

APPENDIX 1



2004-2005
Supporting People

Mr J Hartley
6 Swinburne Road
Abingdon
Oxon

Telephone 01235 540350
Fax 01235 540396
email
Website www.Whitehorsedc.gov.uk
Our Ref PD/10/01/68/MD
Your Ref
Date 2 August 2005

Dear Mr Hartley

Ref Self-Contained Annex, 6 Swinburne Road, Abingdon

I refer to the above matter and to our meeting on site on 22 July 2005. I have since reviewed the legal position with respect to the annex and previous appeal decisions concerning annexes. As I explained to you, the main concern of the Council is that the annex will be used as a separate dwelling which will increase vehicular traffic on the private road between Swinburne Road and St John's Road. This private road has a poor access with Radley Road and there would be an objection on highway safety grounds.

The problem the Council faces is that there is no realistic mechanism available to guard against the separation of the annex from the main house at some point in the future. This is because the annex is separated from the house by a considerable distance. Under these circumstances, it is not credible to assume that the annex would be used with the house as one residential unit, even if it were occupied by a relative of the family. Rather, it seems inevitable that, over time, the resident of the annex would come to have a separate life and the annex would become a separate unit by default.

It is open to the Council to take enforcement action should this happen. However, there is only a 4-year time limit after which the use of the annex as a separate unit would be immune from any action. In addition, even if the Council acted within the 4 years, the owner would have the right of appeal, and my research into appeals shows there is a risk the Council would lose. In fact, this happened to the Council on a site off Hinksey Hill near Oxford. The Inspector in this case allowed the appeal because he felt the self-contained

accommodation was designed to be so separate from the main house that its use as a separate unit was a natural corollary of the degree of separation. The objection of the Council to the separation of the accommodation was therefore overruled. I am aware of other similar cases that have been lost on appeal.

In light of the above, there is a serious risk that, at some point in the future, the annex will become a separate unit by default and that the ability of the Council to rectify this situation will be severely compromised by the physically separate nature of the annex. For this reason, the Council cannot support the annex. You stated to me that you will not undertake any building works to amend the building. Consequently, the only option available to the Council is to take enforcement action, against which you have the right of appeal. It is expected that this matter will be presented to the next available Meeting of the Council's Development Control Committee.

Yours sincerely

Martin Deans
Area Planning Officer (North)

Cc Paul Yaxley, Enforcement Officer

CUM/18082/2 – Mr C Pugh

Part retrospective application for alterations, extension and new vehicular access (amendment to approval CUM/18082/1)

10, Hids Copse Road, Cumnor Hill, Oxford.

1.0 The Proposal

- 1.1 This planning application has been submitted following an investigation by the Council's Enforcement Officer into the unauthorised development that has taken place on the above site and has included infringements of the previous approved planning conditions. Any prospective Enforcement Action will be made after the determination of this planning application.
- 1.2 The changes include an the increase in size of the attached garage building with play room above at the front of the site; the repositioning of the glazed lantern above the kitchen area; the insertion of four number roof lights in the main roof; the insertion of two additional first floor windows on the south west elevation; the alteration, repositioning and increase in sizes of window openings at first floor level located on the south east elevation; and the alteration and increase in size of both window and door openings on the north east and south west elevations. Other changes relate to the internal design of the proposal. Submitted drawings of the proposals together with what has been built so far and the previously approved drawings are in **Appendix 1** together with a site plan.
- 1.3 This application comes to Committee as the Parish Council have objected and at the request of a Local Member, Councillor Derek Rawson.

2.0 Planning History

- 2.1 A planning application for major extensions and alterations to the original existing detached bungalow on the site was submitted and was taken to planning committee on the 4th August 2003 where members deferred their decision in order to seek amendments, namely the removal of the balcony off the master bedroom and a reduction of the height of the wall to the single storey lounge/ kitchen area. Subsequently the planning application went back to planning committee on 1st September 2003 where it was given conditional approved. The conditions related mainly to the south east elevation of the property and the proposed balconies. In April 2004 a further planning application was submitted and approved which included an additional two storey rear and side extension, on the north west elevation.

3.0 Planning Policies

- 3.1 Policy H18 of the adopted Local Plan deals with extensions to properties and their impact on the character and appearance of the area, and on neighbours. Policies D1 and D2 deal with design and impact on neighbouring properties. The equivalent Policies in the Second Deposit Draft Local Plan to 2011 are H24, DC1 and DC9.

4.0 Consultations

- 4.1 Cumnor Parish Council objects care attached as **Appendix 2**
- 4.2 Four local residents have made representations. Their concerns include the points made by the Cumnor Parish Council.
- 4.3 The County Engineer has no objections.

5.0 Officer Comments

- 5.1 The issues are considered to be whether there is a harmful impact on the character and appearance of the area, and on the neighbouring properties.

- 5.2 In terms of the first issue the two storey attached garage building located at the front of the property has been extended a further 1.5 metres back towards the main house than that approved thereby measuring 5 metres square. However the eaves and ridge height remain at the same height as previously approved. Officers consider that the increase in size and bulk together with the materials used will not have a harmful impact on the locality.
- 5.3 With regard to the second issue, impact on neighbours, Officers have carefully considered the various changes that have been made. The glazed lantern above the kitchen area, has been repositioned and can now be partially seen above the parapet wall on the south east elevation, however Officers consider that this will have minimal visual impact on the neighbouring properties to the south east.
- 5.4 Four roof lights have been inserted in the main roof, two of which are located in the south east elevation one above the main hall area and the other above the main stairwell; the other two are located on the north west elevation. Officers consider that due to their positioning the four roof lights will not lead to harmful overlooking of neighbouring properties.
- 5.5 Two additional first floor windows measuring approximately a metre in width by 1.7 metres in height have been inserted on the north west elevation one is to a bathroom which will be obscured glazed and the other to a bedroom, both windows are positioned approximately half a metre above the finished floor of the room in which they have been installed.
- 5.6 The nearest property to these windows is No. 11, Hid's Copse Road; located to the north west approximately 2.5 metres away from the neighbouring boundary and set further back from the road than No. 10 and on lower ground. Ground floor windows nearest to the proposal consist of a kitchen window, a glazed porch, a living room window which has a dual aspect and at first floor level a landing window, a secondary glazed bedroom door with window to front, a small obscured glazed window and another bedroom window.
- 5.7 Officers consider that due to the orientation and distance away and the fact that it is the front aspect of the house closest to the proposal site, there will be no loss of privacy for occupants of this property.
- 5.8 On the south elevation of the proposal site one of the high level master bedroom windows has been omitted from the scheme, the other high level window serving this room has been extended in height to 1.1 metres and is located approximately 1.7 metres above the finished floor level of the master bedroom. The window above the stairwell remains unchanged and an additional window measuring 1 metre in width by 1.1 metres in height has been installed above the hall area with a finished floor height of 3.9 metres above the hall floor. The cill height of these windows are high enough to avoid harmful overlooking.
- 5.9 The nearest property to these windows is No. 9, Hid's Copse Road, a large detached house located to the south approximately 6 metres away from the neighbouring coniferous boundary hedge, this property is also set further back from the road than No. 10. There are windows located on the flank elevation which face the proposal and consist of two ground floor bedroom windows.
- 5.10 Officers consider again that due to the orientation, distance and boundary treatment, there will be no harmful overlooking of this property.
- 5.11 The width of the access and turning area has changed in order to accommodate the existing tree and shrub planting. Officers consider that these changes will have minimal impact on neighbour's amenity.
- 5.12 Other changes to the fenestration include larger windows at the front and rear of the property. However Officers consider that these will have no material effect on the street scene or on neighbour's amenity.

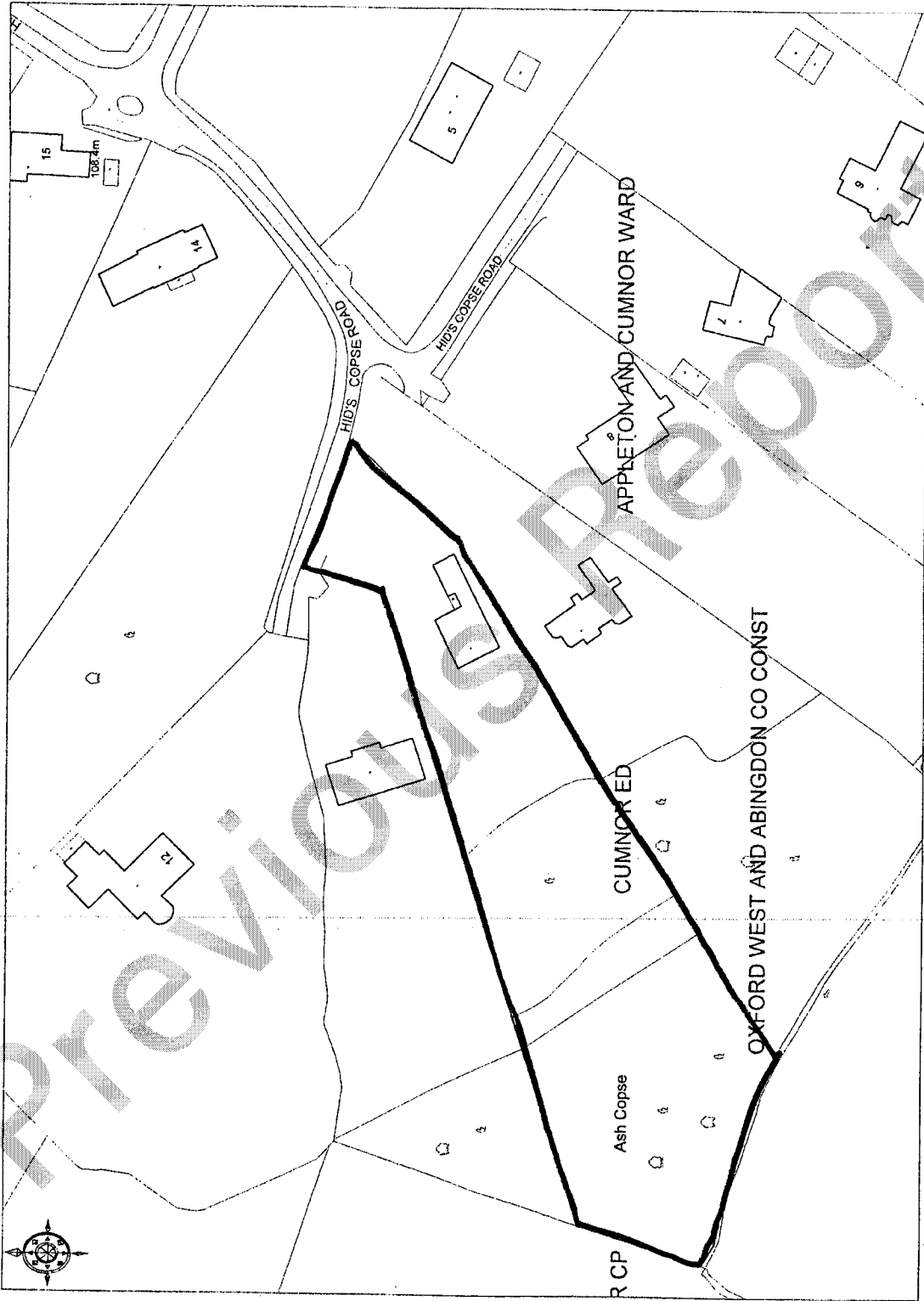
6.0 **Recommendation**

6.1 *That planning permission is granted subject to the following conditions:*

1. Prior to the first use or occupation of the development hereby permitted, and at all times thereafter, the proposed bathroom window on the north west elevation shall be glazed with obscured glass only. Thereafter and notwithstanding the provision of the Town and Country Planning General Permitted Development Order 1995 (or any order revoking and re-enacting that order) no additional windows shall be inserted in the north west and south east elevations of the development hereby approved and without the prior grant of planning permission.
2. *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order 1995) (or any order revoking and re-enacting that Order), there shall be no extension or external alteration to the dwelling hereby permitted including the insertion of any window or roof light and no ancillary structures or buildings shall be erected within the curtilage of the dwelling without the prior grant of planning permission.*
3. *HY29 Surface Water*
4. *HY10 Vision Splays*

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

APPENDIX 1



10 Hids Cope Road
Cumnor Hill, Oxford
OX2 9JJ

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The John Phillips Planning Consultancy

com/1808212

Appendix 1

APPENDIX 1

Clinton Pugh BA-Hons Designer
 CPDM CONSULTANCY
 10 Hids Copse Rr
 Cumnor Hill
 Oxford OX2 9JJ
 Tel: 0778862863

PROJECT:
 Alterations and I
 10 Hids Copse Rr
 Cumnor Hill, Oxd

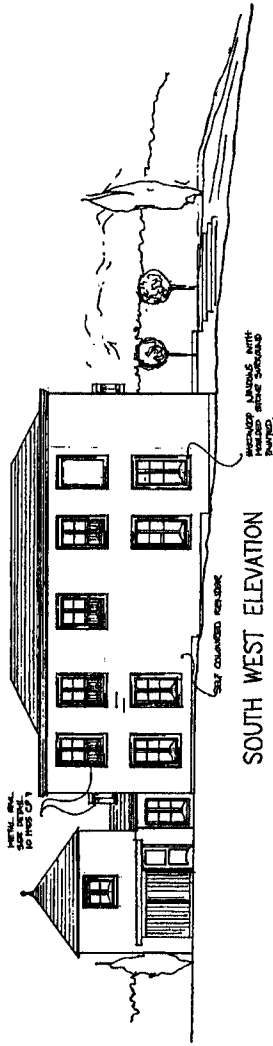
TITLE -
ELEVATIONS

Drawing No - 10

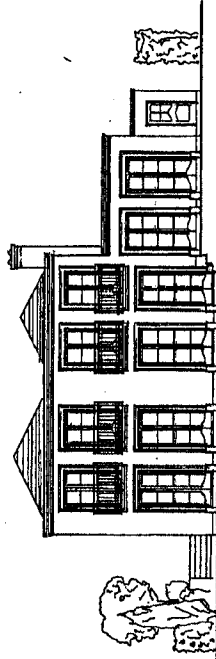
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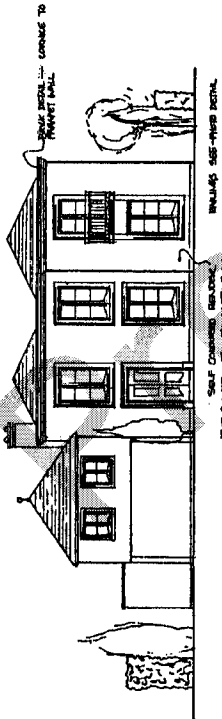
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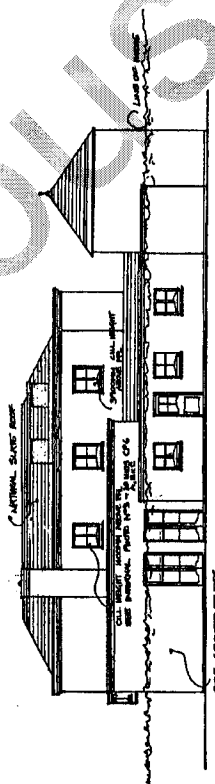
SOUTH WEST ELEVATION



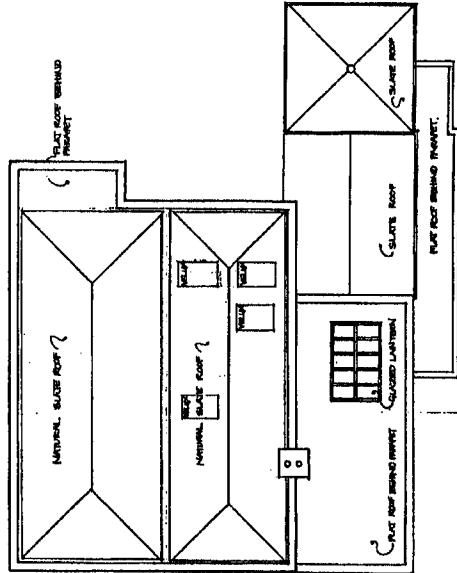
REAR ELEVATION



FRONT ELEVATION



SOUTH EAST ELEVATION



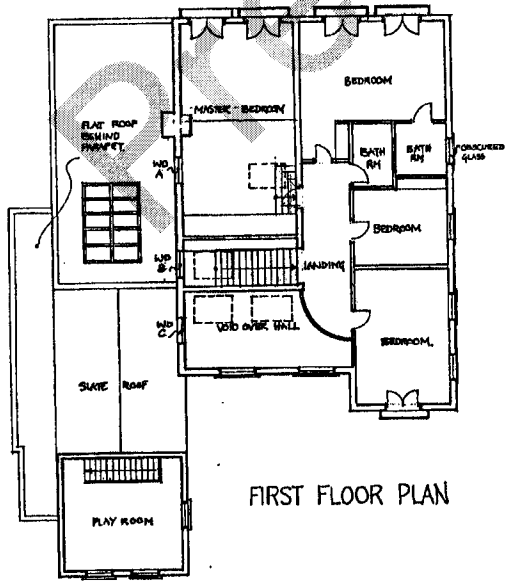
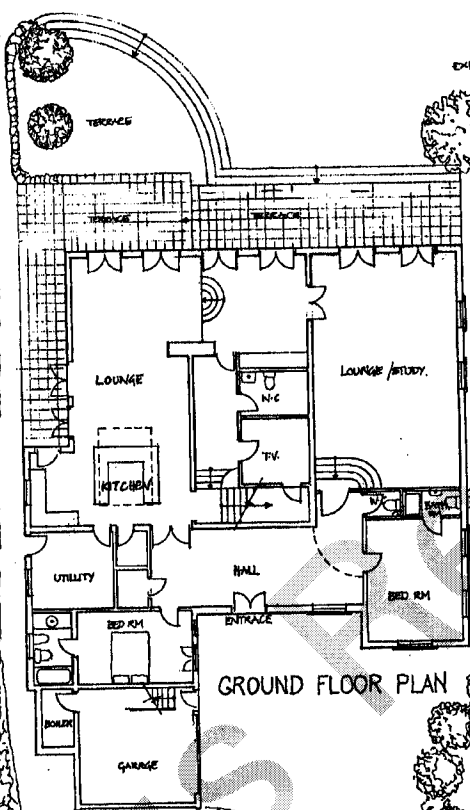
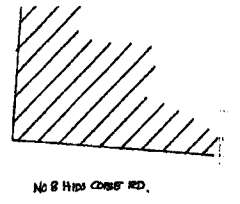
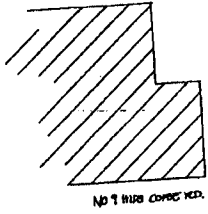
ROOF PLAN



Violent Report

Appendix 1

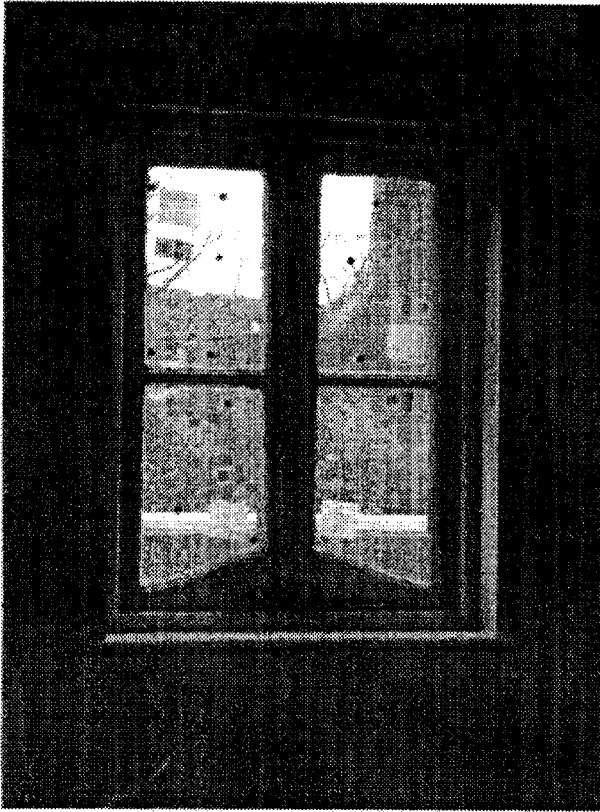
APPENDIX 1



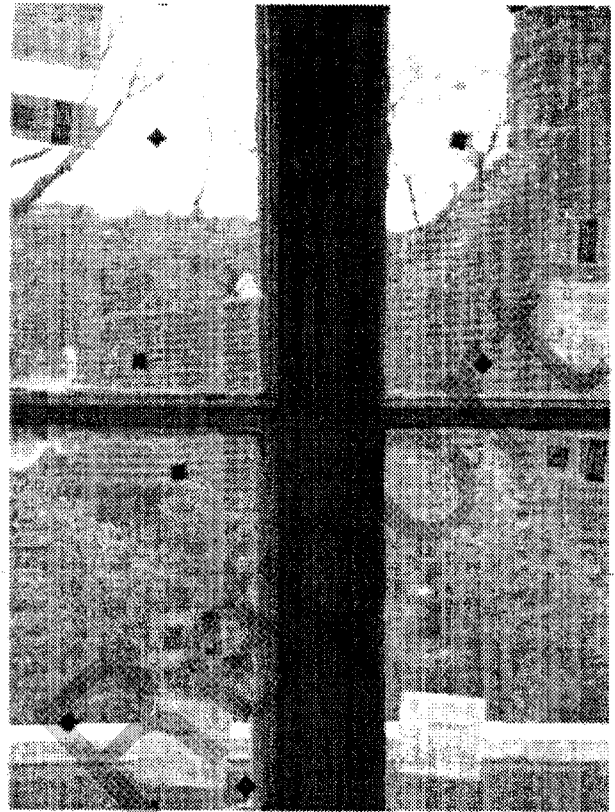
| |
|---|
| <p>Clinton Pugh BA-Hons Designer CPDM CONSULTANCY 10 Hids Copse Road Cumnor Hill Oxford OX2 9JJ Tel: 07788628637</p> |
| <p>PROJECT- Alterations and Extensions to 10 Hids Copse Road Cumnor Hill, Oxford</p> |
| <p>TITLE - GROUND & FIRST FLOOR PLANS</p> |
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| <p>Revision: </p> |

CPA/10002

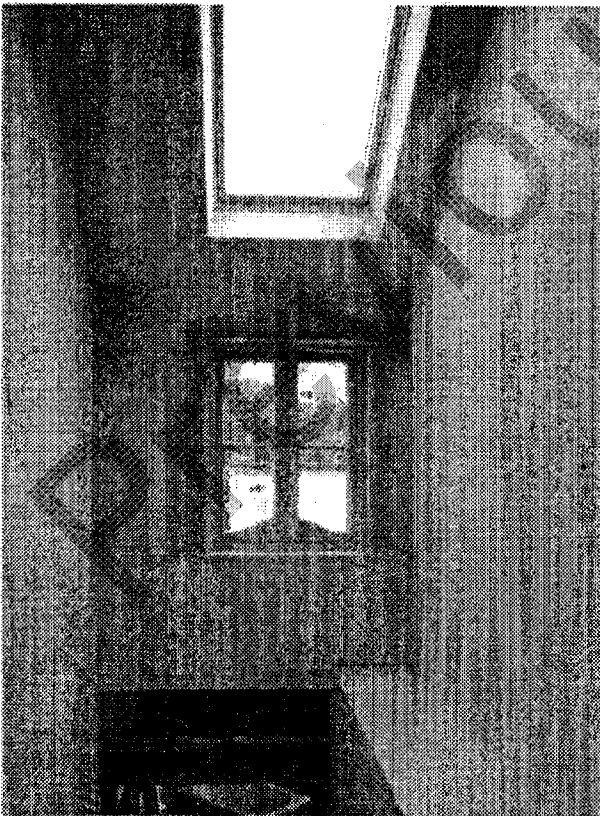
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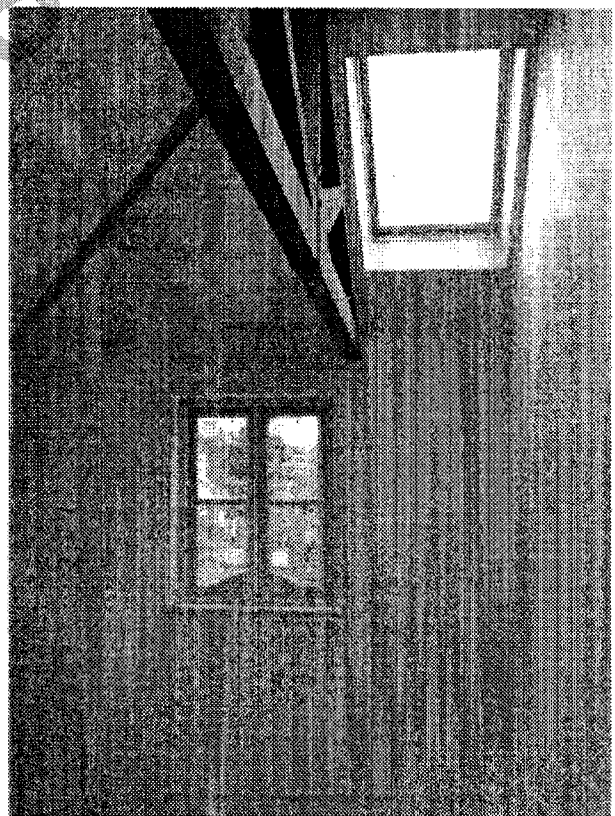
A from doorway



A



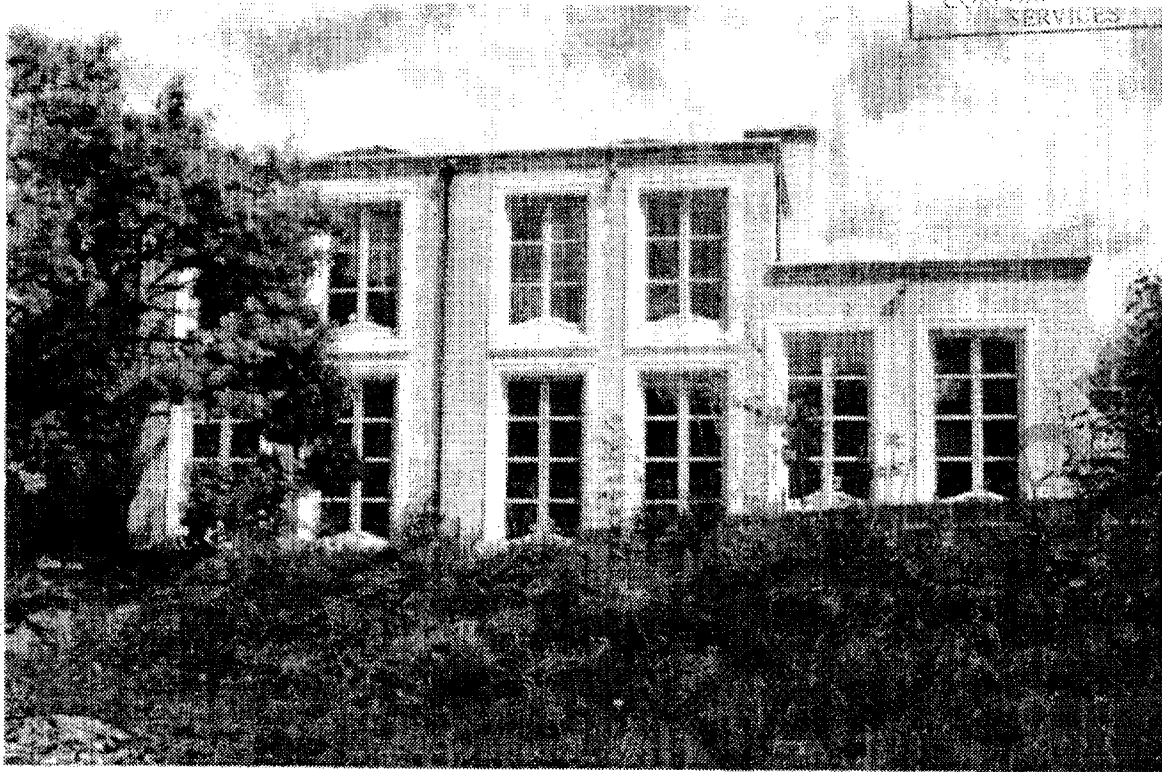
B



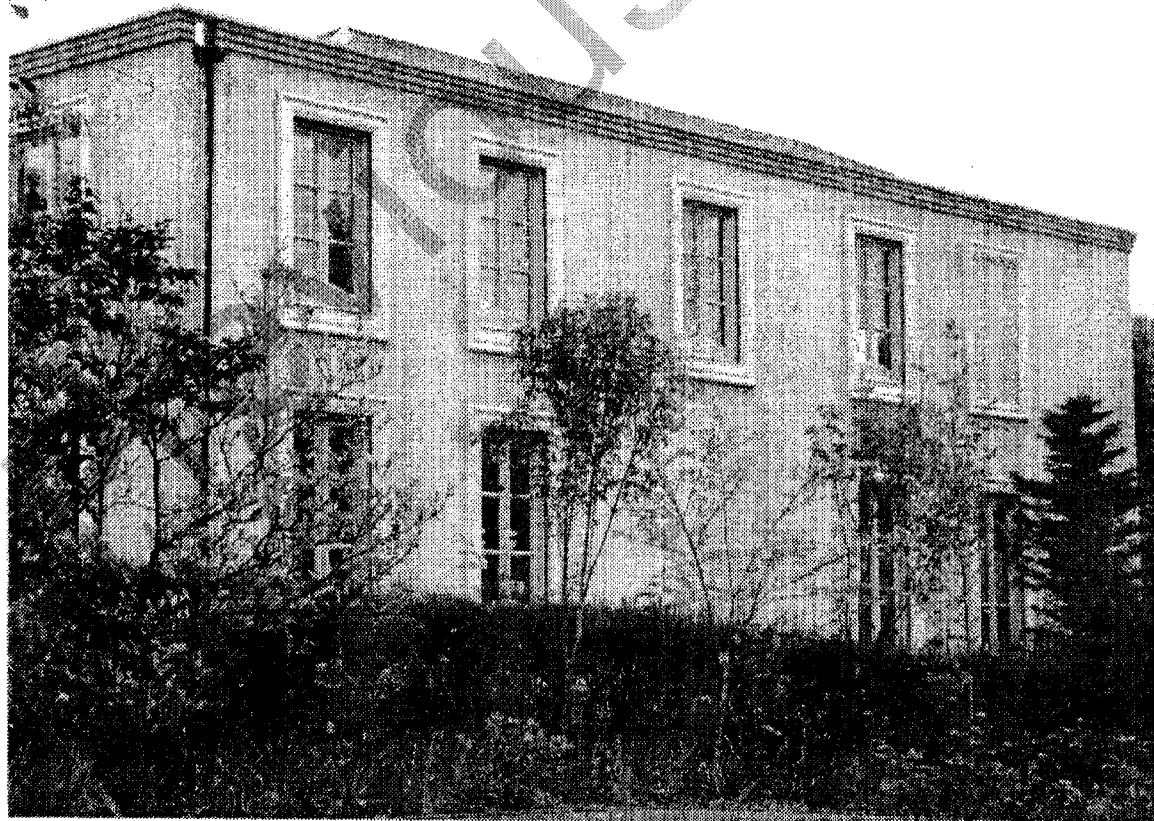
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DISTRICT COUNCIL
REC'D 7 JUN 2005
CORPORATE POLICE
SERVICES

com/1002/2



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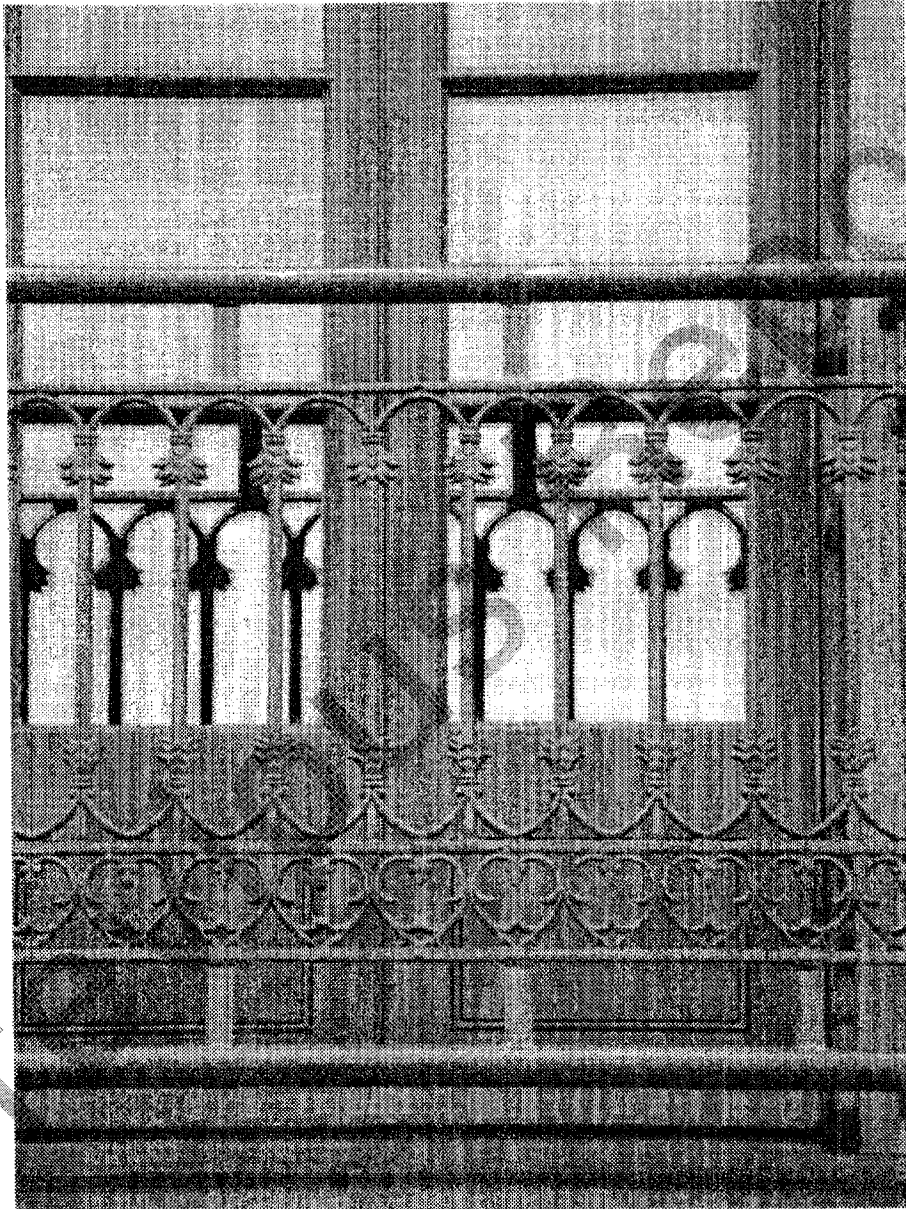


South West Elevation

com/1002/2

10 HIDS CP-7 - DETAIL OF WINDOW RAILINGS

APPENDIX 1

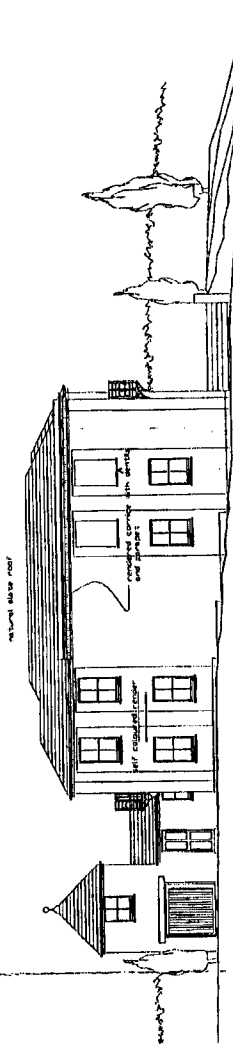


VALLE OF WHITE HORSE
DISTRICT COUNCIL
RECEIVED 7 JUN 2005
CORPORATE POSTAL
SERVICES

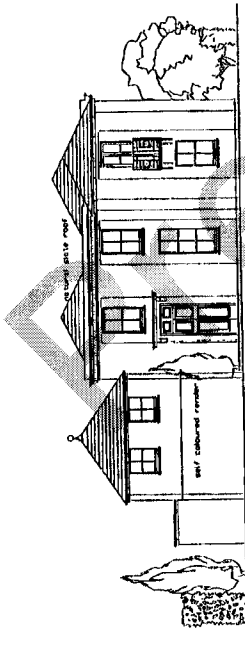
2005/00082/2

APPENDIX 1

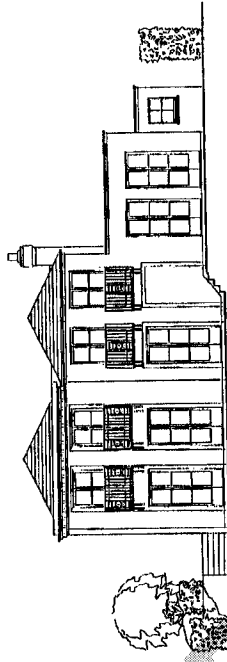
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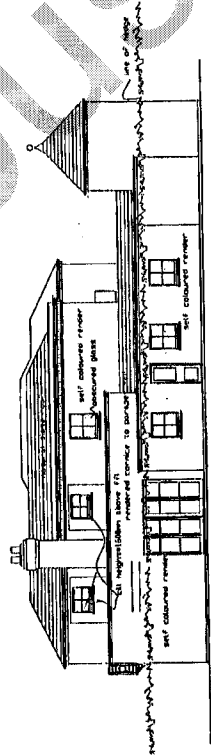
SOUTH WEST ELEVATION



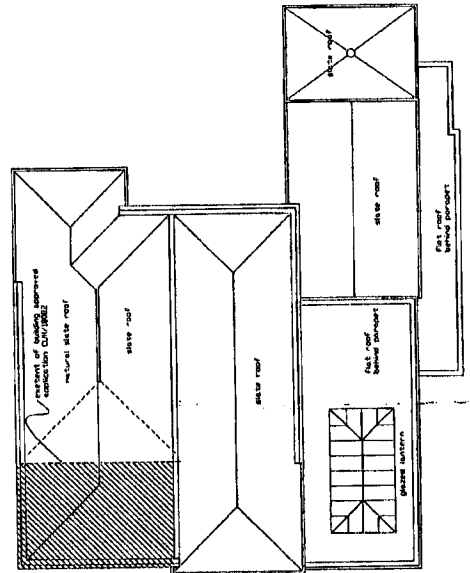
FRONT ELEVATION



REAR ELEVATION



SOUTH EAST ELEVATION



ROOF PLAN

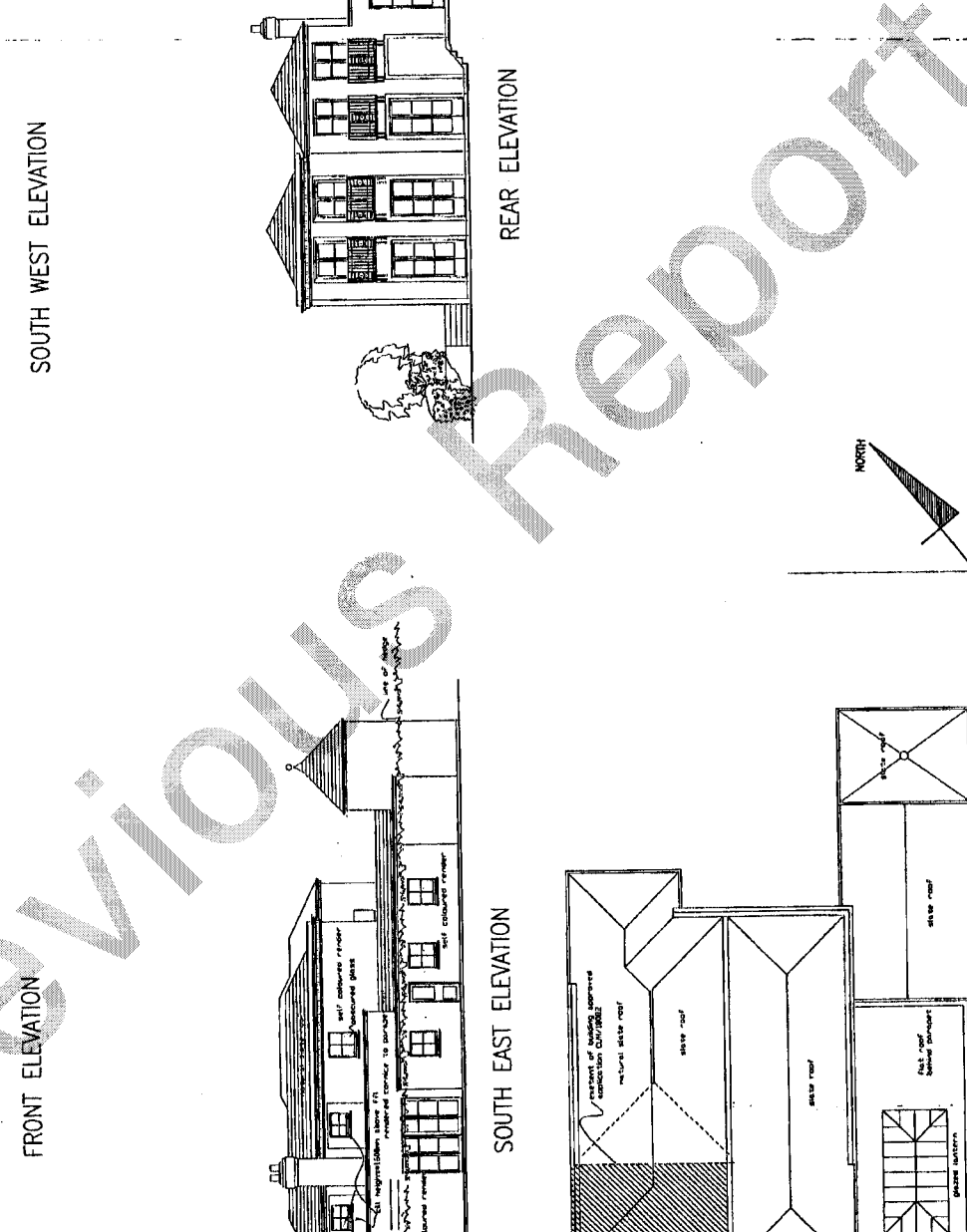
SOLE OF WHITE HORSE DISTRICT
ENVIRONMENTAL SERVICES LTD
APPROVA
DATE OF DECISION 21 APR

DAVID SHERRIN
1 VICTORIA ROAD
SALISBURY
WILTSHIRE
SP4 7JG
TEL: 01246 734
Mr. Clerk
White Horse
10 High Street
Salisbury
Wiltshire
SP4 7JG
TEL: 01246 734

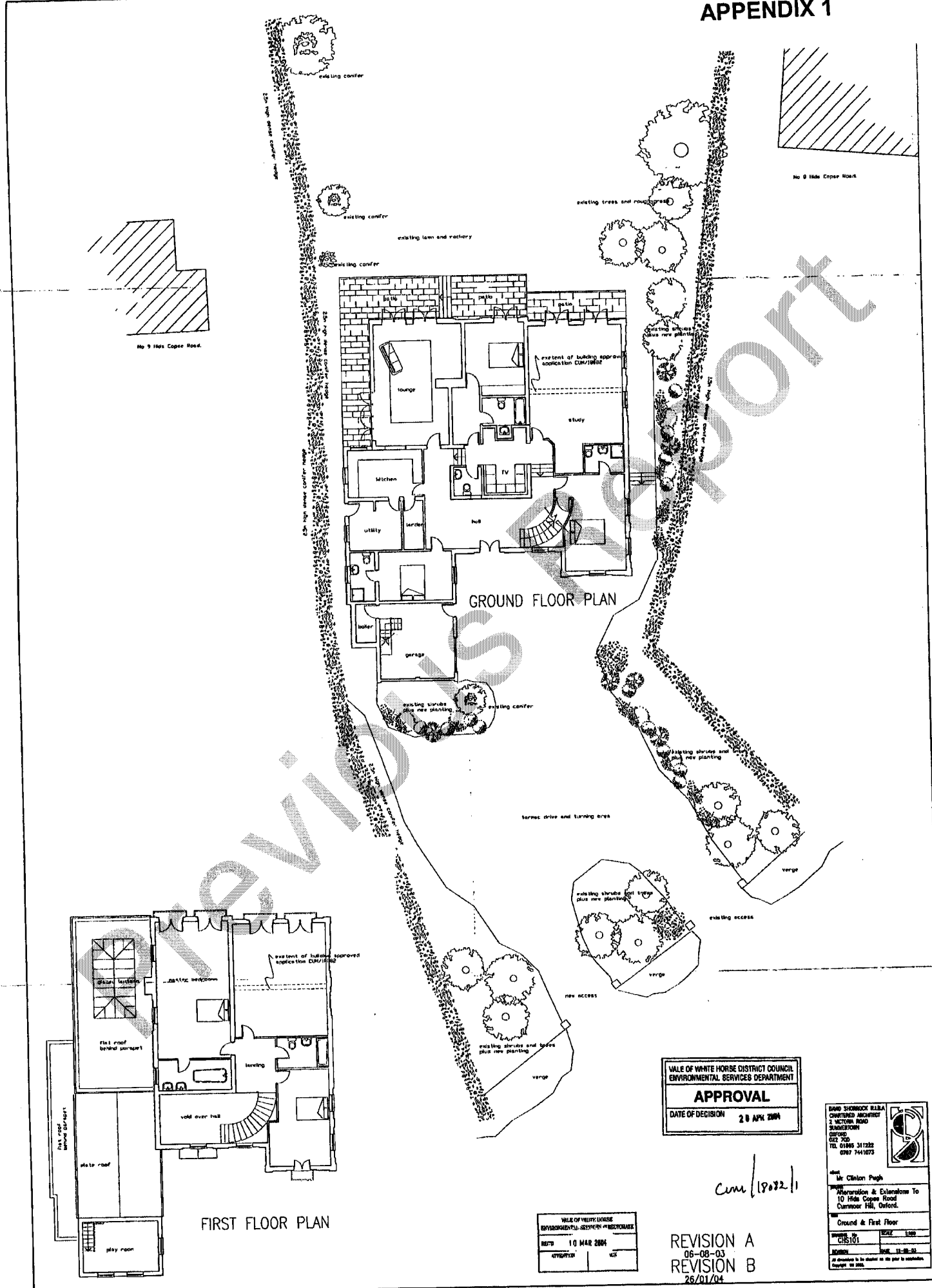
Cum 18082/1

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| SOLE OF WHITE HORSE DISTRICT ENVIRONMENTAL SERVICES LTD | DATE OF DECISION |
| 10 MAR 2004 | 21 APR |

REVISION B 06-08-05
REVISION C 28-01-04



APPENDIX 1



WALE OF WHITE HORSE DISTRICT COUNCIL
 ENVIRONMENTAL SERVICES DEPARTMENT
APPROVAL
 DATE OF DECISION 28 APR 2004

DAVID SHROBROOK B.A. (HON)
 CHARTERED ARCHITECT
 2 VICTORIA ROAD
 BANBURY
 OXFORD
 OX2 7JQ
 TEL 01895 311222
 0207 741070

Mr Clifton Pugh
 Alterations & Extensions To
 10 Hils Copse Road
 Curmcor FH, Oxford.
 Ground & First Floor
 NUMBER: CHS101
 SCALE: 1:200
 DRAWN: JRM
 DATE: 11-02-04
 All dimensions to be checked on site prior to construction.
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WALE OF WHITE HORSE
 ENVIRONMENTAL SERVICES DEPARTMENT
 REF: 10 MAR 2004
 APPROVER: [Signature]

REVISION A
 06-08-03
 REVISION B
 26/01/04

cur/17022/1



Vale of White Horse

CUMNOR PARISH COUNCIL RESPONSE FORM

The observations of Cumnor Parish Council.

Register No. 05/00784/FUL. Officer: Mr A Thorley
Application Number: CUM/18082/2 Amended plans: Yes
Address of Proposal: 10 Hid's Copse Road, Cumnor Hill, Oxford, Oxon, OX2 9JJ
Proposal: Part retrospective application for alterations, extension and new vehicular access. (Amendment to approval CUM/18082/1)

Please select the response that most accurately reflects your views on this application by ticking one box and providing the relevant reasons where this is requested, using a separate sheet if required.

- 1. [] Fully support for the following reasons: []
2. [] No objections.
3. [] Do not object but request the following issues be given consideration: []
4. [x] Object for the following reasons: []

This property was originally a small bungalow set in substantial grounds and the original application (CUM/18082) more than doubled the size of the dwelling. This application was approved with conditions, some of which have still not been complied with. CUM/18082/1 planning application was approved on 20 April 2004 with specific conditions attached. It became apparent that there were breaches to these conditions. The Council understands that an audit was carried out by the Vale Enforcement Officers in February 2005, which identified infringements of the planning conditions. It seems that no follow-up actions have been taken other than advising the applicant to submit a retrospective planning application, CUM/18082/2, incorporating these changes. The Council objects to various aspects of this application and does not consider them to be minor amendments. These include:
• Additional and larger windows on the first floor, contravening the planning consent, some of which overlook and invade the privacy of the neighbours at both No 9 and No 11 Hid's Copse Road.

- Obscured glass has not been installed where required.
The house is elevated relative to No 11 and is overbearing and not in keeping with the surrounding properties. This adds to the dominant and intrusive effect the property has overlooking No 11, in particular some bedrooms, the living room and the garden and is causing genuine distress to the occupants of No 11.
Permitted development rights should be withdrawn from this property so that the owner cannot insert further windows or add extensions or make alterations to the dwelling without express planning consent.
The tower built above the garage is substantially larger (approximately double the size) than the approved plans. It is dominant and overbearing and is very close to the boundary with No 9. It detracts from the neighbours' privacy and enjoyment of the garden at No 9.
The applicant has installed a large lantern roof light above the kitchen area, which is larger than in the original plans and is now highly visible from No 9.
The new vehicular access created is not as per the plans approved in September 2003. The applicant appears to have trespassed onto land belonging to No 9, which is contrary to the current planning application since the appropriate notice to develop land not in the applicant's ownership has not been served.
The Council strongly recommends that the views of the neighbours should be taken into consideration and that the Vale has regard for its own Policies D1 and D2 and should refuse this application.
Furthermore, the Council urges the Vale to enforce the conditions as set out in the permissions for CUM/18082 and CUM/18082/1, otherwise it is likely to be ridiculed if this type of flagrant disregard of planning conditions and guidance is ignored.
In view of the seriousness of these issues the Council would like to be assured that this application will be considered at a meeting of the Vale's Planning and Development Committee.

PLEASE ALSO REFER TO THE COUNCIL'S LETTER OF 18 JUNE ADDRESSED TO THE ASSISTANT DIRECTOR (PLANNING).

Signed by J B Bock Dated 6 July 2005
Clerk to Cumnor Parish Council

APPENDIX 2



REPORT OF THE ASSISTANT DIRECTOR (PLANNING)
TO THE DEVELOPMENT CONTROL COMMITTEE
14 FEBRUARY 2005

Enforcement Programme

1.0 Introduction and Report Summary

- 1.1 This report seeks the approval of Committee to take enforcement action in two new cases.
- 1.2 The Contact Officer for this report is Paul Yaxley, Enforcement Officer (01235 540352 Direct line or 01235 520202 extension 352).

2.0 Recommendation

that authority be delegated to the Director of Environmental Services in consultation with the Director of Support Services and the Chair and/or Vice-Chair of the Development Control Committee, to take enforcement action in the following cases:-

- (i) *On land adjacent and to the south of The Red House, Coxwell Road, Faringdon.*
 (a) *To take direct action under Section 178 of TCPA 1990 to enter the land and take the steps required by enforcement notice GCO/18275-E*
 (b) *To cease the unauthorised use of the agricultural land.*
- (ii) *To remove the unauthorised development and re-instate the marina bank at 20 North Quay, Abingdon.*

3.0 Relationship with the Council's Vision

- 3.1 The content of this report is in line with the objectives A, C and D of the Council's Vision Statement.
- 3.2 This report relates to Enforcement Strategies 14, 15 & 16 and complies with Enforcement Policies E2 and E3.

4.0 Mr Crossley-Cooke & Tape Crown Ltd. – Land south of 'Red House' Coxwell Road, Faringdon, GCO/18275-E.

- 4.1 Committee may recall that on the 29th September 2003 following consideration of an 'Urgent Enforcement Report No. 125/03' (copy attached, with location plan, as Appendix 1) it was resolved: *That authority be delegated to the Director of Environmental Services in consultation with the Director of Support Services and the Chair and/or Vice-Chair of the Development Control Committee to issue and serve an Enforcement Notice and related Stop Notice, if in his judgement he consider it expedient to do so in the following case:-Erection of new building at land south of 'The Red House' Coxwell Road, Faringdon.*
- 4.2 On the 3rd October 2003 Enforcement and Stop Notices were issued which resulted in the cessation of all work on the site and an appeal being lodged. Subsequently an application for a Certificate of Lawful Use (C.L.U.D.), of the land for the storage of building materials, was refused on the 13th January 2004 resulting in a second appeal. Both appeals were dealt with by way of Public Inquiry on the 22nd and 23rd June 2004. The Appeal Decisions Notice dated 26th July 2004 (copy attached as Appendix 2) dismissed both appeals and upheld the enforcement notice.

- 4.3 The deadline for compliance with the Enforcement Notice (GCO/18275-E) became the 26th August 2004. To date the requirements of the notice have not been fully complied with. The roof structure and upper part of the walls consisting of 'Yorkshire Boarding' and windows supported by 6 RSJ vertical supports have been removed, but the concrete foundations, lower sections of the RSJ's and block work walls remain. Additional work has now been carried out by way of, infilling of the window openings with additional block work and, the capping of all block work with a steel strip welded to the tops of the remaining sections of RSJ.
- 4.4 Authority was given on the 16th September 2004, by the Director of Environmental Services in consultation with the Chair of Committee (in accordance with the scheme of delegation), to commence legal proceedings to prosecute those responsible for non-compliance with the notice. The case has been adjourned once at the Wantage Magistrates Court and is now due to be heard on the 6th April 2005. This action alone cannot guarantee compliance with the notice and the ultimate removal of the building. Magistrates can only penalise for the offence of non-compliance with the notice at any one period in time, although once convicted it is possible to bring further prosecutions for a 'continuing offence' thus incurring further penalties.
- 4.5 Notwithstanding the pending court action, authority is sought to take 'Direct Action' under Section 178 of the TCPA 1990, to remove the remains of the building and then recover the costs of doing so, either directly or by placing a charge on the land. This action may not ultimately be required if the possibility of incurring further penalties leads to the entire removal of the building, or the total costs to be recovered following direct action are seen to be prohibitive by those responsible for the breach.
- 4.6 Additional authority is also sought to take further enforcement action to remove building materials being stored on the land and additional hard core that has been deposited on the land, immediately to the east of the remains of building. This area of land was included within the C.L.U.D. application which was refused and had the subsequent appeal dismissed. At the time the Enforcement Notice was issued, there was evidence that a relatively small amount of hardcore had been deposited on the access track. However not to the extent, either depth or area, that it is currently covered by hardcore, in addition there were no materials being stored on the land. As a consequence these elements were not covered in the extant Enforcement Notice.
- 4.3 It is recommended that authority to (a) take 'Direct Action' under Section 178 to carry out the requirements of Enforcement Notice GCO/18275-E and (b) take enforcement action against the unauthorised use of this agricultural land be delegated to the Director of Environmental Services in consultation with the Director of Support and Contact Services, and the Committee Chair and/or Vice Chair, if in their opinion it is considered expedient to do so.
- 5.0 **Mr. Terzi, 20 North Quay, Abingdon, ABG/17715/1.**
- 5.1 It was brought to Officers' attention in March 2004 that two areas of raised decking were being constructed on the waters edge of Abingdon Marina. The Notice of Permission ABG/742/34 (dated 30th August 2001) which relates to this property includes Condition 4 which states: 'Notwithstanding the provision of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order), there shall be no extension or external alteration to any building forming part of the development hereby permitted, including the insertion of any window or rooflight, and no ancillary structures or buildings shall be erected within the curtilage of any dwelling without the prior grant of planning permission'.
- 5.2 Mr Terzi was advised at that time that planning permission was required for the work in progress and that if an application (part retrospective) was not submitted then authority to take enforcement action would be sought.

- 5.3 An application (ABG/17715/1) was submitted on the 25th May 2004, described as 'retrospective application for an harbour and additional pontoons'. However it was not until the receipt of adequate plans and drawings that the application was validated on the 19th November 2004.
- 5.4 The application was refused permission on the 13th January 2005 under delegated powers. Mr Terzi has stated that he intends to appeal the decision, and officers have informed him that it is our intention to seek authority from this Committee to take enforcement action, to remove the unauthorised development and reinstate the marina banks.
- 5.5 This recommendation for the authorisation to take enforcement action could, if implemented, amount to an interference with Mr Terzi's right to respect for his home under Article 8 of the European Convention on Human Rights. There do not appear to be any very special circumstances that would support a continued loss of amenity and outweigh the policies referred to, in the reasons given in the Notice of Refusal (copy attached, with location plan, as Appendix 3). Therefore this interference is considered to be proportionate to the harm that would be caused if the unauthorised development were allowed to remain. Enforcement action is considered to be justified and in the public interest.
- 5.6 It is recommended that authority to take appropriate enforcement action be delegated to the Director of Environmental Services in consultation with; the Director of Support Services, the Committee Chair and/or Vice Chair, if in their judgement it is considered expedient to do so.

RODGER HOOD
ASSISTANT DIRECTOR (PLANNING)

JOHN RAWLING
DIRECTOR OF ENVIRONMENTAL SERVICES

Background Papers: Previous Committee Reports and Enforcement Files

REPORT OF THE ASSISTANT DIRECTOR (PLANNING)
TO THE DEVELOPMENT CONTROL COMMITTEE
29 SEPTEMBER 2003

Urgent Business - Enforcement Programme

1.0 Introduction and Report Summary

- 1.1 In accordance with Section 100B(4)(b) of the Local Government Act 1972 and Standing Order 21(4) the Chair has agreed to accept this report as an item of urgent business in view of a decision being required to allow for the immediate taking of enforcement action to prevent the unauthorised activity on the site, with a decision being required before the next meeting of the Committee in view of the likelihood that if action is not taken now, the situation will be worsen by further development.
- 1.2 This report seeks the approval of Committee to take enforcement action, at land south of 'The Red House' Coxwell Road, Faringdon.
- 1.3 The Contact Officer for this report is Paul Yaxley, Enforcement Officer (01235 540352 Direct line or 01235 520202 extension 352).

2.0 Recommendation

- (a) *that authority be delegated to the Director of Environmental Services in consultation with the Director of Support Services and the Chair and/or Vice-Chair of the Development Control Committee to issue and serve an Enforcement Notice and related Stop Notice, if in his judgement he consider it expedient to do so in the following case:-*

Erection of new building at land south of 'The Red House' Coxwell Road, Faringdon.

- (b) *that authority be delegated to the Director of Environmental Services in consultation with the Director of Support Services and the Chair and/or Vice-Chair of the Development Control Committee to commence legal proceeding in the appropriate court to obtain an injunction to prevent the occupation and use of the unauthorised building referred to in (a) above, if in his judgement it is considered expedient to do so.*

3.0 Relationship with the Council's Vision

- 3.1 The content of this report is in line with the objectives A, C and D of the Council's Vision Statement.
- 3.2 This report relates to Enforcement Strategies 13, 15 and 16 and complies with Enforcement Policies E2 and E3.

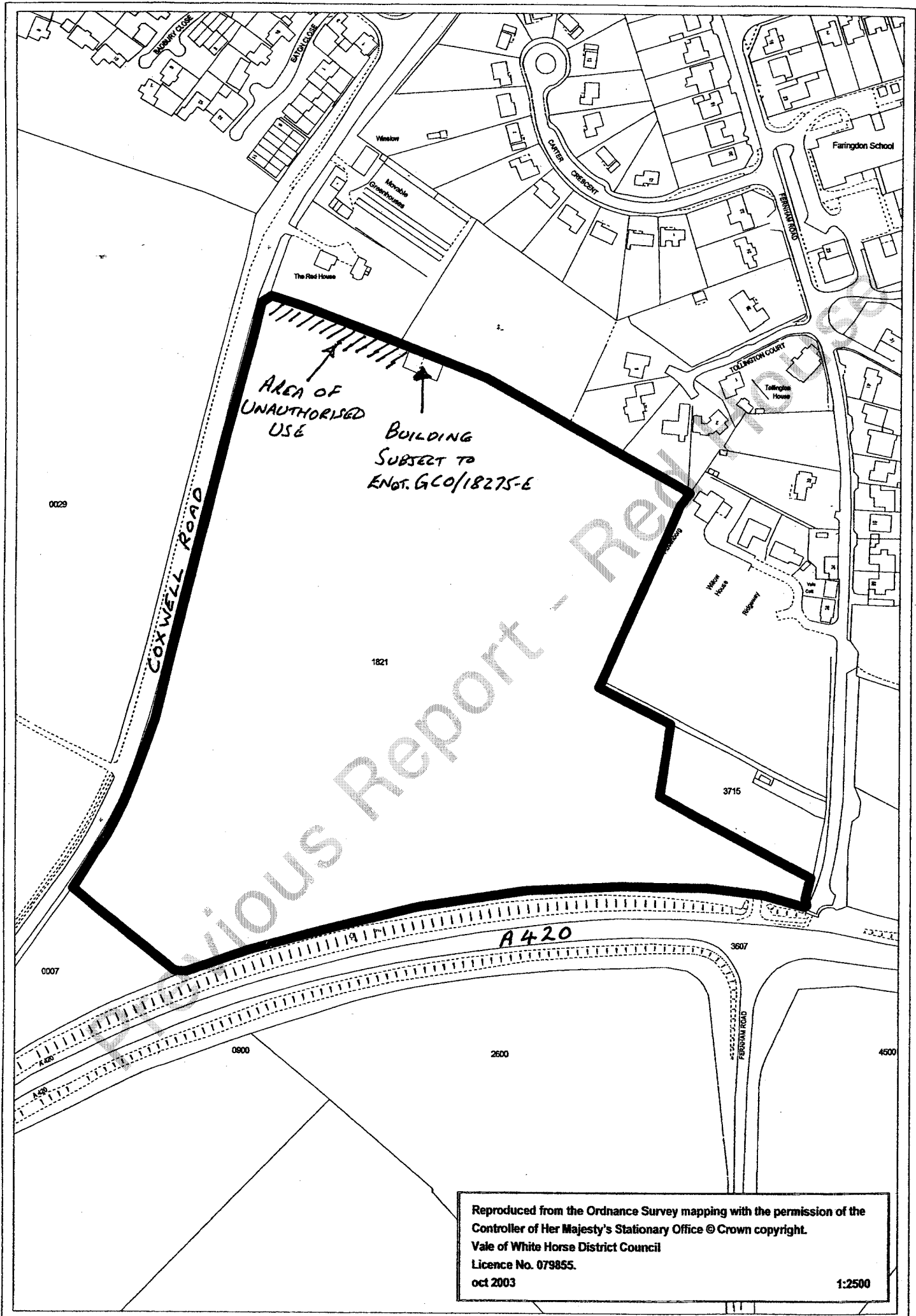
4.0 Mr Crossley-Cooke & Tapeccrown Ltd. - Land south of 'Red House' Coxwell Road, Faringdon.

- 4.1 A complaint was received last month from a local resident and neighbour, to this site, that a field access was being widened and several metres of hedgerow had been removed. The site was visited the on the 27th August and photographs taken that show the area where the hedgerow had been removed and more importantly that the dilapidated and derelict remains of an agricultural building, on the northern field boundary, had been completely demolished/raised to the ground.

- 4.2 A complaint from Great Coxwell Parish Council, that a new building was being erected on the site resulted in a further visit on the 9th September when photographs were taken, and it was observed that new concrete foundations had been laid along with several courses of concrete blockwork between a steel framework on a 9.2mtrs x 9.2mtrs footprint and 3mtrs to the eaves, 5mtrs to the ridge.
- 4.3 Contact was made with the owner of the site, Mr Crossley-Cooke to seek clarification of the nature of the works, which had commenced. In response Mr Cossley-Cooke advised that he does not agree that the works amount to the erection of a new building requiring planning permission, he considers that it is 'repair of an existing building' which 'has been used for over 20 years for the storage of building materials and the like'. Mr Crossley-Cooke was advised on the 23rd September that this Authority did not share his views and that he should stop work forthwith and make a planning application. Mr Crossley-Cooke replied by letter dated the 23rd September and said he will phone on the 22nd October, (he will be in South Africa until then), to arrange a meeting to talk about making a retrospective application. However he concludes his letter by stating 'The building is up now, so there is nothing to be done in that direction'.
- 4.4 The site was visited on the 23rd and 25th September when it was observed that building work had carried on a pace and a second bay had been erected giving a total footprint area of 18.4mtrs x 9.2mtrs (169.28 sq.mtrs). It is believed that without enforcement action being taken the building will be completed and possibly occupied/used for non-agricultural purposes, before any retrospective application is made. Mr Crossley-Cooke has stated he intends to store building materials in the building, while carrying out works to The Priory at Fernham.
- 4.5 The erection of this new building is considered development requiring planning permission. It is clearly contrary to Policies C3 and C6 of the adopted Vale of White Horse Local Plan and Policy G5 of the adopted Oxfordshire Structure Plan. Therefore authority is sought to take enforcement action to prevent the completion, occupation and use of the building and ultimately secure its removal. It is envisaged that this action may require the issuing of a Stop Notice in conjunction with an Enforcement Notice to require the removal of the building and reinstatement of the land. It is also possible that injunctive proceedings may need to be taken to prevent the occupation and use of the building pending the out come of any subsequent appeal following the issue of any notices.
- 4.6 It is recommended that authority to take appropriate enforcement action be delegated to the Director of Environmental Services in consultation with; the Director of Support Services, the Committee Chair and/or Vice Chair, if in their judgement it is considered expedient to do so.

RODGER HOOD
ASSISTANT DIRECTOR (PLANNING)

JOHN RAWLING
DIRECTOR OF ENVIRONMENTAL SERVICES



AREA OF UNAUTHORISED USE

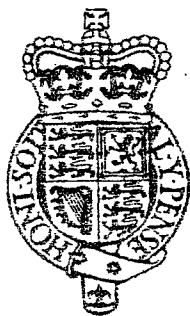
BUILDING SUBJECT TO ENOT. GCO/18275-E

COXWELL ROAD

A420

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Vale of White Horse District Council
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Appeal Decisions

Inquiry held on 22 June 2004

Site visit made on 23 June 2004

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
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inspectorate.gsi.gov.uk

Date 26 JUL 2004

Appeal A: APP/V3120/X/04/1138533

Land to the south of The Red House, Coxwell Road, Faringdon, Oxfordshire

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC).
- The appeal is made by Mr D C Cooke against the decision of Vale of White Horse District Council.
- The application (Ref: GCO/18275/1), dated 11 November 2003, was refused by the Council by notice dated 13 January 2004.
- The application was made under Section 191(1)(a) of the 1990 Act as amended.
- The use for which a Certificate of Lawfulness is sought is the storage of builders materials used in connection with construction projects i.e. a builders yard.

Summary of Decision: The appeal is dismissed.

Appeal B: APP/V3120/C/03/1131643

Land to the south of The Red House, Coxwell Road, Faringdon, Oxfordshire

- 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 D C Cooke against an enforcement notice issued by Vale of White Horse District Council.
- The Council's reference is GCO/18275-E.
- The notice was issued on 3 October 2003.
- The breach of planning control as alleged in the notice is without planning permission building operations have taken place involving the erection of a new building on the area shown hatched blue on the plan attached to the notice.
- The requirements of the notice are:
 - (a) Cease all further work on or to the building.
 - (b) Remove the building.
 - (c) Remove from the land all building materials, building equipment and rubble arising from compliance with requirement (b) and restore the land hatched blue to its original condition before the breach took place.
- The time for compliance with the requirements is one month.
- The appeal was made on the grounds set out in Section 174(2) (a), (f) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Procedural Matters

1. At the inquiry an application for costs was made by the Vale of White Horse District Council against Mr D C Cooke. This application is the subject of a separate Decision.

2. During the inquiry the appellant withdrew ground (f) of his appeal against the enforcement notice.
3. A Stop Notice was issued by the Vale of White Horse District Council on 3 October 2003 and required all further work relating to the erection of a new building on the land to cease. The Notice took effect on 3 October 2003.
4. As there were matters of fact in dispute relating to the LDC appeal, all the evidence was taken on oath.

The Site

5. The site is situated on the east side of Coxwell Road on the southern edge of the built-up area of Faringdon. The area covered by the LDC application consists of a partially completed building at the end of an unmade access track. It is bounded on its north side by a hedgerow and by post and rail fencing on its south side, which separates the site from a large open field. The area covered by the enforcement notice includes the partially completed building and unmade access track off Coxwell Road and the large open field to the south in which has been erected a large building on its southern boundary. The site is bounded on the west by Coxwell Road (the former A420), to the south by a public footpath and the A420 by-pass and to the north and north-east by existing residential development including The Red House north of the site off Coxwell Road and dwellings in Carters Crescent and Tollington Court off Fernham Road to the east, and by woodland.
6. The newly erected partially completed building measures 18.4 m long x 9.2 m wide x 5 m high. It is a 2-bay steel-framed structure built of concrete and timber boarding with insulated profiled metal sheeting on the roof with glass panes. As I saw on my visit, apart from some felting, the entire upper part of the wall on the south elevation of the building is open and unfinished and windows inserted in the breeze block base wall of this elevation and the other walls of the building are unglazed. The west elevation of the building is entirely open and no floor has been constructed at ground level. At the time of my visit the ground inside the building was overgrown with weeds.

LDC Application (Appeal A)

7. The development is described in the LDC application as a "builder's yard". As discussed at the inquiry and affirmed in para 8.21 of Circular 10/97, this is a sui generis use which is not in a "use class" in the Use Classes Order. The appellant acknowledged that the use claimed did not encompass the normally accepted features of a "builder's yard" including retail sales. He affirmed that the use being sought was the storage of builder's materials used in connection with construction projects, as described in the LDC application. I have therefore considered the application on this basis.
8. The main issue is whether the use of the land for the storage of builder's materials began more than 10 years before the date of the LDC application and is therefore lawful.
9. The appellant, Mr Crossley Cooke gave evidence that the site has been used for the storage of builder's materials from various projects since he purchased it in 1981. The use has varied over the years and he said that there are periods when little activity takes place, but that conversely, there are periods when the site is more actively used. In his application dated 11 November 2003 he stated that the use began over 20 years ago, i.e. prior to 1983. He attached statutory declarations to his application said to be from persons who have

known or used the site for a period in excess of 10 years and stated that this evidence confirmed that the land and building had been used consistently for the storage of builder's materials used in connection with construction projects. I have considered the statutory declarations submitted and the evidence given by the appellant and his witnesses called to testify at the inquiry on the use of the site over time.

10. In his statutory declaration dated 14 November 2003, Mr Crossley Cooke states that he specialises in the development of old buildings. Before 1975 he used to store materials at Aston Tirrold, Oxfordshire. From 1975 to 1981 he used a stone barn (now a dwelling) at Little Coxwell Estate (which belongs to his wife). In 1981 he acquired Faringdon Field and from that date has used the building and the land in front of it exclusively for the storage of materials. The remainder of the field has been used for agricultural purposes. The building had always been in a very poor condition so he decided to upgrade it in the summer of 2003, especially as he had just acquired within two miles, a substantial ex-priory, a mainly Victorian building of some 26,000 sq ft (2,415 sq m) which required part demolition and part renovation. Since 1981 the building has never been used for agricultural purposes. The site had already been physically annexed from the adjacent agricultural field prior to purchasing the land.
11. Mr J L Bell, 23 Rusett Avenue, St John's Priory Park, Lechlade gave evidence at the inquiry affirming the evidence given in his statutory declaration dated 5 November 2003. He said that he has been the site agent for the appellant since 1981. Initially he worked on the appellant's developments in London but moved to the country in 1997 where he continued to work as site agent for a number of the appellant's projects including the St Mary's Priory site. He stated that throughout the whole of the time since 1981 they made constant use of the building, which was known to them as The Store. Heavy building materials such as concrete blocks, bricks, roofing materials, large timbers, fireplaces etc were stored both inside and outside the building. He said that Andrew Fowler, an employee from the appellant's wife's Little Coxwell Estate made occasional trips to London with a horsebox to collect and/or deliver materials to and from The Store. On a number of occasions, he, Mr Bell would visit The Store to assess what stock they had that could be used in a new job. He did not visit the site between 1989 and 1992 when he was in London. The timber store was particularly useful when, six years ago, they started a major project on Little Coxwell Estate converting three old large barns into four substantial dwellings and other works. They had a great need of old timbers and used a large proportion of what was needed from The Store. The Store was therefore in constant use, to his certain knowledge, for the storage of building materials, both inside and out, since at least 1981.
12. Mr A J Fowler, 52 Coxwell Street, Faringdon gave evidence at the inquiry affirming the evidence given in his statutory declaration dated 14 November 2003. He said that he had worked as the estate foreman on Mrs Crossley Cooke's Little Coxwell Estate, Faringdon from 1987 until 1995. He said that during the whole of his time working as foreman, the store next to The Red House on the edge of the field known as Faringdon Field between Coxwell Road and the A420 was exclusively used by Mr Crossley Cooke for the storage of materials used for his property development works. In this connection, he used to drive the horsebox to and from various sites from time to time, in particular in London, carrying materials. The field was used for the grazing of cattle, but the fenced off building and area was never used for any form of agriculture. It was purely a materials store. He confirmed

that since he left the employment in 1995 he was aware from passing the site regularly every week that the use of the store had never changed.

13. A statutory declaration dated 14 November 2003 from Mr K Lovegrove, The Red House, Coxwell Road, Faringdon states that he is the tenant of The Red House and has been living there since 1998. He says that the storage barn built many years ago on the land next door to his house, is clearly visible from his property. For as long as he lived next to The Red House Barn, as he understood it is sometimes called, he was aware that Mr Crossley Cooke has used the site for the storage of building materials. He states that he has not taken a very close look, but has been aware that materials such as bricks, blocks, roofing materials and wood etc have been stored there. During the time he has lived in The Red House, he has seen men coming and going on a number of occasions with various loads to and from the site. He states that he has never seen the building used for any kind of agriculture purpose.
14. A statutory declaration dated 15 November 2003 from Mr P J Eyre-Brook, Gorse Farm, Little Coxwell, near Faringdon states that he farms Gorse Farm, which runs along Fernham Road on the other side from Little Coxwell Estate, up to and over the A420 main road, and has a field on the Faringdon side of the A420 on the opposite side of the old Fernham Road to the 20 acre (8 hectare) field belonging to Mr D Crossley Cooke, which lies between the A420 and Coxwell Road. He states that as an extension to his farming operation, he has been the main outside contractor to the Little Coxwell Estate and so knows the 20 acre (8 hectare) field well, not only by having carried out agricultural work on the field since the mid 1980s, but also in the autumn, after first cut hay, he was allowed from time to time to graze his cattle. On the north-east of the field, the building and entrance from the road was wired off and was used to store building materials. Throughout this time he had never seen the building used for agricultural purposes.
15. A statutory declaration dated 15 November 2003 from Mr H A R Muir, Fern Cottage, Bourton, Shrivenham states that for over thirty years he has been an agricultural contractor in the Swindon/Faringdon area. Amongst other, he has over the last twenty years, from time to time, carried out works for Little Coxwell Estate and in particular, carries out all the work for Steeds Farm, whose entrance comes out into Coxwell Road, Faringdon, opposite the 20 acre (8 hectare) field, known as Faringdon Field, between it and the A420, owned by Mr Crossley Cooke. Because of the nature of his work and the fact that he passes the field every working day of the year (and sometimes more than once), he states that he is in a very good position to verify that Faringdon Field has always been used for agricultural purposes; the building on the north boundary, with the area in front, has been used, at least since the very early 1980s, for building materials and the building, yard and entrance have been fenced off for all that time; and since Mr Crossley Cooke acquired the field in the early 1980s, he has never seen the building used for agricultural purposes.
16. A statutory declaration dated 15 November 2003 from Mr W Muir, Portelet House, Southdown Farm, Longcot, near Faringdon states that he is a farmer and cattle dealer and has been engaged in this business since about 1957. He started to supply cattle to Little Coxwell Estate in the seventies and did so from time to time. From the early eighties he, on occasions, had to deliver them to the large field lying between Coxwell Road and the A420, Faringdon. He states that he was unable to deliver them through the gate in the field next to The Red House as it led to a storage barn used for materials storage and was fenced off from the rest of the field. He states that he lives locally and would go past the field several times each week and so feels able to comment on the use to which the barn was put and can

confirm that the store barn and access way to it was never available for agricultural use since at least 1980.

17. A statutory declaration dated 14 November 2003 from Mr M Whittle, 24 Gravel Walk, Faringdon states that he is a ground and drainage works contractor and has run his own business since 1991 and from that time until now he has done works for Mr Crossley Cooke. He states that he has been asked to make the declaration concerning the store barn and builder's storage yard in his field off Coxwell Road, Faringdon. He confirms that he knows the property well as a local person and because it lies just off the Coxwell Road, which he travels very often when heading west out of Faringdon towards Swindon where he obtains a good proportion of his work. He states that for as long as he has known it, since before 1991, it has been used solely as a builder's store, with the access from Coxwell Road. He states that building materials have always been stored both inside and outside the shed. It has never been used in any way for agricultural purposes.
18. A statutory declaration dated 14 November 2003 from the appellant's accountant, Mr G J Broadley states that for more than 30 years he has been the accountant for Mr D Crossley Cooke and has been asked to make the declaration concerning the storage barn and yard that he uses at Faringdon. He confirms that Mr Crossley Cooke has reported this to him when going over his annual accounts, to the best of his memory, for the last 15 to 20 years.
19. The evidence given by the appellant and his witnesses and by others in the statutory declarations submitted with the LDC application, is contradicted in statements received from local residents in response to a letter of enquiry from the Council to local residents dated 27 November 2003 asking whether they had any comments on the application for a Certificate of Lawful Use. Statements were received from 16 parties and a statutory declaration from Mr M Knapp, who co-owned The Red House until sold recently. Of the 17 parties who made representations in response to the Council's letter and the appeals, 5 live in Carters Crescent and 4 live in Tollington Court north and north-east of the site respectively.
20. Mr N Murrin, 4 Carters Crescent gave evidence affirming the statements made in his letter dated 7 January 2004. In his letter he stated that he has lived and worked in and around Faringdon since 1968. During this period, he has had to pass the area of land on an almost daily basis. He said that the site was visible from his house. Over the last 20 years he has never seen any building materials either being delivered or collected. He has only seen broken wood and occasional rubble. In recent years the land had become overgrown and the original barn dilapidated, thus making it totally unsuitable for storing anything other than agricultural waste. He first noticed movement on the site when a JCB moved on to it about August 2003. He enclosed a series of photographs of the present building on the site.
21. Mr C S Davis, 8 Carters Crescent gave evidence affirming the statements made in his letters dated 3 and 7 January 2004. He stated that he has been a resident in Faringdon for 36 years and has been living in close proximity to the site. He has visited both the previous market garden 'Winslow' and The Red House, adjacent to the site, on a regular basis. The rusty corrugated sheet metal structure, approximately 12 ft x 24 ft x 8 ft high (3.6 m x 7.3 m x 2.4 m), with a semi-flat roof was used as a shelter for cattle by the original farmer. The shelter then fell into disrepair and the sheeting used to shake and rattle in the wind. Prior to 1980 the land was owned by Mr Brickell and was used for raising stock and general farming. During the 1980s Carters Crescent was host to ten USAF families for

approximately 7 years. He visited the building at various times throughout the 1980s, as it was used as a play-area/come club house by the local children, much to the concern of the parents. Up to this time there were no building materials stored in the shelter. From 1968 he has cut the grass verge on the Coxwell Road at least once a month during the growing season. The grass cuttings were deposited into a ditch adjacent to the chained five bar gateway, which is now the access to the site. At no time until the Pye/Bryant development to the west of Coxwell Road and the lowering of Coxwell Road, was this gateway used. The gate was permanently locked with a padlock and chain until 2002. As far as he could recollect, access to the field was by the gateway adjacent to the public footpath, Coxwell Road to the Faringdon by-pass. The building was never fenced off from the main field until 2003. This began when the access from Coxwell Road, adjacent to The Red House was increased from a 9 ft (2.7 m) five bar gate to double the width and part of the hedge was grubbed out. A two line wire fence was installed and this was changed to a post and rail fence by the end of 2003. No building materials appeared on the site until 2002, this being a deposit of building material rubble in a strip approximately 6 feet (1.8 m) wide, going to a peak of 1 to 2 feet high (0.3-0.6 m), parallel to The Red House boundary fence, from the shelter towards Coxwell Road and ending approximately 50-60 feet (15-18 m) short of the gateway. He stated that the claim that the shelter and the surrounding area has been used as a builder's yard since 1981 is contrary to his knowledge of the facts.

22. Mr D Belcher, 5 Tollington Court states in his letters dated 6 and 16 December 2003 that he has lived in Faringdon since 1969. He lives approximately 100 yds (91 m) from the building and has lived here for 6 years. He has lived within 2 miles of the site for over 50 years. His property overlooks the site and he has passed the land everyday since 1973 on his way to and from work in Swindon and has never seen building materials stored on the land. It has never been used as a builder's yard. The site has been totally derelict for many years and very overgrown. The only product that he ever saw stored was hay. He enclosed a photograph of the building taken in Spring 2002. Mrs Belcher states in her letter of 6 December that she has lived at 5 Tollington Court for six years and in that time has never seen any one at the site and storing or collecting building materials.
23. In his statutory declaration enclosed with a letter dated 23 December 2003, Mr M A Knapp, Edford Cottage, Edford Green, Holcombe, Radstock, Bath states that he was born at The Red House in 1940 and spent the next 21 years there with his parents. After that he visited them there until they both died, his father being the last in 1997. He states that the land lying to the south of The Red House and close to its boundary, had a corrugated tin shed built on it by a Mr Brickell who used it for sheltering cattle. The building became gradually derelict over the years. He states that his father, who spent a large part of his life in his garden which overlooked the tin shed, never once mentioned that vehicles had been coming and going with builder's materials or anything else, when he discussed events with him on his visits, which were usually fortnightly. Neither did he see anything himself during these visits. He states that his brother and he still own The Red House and that he visits it from time to time. He has never been aware of the tin shed, what was left of it, being used for any purpose. The track leading to the tin shed was grown over with no signs of vehicle movements.
24. A letter from Mr J G Knapp, 3 Culsfield, Newton-le-Willows, dated 4 January 2004, affirms the joint ownership of The Red House with his brother, that it had been the family home since 1935 and shares a boundary with the appeal site. He states that the original building was of corrugated iron construction and built over 40 years ago by Mr Brickell

who farmed the land at that time. Its purpose was to store hay and provide shelter for cattle which grazed the land. When the building ceased to be used by Mr Brickell, well over 20 years ago, it gradually became derelict. The roof partially collapsed as did some of the walls and the floor was littered with rubbish and debris. It had been in this state for at least 10 years and was in his opinion unusable. The track to the building became overgrown through disuse. Approximately 2 years ago the track was cleared and quantities of building rubbish deposited along its length. This included rubble, timber, metal, broken asbestos sheeting and a calor gas bottle. As it was thought this dumping could be a potential health hazard it was reported to the District Council's Environmental Officer. This resulted in site visits when photographs were taken. Prior to that time there was no evidence of any building materials being stored within the collapsed building or outside it. The building has not been used for the storage of building materials for in excess of 20 years. A builder's yard has never existed. In a further letter dated 11 June 2004, responding to comments made by the appellant, Mr Knapp acknowledged that he had not lived at The Red House in the past 20 years but that his parents did. However, prior to August 2002 he lived in Uffington and Stanford, approximately 4 miles from Faringdon, far in excess of 25 years and during the whole of this time he frequently visited his parents when they were alive and subsequently, their tenant, Mr Keith Lovegrove. He confirmed that his mother died in 1985 and his father in 1997. Mr Lovegrove became the tenant in 1998 but his tenancy was terminated acrimoniously by a County Court Order for possession in December 2003. Mr Knapp affirmed that at no time prior to 2003 was he aware of the claimed use of the original derelict corrugated iron shed.

25. Mr P Chambers of Perry Bishop and Chambers, Chartered Surveyors, states in his letter dated 12 February 2004 that he has acted for the Knapp family, the owners of The Red House, Faringdon, for over 10 years and has visited the property on a regular basis during that period of time. Until the recent works were carried out, both to the building and the access road leading from Coxwell Road to the building, it appeared incapable of any use, be it for commercial storage or agricultural purposes. To the best of his recollection, until recently, he has not at any time seen any activities going on in or around the buildings, or any party using the roadway access or track immediately adjacent to the boundary of The Red House leading to the building. Great Coxwell Parish Council states in its letter dated 26 February 2004 that it has no knowledge of the land ever being used for the purpose of a builder's yard.
26. Mr R T Cunningham, Highveld, 3 Tollington Court states in his letter dated 23 December 2003 that they bought the building plot on which his house stands in 1993. Before going ahead with the purchase they had a good look at the field behind and can well remember that the barn was derelict, rusty, falling down and overgrown with weeds etc. Inside were some very rusty old domestic appliances and various other objects that seemed to have been untouched for many years. At the time they had three young children and he and his wife warned them not to play there as they felt it was dangerous. It seemed like that until about a couple of years ago when it was suddenly cleared. During the last year or so, a proper entry was made to the barn and a gate put up. The rusty construction was never in active use to store building materials during the period mentioned. The barn was open to the public and not properly fenced off. Anything of worth would have been likely to be either stolen or vandalised and subject to adverse weather conditions. Access for the storage and removal of materials would have been very difficult and there was no evidence of the 'barn' being used on a regular basis.

27. Sarah Benson, 2 Carters Crescent states in her letter dated 6 December 2003 that she has lived in Faringdon for the last 36 years, in and around Fernham Road, and knows the site well. She is a car driver and walks and drives along the adjacent roads (A420 by-pass and old A420) regularly. She states that she has never seen any building on the site used for the storage of building materials, has never seen builder's vehicles on the site and is certain that the land has never been used as a builder's yard. She has only ever seen the site used for agricultural purposes (usually for grazing cattle) and the previous building on the site was a small and derelict barn/agricultural building.
28. Mrs N Brown, 5 Carters Crescent states in her letter dated 30 December 2003 that she and her husband have lived in Faringdon since November 1994 and have travelled along Coxwell Road countless times. At no time have they ever seen the old barn used as a building store nor have they ever seen building traffic going to or from the barn. The barn itself was in such a state of disrepair that it could not be said to be secure or watertight and so it is questionable as to whether anyone would store building materials and timber in such a place. Also, the opening to the barn was far too small for a builder's lorry to access the barn and the 'road' to the barn was merely a track. They moved into their current home in June 2003 and noticed that the size of the entrance down to the barn had been increased along with improvements to the barn and that post and wire fencing had been added alongside the track.
29. Mr M J Weaver, 6 Carters Crescent states in his letter dated 30 December 2003 that the land has been used for cattle and hay. To the north end of the field next to The Red House was a tin barn, which had been used to store hay into the 1980s. The barn was served by a gate at the top end of the field near The Red House on Coxwell Road, with no separate track and was not fenced off until very recently. As far as he was aware the barn was falling to pieces and not used as a store. He had never seen building materials stored in or around it. The old barn has now been demolished and a new unit is under construction. The separate gate, track and fence have only recently been laid in.
30. Taha and Rita Higazi, Westfield, 4 Tollington Court state in their letter dated 2 January 2004 that they have been residents of 4 Tollington Court for the last 10 years and overlook the disputed building. At no time have they noticed that the property has ever been used for commercial or storage purposes i.e. it has not been used as a builder's yard. The inside was overgrown with brambles and weeds with no door. There were old bits of rusty junk including an old four-wheel drive vehicle, all covered with overgrown vegetation. The "roof" was mostly damaged leaving just the skeleton of a rusty "barn". The access to the "barn" was through the field with three gates. At no time was the "barn" fenced off from the field. They state that they knew this from dog walking and their boys playing ball games in the field. Most of the year the field is empty, but cattle are sometimes grazed and a hay crop harvested. They question most strongly that building materials were stored in the "barn" and it was used for commercial use.
31. David and Megan Brown, Waylands, 2 Tollington Court state in their letters dated 3 January 2004 that they have lived in Faringdon for 24 years. During that period he has passed the site on an almost daily basis on his way to work in Swindon. His wife has passed the site with similar regularity for much of this period. They also used to walk their dog past the entrance to the field from the middle eighties through to the early nineties, as part of one of a number of different walks they would take round the town. He states that he has also walked the dog along the public footpath on the south-western side of the field.
-

In all this time they have only ever been aware of a dilapidated old barn/shed overgrown with brambles and home to a few old refrigerators, and never aware that the site was being used for the storage of building materials. For the last 9½ years they have been living in their house adjacent to the field. Over this period their children (now adults in their twenties) would venture into the field and the site of the old shed. Their reports substantiate their view claiming the shed to be home to brambles and a few old fridges. None of them have ever seen any signs of building materials or visitations by builder's vehicles. They state that claims of 'constant use' are not supported by their own observations. They have never seen the building used for agricultural purpose nor used for any practical purpose at all. They are also not aware of any fencing off of the entrance to the barn, although there was protective fencing around the barn. They state that the fence from Coxwell Road to the barn has recently been erected.

32. Mr N J Mattingley, Lower Farm, Little Coxwell, Faringdon states in his letter dated 5 March 2004 that in 1967 he purchased a bungalow at the south end of Coxwell Road, approximately 400 m from the site. He lived there until 1982 and frequently walked the footpath past The Red House to exercise his dogs. He says that he can confirm there was a corrugated tin field shelter in the field next to The Red House. There was no hard access to it, and it was fairly derelict as some children had set fire to the previous owner's hay (Richard Brickell). Since 1982 he has lived in Little Coxwell and during this time in Little Coxwell he has carried out 95% of the appellant's building work in the village itself (clarified by the appellant as building work for the appellant's wife at Little Coxwell House). Work started in 1982 and continued until February 1997. He said that he cleared the last of his equipment and materials away from his buildings in Little Coxwell village on 30 April 1997. At no time during this period of time when building work was virtually continuous, were any materials stored in the shed at The Red House. Materials, furniture and carpets that occasionally come from London were always stored at the farm at Little Coxwell village.
33. Mr R W Brickell, 40 Hawthorn Drive, Bradwell Village, Burford states in his letter dated 5 March 2004 that he farmed the land in question for several years until its sale in the 1980s to a Mr Crossley Cooke. He states that prior to the sale he personally erected a second-hand building sometime in the mid 1960s. The building was 60 ft x 60 ft (18 m x 18 m) in area and used for housing cattle in the winter. The fields adjacent were laid down to grass for summer grazing. The access he used for his tractor was off the A420 (now Coxwell Road), through a field gate and along a track up to the building, following underneath the hedge belonging to the Knapp family. It was a rough track with tractor ruts running along it. With the change in his farming policy in the '70s the land was used for producing cereals not grass. The building became unusable as the rear part was fire damaged by vandals and through time the whole building became dilapidated. He states that he took the tenancy of Steeds Farm opposite the land and owned by Mr Robin Liddiard, up until 1984. He then moved to Butlers Hill Farm, Cheltenham. He states that during this time he was never aware of the building being used. He handed Steeds Farm back to Mr Liddiard's son Andrew who then carried on farming it himself.
34. Mr W Brickell, 22 Berners Way, Faringdon states in his letter dated 25 February 2004 that he is an 84/85 year old invalid. He states that although his former address at Carters Crescent afforded a full view of any activities claimed by the appellant, he saw none, except a few items, a couple of bits of wood, one section of iron scaffolding and other rubbish left by his son when they vacated the land. The shed was fenced off to avoid animals from

injuring themselves. He is unable to say what happened in the last 3 years. He verifies that the land was not used for any agricultural purpose, but cannot support the appellant's claims re its use as a building store.

35. The Council's Area Planning Officer's evidence is that he has been responsible for planning matters in the Faringdon area for 12 years and has passed the appeal site on many occasions. Although he never had a need specifically to visit the site prior to August 2003, his casual observations of the site did not indicate that any commercial storage or builder's yard use of the site was being carried on. He was not aware of any building materials being stored on the site and could not recall seeing any commercial vehicles accessing the site along the unsurfaced track from Coxwell Road. He estimated that the size of the former building was 9.5 m x 9.5 m. In support of the Council's case colour photographs were submitted taken in January 2002 showing the former agricultural building, access track and gated entrance together with colour aerial photographs of the site taken in 1991 and 1999.

Reasoning and Conclusions

36. The critical period for establishing the lawfulness of the use of the site for the storage of building materials is from 11 November 1993 to 11 November 2003, that is, 10 years prior to the date of the LDC application. I have considered the evidence given by and on behalf of the appellant, including the various statutory declarations, and by the Council, local residents and others, in the context of the only contemporaneous documentary evidence before me, namely the colour aerial photographs showing the site in 1991 and 1999, the photographs showing the former agricultural building, access track and gated entrance taken in January 2002, the photograph of the former agricultural building taken from the woodland to the rear of 5 Tollington Court in Spring 2002 and the photograph of the former agricultural building taken by the appellant's planning witness from the adjacent field in the Summer of 2003.
37. I conclude from my visit to the site and Carters Crescent, where I viewed the site from No 4, that the former agricultural building and the site would have been clearly open to view from The Red House nearby and from residential properties in Carters Crescent and Tollington Court through the woodland to the rear and from the public footpath opposite the entrance to the site off Coxwell Road. As I saw on my visit, visibility is barely affected by the adjacent woodland because of significant gaps between the conifer trees. I conclude from my examination of the colour photographs showing the former agricultural building on the site in 2002, that, as described by local residents and by others with a knowledge of the site including Mr M A Knapp and Mr J G Knapp, who lived for many years in The Red House nearby and who regularly visited their parents who continued to live in the house until they died, and Mr R W Brickell, who erected the building in the mid 1960s, the structure formerly on the site was for many years in a very dilapidated state, almost roofless and open to the elements. I therefore conclude on the balance of probability that if as described by Mr J L Bell, the appellant's site agent, corroborated by the evidence given at the inquiry and in statutory declarations by Mr D Crossley Cooke, Mr A J Fowler, Mr P J Eyre-Brook, Mr H A R Muir, Mr W Muir and Mr M Whittle, the building has been in constant use since 1981 for the storage of heavy building materials such as concrete blocks, bricks, roofing materials, large timbers and fireplaces, stored both inside and outside the building, these would have been visible from the neighbouring dwellings in Carters Crescent and Tollington Court and to walkers using the public footpath opposite the site in Coxwell Road.

38. The photographs taken of the site in January 2002 show the dilapidated former agricultural building at the end of a narrow, unsurfaced track with access through a five bar gate off Coxwell Road. Low level wire fencing is shown separating the site from the rest of the large field. The appellant's own evidence is that the photographs clearly identify the rubble on the track and were taken before the hardcore was spread and levelled. Apart from the rubble deposited further down the track and what appears, to me to be further rubble stacked on the right hand side of the track nearer the building, I find no evidence in the photographs that would lead me to conclude on the balance of probability that the site was being used for the storage of building materials as described by Mr Bell, the appellant's site agent, at this time. The appellant acknowledged that it was not possible to say from the photographs what the materials were stacked outside the building. Even if there were building materials being stored on the site in 2002, the date of the photographic evidence is considerably less than the required 10 year period for establishing the lawfulness of the use.
39. I turn now to the aerial photographs of 1991 and 1999. The colour aerial photograph taken on 29 July 1991 shows clearly the dilapidated former agricultural building adjacent to the northern boundary of the site. However, what is very noticeable is that apart from the building and a sliver of land extending westwards towards the access off Coxwell Road, the large field has been cropped right up to the access to the appeal site, with no vehicular trackway or fencing visible leading from the Coxwell Road access to the dilapidated building. If, as claimed by the appellant at the inquiry, no new building projects were taking place between 1989 and 1992 and building materials were not being stored outside the building and the access to the building was therefore not in constant use, I would still have expected a vehicular access that had been in use constantly for 8 years (1981-1989) by the time that the 1991 aerial photograph was taken, to be clearly visible in the photograph. There is no sign of any vehicular access whatever to the building. The appellant also suggested that a lighter coloured square object visible within the building was a pallet of stone. However, weighed against the absence of any sign of a vehicular access to the building, it seems to me that it is more likely to be either part of the roof or an old fridge, the presence of which was referred to by local residents in their representations. I therefore find no evidence from the 1991 aerial photograph of the site being used for the storage of building materials including any vehicular access for transporting building materials to and from the site nor any indication of building materials being stored on the site, either inside or outside the building, as claimed by the appellant and his site agent, Mr Bell.
40. The colour aerial photograph taken on 14 October 1999 shows the dilapidated former agricultural building and a trackway leading from the access off Coxwell Road to the building. The site also appears to be separated by fencing from the remainder of the large field, which has been cropped. However, I note that the line of the fencing differs materially from that shown on the plan accompanying the LDC application. The photograph also appears to show materials stored outside the building. However, because of the scale of the aerial photograph I find that it is not possible to determine with any accuracy if the materials deposited were building or waste materials. Even if there were building materials being stored on the site in 1999, the date of the photographic evidence is less than the required 10 year period for establishing the lawfulness of the use.
41. There is no dispute between the parties that since the photographs were taken of the site in January 2002, the access to the site has been considerably widened through the removal of a length of the adjacent hedgerow; spoil comprised of bricks and rubble has been deposited on about half the length of the track leading from the newly erected partially completed

building, the five bar gate has been relocated to form an access to the adjacent large field, the wire fencing along the southern boundary of the site has been replaced by post and rail fencing and realigned in its middle section, and, as I saw on my site visit, a significant quantity of building materials in the form of stones and concrete blocks is being stored on pallets in the open air outside the building, together with bricks and tiles.

42. As stated in para 8.12 of Circular 10/97, the onus of proof in a LDC application is firmly on the applicant. I find that the evidence given by the appellant including corroborating evidence from witnesses at the inquiry and in statutory declarations testifying that the site has been used constantly for the storage of building materials since the early 1980s or before 1991 is directly contradicted by the evidence of the aerial photograph showing the site in July 1991, as discussed in para 39 above. This includes the evidence given by Mr H A R Muir who stated that the building, yard and entrance have been fenced off since the very early 1980s; the evidence given by Mr W Muir who stated that from the early eighties when he was delivering cattle to the large field, he was unable to deliver them through the gate in the field next to Red House as it was fenced off from the rest of the field and the store barn and access way to it was never available for agricultural use since at least 1980; and the evidence of Mr M Whittle that since before 1991 the site had been used solely as a builder's store with building materials always stored both inside and outside the shed. The evidence given in his statutory declaration by Mr K Lovegrove, the tenant of The Red House, that for as long as he has lived there the site has been used for the storage of building materials, relates solely to the period since 1998 when he became the tenant of The Red House, that is to say, well within the 10 year period required to establish the lawfulness of the use.
43. Weighing in the balance the evidence given by the appellant and his supporting witnesses and in statutory declarations, against the contemporaneous evidence of the aerial photographs of the site in 1991 and 1999 and the photographs of the site taken in 2002, in conjunction with the evidence given independently by existing and former local residents, which I find to be precise and unambiguous in their description of the use of the former agricultural building and the site over the years, I conclude on the balance of probability that the use of the land for the storage of building materials commenced less than 10 years prior to the application for a Certificate of Lawfulness for the use, and that, as acknowledged by the appellant, the site has never been used as a builder's yard in the accepted meaning of the term.

Enforcement Notice (Appeal B)

Ground (a)

44. The **main issues** are first, the compatibility of the development enforced against, namely, the erection of a new building, with the development plan policies for the area; and secondly, the effect of the development upon the character and appearance of the surrounding countryside area and in particular the Important Open Land between Faringdon and the A420 by-pass and the North Vale Area of High Landscape Value.
45. The **development plan** includes the adopted Oxfordshire Structure Plan and the adopted Vale of White Horse Local Plan. The Local Plan is under review with a First Deposit Draft covering the period up to 2011, published in November 2002. A Second Deposit Draft is currently on deposit with a view to the Plan being published in Spring/Summer 2005. As

the review of the Local Plan is at an early stage in the statutory approval process I accord it limited weight in accordance with the guidance in PPG 1.

46. Structure Policy G5 states that sporadic and ribbon development in the open countryside will not be permitted. Policy EN4 deals with the impact of proposed developments on local landscape character and states that development will be permitted only if it does not unacceptably damage the local landscape. Local Plan Policy C1 states that building in the open countryside will be strictly controlled. Policy C3 states that the North Vale Area of High Landscape Value will be protected from development likely to have a harmful impact on its prevailing character and appearance. In considering applications, regard will be had to a number of factors including the siting, mass, scale and appearance of the proposed development. In Supplementary Planning Guidance published by the Council in October 2000, the appeal site is defined as lying within Zone 1B of the Area of High Landscape Value, the Corallian Ridge. Policy C6 states that in the areas identified on the Proposals Map as urban fringes or important gaps of open land between settlements, encroachment by development will not normally be permitted. As stated in para 9.43 of the reasoned justification of the policy, the principle of retaining an area of open land between Faringdon and the A420 received strong support from the Inspector at the Faringdon Local Plan Inquiry who wrote "*...the preservation as far as practicable of this main open sweep of land between the town and the A420 remains a highly desirable objective*". Policy D1 seeks to ensure that all new development is of a high standard of design. Policy D28 states that development proposals which would extend the built-up area of Faringdon, as defined by the development boundaries on the Proposals Map, into the surrounding countryside will not be permitted. Under Policy E13, where the proposal is for new premises for occupation by small firms, development for business purposes on sites not identified under policies of the Plan will only be permitted on sites within the built-up area of a settlement. The development plan policies largely reflect Government guidance in PPG 7.
47. On the first issue, I find that the development is contrary in principle to the development plan policies for the area in that the site lies outside the development boundary of Faringdon and within an area defined as Important Open Land between Faringdon and the A420 by-pass and the North Vale Area of High Landscape Value, defined on the Proposals Map of the adopted Local Plan, where there is a presumption against development unless required for uses such as agriculture, forestry or outdoor recreational needs.
48. On the second issue, I conclude from my site visit that the development constitutes the erection of a large building, industrial in appearance and character and visually prominent on rising ground when viewed from the public footpath along Coxwell Road, the entrance to the public footpath south of the site and from the A420 by-pass, which is on a raised embankment on the southern boundary of the site. Whilst at this time of year the building is largely screened to view from Coxwell Road and the A420 by-pass by hedgerows and trees, these are mainly deciduous in nature and the building would therefore appear even more intrusive in the openness of the area for a substantial part of the year when the hedgerows and trees are devoid of their foliage. I therefore conclude that the development would detract unacceptably from the openness of the designated area of Open Land between Faringdon and the A420 by-pass, harming unacceptably the character and appearance of the surrounding countryside area and the North Vale Area of High Landscape Value. Visibility splays, which I consider would be necessary in the event of planning permission being granted, to improve highway safety at the vehicular access to the site, would further accentuate the harm caused by the visual impact of the building, through the necessary

widening of the entrance to the site. I therefore conclude that the development is contrary to the policies referred to in the development plan for the area and Government guidance in PPG 7. Having regard to my findings on the planning merits of the development, I do not consider that the objections could be overcome by imposing the suggested conditions discussed at the inquiry.

49. I have considered whether there are any material considerations sufficient to justify overriding the strong planning objections to the development. The appellant contends that the building is a replacement for the former agricultural building on the site. I have considered the evidence on the physical condition, size and appearance of the former agricultural building. I conclude from the evidence given by the appellant, the Council, local residents and others with a knowledge of the former agricultural building on the site, that the building was in a very dilapidated state prior to its demolition by the appellant and was not capable of being used for any beneficial purpose. As acknowledged by the appellant in his pre-inquiry statement, any rights pertaining to the original structure were extinguished when that building was demolished.
50. I find a clear conflict in the evidence given on the size of the former agricultural building by Mr R W Brickell, Mr C S Davis and the Council's Area Planning Officer. I conclude on the balance of probability from my examination of the aerial photographs of 1991 and 1999 and the photographs showing the former agricultural building in 2000 and 2003, that the building was a single bay structure of corrugated metal sheeting and was approximately square in shape. I therefore conclude on the balance of probability that the measurements put forward by the Council's Area Planning Officer accord most closely to the likely size of the former agricultural building. I have no evidence to support the appellant's assertion, made during cross-examination, that there was a further wooden section to the building that was blown down by winds in 1989. I therefore conclude from the evidence that the new building on the site is almost twice the size of the former agricultural building and greater in height. It also comprises a 2-bay steel-framed structure built of concrete and timber boarding with insulated profiled metal sheeting on the roof with glass panes. Having regard to all these points, I conclude that the building cannot therefore be regarded as a replacement for the former agricultural building on the site, but instead constitutes the construction of a new building in open countryside, significantly different in size and appearance from the former agricultural building on the land.
51. The appellant also referred in his pre-inquiry statement to a new farm building erected at the southern end of the large field and contended that it was of a similar design to the appeal building and was the subject of a pre-notification application to the local authority to which the appellant received no objection. The Council's Area Planning Officer stated at the inquiry that objections had been raised by the Council but were misdirected and not delivered to the appellant. The merit of that building is not a matter before me. I have considered the appeal building on its own merits and I find no material considerations of any weight to justify overriding the strong planning objections to the development.
52. For the above reasons the appeal on ground (a) fails.

Ground (g)

53. The appellant requests 6 months to comply with the notice as it would require the employment of an experienced demolition contractor together with compliance with various safety controls and regulations. I consider the period of one month specified in the notice

to be an adequate time scale in which to comply with the terms of the notice. The appeal on ground (g) therefore fails.

Conclusions

54. For the reasons given above and having regard to all other matters raised, I am satisfied that the Council's refusal to grant an LDC in respect of the use applied for was well-founded and I shall exercise accordingly the powers transferred to me in Section 195(3) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991.
55. For the reasons given above and having regard to all other matters raised, I consider that the appeal against the enforcement notice should not succeed.

Formal Decisions

Appeal A: APP/V3120/X/04/1138533

56. In exercise of the powers transferred to me, I dismiss the appeal.

Appeal B: APP/V3120/C/03/1131643

57. In exercise of the powers transferred to me, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the Act as amended.

E.C. Anne Parkhill

INSPECTOR

Previous Report - Red House

APPEARANCES

FOR THE APPELLANT:

Mr D Crossley Cooke

Appellant – Advocate & Witness.

He called:

Mr J L Bell

23 Russett Avenue, St John's Priory Park, Lechlade.

Mr A J Fowler

52 Coxwell Street, Faringdon.

Mr D M Jones MRICS

Partner, The Evans Jones Partnership, Chartered Surveyors & Planning Consultants.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robert Walton

Of Counsel, instructed by Vale of White Horse District Council.

He called:

Mr M Gilbert BA MRTPI

Area Planning Officer, Vale of White Horse District Council.

INTERESTED PERSONS:

Mr N Murrin

4 Carters Crescent, Faringdon.

Mr C S Davis

8 Carters Crescent, Faringdon.

DOCUMENTS

- Document 1 List of persons present at the inquiry.
- Document 2 Notification of inquiry and list of persons notified.
- Document 3 Letter dated 11 June 2004 from Mr J G Knapp, 3 Owlsfield, Newton-le-Willows, Merseyside WA12 8BB to Vale of White Horse District Council.
- Document 4 Copy of Land Registry Entry re land to the East of Coxwell Road, Faringdon, subsisting on the Register on 2 June 2004.
- Document 5 Appendices accompanying Mr M Gilbert's Proof of Evidence.
- Document 6 Exchange of correspondence between Vale of White Horse District Council and Mr D Crossley Cook, 17 September 2003 – 17 November 2003.
- Document 7 Letters dated 2 June 2004 from Vale of White Horse District Council to Mr D M Jones, Evans Jones and 17 June 2004 from Evans Jones, Planning to Vale of White Horse District Council.

PLANS

- Plan A Plan accompanying application for a Certificate of Lawfulness of Existing Use.
- Plan B Plan accompanying the enforcement notice.



Costs Decision

Inquiry held on 22 June 2004

Site visit made on 23 June 2004

by Miss E C A Parkhill BA LLB DipTP MRTPI

an Inspector appointed by the First Secretary of State

The Planning Inspectorate
4/09 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
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inspectorate.gsi.gov.uk

Date

26 JUL 2004

Costs application in relation to Appeals Ref: APP/V3120/X/04/1138533 & APP/V3120/C/03/1131643

Land to the south of The Red House, Coxwell Road, Faringdon, Oxfordshire

- The application is made under the Town and Country Planning Act 1990, Sections 174, 195, 320 and Schedule 6 and the Local Government Act 1972, Section 250(5).
- The application is made by Vale of White Horse District Council for a full award of costs against Mr D C Cooke.
- The inquiry was in connection with an appeal against a refusal to grant a lawful development certificate (LDC) for the storage of builders materials used in connection with construction projects i.e. a builders yard, and an appeal against an enforcement notice alleging without planning permission, building operations have taken place involving the erection of a new building.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Vale of White Horse District Council

1. An application is made for an award of full costs based on the appellant's pursuit of two appeals that had no reasonable prospect of success and under ground (a) in the enforcement appeal was in the face of planning policy (Circular 8/93 Annex 1 para 11 and Annex 3 paras 1-6). In the enforcement appeal, ground (f) was withdrawn under cross-examination. Mr Jones, the appellant's planning witness, just applied for planning permission. His approach was wholly inadequate. There was no assessment in any way of how the large building fitted with development plan policy. He was silent on this fundamental issue which, as a professional, he was duty bound to give having regard to Section 54A of the 1990 Act. The development had to be judged as per the development plan unless there were material considerations. Mr Jones' approach was only if the CLEUD was successful. It flew in the face of the development plan policies. The Council's evidence on development plan policies was unchallenged. There was no chance of success. It was accepted by the appellant that without an LDC the enforcement appeal would be dismissed because it was contrary to the development plan policies.
2. The LDC application was based on 20 years use. It crumbled in the light of the evidence of the 1991 aerial photograph. It was audacious to say that there was storage in the building. It was not good enough. Mr Jones said that if he had known he would not have advised it on 20 years, but still said 10 years. There was a collective memory failure. There was clear evidence from local residents. The burden of proof was on the appellant. Full costs were claimed because the appellant had caused the Council to incur expense unnecessarily.

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| VALE OF WHITE HORSE DISTRICT COUNCIL |
| RECD 28 JUL 2004 |
| CORPORATE POSTAL SERVICE |

The Response by Mr D C Cooke

3. There was no question that any of the evidence showed anything different that the store was not in use over the 20 years period. There was a change in the 1989-92 period but there were still items stored, if not outside the building. The 1999 aerial photograph and the 2002 photographs show items outside the building. There were the proofs of evidence and the statutory declarations re the use of the building as a store. All were agreed that the building was not in use for anything else e.g. agriculture. It was admitted that we should not have knocked the building down and replaced it. If Mr Jones was wrong in not submitting a planning application, it does not change the fact that for 20 years it has been used for storage. The appellant is happy to rely on the statutory declarations. Very little credence should be given to the letters of reply received. It was common-sense that there was a building there and we replaced it.
4. Letters of 23 and 29 September and 17 November 2003 were sent to the Council. The Council could have waited three weeks for the appellant to return from abroad before issuing the enforcement notice and the stop notice. They therefore brought this on themselves. The appellant tried to sort it out, the letter of 17 November shows this. There was no reply or acknowledgement. The costs were incurred at the Council's own behest.

Response by Vale of White Horse District Council

5. The Council's response was as set out in the letters to the appellant, referred to in the Report to Committee on 29 September 2003 and in Mr Gilbert, the Council's Area Planning Officer's Proof of Evidence. The appellant was told that there had been a breach of planning control and was advised to put in a planning application and stop work. He went to South Africa. There were very serious consequences. The matter was taken to Committee and enforcement action authorised. The Council acted entirely properly.

Conclusions

6. 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 appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
7. As stated in Annex 3 para 1 of Circular 8/93 the right of appeal is a statutory right. In respect of the LDC appeal, I consider that the appellant exercised this right in a reasonable manner and substantiated his case by calling witnesses and submitting statutory declarations in support of his appeal against the refusal of an LDC. In a letter dated 2 June 2004 the Council drew the appellant's attention to the possible consequences of persisting in an appeal. However, the relevant facts referred to in the letter focused solely on the 1991 aerial photograph as undermining the appellant's arguments that the appeal site had been used to store building materials for a period in excess of 20 years. While this was a material consideration in the case, the determination of the appeal turned on the evidence of the use of the site over the relevant 10 year period, that is, between 1993 and 2003. It was therefore necessary to weigh the evidence put forward by the appellant against the evidence given by the Council, local residents and others on the use of the site over this period.
8. In respect of the enforcement appeal, I find that the appellant presented no evidence at the inquiry to substantiate his case on ground (a) on the planning merits of the development.

The Council was able to show in evidence that the development was contrary to the adopted Structure Plan and Local Plan for the area and Government guidance in PPG 7 and substantiated its reasons in its written statement on the appeal and proof of evidence at the inquiry. In this regard I note that the Council also drew the appellant's attention to the relevant facts, namely the fundamental policy objections to the principle of erecting a new building on the site, and to the possible consequences of persisting in an appeal, in a letter dated 2 June 2004. It was therefore obvious that the appeal had no reasonable prospect of success as the development flew in the face of the development plan policies and Government guidance in PPG 7. In pursuing the appeal to an inquiry, the appellant was unable to produce substantial evidence to support his contention that there were material considerations which would justify an exception to the policies in the development plan. I therefore conclude that the appellant behaved unreasonably and thereby caused the Council to incur or waste expense unnecessarily.

9. I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated in respect of the LDC appeal. However, I find in respect of the enforcement appeal that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that an award of partial costs is justified.

Formal Decision and Costs Order

10. 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, and all other powers enabling me in that behalf, I HEREBY ORDER that Mr D Crossley Cooke shall pay to Vale of White Horse District Council, the costs of the appeal proceedings limited to those costs incurred in preparing and presenting the case in respect of the appeal against the enforcement notice, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under Section 195 of the Town and Country Planning Act 1990 against the refusal of an application for a certificate of lawfulness for the storage of builders materials used in connection with construction projects i.e. a builders yard, and an appeal under Section 174 of the Town and Country Planning Act 1990 against an enforcement notice alleging without planning permission, building operations have taken place involving the erection of a new building, on land to the south of The Red House, Coxwell Road, Faringdon, Oxfordshire.
11. The applicant is now invited to submit to Mr D Crossley Cooke, to whose agents Evans Jones Planning, 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.

E.C. Anne Parkhill

INSPECTOR