

Application Number:	242893
Site Address:	Brick Barns, White Hill, Remenham Hill, RG9 3HN
Expiry Date:	4 February 2025
Proposal: Full application for the formation of an access track and erection of timber planters, plus erection of a ground maintenance store (Building 4). (Part retrospective)	

1. PLANNING CONSTRAINTS/STATUS

- Listed Building
- Contaminated Land Consultation Zone
- Local Authorities
- Heathrow Aerodrome Consultation Zone
- Affordable Housing Thresholds
- Bat Roost Habitat Suitability
- Borough Parishes
- Scale and Location of Development Proposals
- GC Newt Consultation Zone
- Green Belt
- Ground Water Zones
- Local Wildlife Site
- National Historic Parks and Gardens
- Nuclear Consultation Zone
- Borough Wards
- Radon Affected Area
- Landscape Character Assessment Area
- SSSI Impact Risk Zones
- Local Wildlife Sites Consultation Zone

2. PLANNING POLICY

National Policy	National Planning Policy Framework (NPPF)
Core Strategy 2010 (CS)	CP1 – Sustainable Development CP3 – General Principles for Development CP7 – Biodiversity CP8 – Thames Basin Heaths Special Protection Area CP9 – Scale and Location of Development Proposals CP11 – Proposals Outside Development Limits CP12 - Green Belt
MDD Local Plan 2014 (MDD)	CC01 – Presumption in Favour of Sustainable Development CC02 – Development Limits CC03 – Green Infrastructure, Trees and Landscaping CC04 – Sustainable Design and Construction CC07 – Parking CC09 – Development and Flood Risk CC10 – Sustainable Drainage TB01 – Development within the Green Belt TB21 – Landscape Character TB23 – Biodiversity and Development TB24 – Designated Heritage Assets
Other	Borough Design Guide SPD National Planning Policy Guidance (NPPG)

3. Planning History:

Application Number	Description	Decision
240734	Application for a certificate of lawfulness for the proposed erection of a hardstanding drive for vehicular access, along with curved fencing and the existing gate to be relocated.	Approved 20 May 2024
223387	Application for a certificate of existing lawful development for the use of building known as Brick Barns as a dwelling	Approved 12 January 2023
220359	Full application for the proposed (retrospective) erection of six ancillary residential outbuildings and conversion of the existing Brick Barn.	Withdrawn 9 September 2022
220321	Full application for the proposed Use of Land as Garden (Retrospective)	Withdrawn 9 September 2022
220332	Full application for the proposed access drive to single dwelling, with associated water permeable gravel parking areas, and paths within garden (Retrospective)	Withdrawn 9 September 2022
160204	Householder application for proposed refurbishment and erection of a single storey rear extension, conversion of open cart shed to create habitable accommodation to dwelling, plus the installation of rear roof lights and front wood burner flue.	Withdrawn 10 November 2016
140994	Application for refurbishment of existing converted barn including removal of a previous extension and erection of a new barn-style extension with conversion of a Grade II listed barn to provide ancillary parking, storage and workshop, with change of use of an area of former golf course to provide additional residential curtilage.	Withdrawn 12 November 2014
RM/2010/1243	Reserved Matters application on outline consent O/2008/1353 for the erection of one dwelling (Aspect West- New Dairy Farm) Reserved Matters to be considered for the siting, design (including floorspace, height massing, internal layout & external appearance), access and landscaping.	Approve 04 August 2010
O/2008/1353	Outline application for the demolition of 8 dwellings and erection of 5 new dwellings. Change of use of 3 dwellings to form 2 boathouses and guest accommodation. Conversion of 2 dwellings to form 1 dwelling. Alterations to the barns and the bungalow to form a single residential unit plus alterations and extensions to existing buildings	Approve 09 December 2008
041618	Application for a screening opinion prior to an application for restoration and redevelopment of Park Place.	14 January 2005 EIA Development

APPRAISAL

4. Site Description

- 4.1. The application relates to land adjacent to Brick Barns, which was previously known as The Bungalow, within the Park Place Estate.
- 4.2. The site is located within Park Place and Temple Coombe Grade II* Historic Park and Gardens. Within the Historic Park and Garden there are a number of listed building and structures as well as non-designated heritage assets including the former buildings of Park Place Farm which include Brick Barns.

5. Enforcement History

- 5.1. An enforcement investigation was opened on 5 March 2021 in relation to unauthorised outbuildings at Brick Barns ref: RFS/2021/086216. During this investigation a series of breaches of planning control were identified and resulting in the submission of three planning applications. This investigation was closed on receipt of these applications (validated on 21 March 2022).
- 5.2. The three planning applications were withdrawn by the Applicant with no explanation on 9 September 2022. Following the withdrawal of these applications and unsuccessful negotiations with the landowner an enforcement notice was served on 15 June 2023 (ref: RFS/2022/087587). Following a 5 day inquiry commencing 24 November 2023, the notice was upheld (with corrections and variations) on 9 February 2024 APP/X0360/C/23/3325869. The appeal was dismissed on Grounds (a), (b), (c), (d), (f) and (g).
- 5.3. The notice details are as follows, with the red text comprising amendments made by the Inspector. The alleged breach of planning control is:

Without planning permission, the unauthorised **MATERIAL** change of use of the Land to residential-~~garden~~ including, the erection of five buildings; changing of ground levels; and formation of hardstanding.

- 5.4. The compliance period is:

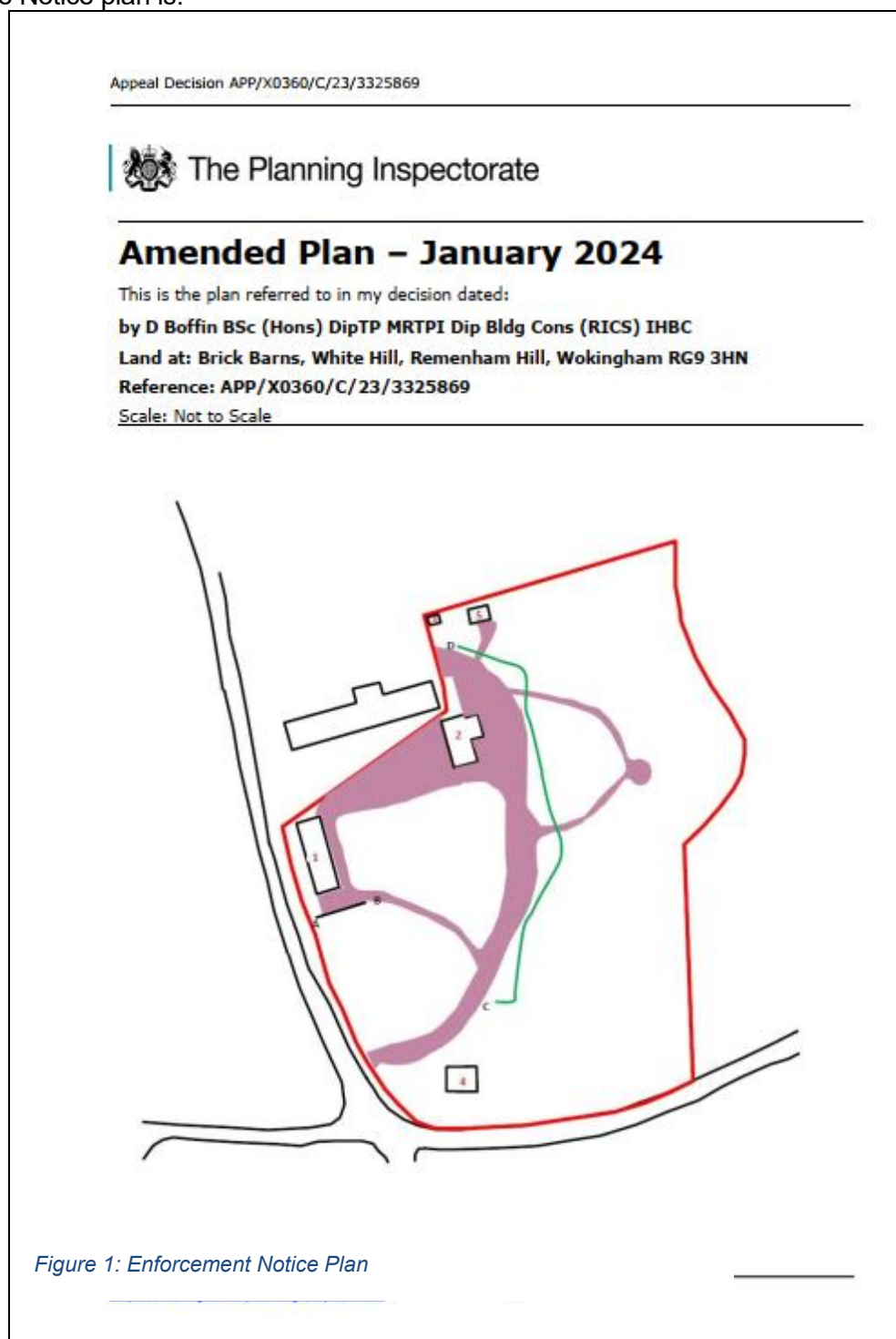
Twelve months from the date this notice takes effect.

5.5. The requirements of the notice are:

5. WHAT YOU ARE REQUIRED TO DO

- i. Cease the ~~use of the Land as residential garden.~~ **RESIDENTIAL USE OF THE LAND**
 - ii. Remove all vehicles and residential paraphernalia associated with the residential use from the Land.
 - iii. Return the ground levels to those prior to the unauthorised use including the removal of the retaining wall marked ~~by a black line~~ A-B on the attached plan.
 - iv. ~~Remove all ornamental non-native tree and hedge planting from the Land including but not limited to the laurel hedging.~~
 - v. Demolish building 1 shown in the approximate position ~~outlined in green~~ on the attached plan including breaking up all foundations.
 - vi. Demolish building 2 shown in the approximate position ~~outlined in black~~ on the attached plan including breaking up all foundations.
 - vii. Demolish building 3 shown in the approximate position ~~outlined in yellow~~ on the attached plan including breaking up all foundations.
 - viii. Demolish building 4 shown in the approximate position ~~outlined in blue~~ on the attached plan including breaking up all foundations.
 - ix. Demolish building 5 shown in the approximate position ~~outlined in purple~~ on the attached plan including breaking up all foundations.
 - x. Disconnect and excavate all services associated with the unauthorised buildings referred to in v-ix above.
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- xi. Excavate the hardstanding, remove the metal edging, brick and stone setts and flint stones shown in the approximate location shaded in pink on the attached plan and stop up the access ~~including removal of visibility splay and associated hardstanding up to the private way/road (White Hill).~~
 - xii. Remove the post and rail fence "estate railings", posts and gates from between points ~~'A', 'B',~~ 'C' and 'D' also shown by the green line, annotated on the attached plan.
 - xiii. Remove all external lighting including any associated lampposts, including disconnecting and excavating the services from the Land.
 - xiv. Return "the Land" to its former condition prior to the breach ~~by re-seeding using grass seed at 50 grammes per square metre.~~
 - xv. Remove the resultant materials from carrying out steps (ii to xiii) from the Land.

5.6. The Notice plan is:



5.7. The present application seeks to retain Building 4, a significant proportion of hardstanding, and residential development in the form of garden planters. As set out in more detail below, this development is attacked by the Enforcement Notice referred to within the Inspector's decision (**Appendix 1**) which remains extant. The compliance date for this Enforcement Notice is 9 February 2025.

5.8. Given the overlap between the present application and development which is the subject of the extant Enforcement Notice, it is appropriate to consider the power in

section 70C of the Town and Country Planning Act 1990 to decline to determine applications.

6. Section 70C of the Town and Country Planning Act 1990: legal principles and background

6.1 Section 70C of the Act states:

- (1) A local planning authority may decline to determine an application for planning permission or permission in principle for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.*
- (2) For the purposes of the operation of this section in relation to any particular application for planning permission or permission in principle, a "pre-existing enforcement notice" is an enforcement notice issued before the application was received by the local planning authority.*

6.2 Section 70C was introduced to avoid delays in effective planning enforcement due to multiple retrospective applications and appeals. Effective planning enforcement is important to:

- tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
- maintain the integrity of the decision-making process;
- help ensure that public acceptance of the decision-making process is maintained.

6.3 The purpose behind and parameters of section 70C have been explained by the courts in a number of decisions. In *Chesterton Commercial (Bucks) Limited v Wokingham Borough Council* [2019] PTSR 220, the High Court provided the following explanation, drawing on a number of previous cases:

"40. The logic of the discretion conferred on the local planning authority by section 70C is clear. Where an enforcement notice has already been served there is less likely to be any proper justification for a related application for planning permission, since the opportunity to obtain a full consideration of the planning merits of a proposal is already available, or was available, in the form of an appeal under section 174(2)(a) against the pre-existing enforcement notice.

41. The object of the provision is not to prevent the merits of an unauthorised development from being considered at all, but to avoid delay in enforcement by ensuring that they need be considered only once. As Lewis J said in O'Brien v South Cambridgeshire District Council [2016] EWHC 36 (Admin) at para 72:

"The purpose underlying the legislative provisions is that an applicant for permission for an unauthorised development cannot insist on more than one determination of the underlying planning merits of that development."

42. Where section 70C is engaged, Cranston J explained in Wingrove (at para 30) that it conferred "a wide discretionary power", but added:

"The legislative history of section 70C demonstrates that Parliament's intention was to provide a tool to local planning authorities to prevent retrospective planning applications being used to delay enforcement action being taken against a development. It seems to me that there is a legislative steer in favour of exercising the discretion, especially since an enforcement notice can be appealed and the planning merits thereby canvassed. Since delay is the bugbear against which the section is directed, a claimant's actual motives to use a retrospective planning application to delay matters is clearly a consideration in favour of a decision to invoke section 70C."

43. Cranston J recognised that in some cases there may be factors pointing against the use of the discretion conferred by section 70C, such as "where for legitimate reasons there has been a failure to appeal an enforcement notice and the development is plainly compliant with planning provisions"; if such considerations were ignored an authority's decision would be open to a public law challenge (Wingrove, para. 31). Other examples of circumstances in which a proper exercise of the discretion might require that the application for planning permission be determined were suggested by Hickinbottom J in R (Seventeen de Vere Gardens Management Ltd) v London Borough of Kensington v Chelsea [2016] EWHC 2869 (Admin), at paragraph 44: "where the development plan has changed, or some other material planning considerations have changed, so that the underlying planning merits may be different".

6.4 In *R (Banghard) v Bedford Borough Council* [2017] EWHC 2391 (Admin), the Judge came to the following conclusion on the facts of that case:

"29. The purpose of s.70C is as explained by Lewis J in *O'Brien v South Cambridgeshire District Council* [2016] EWHC 36, to ensure that the applicant cannot insist on two separate considerations of the planning merits, by having a right to appeal the refusal of planning permission and an appeal against the EN on effectively the same grounds. As Cranston J put it in *Wingrove* the applicant cannot have multiple bites of the cherry. However in the present case the effect of the Council's interpretation of s.70C is that rather than the Claimant having multiple bites of the cherry, he has had none. He has not been able to have the planning merits of the storage building he now wishes to construct considered by the local planning authority and ultimately on appeal. The Inspector on the EN appeal could not consider them because he had an EN against residential use before him, and the ground (a) appeal could only relate to that use, and the Council's decision to rely on s.70C means that the Claimant cannot have the matter considered under s.70 TCPA as would usually be the case."

6.5 The court in *Chesterton* also explained that it is first necessary to determine whether the circumstances described in section 70C(1) exist, so that the power to decline to determine an application is available, before secondly considering whether to exercise that discretionary power (para. 62).

7 Whether the power in s.70C is available in this case:

7.1 The proposed development under the present application wholly relates to land to which a pre-existing enforcement notice relates, i.e. the notice dated 14 June 2023. The application's red-line plan compared to the notice plan is shown below and it is clear that the overwhelming majority of the land subject to the notice falls within the red-line plan for this application:

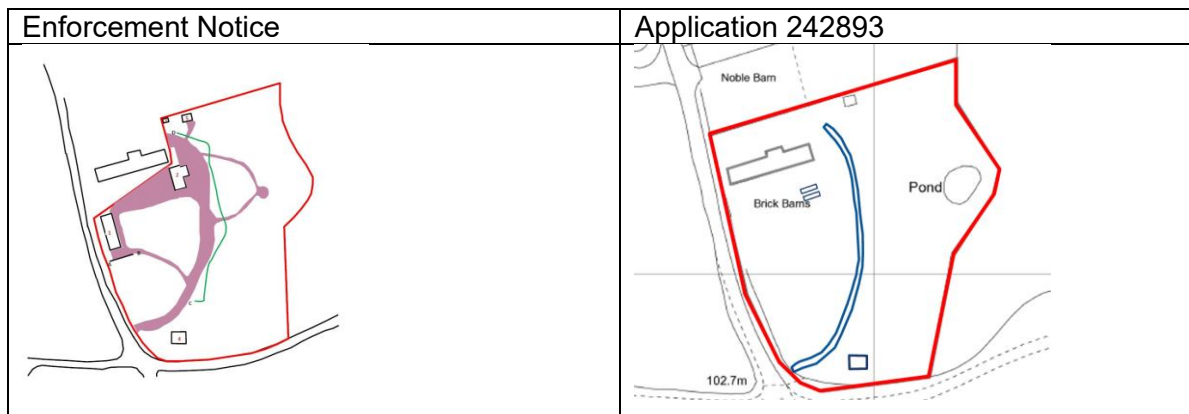


Figure 2: Enforcement Notice Plan & Planning Application Plan

7.2 The allegation within the notice reads as follows with the Inspector's amendments:

'Without planning permission, the unauthorised material change of use of the Land to residential, including, the erection of five buildings; changing of ground levels; and formation of hardstanding'

7.3 The present application comprises three elements:

- Formation of an access track
- Erection of a ground maintenance building
- Erection of timber planters

7.4 It is clear that granting planning permission for these three elements would involve granting planning permission in respect of part of the matters specified in the Enforcement Notice as constituting a breach of planning control, so as to engage s.70C(1). In particular:

- **As to the access track:**
 - The Planning Statement dated November 2024 for the present application explains that this comprises "retention of part of the unauthorised drive in a modified form" (para. 1.5(a)). The hardstanding specified in the allegation in the notice includes this driveway. The Planning Statement further explains that its width will be reduced and the "retained gravel drive" will be seeded with grass (paras. 3.7 – 3.9).
 - It is also noteworthy that the revised plans submitted at appeal also considered a (somewhat different) amended access track/hardstanding, which was considered under Option A (CD4.1 Drawing X10 dated 29/08/2023) and Option B (CD4.2 Drawing X20 dated 29/08/2023) of the

Ground (a) appeal. The driveway proposed as part of Options A and B was part twin wheel grassed track and part full hardstanding 3m in width (no information on the depth was provided). It differs from that now being proposed in design/construction but is in the same location and this alteration proposed now was not put forward at the appeal when the Appellant had the opportunity to do so. The track proposed in this application suggests that it has superficially changed in design from the unauthorised track which formed part of the appeal. Limited information is provided as to what the changes involve; the proposed track appears to be 2.5m in width on the Site Plan (December 2024), in the same location as within the Notice, and comprises 200mm Type 1 sub-base and 50mm gravel surfacing (Drawing: BB.03 – Planters and Driveway Details).

- **As to the ground maintenance building**, the Planning Statement explains that this comprises “retention of Building 4” (para. 1.5(b)). This is Building 4 specified in the Enforcement Notice plan, i.e. one of the five buildings mentioned in the allegation of breach in the Notice. The roof form of proposed Building 4 differs from the roof form of Building 4 in the Enforcement Notice, however revised plans were submitted as part of the appeal inquiry. The existing and revised forms of the building were considered by the Inspector under Option A (CD4.1 Drawing X10 dated 29/08/2023) and Option B (CD4.2 Drawing X20 dated 29/08/2023) and Building 4 (CD 4.3 Drawing X33 dated 29/08/2023) of the Ground (a) appeal. Building 4 proposed as part of this application is identical to that considered in CD4.3 Drawing X33 as part of the appeal.
- **As to the timber planters** element of the application, the Planning Statement explains that this comprises “the retention of one and a half raised, timber flower beds within the cottage garden, that fall outside of the residential curtilage to Brick Barns” (para. 1.5(c)). The formation of these planters is part of the unauthorised material change of use of the land to residential use specified in the allegation in the Enforcement Notice. Such raised planters are development that is commonplace in a residential garden. They are closely related to the dwellinghouse and at officer visits they were being used for domestic planting, i.e. as part of the residential garden of the property. The Inspector at paragraphs 25 and 27 of her decision letter noted that the “raised planting beds” as she termed them are in an area used in connection with the residential use of Brick Barns (see also paragraph 83). Further, even if the timber planters are not considered to be part of the residential use in whole or part, the planning permission sought under the present application for the access track and Building 4 would undoubtedly involve granting planning permission in respect of part of the matters specified in the Enforcement Notice as constituting a breach of planning control. It is also noted that the Site Plan submitted with this application does not appear to be an accurate record of the actual location of the planters (when compared to the overhead mapping or the appeal drawings for Options A or B). The planters also appear to be different dimensions on the Site Plan to Drawing: BB.03. This would need clarification in the event that an application were to be determined.

7.5 Notwithstanding that the Applicant now seeks to amend the roof of Building 4 and amend the design details of the hardstanding comprising the driveway / access track granting planning permission for that development would still involve granting planning permission in respect of part of the matters specified in the Enforcement Notice as constituting a breach of planning control. The application seeks approval for operational development and uses retrospectively which were previously enforced

against. In this instance, the Council considers that there is a significant and clear overlap which is more than de minimis (and indeed the development is substantially similar), such that the power in section 70C is available.

8 Whether to exercise the discretionary power in s.70C:

8.1 As set out above by reference to the *Chesterton* case, where an enforcement notice has already been served there is less likely to be any proper justification for a related application for planning permission, since the opportunity to obtain a full consideration of the planning merits of a proposal is already available, or was available, in the form of an appeal under section 174(2)(a) against the pre-existing enforcement notice.

8.2 Section 70C furthers the aim of effective planning enforcement by avoiding the delays to which multiple retrospective applications and appeals can give rise.

8.3 Those considerations apply in the present case and weigh strongly in favour of exercising the s.70C power. The Applicant has already appealed under s.174(2)(a) against the Enforcement Notice, and the appeal was subject to very detailed consideration through a public inquiry (in which the Applicant was represented by a planning / heritage expert and counsel) and through the Inspector's full decision letter. Development for which planning permission is now sought was part of the development being considered through that appeal and inquiry process. It is inappropriate and not in the interest of effective planning enforcement or the public interest for yet a further opportunity to be provided for considering the merits of that development (in somewhat modified form in some respects as set out above, which could have been presented in the s.174 appeal in any event).

8.4 Since dismissal of the recent appeal, it is not considered that there have been any material changes in local or national planning policy, or other circumstances affecting the underlying planning merits, which would justify entertaining this further application notwithstanding the dismissal of the appeal. This includes the recent updating of the National Planning Policy Framework. The present application comprises the Applicant unjustifiably seeking to have further bites at the cherry, in a way which could further prolong the already protracted enforcement process and increase costs. The Inspector found that the appeal development was inappropriate development in the Green Belt, which caused harm to Green Belt openness and conflicted with Green Belt purposes, caused heritage harm by failing to preserve the significance of the Grade II* Registered Park and Garden, harmed a valued landscape, and was contrary to the development plan with material considerations not indicating that the appeal should be determined other than in accordance with the development plan (see paragraphs 111 – 114). It is not in the public interest that the enforcement process should be further prolonged in respect of development which the Inspector has found to be causing unjustified harm.

8.5 It is noteworthy that no pre-application advice was sought from the Council despite the Council's suggestion to the Applicant that this would be prudent. A pre-application enquiry was submitted, and subsequently withdrawn by the Applicant following a request from the LPA for the pre-application fee. Based on this matter of fact, the Council question the motive of the Applicant in submitting the current application. Motive can a relevant factor in s.70C decisions, as noted in paragraph 30 of *Wingrove v Stratford on Avon DC* [2015] EWHC 287, which states that:

"Since delay is the bugbear against which the section is directed, a claimant's actual motives to use a retrospective planning application to delay matters is clearly a consideration in favour of a decision to invoke section 70C".

8.6 Paragraph 32 of *Wingrove* also highlights that a failure to seek pre-application advice can be considered relevant to identifying motive in the making of the retrospective application:

“It was a reasonable inference for the Council to draw that the application for retrospective planning approval was to delay effective enforcement yet further, in relation to residential units which have now been there for over five years, without planning approval. The Council were entitled in coming to conclusions about the claimant’s intention to take into account that she had not sought pre-application advice, and that her expressed wish, in the Frampton’s covering letter of 21 March 2014, was that in light of the retrospective planning application any prosecution would be ‘held over.’”

8.7 The Applicant’s failure to seek pre-application advice, but instead to proceed straight to a full application which is likely to be more time consuming and create the potential for appeal, indicates that delaying enforcement action may be at least part of the motive behind the current application. But even assuming in the Applicant’s favour there was no such motive, the LPA still consider that it is appropriate to exercise the s.70C power, for the reasons set out above.

10. Human Rights and Public Sector Equality Duty

10.1 The Human Rights Act 1998 makes it unlawful for a public authority to act in a way which is incompatible with a Convention right. Article 8 (respect for private and family life) and Article 1 of Protocol 1 (peaceful enjoyment of property) are of particular potential application to planning decisions.

10.2 These rights of individuals protected under the Human Rights Act are not absolute but qualified rights and are to be balanced against other matters including the public interest in upholding public law and the regulatory planning system.

10.3 When a planning decision is made the authority must also take into account the public interest. In the vast majority of cases existing planning law has for many years demanded a balancing exercise between private rights and public interest.

10.4 In making its decision the Council must also have regard to its public sector equality duty (PSED) under s.149 of the Equality Act 2010. The duty is to have due regard to the need (in discharging its functions) to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
- Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

- 10.5 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 10.6 The PSED must be considered as a relevant factor when the Council is considering its decision but does not impose a duty to achieve the outcomes in s.149. The level of consideration required (i.e. due regard) will vary with the decision including such factors as:
- The importance of the decision and the severity of the impact on the Council's ability to meet its PSED.
 - The likelihood of discriminatory effect or that it could eliminate existing discrimination.
- 10.7 The Council should give greater consideration to decisions that have a disproportionately adverse impact on a protected characteristic and this impact may be unintentional. In appropriate cases, this may involve an understanding of the practical impact on individuals so affected by the decision. Regard should be had to the effect of mitigation taken to reduce any adverse impact.
- 10.8 Further, the PSED is only one factor that needs to be considered when making a decision and may be balanced against other relevant factors. The Council is also entitled to take into account other relevant factors in respect of the decision, including financial resources and policy considerations. In appropriate cases, such countervailing factors may justify decisions, which have an adverse impact on protected groups.
- 10.9 In this case, the Council are not aware of any protected characteristics that are applicable to the Applicants, nor has any evidence been put forward to this effect. Accordingly, declining to determine this application under section 70C of the 1990 Act would not unduly prejudice the Applicants or be contrary to the PSED.
- 10.10 This determination could have implications in respect of the Applicants' rights under Article 1 of the First Protocol of the Human Rights Act, in that this decision would affect the Applicants' ability to retain the development which is the subject of the application and lead to the Applicants needing to incur costs to remedy the breach of planning control. However, the Applicants have had the opportunity to seek planning approval through the inquiry process. An independent Planning Inspector determined that the planning merits of the proposals put forward by the Applicants and upheld the enforcement notice. For the reasons set out above the public interest weighs in favour of not providing another bite of the cherry and delaying matters further. Accordingly, any interference with the Applicants' Article 1 Protocol 1 rights is considered to be justified, proportionate and in accordance with the law. As to Article 8, the subject matter of the application does not comprise habitable accommodation, but even to the extent that the Applicants' Article 8 rights are interfered with, it is considered that any such interference would clearly be justified, proportionate and in accordance with the law for the same reasons as apply in respect of Article 1 Protocol 1.

11. Recommendation:

- 11.1 The Council should decline to determine the application for the above reasons. The application shall be returned to the applicant and regarded as withdrawn in

accordance with the PPG ('Making an application' section, para 14-059).

Recommendation agreed by: (Authorised Officer)	Decline to Determine
Signed:	
Date:	13.1.2025