

**Pengarth- HDC EN/23/0459 and inspectorate appeal decision APP/Z3825/C/24/3343866:
Ongoing Enforcement Breach & Section 70C Request – Planning Application DC/26/1237**

The proposed development at Pengarth, Nightingales, West Chiltington RH20 2QT: under application DC/26/1237, is for the retention and amendment of part of a decking area. The new application provides for the retention of 71% of the original structure (retaining 30 m2 from the original 42m2 that was constructed) and which was the subject of the former Enforcement Notice and the Planning Inspectors Decision Notice.

Partial reduction in height and increasing the decking area in totality for the remainder is not a substantially new application given the extent of the original structure that is intended to remain and what is now determined as unlawful.

I am commenting on planning application DC/26/1237 as the owner of Rosecroft, Nightingales, West Chiltington, RH20 2QT to register my strong objection to this planning application.

The proposal fails to remedy the severe harm caused by the unlawful structure and directly conflicts with local planning policy 33, of Horsham District Council Planning Framework, and a recent binding Decision by the Planning Inspectorate.

While the application purports to propose a reduction of the decking height to below 30cm in part, the submitted plans are misleading and attempt to incorporate elements of an unlawful structure that is currently subject to an upheld Enforcement Notice.

Binding Planning Precedent.

The existing structure is subject to an Enforcement Notice requiring complete removal. The Proposal to retain the exact same structure at a raised height of 70cm in the new application fundamentally ignores the Inspector's binding conclusions.

The planning application is in direct conflict with Horsham Local Planning Policy, Policy 33 (Development Principles) of the Horsham District Planning Framework (HDPF): This policy mandates that high-quality development must "not cause unacceptable harm to the amenity of neighbouring occupiers, taking into account the impact on privacy and oversight. Retaining a 70cm elevated platform directly creates an intrusive line-of-sight visual invasion into our private amenity space and habitable rooms.

A 70cm raised decking effectively reduces the 2m boundary fence to a barrier of less than 1.3m when viewed from every part of the raised decking relative to someone standing upon the decking. This completely undermines the privacy function of the boundary fence.

NPPF Paragraph 135(f): The proposal fails to provide a "high standard of amenity for existing and future users," violating national policy requirements for residential development.

Inadequate mitigation in the application by reducing the height of a minor section of the original decking, extending the total area of decking overall from 42m2 to 55m2 while retaining over 71% of the enforced installation of the elevated structure in the new application is an attempt to justify the application being fundamentally different from the previous installation, and does not mitigate the overall severe harm established by the Planning Inspector.

The application describes the height reduction for the proposed lower section to an unspecified height. A planning application is therefore incorrectly submitted, it must provide and include clear, precise, and accurate dimensioned plans. Horsham District Council cannot properly assess, validate, or enforce unspecified or unclear plans.

Grounds for Objection.

The proposal is a transparent attempt to circumvent an upheld Enforcement Notice and delay compliance. Retaining 71% of the original structure at 70cm height leaves the unacceptable impact on our residential privacy virtually unchanged.

Power to Decline to Determine under Section 70C Town and Country Planning Act 1990: Under Section 70C (as amended by the Localism Act 2011), the Local Planning Authority has the statutory power to decline to determine a planning application where granting permission would grant development specified in a pre-existing Enforcement Notice. Preventing Enforcement Delay:

Parliament introduced Section 70C specifically to prevent applicants from using repeat planning applications as a tactic to frustrate active enforcement action. The applicant already appealed the Enforcement Notice, and the Planning Inspector upheld the notice on all grounds. Allowing any portion of the higher structure to remain—implicitly or explicitly—contradicts the binding decision of the Planning Inspectorate.

Inaccurate and Misleading Drawing

The submitted plans depict a portion of the existing high decking as retained structure. This structure is unlawful and subject to an active Enforcement Notice. To state this is a different application to what has been refused planning consent is incorrect.

Incorporating an unauthorised, refused structure into new application drawings creates ambiguity regarding the scope of the development being applied for.

If approved without explicit clarification or modification, this application could create a loophole where the applicant claims implied consent for the unlawful, higher section.

Planning History and Binding Enforcement Notice

This site has a relevant and recent planning history that must be taken into account:

WPS Planning Submitted Planning Statement

The planning statement incorrectly misquotes and infers the inspectors decision is in relation to the raised portion of decking that is closest to Rosecroft:

Paragraph 1.3 'The proposal seeks planning permission to retain the principal raised terrace adjoins the dwellings, whilst removing and redesigning those elements that gave rise to the enforcement action.'

Response: The enforcement action relates to the entire raised decking, not just the section closest to Rosecroft Clause 13 of the inspectors report gives clarity on this point.

Paragraph 1.5 states 'a high-quality design that safeguards neighbouring amenity whilst retaining an appropriate living space associated with the dwelling'

Response: The retained section at 70cm elevation will continue to breach HDC policy 33 and permit harm by overlooking and loss of privacy.

Paragraph 4.5 'The proposal represents a significant amendment to the development previously considered through the enforcement process' and in paragraph 6.70 'as a materially different proposal'

Response: With 71% of the original installation being retained, this cannot be conceded as a significant amendment.

Paragraphs 6.12 and 6.65 misrepresent the Inspector's statement, paragraph 13 in the Inspectors reports below clearly states the whole of the decking has caused harm, and this gets more severe as you near the boundary fence.

The Inspectors decision under enforcement appeal APP/Z3825/C/24/3343866 determined:

Under Ground (a)

Paragraph 11, on the effect the decking was having on the occupants of Rosecroft having regards to privacy.

The Inspector did not limit this to the section of decking closest to our boundary but the decking in its entirety due to its height.

Paragraph 13. The Inspector writes, 'The visible upper part of the fence is only low on the Pengarth side because much of the rest of it is obscured by the decking structure raised above back garden ground level. I saw that this part of the fence is not tall enough to prevent unrestricted, panoramic standing views from the decking across virtually all of the back garden of Rosecroft and into or towards side or rear facing habitable room windows. Albeit that such views are progressively more limited further from the boundary fence, any part of the decking can be used by the appellant or could be used by future occupants of Pengarth, including near or next to the fence where such views are most pronounced. As well as significant actual direct overlooking, the obvious presence of a person or people and activity on the decking would give a strong, uncomfortable perception of being surveyed from an unexpected close elevated vantage point'

Paragraph 14. The inspector writes, 'These circumstances therefore seriously diminish the living environment of this property by those who live in it'.

Paragraph 16. The Inspector writes, 'Nor should the inhabitants of the adjoining property have to install or maintain measures to protect their living conditions in response to development on adjoining land'.

Paragraph 21. The inspector writes, 'Consequently, the raised platform in the form of timber decking causes significant harm to the living conditions of the occupants of Rosecroft, having regards to privacy. It is therefore contrary to Policy 33 of the Horsham District Planning framework, November 2015. This policy includes that development should avoid unacceptable harm to the amenity of occupiers of nearby property through overlooking'.

The Inspector concluded Grounds (d), (a) and (f) fail, so the appeal does not succeed. Planning permission is also refused on the appeal application deemed to have been made under section 177 (5).

Objections to the Grant of Planning Approval to DC/26/1237

My objection to planning application DC/26/1237 is not based on overlooking by the closest section only, but from severe overlooking from the whole of the decking structure in its entirety due to the height and quantity of the retained unlawful section.

From the far righthand side of the decking closest to the lounge of Pengarth, having been invited by the owner to see their decking and viewed our garden from it, there is a clear view across the whole of our garden from the decking on the far right hand side of the decking when facing the garden, which increases the closer to the steps leading to the lawn and the boundary fence.

While the planning Inspector explicitly rejected a request in the enforcement appeal for an application to grant planning permission. The applicant has exhausted their statutory right to test the planning merits.

Planning application DC/26/1237 submitted for the property at Pengarth Nightingales West Chilton, seeks to retain 71% of the unlawful elevated decking (70cm high), retaining 30 m2 from the original 42m2 of elevated decking structure.

Site location plan drawing 162/2026/1 misrepresents the area of decking for the planning consent applied for, it only depicts the lowered section of decking not the retained elevated section at 70cm high and subject to enforcement action EN/23/0459. In an attempt to illustrate the application is different and to obtain implied consent for what is to be retained.

Drawing 162/2026/3ra submitted with the application shows an overall increase in total deck area from 42m2 to 55m2, the drawings are not dimensioned and whilst scalable, allows future interpretation of any approval granted. Whilst the application states the lower-level section will be below the 30cm permitted development height. The submitted drawing do not give datums or dimensions as to height as required for planning applications. The land also slopes down from the rear elevation of the property, such the outer edge of the lower section of decking could be above 30cm.

In addition, the proposed drawing 162/2026/3ra is undefined/unclear in terms of the structure proposed between the proposed steps to the doors closest to our property and could be interpreted as a plinth section above 30cm. The juxtaposition of the lower section of decking, if it meets permitted development, is so close to the boundary fence that overlooking will still result and leave a residual fence height of 1.7m, permitting an average height person to look over the top. If plinths are in fact a feature of the proposed application this would still permit overlooking and loss of privacy into our property either from the proposed steps or plinth sections.

The retained section of the decking is subject to an active Enforcement Notice EN/23/0459 requiring complete removal. The Inspector's decision formally confirmed that the structure causes severe harm to neighbouring residential amenity and rejected the applicant's request to grant planning consent to retain the decking, the enforcement notice requires the full removal of all materials from the property. As such this new application is a clear tactic to delay compliance. Retaining 71% of the original decking at 70cm height leaves the severe privacy breach and overbearing impact entirely unmitigated, in direct conflict with Policy 33 of the Horsham District Planning Framework.

Conclusion of objection to planning application DC/26/1237

To prevent a breach of planning control from being normalized, I respectfully request that the Local Planning Authority:

Case office to visit site to verify the facts stated in the Planning Inspectors decision as it relates to the application submitted and under consideration with reference to the extent of decking being retained under this application and which is subject to enforcement.

I formally urge the Case Officer to invoke Section 70C of the Town and Country Planning Act 1990 to decline to determine DC/26/1237 application outright, preventing further delay to the statutory compliance period established by the Planning Inspector. On the basis the application is not substantially different by retaining 71% of the enforced decking.

Submit a formal internal representation recommending immediate refusal, should the application proceed to determination.

Confirm the enforcement timeline and next steps for securing full compliance and total removal of the structure as ordered by the Planning Inspector.

Please ensure this letter is placed on the public register and brought to the attention of both the Case Officer and the Planning Enforcement Team.



**Owner: Rosecroft
 Nightingales
 West Chiltonton
 RH20 2QT**