



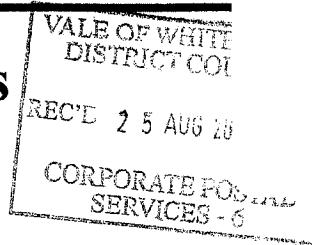
# Appeal Decisions

Hearing held on 04 July 2006

Site visit made on 04 July 2006

by **J G Roberts** BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government



## APPENDIX 2

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Date:  
24 Aug 2006

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### Appeal A Ref: APP/V3120/C/06/2008077

10 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr C Pugh against an enforcement notice issued by Vale of White Horse District Council.
- The Council's reference is CUM/18082/3-E.
- The notice was issued on 6 January 2006.
- The breach of planning control as alleged in the notice is without planning permission building operations have taken place involving the insertion of two unauthorised windows on the South West elevation of the dwelling house on the Land and shown edged red on plan B attached and the unauthorised extension to the garage shown edged red and hatched red on plan B attached.
- The requirements of the notice are (a) remove the unauthorised windows and frames shown edged red on plan B and brick up the window openings and render to match existing surrounding wall; (b) reduce the garage tower in accordance with the approved plans relating to planning permission CUM/18082/1 such reduction to include the removal of the area shown edged red and hatched red on plan B.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of decision: the notice is corrected; subject thereto the appeal is dismissed, the notice is upheld and the deemed application is refused.**

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### Appeal B Ref: APP/V3120/A/05/1192443

10 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr C Pugh against the decision of Vale of White Horse District Council.
- The application Ref CUM/18082/2, dated 31 May 2005, was refused by notice dated 26 September 2005.
- The development proposed is part retrospective application for alterations, extension and new vehicular access (amendment to approval CUM/18082/1).

**Summary of decision: the appeal is allowed in part and planning permission is granted for alterations to and extension of the house excluding the garage and play room subject to conditions; the appeal is dismissed in part and planning permission is refused for the erection of the garage and play room.**

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## **Procedural Matters**

1. At the Hearing an application for costs was made by Mr C Pugh against Vale of White Horse District Council. This application is the subject of a separate decision.

### **Appeal A – the alleged breach of planning control and ground (c)**

2. The notice refers to 2 unauthorised windows in the south-west elevation. In fact the windows concerned are in the north-west elevation as indicated in the appeal statements. This is clearly a drafting error which has not misled the appellant in any way and would be capable of correction without injustice to him or to the local planning authority.
3. The appellant argues that permitted development rights under Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO) for the insertion of windows had not been withdrawn by any condition on planning permission No CUM/18082/1 granted on 20 April 2004 or by any other means. Therefore, he says, specific planning permission was not needed for them and they are not in breach of planning control. However, this argument overlooks a more fundamental point about the alleged breach.
4. Planning permission had been granted for alterations, extension and a new access. Work began but in respect of the 2 windows and the garage with a play room over (referred to as 'the tower' by some) it was not undertaken wholly in accordance with the approved plans. That is accepted by the appellant. *Sage v SSETR and Others [2003] UKHL 22* makes it clear that when an application is made for planning permission for a single operation it is made in respect of the whole operation. So is any permission that may be granted. If, then, a building operation is not carried out, both externally and internally, wholly in accordance with the permission, the whole operation is unlawful.
5. That is the case here. The breach of planning control is in fact the alteration and extension of the house without planning permission, as recognised by the local planning authority in its appeal statement. The notice is corrected accordingly. No consequential variations are needed to the requirements, which by 'under-enforcement' seek compliance with the planning permission that has been granted in respect of the 2 first floor windows and the extended garage and play room only.
6. Permitted development rights under the GPDO would become relevant to an operation that had received specific planning permission only when the operation had been completed in accordance with that permission. The relationship between the requirements of the notice and such rights, which in effect define the appellant's 'fall-back' position, is relevant not to the definition of the breach of planning control or to ground (c) but to ground (a) and the deemed application.

### **Appeal A – ground (a) and the deemed application; Appeal B**

#### ***The windows***

7. The plans approved in April 2004 show 2 first floor windows on that part of the north-west elevation nearest the road and furthest from the front elevation of No 11 Hids Copse Road, a detached house set back from and at a slightly lower level than No 10. The approved windows therefore face the front garden and parking areas of No 11. The plans also show a pair of false windows at first floor level in the rear part of this elevation.
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8. The additional windows arise from the rearrangement of the internal space to create an additional bedroom and bathroom. The false window nearest No 11 remains blocked. The other has been opened and fitted with a window to a bathroom. A further window opening, to a small bedroom, has been inserted at first floor level between the pair of false windows and the pair of windows nearest the road.
  9. In my opinion the main issue is the effect of the 2 extra windows on the privacy of the occupiers of No 11 Hids Copse Road. The Council argues that they cause unacceptable further loss of privacy, an unsettling degree of intrusion and on over-dominance of window openings in this elevation.
  10. The obscure glazing fitted to the lower part of the new bathroom window effectively prevents overlooking. The new bedroom window provides a slightly closer and less oblique view of the front facing windows and first floor balcony of No 11 than the windows approved in this elevation. Together the 2 extra windows may also give the occupiers of the adjoining house a greater feeling of intrusion.
  11. However, conditions on a planning permission could require retention of the obscure glazing to the new bathroom and obscure glazing to be fitted to the new bedroom window, though this would be unusual even for a child's bedroom and, in the Council's view, inappropriate. Conditions could also withdraw permitted development rights for the insertion of further window openings in the north-west elevation and on roof slopes to ensure that greater loss of privacy and intrusion does not occur in future.
  12. What is disputed, however, is the extent of such rights that would remain if the notice is upheld and the 2 windows are required to be blocked up. The Council suggests that section 181 of the Act ensures that the steps required to be taken are a continuing obligation so that permitted development rights would not be available for reinstatement of the windows at a later date.
  13. I disagree. It is an established principle that enforcement notices cannot remove such rights. (*Mansi v Elstree RDC [1964] 16 P&CR 153* re-stated in *South Ribble BC v SSE [1990] JPL 808* and *Kennelly v SSE [1994] JPL B83*). Once the requirements of the notice have been complied with in full section 180 will operate so as to make the structure, as altered in order to comply with the notice, lawful. The permitted development rights granted by Article 3 of and Class A of Part 1 of Schedule to the GPDO were not withdrawn in respect of the north-west elevation by any condition on planning permission No CUM/18082/1. Nor have they been withdrawn by a Direction under Article 4 of the Order. The appellant would be entitled to rely on such rights.
  14. Section 181(5) makes it clear that reinstatement or restoration of works demolished or altered in compliance with an enforcement notice is an offence only if the work is done without planning permission. Works undertaken in accordance with planning permission granted by the GPDO would not be prevented by section 181 of the Act.
  15. Following compliance with the requirements of the notice the internal arrangement of the building would remain as now. This too would acquire lawfulness under the provisions of section 180. The appellant would have a small bedroom and a bathroom each with no window. In my view there would be a reasonable prospect of him exercising his rights under the GPDO to reinstate the window openings blocked up in compliance with the notice.
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16. Further, if he so desired, he would be entitled to rely on them to insert a further opening in the remaining false window closer to the house at No 11 Hids Copse Road and in a much more intrusive position, or additional openings elsewhere other than at first floor level in the south-east elevation.

17. For these reasons I consider that the loss of privacy and sense of intrusion felt by the occupiers of No 11 would probably be no less than at present if the notice is upheld and Appeal B is dismissed. The insertion of the windows concerned is not inconsistent with Policies D2 and H18 of the adopted Vale of White Horse Local Plan (VoWHLP), which forms part of the statutory development plan for the area, or Policy DC9 of its emerging successor. Therefore the harm caused to the living conditions of the occupiers of that house is not unacceptable.

### *The garage and play room extension*

18. This part of the building has been constructed 1.4m deeper than approved under reference CUM/18082/1, parallel with and close to the boundary of No 9 Hids Copse Road. Eaves and ridge heights remain as approved. Hence the roof pitch differs. No additional windows have been inserted.

19. The main issue is whether the increased scale of the garage with play room above is unacceptably out of character or intrusive in the locality or in the outlook from nearby dwellings, bearing in mind Policies D1, D2 and H18 of the adopted VoWHLP and Policies DC1 and DC9 of its emerging successor.

20. The comparison should be with the structure as permitted in April 2004. The building as a whole would have been likely to have dominated the garden of No 9 Hids Copse Road, the front garden of No 11 and, to a lesser extent, that of No 8, appearing somewhat overbearing to the occupiers of these houses and of an entirely different scale and style to most in the immediate locality, which do not dominate the area's semi-woodland character. The local planning authority observes that, with hindsight, it could be concluded that the approved scheme was 'overblown' in the context of its surroundings.

21. No 11, however, is directly affected primarily by the main body of the house overlooking its front garden, not the garage and play room. The appellant argues that the increased size of the garage and play room has little impact on the locality and an insignificant effect on occupiers of other nearby houses.

22. However, the increased depth gives the garage building greater apparent bulk. I have no reason to dispute the evidence of local residents that 'the tower' can be seen from a considerable distance and is prominent when lit at night. The increase in the area of its flank wall facing No 9 is significant. I would expect this, together with its position well forward of its neighbours, to give it substantially greater dominance and apparent incongruity in its surroundings. The graphic and photographic comparison submitted by the occupier of No 9 demonstrates the point well.

23. In my opinion the increase in size of the garage and play room represents a further and unacceptable erosion of the character and distinctiveness of the locality. Whilst it is not the purpose of the planning system to protect the private interests of one individual from those of another the protection of the quality of Nos 7 and 8 Hids Copse Road as components of the local housing stock is a legitimate public planning interest. Therefore I regard the

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increased dominance and overbearing nature of the garage building in the gardens and outlook of Nos 8 and 9 Hids Copse Road as unacceptable also.

24. For these reasons the garage building is contrary to the thrust of adopted VoWHLP Policies D1, D2 and H18 and to Policies DC1 and DC9 of its emerging successor. I see no material considerations of sufficient weight to outweigh the objections. Therefore the appeals fail in respect of the garage and play room.

#### **Conclusion and Appeal A grounds (f) and (g)**

25. I have concluded that the notice should be corrected and planning permission should be granted for the extensions and alterations as built other than the garage and play room subject to conditions, but that the appeals should fail and planning permission should be refused in respect of the garage and play room. It follows that the notice will be upheld.
26. Requirement (a) is not deleted as section 180 would then have the effect of creating an unconditional planning permission in respect of the windows which would be inconsistent with the decision on Appeal B. The planning permission granted would, however, override that requirement. The appeal against the notice on ground (f) fails.
27. On ground (g) the appellant suggests that the requirements would involve significant structural work and internal alterations to the building. That may be particularly so in the case of requirement (a). However, the alterations required to the garage and play room would not affect the internal layout of the house as a whole. Whilst significant reconstruction would be required I do not consider the period of 2 months to be unreasonably short for the completion of the works. Enforcement action is discretionary. It would be open to the Council to vary the period for compliance or defer further action if, in its opinion, such a course is justified by the circumstances at the time.
28. Therefore Appeal A is dismissed and the notice is upheld as corrected. Appeal B succeeds other than in respect of the garage and play room. Planning permission is granted for the development other than the garage and play room subject to conditions but dismissed in respect of the latter elements. A further condition is imposed on the planning permission to control external lighting. This is necessary to the development to be permitted because of the nature of the extensions and their relationship to adjoining properties and the locality, referred to specifically by Policy DC9 of the emerging VoWHLP to 2011, which is a material consideration.

#### **Formal decisions**

##### ***Appeal A Ref: APP/V3120/C/06/2008077***

29. I direct that the notice be corrected by the deletion of the text of paragraph 3 of the notice and the substitution therefor of the following words: 'without planning permission, alteration and extension of the dwelling house'; subject thereto the appeal is dismissed, the enforcement notice is upheld and the application deemed to have been made under section 177(5) of the 1990 Act is refused.

##### ***Appeal B Ref: APP/V3120/A/05/1192443***

30. The appeal is allowed in part and planning permission is granted for alterations and extensions excluding the garage and play room at No 10 Hids Copse Road, Cumnor Hill,
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Oxford OX2 9JJ in accordance with the terms of the application No CUM/18082/2 dated 31 May 2005 and the plans submitted therewith subject to the following conditions:

- 1) Within 2 months of the date of this decision any bathroom windows at first floor level in the north-west and south-east elevations of the building shall be glazed with obscure glass and shall be fixed except for a top hung vent and obscure glass shall be retained in these windows unless the local planning authority gives prior written consent to any variation.
  - 2) Within 2 months of the date of this decision all external light fittings shall be removed unless the local planning authority has given written consent to their retention, and thereafter no external lighting shall be installed on or around the building other than with the prior written consent of the local planning authority.
  - 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows or roof lights other than those expressly authorised by this permission shall be constructed on or inserted in the north-west or south-east elevations of the building nor on any roof slope of the building.
31. The appeal is dismissed in part and planning permission is refused in respect of the garage and play room at No 10 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ.

*John G Roberts*

**Inspector**

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**PERSONS TAKING PART IN THE HEARING**

FOR THE APPELLANT

Mr N Lyzba DipTP DipCP MRTPI

John Phillips Planning Consultancy, Bagley Croft,  
Hinksey Hill, Oxford OX1 5BS.

Mr C Pugh

Appellant.

FOR THE LOCAL PLANNING AUTHORITY

Mr M Chattoe DipTP MRTPI

Planning Consultant to Vale of White Horse DC.

OTHERS

Mr M Winand

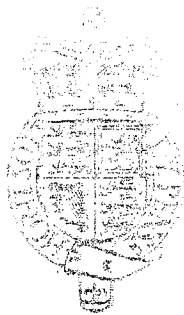
9 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ.

Mr N Grady

11 Hids Copse Road, Cumnor Hill, Oxford OX2  
9JJ.

**DOCUMENTS SUBMITTED AT THE HEARING**

1. Set of 3 photographs submitted by the appellant.



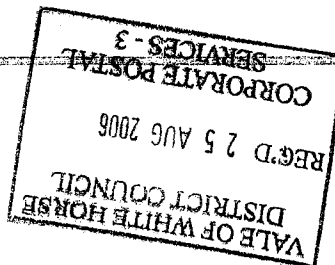
# Costs Decision

Hearing held on 04 July 2006

Site visit made on 04 July 2006

by **J G Roberts** BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for  
Communities and Local Government



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Date

**24 AUG 2006**

**Costs application in relation to Appeal Refs: APP/V3120/C/06/2008077 & APP/V3120/A/05/1192443**

**10 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ**

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr C Pugh for a full award of costs against Vale of White Horse District Council.
- The hearing was in connection with an appeal against an enforcement notice alleging the unauthorised insertion of windows and extension of the garage and an appeal against the refusal of the Council to permit alterations, extension and a new vehicular access.

**Summary of decision: the application is allowed in part and a partial award is made.**

## Submissions for the appellant

1. The claim is based on Annex 3 to Circular 8/93, relating to the substance of the case, including action prior to submission of the appeal. A local planning authority is expected to produce evidence to substantiate each reason for refusal or for issue of an enforcement notice. It did not do so. Whilst it is not bound by the advice of its own officers it is expected to show reasonable planning grounds for departing from that advice and produce relevant evidence to support a decision contrary to that advice. It failed to do so.
2. Planning authorities are expected to consider the views of local residents but local opposition is not by itself a reasonable ground for refusal; that opposition must be founded on valid planning reasons which are supported by substantial evidence. The local planning authority failed to produce such substantial evidence.
3. Officers had considered the matter carefully, bearing in mind the planning permission already granted. They took the view that elements of control that would be afforded by a planning permission subject to conditions could improve the existing situation. However, the committee discarded that advice in favour of the views of the Parish Council and local residents without regard to the appellant's 'fall-back' position.
4. The appellant had given notice of his intention to resist the enforcement action in view of the lack of conditions affecting the north-west elevation and the actions the appellant would be entitled to take following compliance with the notice. The local planning authority failed to understand either this or the effect of under-enforcement, displaying a lack of clear thought in taking enforcement action.



### **Response by the local planning authority**

5. The appellant undertook unauthorised development. In doing so he took a risk. He is not entitled to presume that planning permission would be given retrospectively. On planning merits the committee is not bound by the advice of its officers. It is a question of balance, judgement and weight. The committee concluded that on its merits the development could not be supported and therefore took enforcement action. The planning reasons for doing so were explained fully in the authority's statement, pointing out the harm caused to amenity.
6. The requirements of the notice are continuing requirements that would in practice be difficult to circumvent using permitted development rights. Hence the local planning authority's action was reasonable and costs should not be awarded against it.

### **Reply by the appellant**

7. When using its discretionary enforcement powers local planning authorities should take care to take account of relevant judicial authority. Even if the Council is right to say that requirements continue, windows could be inserted in a different position without specific planning permission. Authorities should be able to show that the breach of planning control would unacceptably affect public amenity or other public interests, rather than just those of local residents.

### **Conclusions**

8. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeals, costs may only be awarded against a party that has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
  9. On the garage and play room element of the development officers took the view that no unacceptable impact would be caused, bearing in mind the existence of the planning permission granted in April 2004. The committee took into account the views of local residents and departed from that advice.
  10. In determining the appeals I considered the reason for refusal and for issue of the notice relating to the garage building and the views of local residents. I concluded that those objections were well founded on valid planning reasons. The appeals were dismissed in respect of this element. It follows that in my opinion the local planning authority's behaviour was not unreasonable and the appellant was not put to the expense of the appeals unnecessarily in this regard.
  11. However, on the question of the 2 additional windows in the north-west elevation of the building the local planning authority appears to have misunderstood the 1990 Act and the leading judicial authorities that have examined the relationship between the requirements of enforcement notices and the subsequent operation of permitted development rights, and in particular the effects of sections 180 and 181. This was fundamental to the Council's view that substantial harm would be caused by this element of the development.
  12. The local planning authority is expected to consider such matters with care before proceeding to refusal of planning permission or enforcement action. In my opinion its failure to do so was unreasonable behaviour which put the appellant to the expense of the appeal in respect of the windows unnecessarily. Therefore an award of costs arising
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directly in connection with that matter is justified. The application is allowed in part in the terms set out below in the Formal Decision and Costs Order.

**Formal Decision and Costs Order**

13. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that Vale of White Horse District Council will pay to Mr C Pugh the costs of the appeal proceedings limited to those costs incurred in respect of the 2 unauthorised windows in the north-west elevation of the building, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Vale of White Horse District Council alleging the insertion of 2 unauthorised windows and the unauthorised extension of the garage on land at No 10 Hids Copse Road, Cumnor Hill, Oxford OX2 9JJ and an appeal under section 78 of the Act against the refusal of that Council to permit alterations, extension and new vehicular access at the same property.
14. The applicant is now invited to submit to Vale of White Horse District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

*John G Roberts*

**Inspector**

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