



**Local Plan 2031 Part 2**  
Publication Version  
Representation Form

Ref:

(For official  
use only)

**Name of the Local Plan to which this representation relates:**

Vale of White Horse  
Local Plan 2031 Part 2

**Please return by 5pm on Wednesday 22 November 2017 to:** Planning Policy, Vale of White Horse District Council, 135 Eastern Avenue, Milton Park, Milton, Abingdon, OX14 4SB or email [planning.policy@whitehorsedc.gov.uk](mailto:planning.policy@whitehorsedc.gov.uk)

This form has two parts:

**Part A** – Personal Details

**Part B** – Your representation(s). Please fill in a separate sheet for each representation you wish to make.

## Part A

### 1. Personal Details\*

\*If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.

### 2. Agent's Details (if applicable)

Title	Mr	
First Name	Ken	
Last Name	Dijksman	
Job Title (where relevant)		
Organisation representing (where relevant)	Dijksman Planning (UK) LLP	
Address Line 1		
Address Line 2		
Address Line 3		
Postal Town		
Post Code		
Telephone Number		
Email Address		

**Sharing your details:** please see page 3

## Part B – Please use a separate sheet for each representation

Name or organisation:

3. To which part of the Local Plan does this representation relate?

Paragraph

Policy

Policies Map

4. Do you consider the Local Plan is: *(Please tick as appropriate)*

4. (1) Legally compliant

Yes

No

4. (2) Sound

Yes

No

4. (3) Compiles with the Duty to Cooperate

Yes

No

5. Please provide details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the Duty to Cooperate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the Duty to Cooperate, please also use this box to set out your comments.

This is a policy that arbitrarily and needlessly limits the relationship between a residential annexe and the existing house – it is unrealistic and will have the effect of preventing annexes being created. It requires:

*vii. the design and siting of the annex is capable of being reasonably integrated with the function of the original dwelling once the need for it has ceased, without creating an independent dwelling unit in the future.*

In a recent appeal within the Vale, the Inspector agreed that a wholly separate and detached annexe, was fully capable of being used as such and lived in by a couple whose children family lived in the main house. In view of the ageing population the need for residential annexe accommodation will only increase. This requirement is a negatively worded attempt to limit and prevent such separate annexes. It was written prior to the Appeal decision I refer to, which I attach to this submission.

(Continue on page 4 /expand box if necessary)

6. Please set out what modification(s) you consider necessary to make the Local Plan legally compliant or sound, having regard to the matter you have identified at 5

above. (NB Please note that any non-compliance with the duty to cooperate is incapable of modification at examination). You will need to say why this modification will make the Local Plan legally compliant or sound. It will be helpful if you are able to put forward your suggested revised wording of any policy or text. Please be as precise as possible.

The Policy should delete any reference to limiting the annexe to something that can be integrated back into the house. It is already integrated into the use and function of the property as a separate dwelling or it could not be used as an annex.

(Continue on page 4 /expand box if necessary)

**Please note** your representation should cover succinctly all the information, evidence and supporting information necessary to support/justify the representation and the suggested modification, as there will not normally be a subsequent opportunity to make further representations based on the original representation at publication stage.

**After this stage, further submissions will be only at the request of the Inspector, based on the matters and issues he/she identifies for examination.**

7. If your representation is seeking a modification, do you consider it necessary to participate at the oral part of the examination?

**No**, I do not wish to participate at the oral examination

**Yes**, I wish to participate at the oral examination

8. If you wish to participate at the oral part of the examination, please outline why you consider this to be necessary:

***Because the Council will argue against allowing detached annexes to be created so I need to attend to counter their arguments, as I had to do in the recent appeal, which was upheld.***

**Please note** the Inspector will determine the most appropriate procedure to hear those who have indicated that they wish to participate at the oral part of the examination.

Signature:

Date:

22/11/2017

### Sharing your personal details

Please be aware that, due to the process of having an Independent Examination, a name and means of contact is required for your representation to be considered. Respondent details and representations will be forwarded to the Inspector carrying out the examination of

the Local Plan after the Publicity Period has ended. This data will be managed by a Programme Officer who acts as the point of contact between the council and the Inspector and respondents and the Inspector.

**Representations cannot be treated as confidential and will be published on our website alongside your name.** If you are responding as an individual rather than a company or organisation, we will not publish your contact details (email / postal address and telephone numbers) or signatures online, however the original representations are available for public viewing at our council office by prior appointment. All representations and related documents will be held by Vale of White Horse District Council for a period of 6 months after the Local Plan is adopted.

**Would you like to hear from us in the future?**

I would like to be kept informed about the progress of the Local Plan

I would like to be added to the database to receive general planning updates

Please do not contact me again

**Further comment:** Please use this space to provide further comment on the relevant questions in this form. **You must state which question your comment relates to.**

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## Appeal Decision

Inquiry Held on 17 & 18 May 2017

Site visit made on 17 May 2017.

**by Stephen Brown MA(Cantab) DipArch RIBA**

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

**Decision date: 01 August 2017**

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**Appeal Ref: APP/V3120/C/16/3147099**

**Land at 1 Downside, Westbrook Street, Blewbury OX11 9QA**

- 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 by Andrew West against an enforcement notice issued by the Vale of White Horse District Council.
  - The enforcement notice, ref. P16/S0984/LDE, was issued on 11 February 2016.
  - The breach of planning control alleged in the notice is the material change of use of an outbuilding to use as a separate dwelling, in the approximate position shown hatched blue on the plan attached to the notice.
  - The requirements of the notice are to:
    - (i) Cease using the outbuilding referred to in the allegation as a separate dwelling.
    - (ii) Remove the kitchen facilities from the said outbuilding, including (for the avoidance of doubt), oven, hob, refrigerator, freezer, washing machine and tumble drying facilities and all standard kitchen fixtures and fittings such as kitchen cupboards, and worktops, whether built-in or free-standing.
  - The period for compliance with the requirements is six months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have not been paid within the specified period, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
- 

### Decision

1. The appeal is allowed and the enforcement notice is quashed.

### The Inquiry

2. Evidence at the inquiry was taken under oath or solemn affirmation.

### Preliminary matters

3. The appellant's Counsel confirmed in opening that the appeal on ground (c) was not being pursued.

### Background matters

4. No. 1 Downside is a semi-detached, two-storey house set back from the road on the western side of Westbrook Street. It is adjoined by no. 2 Downside to the west. Vehicular access to the site is from Westbrook Street along a drive some 40 metres long, which serves both properties. The detached outbuilding subject of the enforcement notice is located on the southern side of the drive,

opposite the house. The drive itself is in the same ownership as no. 2, with a right of way benefiting the appeal site. For the purposes of this decision I have referred to the house as 'the main house'

5. In 2009 planning permission was granted for a 3-bedroom house, carport and associated works<sup>1</sup> on the site fronting the street, immediately to the south of the access drive. This site was then owned by the appellant. The house – known as 'Carrow Cottage' – was subsequently built and occupied, and is no longer within the appellant's ownership.
6. The outbuilding subject of the enforcement notice was built as a study/home office in replacement of an existing garage/store under planning permission ref. P11/V1414, and a subsequent non-material amendment confirmed by the Council by letter. It is single storey building with shiplap external walls, and a slate hipped roof. As originally approved it had three principal rooms – a study, a home office, and library – with a shower/WC, and entrance area located between the two latter rooms. As it exists now, a kitchen has been installed in the room designated as the home office, the study is now a living/dining area, and the library has become a bedroom. For the purposes of this decision I have referred to the outbuilding as 'the annex'.
7. An application for a certificate of proposed lawful use (LDC) of the outbuilding as self-contained annex for occupation by elderly dependent relatives was refused by the Council in April 2017<sup>2</sup>.

### **The appeal on ground (b)**

8. In a ground (b) appeal the burden of proof is on the appellant to demonstrate that on the balance of probabilities the alleged breach of planning control has not occurred as a matter of fact. Furthermore, in a case of this type – on 'legal' grounds – with matters of fact in dispute, there is well established legal authority to say that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the appeal, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the case on the balance of probabilities.
9. The Council argue that the outbuilding has all the facilities necessary for day-to-day domestic existence, and that it must therefore be seen as a dwellinghouse in the terms set out in the High Court case of *Gravesham*<sup>3</sup>. When the appellant applied for a change of use of the outbuilding from a study/home office<sup>4</sup> to a self-contained annex he was advised by the Council that the outbuilding would be seen in this light, and that the application would be likely to be refused. The Council argue that the annex is a self-contained dwellinghouse in *Gravesham* terms, and a new separate planning unit has been created that is both physically and functionally separated from the main house.
10. As the appellant argues, the internal changes needed to provide a kitchen, living/dining area and bedroom affect only the interior of the building, and do not materially affect the external appearance. Under the provisions of

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<sup>1</sup> Decision notice ref. P09/V2099/FUL.

<sup>2</sup> Decision notice ref. P16/V2840/LDP, dated 4 April 2017.

<sup>3</sup> *Gravesham Borough Council v Secretary of State for the Environment* [1982] 47 P&CR 142.

<sup>4</sup> Application ref. P14/V1806/FUL.

s.55(2)(a) of the Act they do not therefore constitute development, and no planning permission for these changes was required.

11. In the High Court case of *Uttlesford*<sup>5</sup>, which related to an application for a change of use of a building detached from the main house to private living accommodation to be used in conjunction with existing dwelling, it was held that the basic question to be answered was whether there was a material change of use that created a separate planning unit. In the case of *Burdle*<sup>6</sup> the judge gave the opinion that when determining what was the appropriate planning unit, the whole of the area which is used for a particular purpose should be looked at, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose.
12. The single Land Registry title document shows that the parts of the site to either side of the drive are owned by Mr West and Ms Mols. The Council argue that the entrance drive being in separate ownership, and the raised patio and retaining wall to the front of the annex constitute a physical separation between the buildings. However, until about 8 years ago the entrance drive had been in common ownership with the 2 semi-detached houses. The separation occurred as a result of a judicial ruling on ownership of no. 2. The appellant has a right-of-way along, and across the drive at all times. To my mind the separate ownership of the drive does not provide any effective physical or functional separation between the two buildings.
13. As regards the patio and retaining wall, these extend across roughly three-quarters of the width of the annex. The building is set at a significantly higher level than the drive and the house – I estimated a difference of some 0.8 of a metre. I consider a retaining wall is reasonably necessary in order to provide a level amenity area to the front of the annex. Furthermore, there is only a minimal outdoor space available to the front of the main house that provides little in the way of privacy, given its proximity to the access drive. In order to provide some degree of privacy, and to guard the change of level, it is not unreasonable for the wall to be built up above the patio level. The Council consider that this would in any case be permitted development. Although a visual distinction between the house and the annex has been created, there is a clear unobstructed route between the two buildings that can be used by the occupants of both buildings at any time, and I do not consider the retaining wall and patio have created a physical barrier between the two parts of the site.
14. As regards utility supplies and other services, the house and annex are on one Council Tax account, there are single accounts for the TV licence, water supply and telephone. There is a single letter box, and one set of refuse bins. Electricity and gas supplies are separate, as is the foul drainage. The appellant explained that this was to avoid a ransom demand by the owner of no. 2 for services crossing the entrance drive. In my opinion, the existence of various supplies and services common to both buildings gives some weight to the argument that the two buildings are used in an inter-dependent way. Overall, I do not consider the existence of the drive and the retaining wall, or the existence of some separate utilities are sufficient to constitute a separation between the two parts of the appellant's site. In the light of this, I consider the

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<sup>5</sup> *Uttlesford District Council v Secretary of State for the Environment and White* [1992] JPL 171.

<sup>6</sup> *Burdle and Another v SoSE and Another* [1972] 3 All E.R. 240.

- planning unit comprises the entire area of land owned by Mr West and Ms Mols, and is used for residential purposes.
15. However, that is not the end of the matter, and consideration must be given to whether there has been a material change of use of the annex, such that it no longer remains subordinate to the main house.
  16. As a result of serious and continuing health problems and impaired mobility Mr West had found it increasingly difficult to live in the main house, largely on account of the steep and narrow stairs, the compact first floor bathroom, the lack of a bath or shower on the ground floor, and poor heating. I could see that there would probably be no space available in the main house to install a stair-lift. As a consequence he and his partner now sleep and eat in the annex, which is all on one floor, has a reliably functioning heating system, and a readily accessible shower/WC.
  17. Philippa Mols' son Jonathan and daughter-in-law Subashnie live in the main house. However, the house is also used by the Andrew West and Philippa Mols as an office, for handcrafts, for entertaining friends and other members of the family, and cooking meals for them. They use the washing machines, cookers and fridges in both buildings. Their guests are put up in the second bedroom of the main house. I saw that the appellant's office equipment and papers are kept there, their furniture, books and most belongings remain there. Andrew West and Philippa Mols move freely between the annex and house at all times during the day, and there was extensive evidence provided by the appellant, his partner, members of the family, and close friends to the effect that the house and outbuilding were used essentially as a single unit.
  18. I appreciate that Jonathan Mols and his wife may not be full-time carers, and that they are living in the main house pending being able to buy a house of their own. However, they have exclusive use of only one bedroom in the house. The ground floor is accessible for the appellant and members of his large family at more or less all times, and the evidence showed that much use is made of this, particularly when there are family gatherings.
  19. It is not an uncommon arrangement for younger family members to live with parents in these circumstances. The son and daughter-in-law by no means have exclusive use of the house, and I do not accept that this is similar to a situation where members of the same family might live in dwellings side-by-side, but live quite independent lives. The fact that there are two separate buildings in use does not to my mind significantly differentiate this case, in planning terms, from the situation where 'children' and spouses live together with parents in a single, larger house.
  20. I saw that the facilities in the annex are highly compact – there is a dining table with two chairs, the kitchen is of minimal size, and the living room and bedroom are relatively small. While it would be conceivable to use the annex for independent residential accommodation, it would be quite unsuitable for a family dwelling, and could not reasonably contain the social and work activities of the appellant, or their extensive possessions, in any reasonably practical way.
  21. Furthermore, if for instance the main house were to be occupied by, and possibly let to non-family members, it is unlikely that the current arrangement could exist, whereby Mr West and Ms Mols could eat and sleep in the

outbuilding, but have free access to the house for work and social purposes. I concur with the view put forward for the appellant that the annex cannot exist as a residential unit in these particular circumstances without reliance upon the facilities of the main house. As a matter of fact and degree I consider the current arrangements indicate that the outbuilding is used in a way that is incidental to the main dwellinghouse.

22. The Council argue that Mr West's use of the house for his business is not a residential use, the business is registered elsewhere, and this element should be discounted. Again, it is not uncommon - and is becoming increasingly frequent - for business activities on a small scale to be carried on in the home environment. In my view the use of the main house for this purpose is part and parcel of the range of activities that the appellant carries out there.
23. Evidence was given by objectors as to the infrequency of visits by the appellant and Philippa Mols to the main house, and of visits by the son and daughter-in-law to the annex. However, there was little information given about when these observations were made, or how often. Although there are views from neighbouring gardens I saw that these are quite limited. I can give only little weight to this material, and do not consider it provides a firm basis on which to contradict the evidence put forward by the appellant's witnesses.
24. Overall, I consider that as a matter of fact and degree the annex remains subordinate to the main house, and there has not been a material change of use to a separate dwelling. The two parts of the appeal site are not significantly separated either physically or functionally, and they remain as a single planning unit in residential use.
25. I conclude that that on the balance of probabilities the material change of use of the outbuilding to use as a separate dwelling has not occurred as a matter of fact, and that the appeal should succeed on ground (b). Accordingly, I intend to quash the enforcement notice. In these circumstances the appeal under the other grounds set out in section 174(2) to the 1990 Act as amended do not need to be considered.

### **Conclusions**

26. For the reasons given above and having regard to all other matters raised, I consider the appeal should succeed and I intend to quash the enforcement notice.

*Stephen Brown*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Michael Rudd	of Counsel, instructed by, Ken Dijksman, Dijksman Planning LLP.
He called:	
Philippa Mols	The appellant's partner.
Andrew West	Appellant.
Kylie Baker	Mr West's daughter.
Jonathan Mols	Philippa Mols' son.
Paul Springford	Local resident and friend of the appellant.
Roger Smith	Friend of the appellant and former local resident.
Jennifer Gold	Local resident and friend of the appellant.
Sarah Mols	Philippa Mols' daughter-in-law.
Peter Mols	Philippa Mols' son.
Subashnie Moodley	Philippa Mols' daughter-in-law.
Peter Savage	Friend of the appellant.
Richard Gilbert	Local resident and friend of the appellant.
Simon Mols	Philippa Mols' son.
Michael Bissell	Friend of the appellant.
Ken Dijksman	Chartered Town Planner, Principal of Dijksman Planning (UK) LLP.

### FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham-Paul	of Counsel, instructed by Robert Cramp Vale of White Horse District Council.
She called:	
Robert Cramp	Principal Planning Enforcement Officer Vale of White Horse District Council.

### INTERESTED PERSONS:

Justin Cadbury	Local resident.
Christine Duckett	Local resident.

### DOCUMENTS

- 1 Attendance list (2 documents).
- 2 The Council's letter of notification of the appeal, dated 11 April 2017.
- 3 Letters of representation.
- 4 Statement of Common Ground.
- 5 Appendices to Mr Dijksman's proof of evidence.
- 6 Appendices to Mr Cramp's proof of evidence.
- 7 Eileen George's statement.
- 8 Christine Duckett's statement.
- 9 Justin Cadbury's statement.

- 10 The Council's Draft Authorisation for enforcement action, dated 11 December 2014.
- 11 Transcripts of the High Court cases *Bowring*, *Somak Travel*, and *Uttlesford District Council v SoSE and White*.
- 12 Transcript of the High Court case of *Burdle*.
- 13 E-mails between Ms Mols and Mr Dijkstra of 20 June 2016.



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## Part A

### 1. Personal Details\*

\*If an agent is appointed, please complete only the Title, Name and Organisation boxes below but complete the full contact details of the agent in 2.

### 2. Agent's Details (if applicable)

Title	Mr	
First Name	Ken	Ken
Last Name	Dijksman	Dijksman
Job Title (where relevant)		
Organisation representing (where relevant)	Dijksman Planning (UK) LLP	
Address Line 1		
Address Line 2		
Address Line 3		
Postal Town		
Post Code		
Telephone Number		
Email Address		

**Sharing your details:** please see page 3

## Part B – Please use a separate sheet for each representation

Name or organisation:

3. To which part of the Local Plan does this representation relate?

Paragraph

Policy

DP5

Policies Map

4. Do you consider the Local Plan is: *(Please tick as appropriate)*

4. (1) Legally compliant

Yes

No

4. (2) Sound

Yes

No

4. (3) Compiles with the Duty to Cooperate

Yes

No

5. Please provide details of why you consider the Local Plan is not legally compliant or is unsound or fails to comply with the Duty to Cooperate. Please be as precise as possible.

If you wish to support the legal compliance or soundness of the Local Plan or its compliance with the Duty to Cooperate, please also use this box to set out your comments.

This is a policy that arbitrarily and needlessly limits the scale of replacement dwellings in rural areas. It is a negative policy that does not further the goal of sustainable development. The key element that is profoundly unnecessary is the requirement that the new dwelling should be 'within the footprint' of the 'original' dwelling. There is no justification for this level of restriction in size and position. In many instances dwellings in large plots can be made substantially bigger without any harm whatsoever to the landscape, rural character or amenities of a location. To restrict within the footprint is to unreasonably and unjustifiably and arbitrarily prevent the replacement of a house with a larger one. The second problem is the word 'original' what does this mean? When it was built? Or 1947 or as it is now? The policy should refer to the existing curtilage of the dwelling, that is the relevant land use.

(Continue on page 4 /expand box if necessary)

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The Policy should delete any reference to limiting the replacement to the original footprint. It should welcome the replacement of dwellings within existing residential curtilages provided it does not cause demonstrable harm to the landscape. This would be sound and positive as an approach.

(Continue on page 4 /expand box if necessary)

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***Because the Council will argue against increasing personal liberty to improve and enlarge existing properties and I need to attend to counter their arguments.***

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Signature:

Date:

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