitations and controls imposed by planning condition. At the time of these discussions there was no suggestion site use and activity had given rise to any degradation of environmental interests or was raising concern; those responsible for monitoring and managing the adjacent environmentally sensitive areas had not raised the matter with the planning authority or indicated harm was likely. The application was submitted in September 2018 (reference 18/00943) and remains undetermined.
- 2.25 Significant objection to the application arose, demonstrably after a local newspaper article praised the application (January 2019), with local concerns focussed on noise generation and the loss of amenity to adjacent neighbours and the wider community. It was demonstrated (as referenced above) by the Appellants, in response to those objections, while some noise could be attributed to Tournerbury events (a situation which the Appellants have reduced and managed through physical and managerial means and are committed to managing further in the future) it frequently emanated from other sources locally over which the Appellants have no control.
- 2.26 As the planning application progressed and the time for determination was extended, knowledge of its existence spread and objections to noise generation were raised from households further afield, including properties at some distance from the site, and across the Harbour. As noise issues were addressed, other local issues began to be introduced, such as development impacts on the harbour generally, even if these were not demonstrably attributable to the application and may arise from concerns about the general level of other development taking place; such as the issue of Nitrate pollution from increased housing growth around the harbour in particular. The application continues to be a focus for local dissatisfaction, but the Appellants consider this to be unwarranted on planning grounds and site specific, individual circumstance.
- 2.27 It must be noted that although there have been objections to activities at Tournerbury over the past 15 months (after the local newspaper article), these have arisen from a limited number of residents in the immediate vicinity of the development. It is only very recently and in response to later consultation opportunities, that other persons and bodies have raised concerns but with no supporting evidence linking claimed effects, to Tournerbury activity.
- 2.28 While the immediate neighbour (Mr. Phillips) was the first member of the public to object to 18/00943 in December 2018 and has contributed to widening the discussion on the application, his position must be separated from the comments of others, for the reason his prime opposition relates to the new access provision and the necessary agreement to be reached with the Appellants. His objection until very recently was on grounds of the unsuitability of the existing access and resulting loss of amenity, but that has now been widened to include environmental issues. Both the first and the latest representations made on his behalf nonetheless state specifically he has no objection in principle to the development, subject to an improved access arrangement. The objection from the neighbour is therefore primarily of a private law and valuation nature, and we will reference this situation through the appeal.
- 2.29 With the 2018 retrospective application held in abeyance while issues raised through consultation are addressed (principally the provision of an assessment of environmental impact), it was decided to seek certification that the development at the site had become lawful with the passage of time. The

Appellants consider that use of the site has been continuous for more than ten years previous to the planning authority first raising the matter and all structures for more than four years. Evidence supporting this view has been submitted in support of the CLEUD application and will be referenced in this appeal.

- 2.30 Initially a CLEUD application was submitted for part of the 'development' only (application reference 19/00889) but later this was withdrawn and substituted for an application for a wider site certificate (19/01262). The purpose of the change was to address all issues at the site, remove any inconsistencies between submissions and to provide a sound planning base against which the extant and any future planning applications can be made and determined. The CLEUD remains undetermined.

### **The Enforcement Notice**

- 2.31 The Enforcement Notice alleges the following breach of planning control:

*“Without planning permission and within the last 10 years, a material change of use of the land from agriculture and a dwellinghouse used for holiday letting’s, to the use of the land for agriculture, a dwellinghouse used for holiday letting’s, camping, holding of weddings and other commercial events.”*

- 2.32 Taking effect (but for this Appeal) on 13<sup>th</sup> March 2020 the Appellants have three months (i.e. by 13<sup>th</sup> June 2020) in which to:

- Cease the use of the Appeal Site for weddings and other commercial events;
- Cease the use of the Appeal Site for camping associated with weddings and other commercial events;
- Cease the use of the dwellinghouse for accommodation associated with weddings and other commercial events; and
- Remove from the Appeal Site, all buildings (excluding the dwellinghouse), structures, decking and marquees and any other paraphernalia associated with weddings and commercial events.

- 2.33 The reasons for issuing the Notice are set out in its section 4, and may be summarised as follows:

- The breach of planning control has occurred in the last 10 years;
- The use causes significant harm to the sensitive rural location and amenity of occupiers of the area by reason of noise and disturbance;
- An appropriate assessment has not been provided to assess the impact of the development on the sensitive sites within which the proposal is located or which adjoin it, as a result of which (applying the precautionary principle) it has not been shown that the development would not give rise to an adverse effect on the integrity of these sites; and
- Planning permission should not be given because planning conditions could not overcome these issues.

- 2.34 As set out above, the Appellants consider it inappropriate for the Council to have issued the Enforcement Notice in circumstances in which it has before it for determination, a planning application seeking retrospective consent for the change of use and development at the site, and a CLEUD demonstrating the existing use and development to be lawful. As the Council recognises (see its Enforcement Report), if the planning and/or CLEUD applications are successful, the Enforcement



Notice will fall. The Council ought therefore to have waited to determine those applications before deciding whether to take enforcement action, and should not allow the desire to commence enforcement action to influence consideration of the applications on individual merit.

### **3 GROUND OF APPEAL**

#### **Introduction and Preliminary Matters**

- 3.1 As summarised in section 1 above and set out in detail in this section, this Appeal is pursued on grounds (a), (b), (d), (f) and (g).
- 3.2 Grounds (b), (d), (f) and (g) are pursued by all three Appellants. Ground (a) is pursued by Mr Snell only. As set out in section 7 below, Mr Snell is not required to pay a fee in respect of the deemed application that arises pursuant to section 177(5) of the Town and Country Planning Act 1990. The other Appellants would be required to pay a fee in respect of a deemed application were they to pursue a Ground (a) appeal. For that reason, the Ground (a) appeal is pursued by Mr Snell only, but with the support of the other Appellants.
- 3.3 The Enforcement Notice was issued after the making of a related application for planning permission (APP/18/00943). However, the applicable period under section 78(2) of the Town and Country Planning Act 1990 had already ended when the Enforcement Notice was issued (an extension of time had been agreed in writing up to 31<sup>st</sup> July 2019 but not beyond). As a result, Mr Snell is not precluded from making a Ground (a) appeal by section 174(2A) of the Town and Country Planning Act 1990.
- 3.4 The Council remains under a duty to determine application APP/18/00943 (see *Bovis Homes (Scotland) Ltd v Inverclyde DC* (1982) SLT 473) and is in the process of discharging that duty, having sought additional environmental information which the Appellant will provide shortly. Once the planning application (and also the CLEUD application) has been determined, the Appellants will consider the implications for this Appeal and liaise with the Council as appropriate.

#### **Ground A: that planning permission ought to be granted for the breach alleged**

- 3.5 The Appellants will demonstrate that planning permission should be granted for the unauthorised development cited in the enforcement notice. The Appellants will demonstrate the development is an appropriate reuse of the site, following its separation from a farm holding to which it contributed little. The site is now in beneficial use, without generating harm to issues of acknowledged importance.
- 3.6 The Appellants will demonstrate the suitability of the use of the site and operational development undertaken through reference to the extant planning application and CLEUD submission and the supporting material accompanying both. These documents provide ample evidence in support of the proposal in planning terms and the avoidance of any harm arising that cannot be suitably mitigated. The submissions provide the evidence that planning permission should be granted.
- 3.7 By reference to the planning application and CLEUD, the Appellants will demonstrate the Council's actions in respect of the Enforcement Notice are misplaced; that no breach has occurred; and that planning permission is the appropriate response to National and local planning policy and a solution to concerns raised by third party representations. Planning permission will provide appropriate long-term control of the site and secure economic, social and environmental benefits.
- 3.8 The use has operated for a number of years without demonstrable harm and with few objections, while giving rise to important social and economic benefits. Matters arising, principally noise generation, have been addressed positively. The harm claimed by the local planning authority through the Enforcement Report and Notice is simply not proven and the Report is both incorrect and inaccurate. The claim therefore that planning permission should not be granted is incorrect. While

development and use of the site is acknowledged as being in a sensitive area, it does not follow that planning permission must be refused. Each application must be treated on individual merit and there are many examples where developments are found not inappropriate because of the particular circumstances applied to the site and proposal and the means in which planning permission apply long-term controls. The Appellants will demonstrate, with reference to the Enforcement Notice and Enforcement Report, that the Council's reasoning is not sound, and the justification offered to substantiate effective enforcement, for reason that planning permission will not be granted, is equally unsound.

3.9 The Enforcement Notice states (Section 4 and as reasoned in the Enforcement Report):

“The Council do not consider that planning permission should be given, because planning conditions could not overcome these problems.”

3.10 The problems are stated as being:

- A planning breach has occurred within the last ten years;
- Use of the land because it is in countryside causes significant harm;
- It will cause harm to the amenity of occupiers of the area by reason of noise and disturbance; and
- An appropriate assessment has not been undertaken to assess the impact of the development on sensitive habitats.

3.11 The Appellants will demonstrate, with detailed references to both the Enforcement Notice and Enforcement Report, the Council's reason for enforcement is not sound. It is the Appellants' strong belief that the inability of the Council to apply planning conditions is not reason for withholding planning permission. The Appellants' position is one which demonstrates the advantages of a planning permission, with or without conditions, as an appropriate means of applying long term planning control over this site. There is sufficient evidence available to demonstrate the proposal will not generate the harm claimed by the planning authority and that planning permission should be granted.

3.12 The Appellants draw attention to the Enforcement Report where it is stated that the planning authority invited a retrospective planning application to be submitted to regularise the use of the land and development, a request indicating an acceptance a planning permission was possible and would offer appropriate controls. The fact environmental information is awaited in support of that application and has consequently delayed determination, is not disputed, but the scope and form of the information required has changed significantly from the initial discussions, where up to date ecology reports for the site were requested, (and undertaken by the Appellant's ecologists and supplied to the Council), to a requirement for a full appropriate assessment, responding to the later demands of third parties. There has not been any reluctance on behalf of the Appellants to provide the additional requested information.

3.13 The Appellants will demonstrate the planning authority raises a number of assumptions in its enforcement report that harm has arisen and will continue to arise as a result of the proposal. However, there is no proof offered to substantiate those concerns. By contrast, the Appellants through the submitted planning application and CLEUD continue to provide evidence to demonstrate there is policy compliance and a lack of harm, not only from assessment of the possible impact of the development, but from the fact the development has existed and operated at the site for many years without the harm arising. Where harm has been perceived in the past, this has been addressed or mitigated through site management measures. Given the presumption that development should be permitted unless it is proven to generate harm, the Appellants have sound reasoning to support their view planning permission is possible; also that the application of conditions can add extra controls.

- 3.14 Initial comments from third parties, raising concerns for the loss of public and private amenity have been dismissed through evidence submitted with the planning application, and changed management practices and mitigation, following extensive discussions with the Council. More recently, and as the result of focussed comment from a limited number of sources, new issues are raised, which were not the subject of previous concerns. While it is not inappropriate to raise matters, which should be considered as part of the consideration of a planning application, following detailed investigation, these representations do not raise issues indicating the presumption in favour of sustainable development should be set aside. The Appellants will demonstrate objection is raised in response to limited, subjective interests of a minority, being portrayed as being in the public interest. Wider environmental concerns arise from matters beyond the Appeal Site, but use of the site and development does not individually or collectively contribute to those issues.
- 3.15 Whilst the change of use of the land and the carrying out of operational development did not benefit from planning permission at the time of the first occurrence, consent is no longer required for the development subject to the notice because it has become lawful with the passage of time (see Ground (d) below). Nevertheless, the Appellants have no objection to a planning permission which introduces appropriate controls on activity in the public interest. The Appellants will demonstrate the submission of a retrospective planning application to achieve that aim is an appropriate and proportionate response to the sound planning and management of this site. The benefits of approval far outweigh disbenefits, if any, arising.
- 3.16 The Appellants will demonstrate the historic use of the site and the operational development thereon is wider than described in the Enforcement Notice, and to proceed with the latter will not impose appropriate control over the site. It will be demonstrated that some elements of site use and development lie outside of the scope of the Notice, whereas planning permission, in the form of the application already before the planning authority, will provide a comprehensive response to the site's history of use and development and provide appropriate long-term control across the whole site. The Appellants will demonstrate no evidence is presented by the local planning authority or opponents to indicate the use and development to be harmful such that planning permission should be withheld.
- 3.17 With reference to individual circumstance, the NPPF and local policy, the Appellants will demonstrate the development is policy compliant and does not raise material considerations to suggest the proposal should not be granted planning permission. The proposal will be shown to have social, economic and environmental benefits and has the opportunity, through new management agreed as part of a planning permission, to enhance the natural, built and historic environment. The grant of planning permission will allow each of these key objectives of sustainable development to be enhanced.
- 3.18 The NPPF requires the determination of applications for planning permission to be taken in accordance with an up to date development plan. The Havant Local Plan comprises the adopted Core Strategy (2011) and later Site Allocations Plan (2014) both of which are out of date. A replacement Plan Havant Local Plan 2036 is in the course of preparation, having completed a pre-submission consultation stage in March 2019. Submission of the plan to the Secretary of State has been delayed due to outstanding evidence work on nutrient neutrality (to which reference is made in this statement) and transport issues. In these circumstances the Appellants believe the adopted local plan carries little weight in a development decision at the site and the emerging plan has yet to gain sufficient weight to be a determinant. However, the Appellants will demonstrate the proposal does not compromise current (albeit out of date) policy objectives nor the direction of travel of the replacement plan. The proposal also meets tests set out in the NPPF. Accordingly, it should be granted planning permission.
- 3.19 Neither the adopted local plan nor emerging plan contains site-specific policies for the Appeal Site or the use proposed; it is considered part of the general countryside to which restrictive policies apply,

subject to the demonstration of site-specific considerations and individual merit, which may deem an individual proposal appropriate.

- 3.20 The Enforcement Report lists applicable policies and constraints imposed by Local Plans and the NPPF (these are set out in the section entitled "Policy & Neighbourhood Plan). Five constraints are also listed against the submitted planning application, when consulted on the Council's web site:
- SSSI
  - Tree Preservation Order
  - Environment Agency 20m buffer; and
  - Flood Zone
  - Scheduled ancient monument
- 3.21 In addition, the site is affected by policies controlling development within the Chichester Harbour AONB and SAC, SPA and RAMSAR, and adjacent SAC designations applicable to the harbour area. The Appellants do not dispute it is reasonable to consider the proposal against policies seeking to protect the specific environmental characteristics of Chichester Harbour, which the site adjoins. However, they will demonstrate the fact policies and designations exist and apply to the site is not sufficient reason of itself to suggest planning permission will not be granted. The Appellants have provided sufficient evidence to demonstrate the development can take place without harm to applicable policies and constraints. Planning process requires proposals to be tested against the aims and objectives of policies and constraints; if proven harmful permission is withheld, whereas planning permission can be granted where harm to aims and objectives does not arise or where the benefits of the development outweighs any harm. The Appellants will demonstrate the planning authority has assumed the development is harmful without due consideration of the evidence provided, whilst demonstrating through evidence it causes no harm that cannot be controlled through planning permission and appropriate conditions.
- 3.22 The Appellants will demonstrate, with reference to the adopted and emerging local plan and the NPPF, the appropriateness and scope of influence of each policy quoted by the local planning authority in respect of the proposal. They will demonstrate the development does not compromise the effect and purpose of these policies, nor the wider aims and objectives of the plans; to the contrary it will be demonstrated the proposal complements those policies which seek to protect and enhance the economic vitality of Hayling Island, supplementing its economic base and regeneration objectives, promoting healthy and safe communities, and providing long term protection and enhancement of environmental objectives. The proposal does not cause harm to or conflict with the constraints applied to the site, nor to policies seeking to protect the countryside from inappropriate development and the harbour from development harm. Any minor harm arising can be mitigated appropriately through the application of conditions, and planning permission should therefore be granted.
- 3.23 Whilst the Appeal Site is located adjacent to sites of specific importance, those interests do not preclude development per se on adjoining sites. The Appellants will provide evidence to demonstrate the development does not compromise the protected assets adjoining and those interests per se do not provide a clear reason for refusing the development proposed. There are no likely adverse impacts on adjoining sites arising directly or indirectly from the proposed development to outweigh the benefits of the proposal.
- 3.24 A planning application for the development has been before the Council since September 2018 following extensive discussion with the local planning authority. If the proposal was considered to conflict with adopted and emerging policy, or the provisions of the NPPF there has been ample opportunity for the planning authority to reject the proposal on policy grounds. The planning authority also had opportunity to act against alleged unlawful development, an option it decided not to follow.

The authority has instead chosen to proceed with the planning application in the light of all material considerations, including the potential lawful use of the site and operational development, and that matters arising from site use are likely to be capable of mitigation through controls imposed through planning permission. Consequently, it has sought confirmation the development does not compromise the protection of environmental interests through a request for additional environmental evidence and assessment. Once this is delivered and considered planning permission should be granted.

- 3.25 The Appellants will demonstrate the proposal to be sustainable and the presumption in favour of sustainable development is engaged.
- 3.26 The Appellants have co-operated fully with the planning authority since issues concerning the potential need for planning permission were drawn to their attention following noise complaints. Use of the site and potential harm from its use were discussed in conjunction with the planning application for a replacement access road. At no time has the planning authority indicated planning permission is unlikely to be granted; it has however sought to agree with the Appellants a range of measures to ensure the site's operation and use do not compromise public and private amenity, or harm issues of acknowledged importance. The Appellants will demonstrate how such safeguards can be put in place and enforced; moreover, a willingness to work further with the planning authority through planning permission to further enhance the sustainability of the site generally and make effective use of the site as required by provisions of the NPPF taken as a whole.
- 3.27 The Appellants will demonstrate the use has been operating for many years without harm to the environment, local landscape or the general character of the coast. Further investment in the site following the grant of planning permission will enable net gains for biodiversity and a general enhancement of the environment in this locality, including the AONB, SSSI, and scheduled monument and offer protection to adjacent sensitive areas. The absence of harm arising from site activity to sensitive sites will be demonstrated through the additional environmental information submitted as will be explained further by the environmental experts through this Appeal.
- 3.28 Development and activity at the site are not readily visible from outside the site and the Appellants have discussed measures which could be introduced through increased planning control and planning permission, such as additional planting, to further reduce the site's visibility. The site is suitably drained and accessed, with the latter also subject to a planning permission for an improved alternative access.
- 3.29 Planning permission will allow new controls such as site management to be introduced, measures which cannot be applied if permission is not granted and the site's future operation is controlled by a lawful use certificate. Management improvements will apply not only to those attending events, controlling accessibility, noise, numbers attending, and the range of uses permitted etc. but will also address the enhancement and protection of the SSSI, SPA, RAMSAR and adjacent SAC, Scheduled Monument, coastline, flooding and trees; further reason why planning permission is beneficial and should be granted.

**Ground B: that the breach alleged in the Enforcement Notice has not occurred**

- 3.30 The Appellants do not deny a change of use and operational development at the site have taken place. This occurred a significant time ago and, as demonstrated through the CLEUD application, was of sufficient time in the past for the use and operational development to have become lawful. Section 3 of the Notice is therefore factually wrong to allege that the change of use occurred "within the last 10 years".

**Ground D: that, at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of the matters stated in the notice**

- 3.31 The Appellants will demonstrate, including through information submitted with the CLEUD application to which detailed reference will be made, that the change of use commenced in excess of ten years before the Notice was issued (or, indeed, any indication from the Council that action was imminent). The use has continued uninterrupted since its inception and has not changed character during the ten-year period. Although it is not necessary for the Appellants to demonstrate this, given that the Notice is targeted at the use of the Site, the operational development has been in place in excess of four years prior to the critical enforcement date. Both site use and operational development were therefore lawful at the time of the Enforcement Notice. Consequently, it was too late to take enforcement action against the matters stated in the notice when it was issued.
- 3.32 Commercial activity at the site has taken many different forms since 1998. While weddings are now a major component of the business, other commercial uses, events and lettings, continue to take place, as mentioned above, and will do so into the future. The commercial use will continue to evolve according to public demand and fashion. Commercial use, whether for weddings, shoots, or corporate activities is the prime use of the site. The use has evolved but no material change of use has since occurred; commercial use of the site has not changed, and no one form of commercial use has excluded any other.

**Ground F: that the steps are excessive**

- 3.33 The requirements of the Notice are excessive in a number of respects.
- 3.34 First, in seeking a total cessation of weddings and other commercial events and associated camping and accommodation, and removal of all associated buildings (apart from the dwellinghouse), structures, decking, marquees and paraphernalia, the Notice goes beyond what is necessary to remedy any breach of planning control and/or any injury to amenity. If the Inspector accepts that any element of the use is lawful and/or may be carried on without injury to amenity, the requirements should be adjusted accordingly.
- 3.35 Second, the requirements in section 5 of the Notice ought to make clear that they do not remove any permitted development rights that may exist.
- 3.36 Third, the log cabin and adjoining deck, gazebo and marquee are lawful operational development, having been in existence in excess of the requisite four-year period. It is excessive for an Enforcement Notice targeting the use of the site to require the removal of such operational development.
- 3.37 Fourth, paragraph 4 of section 5 of the Notice appears to require the removal of a garage building on the site. The garage is believed to have been in existence for some 50 years or more and, although it is currently used in association with weddings and other commercial events, it predates that use of the site. The requirement to remove it is therefore excessive.

**Ground G: that the time given to comply with the notice is unreasonably short**

- 3.38 For business success, the majority of events at Tournerbury are booked well in advance; weddings in particular can be booked up to twentyfour months prior to the event to secure a date and allow appropriate time for preparations. As stated above, Tournerbury has a substantial number of weddings booked for this year and a significant number for the following year. There are also a number of other commercial activities which have been booked well in advance of the event. To allow only three months for compliance in this situation is totally unreasonable. It would not only cause substantial harm to the Appellants' business, but also to couples who have booked their weddings, or businesses having arranged corporate events. It would also cause considerable economic harm to the Borough's local businesses such as hotels, Bed and Breakfasts, catering companies, entertainers, and other third-party suppliers whose livelihood is substantially enhanced

by the site's weddings and events and who have taken advanced bookings for their services as well. It is not uncommon to require at least a year to reorganise such events at an alternative venue.

- 3.39 It is the Appellants' contention that no harm to acknowledged planning interests arises from the commercial use of the site, and this will be proven through the Appeal. It is accepted that there has been some localised disturbance on some historic occasions, but those issues have been resolved, and any potential for similar issues happening in the future can be managed appropriately by the operator in accordance with a management plan agreed with the Council. Consequently, a twelve-month compliance period will not give rise to any unacceptable impacts.
- 3.40 It is therefore submitted that a period of at least twelve months from the date of the Appeal decision is appropriate for compliance.

#### **4 PROCEDURAL MATTERS**

- 4.1 The Appeal raises issues that overlap strongly with those under consideration in the extant planning application (Havant BC reference APP/18/00943) and the extant CLEUD application (Havant BC reference APP/19/01262), as well as those on the consented application for an alternative access track to the Appeal Site (Havant BC reference APP/17/00207).
- 4.2 Given the Council's decision to issue an enforcement notice, the Appellants have been forced to bring this Appeal now. However, the Appellants contend that the Enforcement Appeal cannot be considered appropriately without reference to the planning and CLEUD applications, and that determination of the Enforcement Appeal ought to await the decision of the Council on those two applications. The Council's decision on those applications (if adverse to the Appellants) may lead to appeals being brought which ought to be determined alongside the Enforcement Appeal on a conjoined basis. On the other hand, if the applications are allowed in whole or in part, the Enforcement Notice may be undermined and need amending or withdrawing. It would therefore be premature to determine this Enforcement Appeal until the Council's decision on the planning and CLEUD applications has been made.

#### **5 CHOICE OF PROCEDURE**

- 5.1 The Appellants consider it necessary for the Appeal to be determined under the Inquiry procedure. On application of the criteria under Annexe G to the Procedural Guide for Enforcement Notice Appeals (23<sup>rd</sup> March 2016) an Inquiry is necessary because:
- The evidence is substantial and complex and there is a clear need for it to be tested through formal questioning by an advocate.
  - The issues are undoubtedly complex, involving technical environmental issues, and issues of legal and factual complexity concerning enforcement matters and associated matters under the planning and CLEUD applications.
  - The Appeal has generated substantial local interest.
  - Evidence needs to be given on oath, with witnesses giving factual information on issues such as how long the use of the site has been taking place and the character of the use throughout that period.
  - The alleged breach and requirements of the Notice are unusual and highly contentious.
  - It was too late to take enforcement action against the matters stated in the notice.

These points are explored in more detail below.

- 5.2 It will be understood from the case outline provided above, the issues at appeal go far beyond a simple absence of planning consent for the matters alleged in the Notice; or a situation where matters could be remedied quickly should the Appeal not succeed. The matter is complex and highly contentious. The reasoning and the evidence on which the planning authority justifies the need to pursue enforcement action and the timing of its issue must be fully tested through formal questioning by an advocate, as must issues of complexity on environmental matters (including concerning potential impacts on SSSI, SPA, SAC, RAMSAR and AONB designations) and planning matters concerning the use of the site. This can only be assured if the issues are taken through Inquiry.
- 5.3 The complexity is also increased in this case, because it is inappropriate for the Enforcement Notice to be considered in isolation, given the undetermined planning application, requested and agreed with the local planning authority prior to submission, and a more recent CLEUD submission. Individually and jointly these submissions address all matters identified in the Notice, and they were submitted and consulted upon prior to the Notice being issued. The Council's decision to issue the Enforcement Notice does not grapple with the planning application or CLEUD application, and the Enforcement Report proceeds expressly on the basis that the decision to enforce was based on a "current" view, and that the Enforcement Notice would fall were the planning application to succeed (the same would apply were the CLEUD application to succeed). The submitted applications demonstrate it was too late to take enforcement action on 17<sup>th</sup> January 2020.
- 5.4 An inquiry is essential to allow the robust testing of the Council's position and actions. The Appellants are likely to provide some six witnesses in support of their actions and to demonstrate the Council's premature stance in issuing the Enforcement Notice to be without foundation.
- 5.5 The Appellants believe the Council's decision to enforce resulted from political pressure rather than an appropriate consideration of individual planning merits. An inquiry will allow the Appellants the opportunity to prove this belief and for the substantial local interest generated by the case to be properly examined. An inquiry will also allow the evolution of local objection to be reviewed; including the noticeable switch from complaints arising from the operation of the site, to technical, process-led representations.
- 5.6 At the time of submission of this Appeal it is unclear when either the planning application or CLEUD will be determined. The planning authority is aware that further environmental evidence is being submitted to support the planning application, and to assess and demonstrate the lack of environmental harm backed by scientific evidence; it is for this reason that the Council has held the planning application in abeyance. Once submitted, there will be a period of time, at least two months, to allow the authority time to consider the additional information, to undertake a further period of public consultation, assess responses, discuss matters arising with the applicant and determine the application. It is therefore possible (if the request for delay under section 4 above is not acceded to) that this appeal might run ahead of that programme.
- 5.7 With the Appellants drawing upon evidence submitted with the CLEUD to support their case against enforcement, it may fall to the Secretary of State to use his discretionary powers under section 177(1)(c) of the 1990 Act. This enables him to determine whether, on the date the Appeal was made, any existing use of the land was lawful or any operations which had been carried out were lawful. To do this the appointed inspector will be required to fully consider and test the evidence on lawful use presented to him. This can be undertaken soundly only under Inquiry conditions.
- 5.8 The Enforcement Report, prepared by the Council to determine the appropriateness of taking enforcement action, lacks precision and contains a number of assumptions which are central to the decision reached. It is essential in the interests of sound planning for these assumptions to be tested through Inquiry. The Appellants contend that assumptions have not been applied appropriately and the conclusions reached do not follow a logical conclusion from the evidence presented. An inquiry will allow these assumptions to be fully tested and challenged appropriately.



- 5.9 Finally, evidence needs to be given on oath, with witnesses giving factual information on issues such as how long the use of the site has been taking place and the character of the use throughout that period. Again, an Inquiry is necessary to allow the evidence to be appropriately adduced and tested.
- 5.10 For all those reasons, the Appellants consider that an Inquiry is necessary in this case.

## 6 **WITNESSES AND INQUIRY LENGTH**

6.1 The Appellants currently intend to call six witnesses to address matters through an inquiry, with additional witnesses called as appropriate to respond to any specific matters raised by the local planning authority and any other parties/representors as a result of this Appeal. Specific witnesses have yet to be confirmed but will include the Appellants and advisors involved to date in the running of the site, advising on matters arising, and preparing, submitting and negotiating the submitted applications. Experts on noise and environmental issues will be called in respect of matters that have been the source of objections to date and the Appellants' response. The Appellants have appointed Counsel to act as advocate in the Appeal.

6.2 Witnesses currently identified comprise:

- (a) The Appellants: to describe the use of the site, its history (ownership and activities) and day to day management (including the SSSI, Ancient Monument, Woodland, dwelling and open space, and coastline; typical events and what is involved; the relationship with the local planning authority and how complaints to date have been mitigated or managed. They will also explain the discussions surrounding the alternative access proposal and relationship with the adjoining neighbour.
- (b) A Planning Expert: to present the planning circumstances applicable to the site, its relationship to National and Local Planning Policy and the content and procedure of planning submissions made at the site: the retrospective planning application (reference APP/18/00943), replacement access proposal (reference APP/17/00207), and the CLEUD application (reference APP/19/01262).
- (c) Noise expert: to explain how noise at the site is managed and how complaints have been addressed and mitigated.
- (d) Ecologist: to describe the environmental interest in and adjoining the site and how this is affected or enhanced by site operations.
- (e) Environmental Assessment: an expert on Environmental Assessment (including Habitats Regulations Assessment) to describe the soundness of approach adopted by the Appellants in assessing impacts of site activities on sensitive receptors and to demonstrate policy and legislative compliance on environmental issues.

6.3 It may also be necessary to present witnesses to discuss specific activities at the site and matters arising, for example patrons of the site describing how the site is managed and operated, and sub-contractors employed during operation, such as for security and event management. It may also be necessary to call additional expert witnesses to test other evidence presented to the appeal by the local planning authority, of which they have no current knowledge.

6.4 The Appellants currently estimate the Inquiry will last a minimum of four days.

## 7 **FEE PAYMENT**

7.1 As set out above, Mr Snell is appealing on Ground (a). There is therefore a deemed application for planning permission pursuant to section 177(5) of the Town and Country Planning Act 1990. A fee would ordinarily be payable in respect of a deemed application under Regulation 10 of the Town and Country Planning (Fee for Applications, Deemed Applications, Requests and Site Visits) (England)

Regulations 2012 ("the Fees Regulations"). However, in this case, Mr Snell had, before the date when the Enforcement Notice was issued, made an application to the Council for planning permission for the development to which the Enforcement Notice relates (i.e. application APP/18/00943) and paid the fee in respect of that application; and at the date when the Enforcement Notice was issued, that planning application had not been determined. As a result, by operation of Regulation 10(7) of the Fees Regulations, no fee is payable on the deemed application.

## **8 HEALTH AND SAFETY**

- 8.1 The Appeal Site is accessible to members of the public as a public venue. The site therefore meets requirements for the safety of the public during events in accordance with the site's up to date risk assessment. The site can be visited by an Inspector with a reasonable level of confidence. However, as the site is unoccupied from time to time, when there is no event present, being prepared or cleared, or no tenants in the cottage, access to the site will need to be on an arranged basis. Site visits are best arranged through the agent, who can arrange the visit to be accompanied or unaccompanied.
- 8.2 The site is not a construction site or workplace which requires the provision of Personal Protection Equipment, site specific safety or viewing arrangements. There are no buildings, structures or operations, which should pose a risk to anyone visiting the site. There are some areas of uneven surface, principally along the access road, but this is accessible for persons with limited mobility, who visit the site for events.
- 8.3 No animals are kept at the site, although access is achieved through a working farmyard in separate ownership.

## **9 CONCLUSION**

- 9.1 This Statement is summarised in section 1 above.

HMPC Ltd

for the Tournurbury Woods Estate

9<sup>th</sup> March 2020