

APPLICATION NO.	P23/S3077/FUL
APPLICATION TYPE	FULL APPLICATION
REGISTERED	12.9.2023
PARISH	ROTHERFIELD GREYS
WARD MEMBERS	Jo Robb & James Norman
APPLICANT	Mr Clive Hemsley
SITE	Greys Meadow Studio, near Rotherfield Greys, RG9 4QJ
PROPOSAL	Application for the retention of Greys Meadow Studio (retrospective).
OFFICER	Paul Lucas

1.0 INTRODUCTION AND PROPOSAL

- 1.1 This application is referred to the Planning Committee by the Chief Executive in the exercise of his discretion under delegated authority granted to him in consultation with the Chair of the Planning Committee.
- 1.2 The application site, which is shown on the OS extract attached at **Appendix A**, totals approximately 0.43ha and lies to the rear of a loose knit and low-density area of housing within the vicinity of the rural settlement of Shepherds Green. The site falls within the Chilterns Area of Outstanding Natural Beauty (AONB) and is generally flat with a slight rise from southeast to northwest. It is separated from the adjacent public highway on its northeast side by a belt of woodland, which also extends along the southeast boundary, whilst the remaining boundaries to the southwest and northwest are more open. There is an existing access serving the site at the north-western corner of the site.
- 1.3 In 2017 an application (P17/S1779/FUL) to vary the design and position of the new artist studio was approved. This building was to be positioned in the southeast corner of the site and within 3 metres of the original stable building on the site.
- 1.4 Following the grant of application P17/S1779/FUL the applicant proceeded with developing the site. However, an enforcement investigation confirmed that the development was not carried out in accordance with the approved details. The landowner submitted a retrospective application to attempt to regularise the unauthorised development, (P20/S2723/FUL), this was refused on 11 November 2020. An enforcement notice was served on the land on 12 January 2021 requiring the demolition of the building and removal of all the unauthorised additions including hardstanding and storage buildings and restoration of the land to its previous form.
- 1.5 The landowner appealed the terms of the enforcement notice under five grounds including ground A that planning permission should be granted. The appeal was dismissed on all grounds in June 2022 after a four day public inquiry. The inspector upheld the notice with some variations as set out in the appeal decision notice attached at **Appendix B**. The notice was due for compliance by 7 June 2023.
- 1.6 The breach of planning control as amended by the Inspector in his appeal decision is: Without planning permission, the undertaking of various building, engineering and other operations comprising:

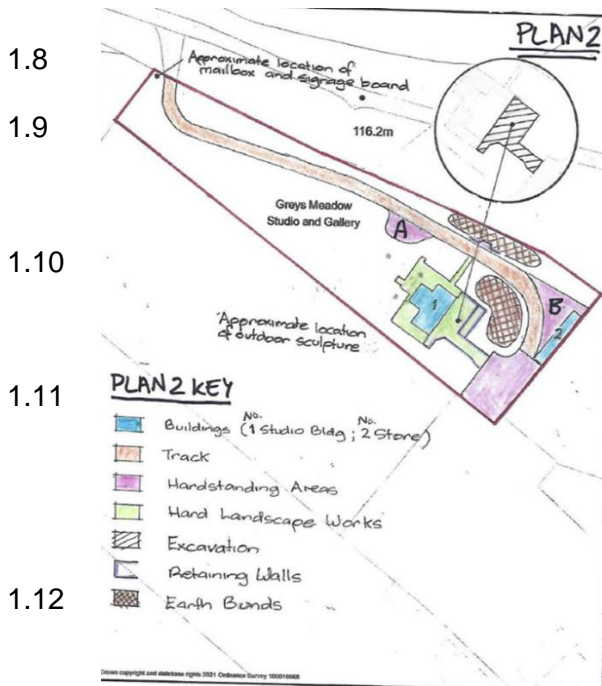
- 1) the erection of 2 buildings in the approximate location indicated on the plan entitled “Plan 2”, hereby annexed to this enforcement notice (referred to hereinafter as “Plan 2”), and identified as “No 1 Studio Building” and “No 2 Store” in the Plan 2 key;
- 2) the laying of a track in the approximate location indicated on Plan 2 and identified as “Track” in the Plan 2 key;
- 3) the laying of 2 hardstanding areas labelled “A” and “B” in the approximate location indicated on Plan 2 (for the avoidance of doubt this excludes a third hardstanding area in the southern corner of the Land, the approximate location of which is also shown on Plan 2, but this area has not been labelled on the plan with a letter);
- 4) the erection of retaining walls in the approximate location indicated on Plan 2 and identified as “Retaining Walls” in the Plan 2 key;
- 5) earthworks to create an excavation in the approximate location indicated on Plan 2 and identified as “Excavation” in the Plan 2 key;
- 6) hard landscape works to create paths, steps, patios and courtyard areas in the approximate location indicated on Plan 2 and identified as “Hard Landscaping Works” in the Plan 2 key; and
- 7) the installation of a mail box and a signage board in the approximate location indicated on Plan 2’;

1.7

The requirements of the enforcement notice upheld in the appeal decision are as follows:

- (i) Demolish or otherwise take down the two buildings referred to in part 3.1) of this notice, including their foundations.
- (ii) Dig up the track, hardstanding areas, retaining walls and hard landscape works referred to in 3.2), 3.3), 3.4) and 3.6) of this notice.
- (iii) Pull down, dismantle or otherwise remove the mailbox and signage board referred to in 3.7) of this notice.
- (iv) Remove from the Land all materials resulting from the works required by i), ii) and iii) above.
- (v) Reinstatement areas disturbed by the works required by i), ii), iii), and iv) above by the backfilling of any excavations referred to in 3.5) of this notice and resulting from the works required by (i) above using clean fill, the spreading of topsoil to levels commensurate with the natural levels and fall of immediately adjoining lands and the sowing of grass seed.

‘Plan 2’ as referred to above is copied below:



The notice was due for compliance by 7 June 2023.

In February 2023 the landowner submitted a letter requesting pre application advice about a modified scheme for the site. Officers gave clear advice that a scheme that included retention of the unauthorised building wouldn't be acceptable.

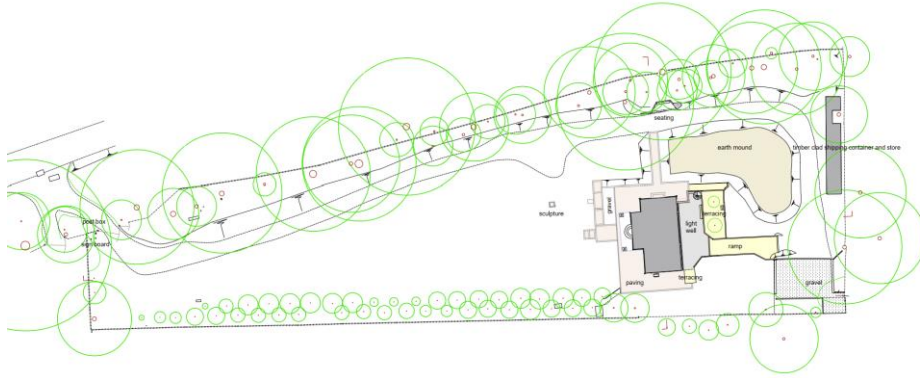
A site visit on the 8 June 2023 after the compliance date for the enforcement notice confirmed that no part of the enforcement notice had been complied with. Photographs of the site taken during this site visit are attached as **Appendix D**.

A further site visit on the 20 September 2023 after the current application had been submitted revealed that some elements had been removed from the site in accordance with the requirements of the enforcement notice but the building remained in situ and unaltered. Photographs of the site taken during this site visit are attached as **Appendix E**.

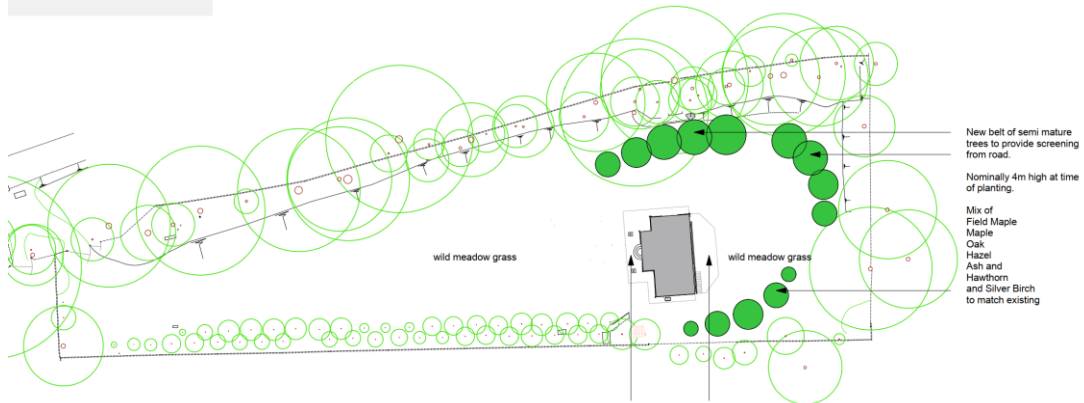
The application subject of this report seeks planning permission for the retention of the studio building as built with the retention of an area of handstanding (paving) around the building and a lightwell serving the basement area. Other built elements on the site required to be removed under the enforcement notice do not form part of this application. The 'as built' site plan and site plan now proposed are shown below. A copy of the plans associated with the current planning application are attached at **Appendix C**, and other documentation associated with the application can be accessed via the council's website,

<https://data.southoxon.gov.uk/ccm/support/Main.jsp?MODULE=ApplicationDetails&R EF=P23/S3077/FUL>

Unauthorised layout



As now proposed:



3.0 **RELEVANT PLANNING HISTORY**

3.1 [P23/S0623/PEO](#) - Advice provided (12/04/2023)

Private artist's studio with basement, roof void storage and exterior landscaping. Removal of unlawful features and paraphernalia.

[P21/S0931/DA](#) – Enforcement Notice (07/06/2022) - Appeal dismissed (07/06/2022)

Without planning permission the undertaking of various operations including: 1) the erection of three buildings; 2) the formation of earth bunds; 3) the excavation of a trench (ha-ha); 4) the laying of a track and various hardstanding areas, 5) the erection of retaining walls; 6) earthworks to create a tiered garden and basement level courtyard; 7) hard landscape works to create paths, steps, patios and to install an outdoor sculpture; and 8) the installation of a mail box and signage. (Enforcement Investigation SE19/309).

[P20/S2723/FUL](#) - Refused (11/11/2020) - Appeal dismissed (07/06/2022)

Erection of art studio, with details of access, car parking and landscaping (Retrospective)

[P18/S2253/FUL](#) - Approved (18/01/2019)

Variation of condition 6 - laying out and construction of an access, driveway or other hard standing on application ref P17/S1779/FUL.

[P18/S0207/DIS](#) - Details Agreed (08/03/2018)

Discharge of condition 2 - materials and 3 - landscaping on application ref. P17/S1779/FUL.

[P17/S1779/FUL](#) - Approved (21/07/2017)

Variation of Condition 2 of P16/S2721/FUL for an alternative design, form and siting of the approved art studio with reference to amended drawing 1101.PL.004e.

[P16/S2721/FUL](#) - Approved (01/02/2017)

Proposed removal of existing timber building and separate store and erection of a replacement purpose-built art studio and store for private use.

4.0 RELEVANT LEGISLATION

4.1 Section 70C(1), Town and Country Planning Act 1990(as amended)

4.2 Other Relevant Legislation
Human Rights Act 1998

The provisions of the Human Rights Act 1998 have been taken into account in the processing of the application and the preparation of this report.

Equality Act 2010

In reaching this decision the Council has regard to its equalities obligations including its obligations under Section 149 of the Equality Act 2010.

5.0 IS THE POWER TO DECLINE TO DETERMINE THE APPLICATION UNDER SECTION 70C(1) ENGAGED?

5.1 Section 70C(1), Town and Country Planning Act 1990 provides that:

“A local planning authority in England may decline to determine an application for planning permission 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.”

5.2 A “pre-existing enforcement notice” is one issued before the related application for planning permission was received by the local planning authority (section 70C(2)). In this case, the Enforcement Notice subject of [P21/S0931/DA](#) qualifies as a “pre-existing enforcement notice.

5.3 Section 70C is concerned with curbing opportunities for delay in enforcement by abuse of the appeals procedure in circumstances where a retrospective application for planning permission and an enforcement notice concern related matters. 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.

5.4 Having identified the matters specified in the enforcement notice as the breach of control, Section 70C(1) then invites a comparison between those matters and the development to which the retrospective application for planning permission relates. The purpose of the comparison is to identify any overlap between the matters enforced against and the subject of the retrospective application. It is clear that something very much less than a complete duplication of the matters enforced against and the matters for which permission is sought will be sufficient to engage section 70C(1). It is enough that the retrospective application relates to “the whole or any part of the land” to which the enforcement notice relates, and that granting it would involve granting permission for “the whole or any part of” the matters specified in the enforcement notice.

5.5 Section 70C is not concerned with the existence of differences between two developments, but with the existence of similarities. Section 70C(1) is also not

concerned with the steps which the enforcement notice requires to be taken, or the activities which must cease, in order to remedy the breach or any injury to amenity which has been caused by the breach. The fact that granting the application would also involve granting permission for matters which were not specified in the enforcement notice, or that it would not involve granting permission for other matters which were specified in the notice, are not relevant when considering whether the power to decline to determine the application is engaged.

- 5.6 In this case, officers consider that there is sufficient similarity, both functionally and physically between the subject of the breach of control specified in the enforcement notice, namely “No 1 Studio Building”, and the development shown at **Appendix C** for which planning permission is now sought. The planning merits of this building were considered by the Inspector at appeal against the enforcement notice. What is now being sought is a reconsideration of what are substantially the same issues. If granted, the application would result in the retention of the same structure dismissed at appeal.
- 5.7 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 only achieved by asking whether the planning merits of a proposal have already been determined.
- 5.8 The Inspector stated at Para. 174 of the enforcement appeal decision:
“Whilst the appellant suggested that the AS [Art Studio] could be altered to make it more acceptable, an alternative scheme has not been submitted in any detail, such that this might be considered. Nevertheless, the appellant acknowledged that an alternative would not remedy the breach of planning control in this case.”
- 5.9 The Inspector also stated at Para. 176:
“No alternative or lesser steps have been suggested to achieve the purpose of remedying any element of the breach in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice, once corrected and varied, are necessary and proportionate. For these reasons, the appeal, under ground (f) should fail.”
- 5.10 Officers consider that the power to decline to determine the application under Section 70C is engaged.
- 6.0 **SHOULD THE DISCRETION TO DECLINE TO DETERMINE THE APPLICATION UNDER SECTION 70C(1) BE EXERCISED?**
- 6.1 The extent of any differences is relevant in the exercise of the council’s discretion. Firstly, there has been no change to the development plan and no other material planning considerations have arisen. Therefore, the underlying planning merits considered by the Inspector are not different.
- 6.2 The building subject to this application is identical and remains the same distance away from the site boundaries as the No 1 Studio Building considered in the appeal. In this regard the proposed development would not address the Inspector’s comments at Para. 111 of his decision as follows:
“The building is also some distance from the closest boundaries of the site. Its location does not, therefore, benefit from the visual containment that could result from a close proximity to the existing trees and landscape features that dominate some of the site’s boundaries, in accordance with checklists 3.9 and 3.10 of the CBDG. The more recent

orchard planting does little to mitigate the detached location of the building. I find the building's location within the site to have been poorly chosen."

- 6.3 The building subject to this application would retain the same form and appearance above the natural ground levels of the site as the No 1 Studio Building considered in the appeal. In terms of the design and scale of the development, the Inspector commented at Para. 112:
"The building's prominence is exacerbated by the scale of the development. The roof form and ridge height, together with the substantial front projecting gable, result in a building that is not subtle in its presence on the site. I cannot agree with the appellant, that the scale of the building is relatively small and sympathetic to the scale of the site. That a substantial building sits within a substantial plot does little to reduce its effect on the landscape. Whilst the building may be smaller than the residential buildings to the south and south east, there is a significant degree of separation with these buildings, as noted above. It would not, therefore, be reasonable to compare the size of these with that of the AS. The building's size and location make the building a prominent feature that is a substantial encroachment of built development into the rural landscape."
- 6.4 Para. 113 of the Inspector's decision states:
"Having regard to the above, I conclude that the building, together with the associated hard landscaping and retaining walls to the rear are unacceptable in terms of the landscape effect on the site and the surrounding area. For this reason I find the effect of this development on the character of the local landscape and the AONB to be substantially harmful."
- 6.5 It is clear from the above that the Inspector found the building **and** the hard landscaping and retaining walls to be unacceptable in terms of impact on the surrounding area. Although there are seven elements forming the matters specified in the enforcement notice as constituting a breach of planning control, the application seeks to retain the element that goes to the heart of the enforcement notice. As such, the removal of most of the hard landscaping and retaining walls, a requirement of the enforcement notice in any event, as shown in the current application, would not be sufficient to address the unacceptable impact of the building. The impact of the development is summarised at Para. 116 of the Inspector's decision as follows:
"To summarise with regard to the effect of the development comprising the AS, retaining walls and hard landscaping, my findings above lead me to conclude that the development causes harm to the character of the site and the surrounding area. I acknowledge that the development is not highly visible. Nevertheless, it still causes detriment to the appearance of the site and its setting. For this reason, the development fails to conserve or enhance the landscape and scenic beauty of the AONB, in conflict with the development plan policies and relevant sections of the Framework referred to above."
- 6.6 Based on the clear similarities of the proposed building to the No 1 Studio Building considered in the appeal, and given the very clear conclusions of the Inspector and the lack of any material change to planning policy, there are no reasonable grounds for the council to reach a different decision to the Inspector. Indeed, effective enforcement is required to ensure that the integrity of the planning system and its decision-making processes are maintained. As acknowledged by the Inspector, the applicant still has the right to implement the approved scheme under application P17/S1779/FUL and so the rejection of this application does not prevent the provision of a private artist studio on the site without causing the substantial harm to the Chilterns AONB.

6.7

South Oxfordshire District Council – Planning Committee - 22 November 2023

In the light of the above assessment, officers consider that the discretion to decline to determine the application should be exercised.

7.0 **CONCLUSION**

7.1 The council expects full compliance with the enforcement notice and, in light of this, the council considers that Section 70C(1) is engaged and that the discretion to determine the application should be engaged.

8.0 **RECOMMENDATION**

That the council **decline to determine** the application under Section 70C of the Town and Country Planning Act 1990 (as amended).

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