

Rebecca Stanton

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From: Matt Gilks  
Sent: 23 December 2021 11:22  
To: 'Weaver, Steve'  
Cc: [REDACTED]  
Subject: URGENT: Proposed further application from Tournurbury Estate; section 70C 1990 Act; EIR etc, request [ID=A4274-4]  
  
Importance: High

Good morning Steve,

URGENT: Proposed further application from Tournurbury Estate; section 70C 1990 Act; EIR etc, request [ID=A4274-4]

As you can imagine Mr and Mrs Phillips are extremely disappointed that this inquiry is being moved back but will reluctantly have to accede to accommodate the wishes of the Inspector.

[REDACTED]  
[REDACTED] We have advised our client that in all the circumstances, we would expect the local planning authority to exercise the power under section 70C of the Town and Country Planning Act 1990.

The relevant law is:

1. Section 70C of the Town and Country Planning Act 1990 confers a discretion on a local planning authority to decline to determine an application for planning permission if the grant of permission would be in respect of the whole of, or any part of, matters specified in an extant enforcement notice. It provides: ““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. That discretion is engaged in this case in respect of the specification of the matters which constituted the breach of planning control.
3. Havant Borough Council ought to compare notice the matters and the development to which the application for planning permission related, the focus of that comparison being on the similarities between the two rather than any differences
4. The section is engaged in any case where there is any overlap between the whole or any part of the land concerned, such that granting planning application would have meant granting permission over the whole or any part of the matters specified in the enforcement notice.
5. A decision by the local planning authority to exercise its discretion (provided the factors taken into account are lawful) should be focused on stopping the gaming of the planning system to the detriment of the public interest.

Upper Tribunal Judge Martin Rodger QC sitting as a High Court judge summarised the legislative policy of the section extremely well in Regina (Chesterton Commercial (Bucks) Ltd) v Wokingham Borough Council [2019] PTSR 220 [at [69]]:

“the statutory objective of stopping applicants who have undertaken development in breach of planning control from gaming the system by tactical appeals and retrospective applications is not achieved by asking only whether the planning merits of a proposal have already been determined. The applicant cannot have multiple “bites at the cherry”, but nor can he decline the cherry when it is available to be bitten, and insist on biting it on a later occasion. As was recognised in Banghard’s case [2018] PTSR 1050, para 30, the statutory purpose requires that the unexploited opportunity to have the planning merits considered should also count against the applicant, because “in such cases the developer had a full opportunity to a fair process and did not avail himself of it”. In Smith’s case [2017] EWHC 2696 Gilbert J considered that it was sufficient that the opportunity to pursue an appeal against an enforcement notice had been available to the applicant’s predecessor in title, even though it had not been taken and was no longer available to the applicant himself.”

Taking into account the delay and ongoing harm that will be occasioned by the local planning authority's acceptance of a planning application where the matters raised are far more likely than not to be matters that could properly have been raised in the appeal from the planning enforcement notice; taking into account the prolonged determination of the earlier application and the point that it is plain that there has been absolutely no material change in planning policy or factual circumstances since the issue of the planning enforcement notice or the making of the planning appeal by Tournurbury Estate, there is no rational basis on planning grounds upon which Havant Borough Council can do other than exercise its discretion having regard to these factors. If the appellant has more to say on the planning merits, or proposed conditions, then this ought properly be determined through an appeal process in response to a planning enforcement notice appeal.

Accordingly, and in order to pre-empt and prepare for any action required by my client were the proposed Tournurbury Estate further planning application be validated without full consideration of section 70C my clients request within 7 days of the date of this email:

1. A confirmation by the Council that in accordance with the Act, the proposed planning application meets the factual and legal criteria for the operation of the discretion under section 70C;
2. A confirmation of the Council and provision to my clients of the Council's policy (if any) on the exercise of section 70C;
3. The officer report confirming and determining a decision under section 70C;
4. A formal communication by the Council to our client via this office of the determination of the section 70C discretion;
5. A copy of all the email communications, notes (including notes of telephone calls) of the pre-application discussions between the Council, its officers and its consultants (to the extent they are not protected by strict privilege) and the applicant/appellant. This is to determine among other things, whether the Council has properly considered if and how it ought to exercise the discretion under 70C, including whether the Council has taken into account lawful considerations.

[REDACTED]

[REDACTED] This means that were the local planning authority to take the step of accepting this planning application without properly turning its mind to exercising the discretion available to it, then my client will consider what further steps are necessary in order to correct any legal error that may be disclosed.

Please kindly acknowledge this email and confirm you have passed it to the Council's legal team for consideration and response. I look forward to your confirmation that the Council understands that the requests for documents and notes above made pursuant to the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 and the Openness of Local Government Bodies Regulations 2014, SI 2014/2095.

Finally, may I politely take the opportunity of this email pre-letter before action to put the Council on notice that in respect of this matter, my client reserves the right to seek costs against the Council if the response or actions of the Council in respect of dealing with the Tournurbury Estate/Mr Snell renewed planning application requires the issue of legal proceedings by my client or any other interested third party in order to correct any defect or unlawfulness in the Council's decision making procedures. I have copied in [REDACTED] of the Conservancy.

Yours sincerely,

Matt Gilks

Matt Gilks  
Senior Associate Solicitor

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[REDACTED]

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From: Weaver, Steve  
Sent: 22 December 2021 09:13  
To: teame1@planninginspectorate.gov.uk

Subject: FW: APP/X1735/C/20/3248610, 11, 12 and APP/X1735/W/21/3278661

Good morning Alice

Thank you for your email setting out the Inspector's suggestions for taking the Inquiry arrangements forward for these appeals. I have liaised with the Council's legal and planning representatives for the appeal and must advise that we do not have availability for the extended 8 days of the Inquiry were it to take place in March 2022 as originally intended. The alternative June/July dates are available, and the Council's preference would therefore be for the Inquiry opening date to move as suggested.

The Council can also confirm that it is in receipt of a revised application for the operation of a wedding and events venue at the site which is likely to be made valid this week and consulted upon in the New Year. The rescheduling of the Inquiry should allow for the determination of the application, and for the appellant's and Council's respective positions to be appropriately reviewed dependent on the outcome of the application, in advance of the final submission of proofs for the appeal.

With regards a case conference in January, should this still be required, the Council's legal and planning representatives are both available on the following dates:

- 7<sup>th</sup> – between 12 and 3pm
- 17<sup>th</sup> – after 1.30pm
- 25<sup>th</sup> – PM
- 27<sup>th</sup> – AM
- 28<sup>th</sup> - AM

Kind regards

Steve Weaver  
Development Manager  
Planning Services  
Havant Borough Council, Public Service Plaza, Civic Centre Road, Havant PO9 2AX  
Tel: (023) 9244 6512  
WORKING PATTERN – Monday, Tuesday, Wednesday, Thursday, Friday.

Advance notice of leave: 25<sup>th</sup> December – 3<sup>rd</sup> January inclusive (Council offices are closed)



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From: TeamE1 <[TeamE1@planninginspectorate.gov.uk](mailto:TeamE1@planninginspectorate.gov.uk)>

Sent: 16 December 2021 15:02

Subject: APP/X1735/C/20/3248610, 11, 12 and APP/X1735/W/21/3278661

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Good afternoon,

In response to the appellant's request for postponement of the Inquiry and for extra sitting days, having reviewed all parties' submissions, the Inspector agrees that it would be prudent to allow 8 sitting days for the Inquiry. This could be accommodated by the Inspector, at least, for the current opening date (1 March 2022), though he has not been advised of the availability of all parties for that extended period. However, while he would not normally countenance further delays to enable the determination of applications given that abeyance has previously been granted, in the circumstances he is willing to consider moving the Inquiry opening date to 28 June 2022 (sitting then until 1 July and 5-8 July), this being the earliest he can accommodate. However, before vacating the current dates he seeks the views of all parties. He will seek in either case to have a case management conference 7-8 weeks before opening. If the current date should be adhered to, that will be in early January, so if there are dates that should be avoided please also advise.

Kind regards,

*Alice Maurice*

Enforcement Case Officer

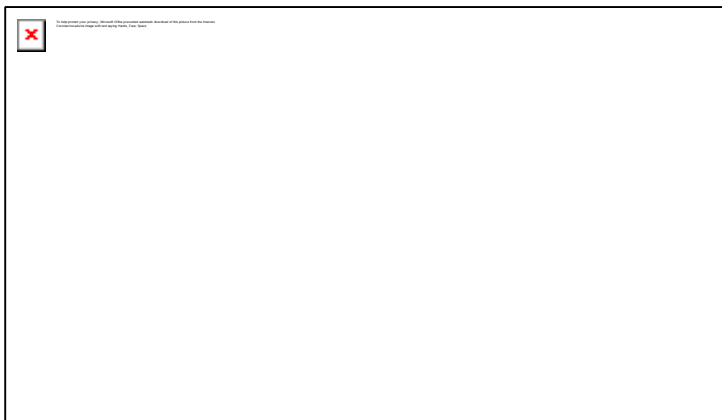
The Planning Inspectorate

Room 3B

Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN

[Teame1@planninginspectorate.gov.uk](mailto:Teame1@planninginspectorate.gov.uk)

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