

**IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT 1990
(AS AMENDED)
AND
IN THE MATTER OF A SERIES OF APPEALS AGAINST DECISIONS OF THE
ST EDMUNDSBURY BOROUGH COUNCIL TO:**

- (1) Refuse A First Application For A Certificate Of Lawful Use And Development:**
- (2) To Refuse In Part A Second Application For A Certificate Of Lawful Use And Development:**
- (3) Against The Terms Of An Enforcement Notice Issued Under The Terms Of Section 172 Of The Town And Country Planning Act 1990**

**THE THREE APPEALS RELATE TO LAND AND PREMISES OWNED BY MR
CARL LEE DOWDS BEING LAND AND PREMISES AND KNOWN AS LINCOLNE
AUTOS LINCOLNE HOUSE CROWN LANE IXWORTH IN THE COUNTY OF
SUFFOLK**

**MAIN PROOF OF EVIDENCE OF
MICHAEL ANDREW JONES**

PLANNING APPEAL REFERENCE NUMBERS

APP/E3525/X/06/2018352

APP/E3525/X/06/2007681

APP/E3525/C/06/2029440

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1. **Statement of Experience and Qualifications of Mr M A Jones**

My name is Michael Andrew Jones, solicitor and planning consultant. I have over 25 years experience in the field of town and country planning. During that period of time I have practiced as a specialist-planning solicitor undertaking a wide range of work relating to the preparation of and submission of planning applications and also attending to any resulting appeals. I have advised and worked on a large number of planning appeals including large and complex cases that have resulted in major inquiries. For example I was recently involved in the planning inquiry into the Bathside Bay container port inquiry. I am a member of the Law Society's Planning Panel and am also a Member of the Royal Town Planning Institute. I hold the degree of Master of Science in Environmental Management and the degree of Master of Law in Environmental Law. I also hold a number of other relevant post-graduate qualifications at Masters Degree level. I also hold the degree of Master of Arts in Town and Country Planning from the University of the West of England Bristol.

I have been involved in negotiating a number of complex planning schemes and I have assisted in helping clients promote complex town centre redevelopment schemes. I have worked on substantial compulsory purchase projects and I have advised on the implementation of compulsory acquisition schemes. I have also advised on all aspects of environmental issues including land contamination, water pollution, waste management and environmental assessments.

I have also advised clients on the pursuit of applications to the High Court in relation to challenges under Section 288 and 289 of the Town and Country Planning Act 1990 and also in relation to applications for judicial review in the High Court for the purpose of quashing planning decisions. Prior to entering private practice in 1997 I devoted the first 18 years of my career in the public sector acting as a legal advisor to various local authorities. Prior to leaving the local government service I held First Tier Chief Officer posts and my duties included the management of the planning function of a local authority.

I have also advised on various aspects of forward planning and I have attended and submitted detailed representations at Local Inquiries into the review of statutory development plans.

I have provided planning advice to clients from the private sector who have been involved in seeking to gain planning permission from local planning authorities. This has involved providing advice on the tactics to be involved including the preliminary submission of applications for Lawful Development Certificates to preserve the current position so far as Lawful Use Rights are concerned and then to prepare and submit planning applications including advice on the form and type of planning application together with the supplementary information to be included including supporting statements of case and a number of drawings and types of drawings together with attendance at meetings with senior planning officers to Negotiate the terms and conditions of a suitable planning permission together also with providing advice on any relevant amendments together with negotiations with the Environment Agency in respect of overlapping areas of jurisdiction on environmental impact assessments together with advice on other

documentation including wildlife habitat surveys including advice on other professional expertise required relating to the preparation and submission of the planning application together also with negotiations with the local highway authority and where appropriate with English Heritage and English Nature and liaison with other public bodies where required together with attending meetings of planning committees and submitting verbal representations to the committees in support of the planning proposals therein. The work has also involved providing advice on the other side of the fence for local planning authorities in their capacity as clients of the practice.

This has included providing advice on the requirements for planning obligations and attending to the negotiation and settling of the terms of planning obligations to be required from prospective developers. This particular work has also been undertaken when acting for private clients negotiating with local planning authorities in that I have prepared and submitted detailed planning obligations many of them being unilateral planning obligations in support of a planning application where considered appropriate. Examples of cases include sites where I have negotiated applications for the approval of residential development schemes for developments of thirty five homes including the incorporation of requirements for an element of affordable housing in accordance with Circular 6/98 and in accordance with planning policy guidance note 3 on housing together with the negotiation of the appropriate planning obligation relating to contribution to educational provision arising from proposed residential redevelopment schemes. I have also been involved in other cases involving large scale residential development schemes where similar factors were considered. The type and nature of applications

negotiated also included cases of applications for large scale commercial development schemes. Such proposals included applications for large waste transfer stations and recycling facilities. The planning applications have also included other forms of proposed development including recreational and leisure facilities. During the course of the process detailed knowledge and experience has been further enhanced relating to National Planning Guidance and also relating to the statutory development plans.

A large number of planning appeals have been pursued including the usual planning appeals under Section 78 and also appeals relating to applications for Lawful Development Certificates, appeals against non-determination of planning applications and appeals against Enforcement Notices. A large number of appeals have in particular been pursued against various Enforcement Notices of various types. Some planning appeals have included major cases. For example I attended and acted as advocate at a major planning appeal relating to the proposed new container port at Bathside Bay near Harwich Essex. That particular planning hearing related to a case which was to be determined by Central Government. I dealt with planning appeals by written representations and I have also dealt with planning appeals at a large number of informal hearings. I have also attended Public Local Inquiries into planning appeals. Examples of the types of planning appeals dealt with on a routine basis include the following:-

Appeals against refusals of applications for residential development.

Appeals against refusals of commercial development.

Appeals against Enforcement Notices requiring the removal of caravans and mobile homes from land.

Appeals against refusal of applications for Lawful Development Certificate for large car sales and car breaking yards in greenbelt sites.

With reference to forward planning I have carried out work relating to the preparation for and attendance at local plan inquiries. The works included carrying out initial research after taking instructions from client and preparing a detailed statement of case and submitting the same and then attending the formal part of the hearing relating to the review in public before a planning inspector of the emerging local plan. The representations have related to for example the review of the statutory development plan for St Edmundsbury. I have also attended and made representations on behalf of client including parish Councils relating to the review of the Babergh District local plan. I have also undertaken similar work relating to other local plans. The work has been extremely complex involving the consideration of infrastructure requirements and demands for various services including a review of highway infrastructure and associated matters.

I have dealt with a large number of disputes over alleged breaches of planning control including dealing with matters such as application for planning injunctions in the County Court both on behalf of local planning authorities and against local planning authorities. I have also dealt with cases involving the conduct of enforcement appeals both on behalf of local authorities and against local authorities. For examples of Enforcement Notice Appeals I have conducted on behalf of local planning authorities include work on behalf of a large London borough Council which involved dealing with the case from start to finish including dealing with the Public Local Inquiry into the appeal as advocate on behalf of the local planning authority. I have also dealt

with resulting challenges by way of applications to the High Court against decisions of the Inspectorate on such Enforcement Notice appeals. I have also dealt with Breach of Condition Notices and on behalf of clients I have represented them in the Magistrates Court in defending prosecutions brought by Local Planning Authorities. I have dealt with a very large number of enforcement cases over a considerable period of time. I have also prepared and issued Enforcement Notices on behalf of local planning authorities.

In the case of actions in the High Court I have dealt with applications by way of challenge under the planning acts relating to decisions of the Planning Inspectorate including a number of challenges which have been settled under the terms of Orders to which the Treasury Solicitor has consented for the purpose of arranging for fresh public local inquiry to be held after defects were found in a previous inspectors decision letter. I have also dealt with applications for Judicial Review on planning matters including all of the preparatory work and organising the submission and marshalling of documentation together with the filing of all papers in the High Court together with all legal research on the case law concerning a high profile case relating to the challenge of a decision by Harlow District Council relating to the purported grant of planning permission for a large scale extension to the town centre of Harlow by a large developer. The decision of the Councils planning permission was quashed by Mr Justice Richards in the High Court.

I have dealt with compulsory purchase orders and the associated paperwork on behalf of local planning authorities including for example dealing with compulsory purchase order work for a local

authority Hampshire relating to a substantial site and dealt with the general vesting declaration and the associated legal work. I also dealt with the attendance at the Public Inquiry into the objections to the original compulsory purchase order. I also dealt with the claims for compensation arising there under and the negotiation before the same reached the Lands Tribunal. I also dealt with the provisional advice on compulsory purchase orders on behalf of private sector clients who were concerned about compulsory purchase schemes promoted by local planning authorities.

It should be noted that one particular aspect of my work includes spending a considerable amount of time working on applications for Certificates of Lawful Use and Development. I have prepared and submitted a wide range of applications for Certificates of Lawful Use and Development over a number of years and I am therefore very familiar with the law and practise governing Section 191 of the Town and Country Planning Act 1990. I have dealt with applications relating to commercial uses and also applications for residential uses. On a number of occasions I have been obliged to pursue the matters by way of an appeal resulting in a Public Local Inquiry. I am familiar with the standard of proof applied in cases of this nature.

2. Introduction

2.3 This Public Local Inquiry involves consideration of three appeals lodged by the appellant relating to respectively two applications for Certificates of Lawful Use and Development and the pursuit of five grounds of appeal against the Enforcement Notice issued by the Council under Section 172 of the Town and Country Planning Act 1990. The first appeal relates to the

first application for a Certificate of Lawful Use and Development referenced under number SE/04/2215/P. The application was lodged on 11th May 2004 pursuant to Section 191 of the Town and Country Planning Act 1990 relating to the existing use. The application which was dated 3rd April 2004 was for:-

“Use of the front garden and the back garden of Lincolne House for commercial purposes being the parking and storage of motor vehicles and also the retail sale of motor vehicles from the site and from the commercial buildings on the site and use of a room in the house as an office.”

Subsequently on 19th July 2004 the local planning authority issued a Notice of Refusal alleging that there was insufficient evidence to justify the grant of a certificate. This was a surprising decision given the large volume of material submitted in support of the application which included a detailed and long statement issued by the appellant Mr Carl Lee Dowds which was supported by documentary evidence referred to in his statement and also by further evidence in support of the said application including letters from local residents and additional documents. It is interesting to note that the local planning authority did not even consider the issue of a Certificate for even part of the uses claimed in the said application.

2.4 Accordingly, an appeal was lodged against the decision of the Council to refuse the application under the terms of the appeal it is contended that the use described in the application had subsisted for more than ten years prior to the date of the application being a period of at least ten years prior to 3rd April 2004. It is clear from the substantial evidence submitted in support of the application that the land described in the application has

been used continuously and without interruption for a period of at least ten years. For legal purposes this must be considered to be the period from 3rd April 1994 through to 3rd April 2004. It is significant that the Council did not provide any specific reasons in support of its decision not to approve the application. When one considers the letter of 19th July 2004 it does appear to be a very brief letter which does not really constitute a formal Notice of Refusal as such and most certainly does not contain specific reasons in support of the apparent decision contained therein.

2.5 Further correspondence took place between the Council and this office relating to the Council's failure to grant a Certificate of Lawfulness relating to the claimed use. The subsequent correspondence which developed over a number of months led to the Council and the Appellant agreeing to a postponement of the normal timetable applicable to the pursuit of an appeal against the refusal to grant a Lawful Development Certificate. It appeared that the Council was anxious to pursue further correspondence rather than to allow the appeal to progress through the normal procedures. The Appellant was agreeable to this approach given that the appellant felt that the position adopted by the Council was a potentially helpful and positive approach and could lead to a reasonable resolution of the problem through correspondence and the pursuit of the second application for the Lawful Development Certificate. The Planning Inspectorate agreed to the significant delays in the normal appeal timetable relating to the said appeal on the basis that it felt that both the Council and the Appellant were sufficiently advanced in their correspondence and the pursuit of the second application that it would potentially lead to a position which may avoid the necessity for convening a Public Local Inquiry.

2.6 The second application for a Certificate of Lawful Use and Development under reference SE/05/1146/P was lodged on 7th February 2005. The second application was also an application for a Certificate of Lawfulness pursuant to Section 191 of the Town and Country Planning Act 1990. The application was dated 4th February 2005. Given that an opportunity had presented itself for the submission of a second application it was felt appropriate to modify the description of the claimed use to recognise the existing residential use on the site which obviously formed part of the same planning unit. Accordingly, the application was described as follows:-

“The mixed use of the planning unit for residential and commercial purposes being the storage, parking, repair and sale of light motor vehicles up to 3.5 tonnes on part of the site and the parking of 8 hobby vehicles.”

The said application was supported by a substantial body of evidence and it was considered that the said application was clearly justified. There was therefore a reasonable and legitimate expectation that the Council would grant the requested Certificate of Lawfulness for the said use. During the course of subsequent correspondence it was felt appropriate to clarify the description of the use by reference to the various categories of use differentiating between the independent use and what is regarded as ancillary or incidental uses arising from the said primary independent use. This minor clarification was put forward after discussions with the local planning authority and for the purpose of seeking to assist the local planning authority in issuing a Certificate of Lawful Use and Development. It was also clear from the evidence that the clarification in the description of the use was justified. Accordingly the repair of vehicles

was clearly described as “an ancillary or incidental use arising from the fact that Mr Dowds business comprises the storage and display of motor vehicles”. It was also acknowledged that the repair work was obviously “minor and limited in nature” and therefore ancillary to the sales activity of the appeal site. It was also recognised that given the description of the use on the said planning unit as a mixed use for residential and commercial purposes it was strictly not necessary to specify a separate hobby use for motor vehicles because vehicles used by the occupiers of the residential premises were entitled to exercise their normal rights as residential occupiers which included the parking on their own vehicles within the said planning unit and was therefore an implicit part of the said residential use.

2.7 The local planning authority issued a Certificate of Lawfulness on 21st April 2006 for the mixed use of land at the appeal site comprising part of the curtilage to the residential dwelling including use of the parking of up to four light motor vehicles not exceeding 3.5 tonnes for the purposes of sale in respect of part of the property known as Lincolne Crown lane Ixworth. The said Certificate was crossed referenced to a plan annexed to the Certificate which drew an artificial red line through part of the planning unit. Upon examination of the plan it appeared that the Council had come to the view that approximately one third of the total site area should enjoy the benefit of a Certificate of Lawful Use and it should be constrained to the front garden and to the side of the premises terminating at a position immediately in front of the out building closes to the residential bungalow on the site. The appellant was naturally very surprised by the Councils decision which was not supported by any specific reasons nor any reference to any specific evidence. The Councils decision also appeared to be inconsistent with the general practise of

ensuring that Certificates of Lawful Use and Development are issued relating to land comprised within a planning unit. It has always been recognised throughout the correspondence and discussions that the property known as Lincolne House was a single planning unit. It is considered that it is inappropriate to seek to issue a Certificate of Lawful Use and Development for what is recognised to be a mixed use of the site and to constrain that mixed use purely to approximately one third of the said site. In essence the Council appeared to make the artificial decision that a red line should be drawn across the site for the purpose of constraining the area of land that could be used for the said recognised Lawful Use. The said red line does not follow any specific topographical feature within the site and the position of the putative red line is not supported by any specific evidence. In other words, the Council could not reasonably justify the location of the red line as described on the plan having regard to the factual evidence submitted in support of the second application. Furthermore, the Council was not justified in law in seeking to grant a Part Certificate of Lawful Use and Development for approximately one third of what is recognised to be a single planning unit. The Council's decision was puzzling and irrational. It is considered that there is no conceivable reason for seeking to artificially subdivide an existing acknowledged planning unit. It is clear that the Certificate should have been granted for the whole of the planning unit known as Lincolne House comprising the whole of the curtilage of the said premises. It is clear that in legal terms there is no other way in which the Certificate could have been framed had it been framed correctly.

2.8 There are also problems with the exact words used in the Certificate of Lawfulness issued by the Council. For reasons that were not made clear the Council sought to place an artificial restriction upon the number of

vehicles and the type of vehicles to be specified under the terms of the Certificate. The limitation of the number of light motor vehicles to the number of four and to a weight not exceeding 3.5 tonnes was a curious limitation which is not supported by any specific evidence put forward by the Council. The evidence put forward by the appellant clearly described a much larger number of vehicles and there was no evidence that the number of vehicles is any limited to purely four vehicles. The decision to issue the Certificate of Lawful Use in part is therefore a perverse decision. The text of the said Certificate should have permitted the parking of motor vehicles for sale on any part of the said planning unit and should not have constrained the number of vehicles to a specific number. It is clear that the capacity of the site to accommodate vehicles will be the correct was of limiting the number of vehicles. The historic evidence put forward in support of the application indicated that the maximum number of vehicles that could be accommodated on the site was forty two. The evidence was indicated that the average number of vehicles parked on the site was in the region of twenty five vehicles.

2.9 The appellant was very surprised to find that the local planning authority decided to issue an Enforcement Notice relating to the appeal site on 26th December 2006. The document was received by recorded delivery post by the appellant who immediately passed it to myself with instructions that an appeal be lodged under the terms of ground (c) ground (d) ground (f) and ground (g). Subsequently the appellant also then instructed my firm to lodge a further ground of appeal being ground (a).

2.10 It is significant that the Enforcement Notice issued by the Council incorporated a plan which sought to identify the planning unit for the purposes of the Enforcement proceedings as being the whole of the

curtilage of Lincolne House. The fact that the Enforcement Notice was prepared on this basis indicates that the Council deliberately choose to adopt a different approach in the Enforcement Notice from the approach it adopted relating to the issue of the Certificate of Lawful Use for part of the appeal site. It is irrational and perverse for a local planning authority to take diametrically opposed approaches to the interpretation of the planning unit when issuing formal Certificates or Notices pursuant to its powers under the Town and Country Planning Act 1990. If the Council really believed that the planning unit had been severed into two halves and that was the reason why it issued the Certificate of Lawful Use in the form that it did then it would have constrained the terms of the Enforcement Notice to the area of land shown hatched black on the plan annexed to the Enforcement Notice and not included the bungalow known as Lincolne House nor indeed the front garden or the side passage way.

2.11 The allegation referred to in the Enforcement Notice was of course substantially defective given the ambiguity of the wording used. By use of the word “including” half way through the terms of the allegation it appears to be implicit that the assertion that the alleged breach of planning control is also designed to cover the land benefiting from the Certificate of Lawful Use itself. It is also unclear how the Notice can allege that there can be both a material enlargement and an intensification at the same time. The Council does not appear to have any evidence to support the assertions set out in section 3 of the Enforcement Notice.

2.12 There are numerous defects in the Enforcement Notice an example of the further defects can be found in section 5 relating to the requirements of the Notice. Under the terms of section 2 of the Notice the area of land referred to in the Notice known as “The Land” is the whole of the site known as

Lincolne House and its curtilage. It therefore follows that in Section 5 the Decision to Enforce against the whole of the “land” as defined in Section 2 of the Notice renders the Notice substantially defective. It is clearly inconsistent with the terms of the pre-existing Certificate of Lawful Use relating to part of the site. It therefore contradicts the terms of a previous Certificate.

2.13 It should also be noted that given the terms of the Enforcement Notice which relate to the whole of the said planning unit comprising the whole of the curtilage of Lincolne House it appears that the Enforcement Notice has in law overridden the terms of the certificate of Lawful Use in that the said Enforcement Notice has declared that it permits up to six light motor vehicles to be parked and stored for retail purposes on any part of the said planning unit. It therefore follows that under the principles relating to “under-enforcement” as set out in Section 173 subsection 11 of the Town and Country Planning Act 1990 it is clear that the Council by issuing the said Enforcement Notice has clearly declared an intention to grant deemed planning permission for parking of six light motor vehicles not exceeding 3.5 tonnes in weight for the purposes of sale at any time throughout the whole of the planning unit comprising the whole of the back garden as well as the whole of the front garden. This decision by the Council is clearly inconsistent with the decision it made concerning the issue of the Certificate of Lawful Use relating to part of the said planning unit.

2.14 When one examines the grounds of appeal against the Enforcement Notice one noted that ground (c) has been cited. In this ground it is stated that there has not been a breach of planning control on the appeal site as alleged in the said Enforcement Notice. The allegation put forward in the Enforcement Notice is ambiguous and indeed confused. It should be

noted that it is not legally permissible to allege a “material enlargement” of a use in circumstances where the use is subsisting over a single planning unit. A material change of use does not take place merely because a use moves within a single planning unit. It therefore follows that the terms of the allegation as expressed in the Notice and indeed as contradicted in the terms of the Certificate of Lawfulness clearly indicates that the allegation put forward is misconceived and accordingly the terms of ground (c) are fully made out. It should also be noted that a number of motor vehicles can be parked on the site under the existing lawful use rights ancillary to the residential use of Lincolne House and it is therefore clear that a number of the points set out in the Enforcement Notice seek to control matters which do not in themselves constitute a breach of planning control. It is entirely conceivable that in a case such as Lincolne House owned by the appellant and his wife that they may wish to park personal vehicles owned by members of the household which can be anywhere between seven or more motor vehicles. It should be borne in mind that the appellant has a large family which includes ten children. Many of the children have now reached adulthood and now have their own cars.

2.15 With reference to ground (d) it should be noted that this ground does of course overlap with the main grounds of appeal concerning the refusal to grant the whole of the first application for a Certificate of Lawful Use and part of the second application for a Certificate of Lawful Use. It therefore follows that the evidence in support of ground (d) is identical to the grounds of appeal set out in the other two appeals. For the purposes of ground (d) the following points should be noted:-

2.15.1 The Council has no reliable evidence demonstrating that a material change of use took place in the last ten years. The conditions for a

material change of use can only be a change that has a material impact upon the area and the new use must be within a different category of “sui generis” use and wholly supplanting the previous use. However, there is no evidence of any such dramatic change whatsoever. Furthermore, it should be noted that the mere development of ancillary uses is not sufficient to constitute a material change of use. Furthermore, mere fluctuations in levels of activity from time to time do not constitute a material change of use. It should also be noted that mere periods of none-activity are insufficient to interrupt the continuation of a use on the land. It therefore follows that it is not possible to base an alleged material change of use on such a proposition. Furthermore, there is no evidence whatsoever of any abandonment of the use particularly having regard to the four criteria relevant to allegations of abandonment.

2.15.2 It is clearly incorrect for the Council to now claim that there is “no substantive evidence” to support the assertion that the whole of the planning unit has been used for the parking of cars for display for sale. Reference should be made to the original statement issued by the appellant and to the photographic evidence. There is on the contrary a substantial volume of evidence supporting the contention put forward by the appellant. It would appear that the Council misunderstands the tests applied to evidence so far as the standard of proof is concerned. The standard is whether it is “more likely than not” that the use has subsisted on the site for more than ten years. It is not a question of the appellant being obliged to prove the case “beyond all reasonable doubt”.

2.16 Another ground of appeal against the terms of the said Enforcement Notice relates to ground (f) which is based on the view that the

Enforcement Notice imposes steps which exceed what is necessary to remedy the breach of control or the impact on the amenity of the area. It is clear that the Enforcement Notice seeks to cover a wider range of vehicles than could be regarded as necessary for the purpose of alleviating the alleged impact upon the amenity of the area or indeed dealing with what is necessary to remedy the breach of planning control. It should be noted that some of the alleged prohibited vehicles referred to in the Enforcement Notice could stay on the site in any event without the requirement of grant of planning permission. In other words the terms of the Enforcement Notice go wider than what is necessary to remedy a breach of planning control because the terms of the Enforcement Notice cover matters which are not covered by the terms of development control. It is noted that it also seeks to target vehicles parked within the area of the lawful use granted under the terms of the Certificate of Lawful Development and Use issued by the local planning authority. It also specifies vehicles that will have no adverse impact upon the amenities of the area.

2.17 With reference to the further ground for appeal against the terms of the Enforcement Notice issued under ground (g) it is noted that the time given for the compliance with the Notice is far too short. It is stated to be a period of six months. However, a period of six months is far too short given the circumstances. It is necessary to consider a period of at least three times as long as the period cited in the Enforcement Notice because:-

- i. There is obviously an initial need to carry out a search to find another site within a reasonable radius of the appeal site (say twelve miles or so) being a reasonable daily travelling distance from the house on the appeal

site and in circumstances where the alternative site has the capacity of up to forty eight cars for storage and parking for display for sale. This site must also have support services on hand and a series of commercial out buildings. This is obviously a very demanding set of specifications and it is likely to take a considerable period of time to find a considerable alternative site which can be afforded. It should be noted that there is a very restricted market in the Ixworth area.

- ii. There is also a need to ensure that the appropriate planning permissions and other licences and consents are obtained relating to the alternative site and to ensure that there are no onerous provisions that prevent a viable business from operating from the site. This is again a tall order and again would require an adequate period of time in order to resolve.
- iii. There will also be a need to devote substantial resources to up grading the site in physical terms including the installation on new buildings and equipment and also to comply with specific legal requirements issued by the Environment Agency and other regulatory bodies.
- iv. It should be noted that as part of the package it will be necessary for the appellant to negotiate an appropriate lease with the new freeholder and this in itself will take a considerable period of time.

2.18 It should be noted that by any estimate the above sequence of events would easily occupy at least twenty four months of time. This involves the search period, the securing of the appropriate permissions, the negotiating of the lease and the implementation of works on the site. This all needs to take place before one can even begin to remove the vehicles from the appeal site on to the new alternative site.

2.19 Consideration should also be given to the additional ground of appeal pursued by the appellant being the appeal against the Enforcement

Notice under the term of ground (a) being the deemed planning application appeal. It should be noted that the appeal site constitutes a site where there are employment opportunities and these have been demonstrated over a period of time. One must of course take into account the relevant planning policy framework. The Statutory Development Plan comprises the Suffolk County Structure Plan of 2001 and the Replacement St Edmundsbury Borough Local Plan 2016. The St Edmundsbury Borough Local Plan was adopted on 27th June 2006.

2.20 In the said local plan one finds that chapter 4 the policies relating to employment issues. It should be noted that the emphasis is upon a proactive approach to supporting employment generation in the area. In paragraph 4.2 (b) it states that the intention is to help existing firms to grow. Under the terms of paragraph 4.3 the intention is to encourage the establishment of businesses. Clearly, the appellant Mr Dowds operates an existing business in the area and therefore is entitled to expect the Council to seek to provide assistance to him so far as his planning requirements are concerned. Under the terms of paragraph 4.14 it is recognised that employment development outside of defined employment zones may be proven to be acceptable when assessed against the policies in the local plan. Attention is drawn to policy E1 concerning the need to assist in the protection of existing employment land.

2.21 On the proposals map for Ixworth the site is well within the defined settlement boundary. Policies that appear to be relevant include the Design and Impact Policy set out in Policy DS3 and also Policy DS2 on the need for a sequential approach to development.

2.22 It should be noted that those policies which are cited against the appellant relating to his development on the site are mainly based upon the assumption that the use of the site results in the loss of residential amenity. It is noted that in the Development Plan it is considered that some development may be unacceptable on the basis that it is inappropriate because it will lead to a reduction in residential amenities. However, there is no evidence whatsoever of any adverse impact by the development on the site upon the residential amenities of adjacent occupiers. In objective terms there are no firm noise readings nor any specific examination of any alleged odour nuisance. There are formal complaints of disturbance known to the appellant and no evidence of late night or early morning working causing disturbance to adjacent residential occupiers. One of the interesting aspects of this case is the very substantial number of local people in Ixworth who are happy to support the appellant in his case. It is clear that the appellant provides a valuable service to the local people and that the local people fully appreciate that service and wish to support the appellant in continuing his business activities on the appeal site.

3. Site Description

3.1 The appeal site is located on the south western side of Crown Lane within the small town of Ixworth. Ixworth is served by an excellent local road network and is at the intersection of the A143 running between Bury St Edmunds and Diss and the A1088 running between Elmswell and Thetford. The settlement is well served by existing regular bus services and there is a wide range of services within the town centre including restaurants, public houses, general stores, post office and

educational, social and welfare services. The settlement is therefore a sustainable community.

- 3.2 The appeal site is located within a short level walking distance of the main high street in the small town of Ixworth. The site is also within short level walking distance of the local primary school.
- 3.3 The property known as Lincolne House incorporates a large residential bungalow with a very substantial garden. The size of the plot is approximately 84 metres deep by 17.5 metres wide. The residential bungalow known as Lincolne House is occupied by the appellant and his large family. In addition there are outbuildings on the site which principally include two large commercial style outbuildings which have been on the site for a period well in excess of fifteen years.
- 3.4 The adjacent dwelling on the north western side of the property marked "Conifers" on the Ordnance Survey extract has been renamed Bradgate House. The adjacent dwelling on the south eastern side of the appeal site referred to as "Three Gables" on the Ordnance Survey extract has been renamed Dunhelm House.
- 3.5 It should be noted that the property known as Lincolne House is clearly an old established property and its garden is screened by large fences and substantial vegetation.
- 3.6 Given the topography of the area and the substantial amount of screening between the various garden boundaries it is quite clear that the use claimed by the appellant on the whole of the appeal site can easily be

undertaken without affecting the amenities of adjacent residential occupiers.

4. The Historical Evidence Relating to the use of the Appeal Site

4.1 Within Volume I of this Proof of Evidence the main legal and planning issues are addressed. With reference to the factual background, it should be noted that evidence from witnesses as to matters of fact will be presented at the Public Local Inquiry. A table has been prepared showing the schedule for the attendance of witnesses at the Public Local Inquiry and this document is incorporated into Volume II of this Proof of Evidence comprising the Appendices referred to in this said Proof. It should also be noted that a complete set of letters and Statements provided by those who have knowledge of the site has been incorporated into the Appendices within Volume II of this Proof of Evidence. The letters and Statements duly copied in Volume II have been issued by the following individuals:-

1. Mr Carl Lee Dowds (the Appellant) of Lincolne Autos "Lincolne" Crown Lane Ixworth.
2. Angus Baker of Dunham House Crown Lane Ixworth.
3. J R Hunter of Wrattlers Livermere Road Great Barton.
4. Mr A Goshawk and Mr P Goshawk of Barnham Vehicle Services Place Farm The Street Ingham.
5. Haydn Wells of Coast 2 Coast Services Unit 17 Boasts Industrial Park College Lane Worlingham Beccles.
6. Paul D Cutting of The Workshop Stockhold Farm Thurston.
7. Mr F Newton of 16 Turnberry Avenue Fornham St Martin.

8. Richard S Pratt of R & D Construction Limited The Broadway
Badwell Ash.
9. J M Smith of Woodcroft Sandy Lane Barningham.
10. D Wallman of 4 Back Lane Badwell Ash.
11. Mr B Holder of 7 Sadlers Yard Ixworth.
12. Mr Davis of 44 New Road Ixworth.
13. Mrs P Rogers of 7 New Road Ixworth.
14. Anthony Rositski of 17 Scott Road Ixworth.
15. Shirley Hurlock of 18 Scott Road Ixworth.
16. W Jamaway of 11 Scott Road Ixworth.
17. D James of 9 Scott Road Ixworth.
18. R Simpkin of 11 Scott Road Ixworth.
19. L Wakeman of 19 Abbey Close Ixworth.
20. Pat Crosby of 3 Hicks Bungalows Ixworth.
21. Andrew Coe of 8 Dover Terrace Ixworth.
22. Mrs J O'Brien of 10 Commister Lane Ixworth.
23. Mr A Rogers of 7 New Road Ixworth.
24. Mr M A Lambert of Woodgersend Ixworth.
25. Dr J C Cannon of Ixworth Surgery Peddars Close Ixworth.
26. Mrs S Plummer of 7 Crown Crescent Ixworth.
27. S Brown of 3 Crown Crescent Ixworth.
28. J Mills of Orchard House Crown Lane Ixworth.
29. R Sturgeon of Crown Lane Garage Ixworth.
30. N J Gray of Claire Crown Lane Ixworth.
31. Mr S Rush of 25 New Road Ixworth.
32. Mr I Rush of 25 New Road Ixworth.
33. Tonia Stern of 16 Scott Road Ixworth.
34. Jean Webster of 20 Peascroft Road Ixworth.
35. Mr A Bunnage of 1 Scott Road Ixworth.

36. Chris Ridgeon of Whiting & Partners 12-13 The Crescent Wisbech.
37. Mr G Bunnage of 1 Scott Road Ixworth.
38. Mr M Westfall.
39. Mr Warner.
40. Mr M Betts.

4.2 A careful examination of the various letters and Statements issued by the persons mentioned above indicates that there is a substantial body of evidence in support of the Appellant's contention that he has used both the front and the rear garden of the property at Lincolne House Crown Lane Ixworth for the storage and parking of motor vehicles for sale for a continuous period of at least ten years prior to the date of the lodging of the respective two Applications for Certificates of Lawful Use and Development. It is clear that there is an overwhelming body of evidence in support of this contention and the evidence has clearly been submitted from people who fall into one or more of the following categories:-

1. Professional persons who have had dealings with the Appellant and have visited the site including the Appellant's Medical Practitioner (Dr Cannon).
2. Persons who are in the motor trade and have had dealings with the Appellant at the site.
3. Persons who are customers of the Appellant and purchase vehicles from time to time from the site including the rear garden of the premises.
4. Persons who have occupied neighbouring properties and have been aware of the activities carried out within the Appeal Site at all

material times. The interesting point to note is that the authors of the various letters supporting the contentions of the Appellant and those providing Witness Statements all come from diverse backgrounds. They may truly be regarded for the most part as independent witnesses and their evidence collectively is a credible body of evidence supporting the contention that the use claimed by the Appellant has subsisted across the whole of the planning unit namely both the front garden and also the rear garden. For some inexplicable reason the Council has felt unable to contemplate granting a Certificate of Lawful Use and Development relating to the use of the land within the rear garden. However, the Council does not have any evidence to assist it in coming to this conclusion. In fact the Council's decision to set its mind against granting a Certificate to cover the rear garden actually "flies in the face" of the main body of evidence which supports the contention that the use in question has also subsisted within the rear garden.

4.3 Given the very substantial body of evidence in support of the contentions put forward by the Appellant concerning the historic use of the premises it is only possible in this part of the Proof of Evidence to briefly summarise some points appearing in the evidence.

4.4 In the Statement issued by Mr G H Warner of Grange Farm Potash Lane Wyverstone Stowmarket Suffolk the witness clearly states that he purchased five vehicles from the Appellant at various dates over a period running between 17th March 1990 through to June 2004. In his evidence he clearly states that he viewed and indeed purchased the vehicles from the rear garden at Lincoln Autos.

- 4.5 In the Statement provided by Mr Betts of Kermack Barton Road Thurston Bury St Edmunds Suffolk the witness states that he purchased three vehicles from the rear garden of Lincolne Autos over a period of time from 27th November 1996 through to 16th August 2000. He makes it clear that he purchased the said vehicles from the rear garden of Lincolne Autos.
- 4.6 In the Statement issued by Mr M G Westfall of 7 Church Close Risby near Bury St Edmunds Suffolk IP28 6RH the witness clearly states that he purchased a series of vehicles at various points of time from and including 11th August 1990 through to 26th October 2005 from the rear garden at Lincolne Autos. It would appear that Mr M G Westfall was a very loyal and regular customer so far as the Appellant was concerned. In essence a total of 13 vehicles were purchased at various points in time throughout that period and on each occasion the vehicles were purchased from the rear garden at Lincolne Autos.
- 4.7 In a letter addressed to "To whom it may concern" Dr John Cannon of the Ixworth Surgery of Peddars Close Ixworth clearly states that the Appellant Mr Dowds has indeed been selling vehicles from the rear of his home in Crown Lane for many years. The Doctor clearly states that he had visited the Appellant and his family for medical reasons and also for professional reasons over the last 12 years "plus" and can confirm that there have been regularly more than 20 cars for sale traded from the rear of his home during this period of time. It should be noted that Dr Cannon will of course be available for cross examination at the Public Local Inquiry. However it should be noted that given his status as a professional man and a person with detailed

knowledge of the Appeal Site over a very long period of time it is clear that significant weight can be attached to his evidence.

4.8 In a letter issued on 20th September 2006 Mrs Tonia Stern of 16 Scott Road Ixworth provided further evidence in support of the Appellant's contentions. Mrs Tonia Stern is an important witness because she confirms that she was indeed the neighbour occupying the property adjacent to Lincolne House being a property known as "Three Gables". This property is now known as "Dunham House". She confirms that the Appellant moved into Lincolne House in 1987 and started selling cars from Lincolne House in 1989. She indicated that she had a conifer hedge between her property and Lincolne House. She gives evidence to the effect that the Appellant started to use the rear garden in 1990 to store and sell his vehicles and apparently he kept anywhere between 15 to 25 vehicles in the rear garden. It would appear that the witness then allowed the conifer hedge to grow to about 12 feet high. She could however observe the vehicles in the rear garden of Lincolne House from her back bedroom window. However at the same time she indicates that at no stage was she affected by the activities of the Appellant. She then goes on to state that she only moved out in 2001 owing to her concerns about the size of her own garden and that she moved locally to another address. The evidence of Mrs Tonia Stern is indeed compelling. She is one of the older residents of Ixworth who knows the town very well. She is obviously very critical of the persons who allegedly complained about the Appellant and started the course of events which appears to have resulted in the present Public Local Inquiry.

4.9 In his own evidence, the Appellant Carl Lee Dowds makes it perfectly plain that the whole of the front garden area for the property known as Lincolne House and the whole of the back garden area of the property known as Lincolne House has been used for the parking and storage of motor vehicles for commercial purposes for a continuous period of at least ten years prior to the date of the submission of the first Application for a Certificate of Lawful Use and Development back in 2004. He clearly provides evidence as the owner and occupier of the property and also the operator of the business that the use has been continuous and consistent. He maintains that it has been carried out overtly and without complaints from local residents. He also provides evidence that the commercial use also extends into the residential bungalow known as Lincolne House in that he uses one room within the bungalow as an office for the purpose of controlling and managing the commercial car business on the site. He also maintains that the two commercial buildings within the site in the rear garden are also used for commercial purposes. He also maintains that commercial use within both commercial buildings has subsisted for a period of ten years prior to 2004.

4.10 Mr Dowds makes it clear that his evidence is corroborated by documentary evidence. The documentary evidence includes the Licence issued by the Office of Fair Trading under the Consumer Credit Act 1974 being a standard Licence under reference number 257295. It provides specific authorisation for a credit brokerage to be carried out from his premises at Lincolne House in Crown Lane Ixworth. The Licence was granted on 28th April 1989 and was valid for a period of 15 years from that date. In his evidence, Mr Carl Lee Dowds provided a copy of the said standard Licence.

- 4.11 Mr Carl Lee Dowds also produces further documentary evidence including copies of vehicle registration documents which records the name and address of registered keepers of the motor vehicles including the recovery vehicle. In this respect reference in particular should be made to Exhibit "CD3" in the exhibits annexed to the Appellant's original Statement dated 24th April 2004 which relates to a vehicle registration document where the last note of the date of change of the keeper was 1st March 1990.
- 4.12 The evidence of the Appellant is compelling. On points of fact it is corroborated by documentary evidence. Furthermore, the Appellant maintains that on average the number of vehicles on the site was between 20 to 25 motor vehicles. This is consistent with the evidence put forward by Dr Cannon. It should be noted that the Appellant also refers to other documentary evidence including an appointment for a vehicle test on 11th November 1993. In his evidence, Mr Carl Lee Dowds also refers to a log book setting out a record of dates of purchase on selling prices relating to various cars which were stored and displayed at the Appeal Site.
- 4.13 Attention is also drawn to another piece of evidence provided by the Accountant Mr C D Ridgeon of Messrs Whiting & Partners Chartered Accountants of 12 and 13 The Crescent Wisbech Cambridgeshire PE13 1EP. In the letter dated 10th August 2004 the Accountant Mr C D Ridgeon confirms that he acted for the Appellant as an Accountant from February 1989. He confirmed that the Appellant has traded from the front and side of the premises since 1989 and from late in 1992 he has stored vehicles and traded from the back garden of the same

premises. This is clearly another piece of important information from a well respected professional person.

4.14 In further evidence provided by Angus M Baker who now resides at Dunham House Crown Lane Ixworth being the adjacent property to the property known as Lincolne House Mr Angus M Baker clearly states that he carried out work on Lincolne House for the Appellant in 1991 wiring two bedrooms. He confirms that at that time cars and vans were parked in the rear and the front gardens and to the side of the house and that they were being displayed for sale. He also confirms that he personally purchased a motor vehicle from the Appellant in 1995.

4.15 Another witness Mr J R Hunter can provide evidence clearly stating that as a motor mechanic he has known the Appellant in the trade for in excess of 31 years. He is able to confirm that over 31 years he has bought many cars and commercial vehicles and for his customers from the Appellant from the rear of the property at Lincolne House.

4.16 There is further evidence from another motor trader in the locality being Mr A Goshawk of Barnham Vehicle Services of Ingham. He maintains that he had been trading with the Appellant of Lincolne Autos for over 18 years at the site at Crown Lane Ixworth. He has confirmed that he has traded with him by collecting and delivering cars to the rear of the property during that period.

4.17 It is significant that another person who owned the property adjacent to Lincolne House being Mr John Paterson who now resides at 25 Codington Way Ixworth and had previously resided at Conifers (now

called Bradgate House) has submitted evidence in support of the Appellant. He maintained in his letter of 24th April 2004 that when Mr Carl Lee Dowds moved to Lincolne House in approximately 1988 and started trading as Lincolne Autos in early 1989 he sold cars. Apparently he sold cars to Mr John Paterson and maintained them for approximately 13 years. He also maintains that during the 13 years he lived adjacent to the Appellant's property at Lincolne Autos he was not affected by the activities on the site.

4.18 In another piece of evidence Mr J W Sturgeon Haulage Contractor of Crown Lane Garage Ixworth maintains that the Appellant started trading as Lincolne Autos from Lincolne House Crown Lane Ixworth in February 1989. He confirms that he purchased two vehicles from the property at Lincolne House during the course of the 15 years prior to the date of his letter being 26th April 2004.

4.19 In further evidence Mr Hayden Wells being the proprietor of Coast 2 Coast Services of Beccles Suffolk has provided further evidence in support of the Appellant's contentions. He maintains that he has known the Appellant since 1988 and in 1993 was asked by the Appellant to collect and deliver vehicles from various auction houses and dealerships in Norfolk Suffolk and Essex to the home address at Lincolne House Crown Lane Ixworth. In his evidence he has clearly stated that when he first started collecting vehicles he was building a recovery vehicle for his own use in the workshop at the rear of the bungalow and in the rear garden there had always been between 20 to 25 vehicles on display for sale. Apparently Mr Hayden Wells originally collected and delivered the vehicles under a previous

company name known as H & M Wells Transport. Haydn Wells ceased trading in 2004.

4.20 Another witness Mr P D Cutting is a motor engineer and resides at The Workshop Stockhold Green Farm Thurston. He has dealt with the Appellant since 1989 and has attended the property known as Lincolne House Crown Lane Ixworth. He has collected and returned vehicles to the rear of the property at Lincolne House Crown Lane where he noticed that the business was being carried on.

4.21 Another witness being Richard S Pratt Director of R & D Construction Limited of The Broadway Badwell Ash has provided evidence clearly indicating that he has known the Appellant as a motor trader for in excess of 20 years. He confirms that he provided the Appellant with a replacement driveway at Lincolne House to allow easy access to the rear garden where he was trading in the sale of motor vehicles. The witness has confirmed that over the years R & D Construction Limited both purchased and sold vehicles to Lincolne Autos and the business was always conducted from the rear garden.

4.22 Another witness J M Smith of Woodcroft Sandy Lane Barningham has provided evidence confirming that she has been a customer of the Appellant since 1989. Her evidence indicates that she purchased a number of vehicles from Lincolne Autos and that the Appellant also maintained and serviced her vehicles during the same period. She has confirmed that there have always been a number of vehicles for sale both outside the front and at the rear of the property.

4.23 Another witness Mr B Holder of 7 Sadlers Yard Ixworth has also provided evidence confirming that he has known the Appellant for over 15 years and has purchased cars from him during that period. He has provided evidence that he has observed a number of vehicles to the front and sometimes a very large number of vehicles to the rear of the property.

4.24 Another witness Mr D Wallman of 4 Back Lane Badwell Ash has also provided evidence that he has visited Lincolne Autos and purchased a white Peugeot 205 in 1995 from the site. When he attended he noticed that there were many vehicles available for sale parked both in the front and in the rear garden area. Similar evidence has been provided by Mr F Newton of 16 Turnberry Avenue Fornham St Martin near Bury St Edmunds Suffolk IP28 6TP.

4.25 In contrast, it would appear that the Local Planning Authority has little or no evidence to place in the balance against the overwhelming weight of evidence put forward on behalf of the Appellant. It would appear that the Local Planning Authority has to some extent sought to rely upon some extremely questionable evidence put forward by a few local residents who appear to have some form of difference of view so far as the Appellant is concerned. It would appear that the "evidence" upon which the Council seeks to rely is unreliable given that the persons in question have no intention of attending the Public Local Inquiry. I have received confirmation from the Council's Planning Officer that the only witness to be called by the Council at the Public Local Inquiry will be the Enforcement Officer Mrs Jane Stanley. Accordingly it would appear that the two persons who appear to object to the Application for a Certificate of Lawful Use and Development are

not prepared to attend the Inquiry in order to support their objections. At the same time I am informed by the Appellant that the two objectors have not resided in Ixworth long enough to have any degree of knowledge concerning the historic use of the site in any event. I am informed by the Appellant that the views expressed by the objectors are clearly unreliable and “fly in the face” of the facts. Accordingly, applying the appropriate civil standard namely the balance of probabilities test it is abundantly clear that the Appellant has discharged that standard in the comprehensive evidence that has been put forward clearly indicating that the whole of the Planning Unit at Lincolne House Crown Lane Ixworth has been used for a period in excess of 10 years for the storing and parking of motor vehicles for sale both in the front garden and in the whole of the rear garden.

5. The Legal Issues

5.1 Under the terms of Section 191 of the Town and Country Planning Act 1990 it is stated that:-

- (i) “If any person wishes to ascertain whether:-
 - a. Any existing use of buildings or other land is lawful;
 - b. Any operations which are being carried out in, on, over, or under land are lawful; or
 - c. Any other matter constituting a failure to comply with any condition or limitation subject to which the planning permission has been granted is lawful;

He may make an application for the purpose to the Local Planning Authority specifying the land and describing the use, operations or other matter.”

- 5.2 Under the terms of Section 191 it is stated that uses and operations are lawful at any time if;
- a. No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforced action has expired or for any other reason) and;
 - b. They do not constitute a contravention of any of the requirements of any Enforcement Notice then in force.
- 5.3 Under the terms of Section 171 of the Town and Country Planning Act 1990 a breach of planning control becomes immune from enforcement action if no action has been taken in respect of unauthorised material changes of use which have subsisted for a period of ten years prior to the date of the application for the lawful use certificate and in the cases of operational development where the substantial completion of the said operational development has taken place four years prior to the date of the application for the Certificate of Lawful Use and Development.
- 5.4 Under the terms of the applications for the Certificates of Lawful Use lodged with the Council they related to a single planning unit comprising land whose boundaries were defined on the plan annexed to the applications and which said area of land had remained in tact and had remained unchanged in terms of area since at least 1964 being a period of over 42 years prior to the date of submission of the said applications.

- 5.5 It is noted that the commercial car storage for display for sale use subsisted over the full extent of the appeal site and constituted a single planning unit.
- 5.6 It is noted that the nature of the use of the land does not fall within any of the existing "Use Classes" and accordingly the use is designated as being a sui generis use.
- 5.7 The said commercial use subsisted continuously on the site throughout the period up to and including the date upon which the application for the Certificate of Lawful Use was submitted. Although for the purposes of Section 191 of the Town and Country Planning Act 1990 incorporating Section 171 of the Town and Country Planning Act 1990 it is clear that it is only necessary to establish that the said use has subsisted for a period of ten years before the date of the application nevertheless it is clear from the evidence as a whole that the said use has subsisted on the site for a period well in excess of ten years. Furthermore, the evidence indicates that the said use has subsisted on the site throughout the period and that there has been no material change of use within the said planning unit during the period of the last ten years. Furthermore, it is noted that the planning unit has remained unchanged throughout the whole of the said period of time and that there has been no change in the area of the said planning unit nor any legal abandonment of the said use at any stage during the said period having regards to the terms of the legal tests applied in cases of this nature.
- 5.8 The applications are supported by a large number of letters of support and witness statements including persons who previously visited the

said premises and also witness statements from local residents. Witness statements were also submitted by other third parties including persons who supplied services to the business. The evidence of the said witnesses is corroborated and supported by independent documents. The said papers are contained in volume 2 of this Proof of Evidence as part of the Appendices. The evidence of the retail use is supported by third parties who traded with the appellant at the appeal site and also by local residents who also traded with the appellant at the appeal site. Accordingly, the burden of proof placed on the appellant has been discharged and the appropriate civil standard of proof achieved beyond one of a “balance of probabilities”.

- 5.9 The sources of the site history can be summarised as falling into the following categories:-
- a. The personal recollections of local residents including.
 - b. The personal recollections of businessmen who have visited the site pursuant to business activities.
 - c. The personal recollections of the occupier and owner of the site.
 - d. The aerial photography relating to the site.
 - e. The ground level photography relating to the site.
 - f. The public records held by public bodies such as the Consumer Credit Licence.
 - g. The professional correspondence of Accountants and Doctors.
 - h. The business records for the business.
 - i. The evidence from customers who have purchased vehicles from the site

When one considers all of the evidence from the above various sources there is an overwhelming body of evidence supporting the proposition that the use claimed by the appellant in his applications for Certificates of Lawful Use and Development are justified. It should be noted that the preferred view is that the Certificate of Lawful Use and Development should be granted on appeal and on the basis of the amended wording set out in the second application. The wording of the proposed Certificate for the whole of the planning unit as described in the second application would on the basis of all of the evidence now available be the most appropriate. It should be noted that the evidence supports the view that there has been a continuous breach of planning control for a period well in excess of ten years calculated up to the date of each of the two said applications for Certificates of Lawful Use and Development. On the basis of the evidence presented there does not appear to be any indication of any material interruption of the use at any stage during the relevant ten year periods. However, even if there were this would not be a matter of concern given the judgement in the leading case of *Panton -v- Secretary of State for the Environment, Transport and Regions* (1999) 1 PLR page 92. Where it was held that even a dormant use could still exist in planning terms and could still be an existing use for the purposes of section 191 of the Town and Country Planning Act 1990. Clearly, given the considerable degree of latitude provided by the Courts in the interpretation of Section 191 it is abundantly clear that the local planning authority simply cannot challenge the proposition that there is ample evidence showing a continuous and existing use of the whole of the planning unit at Lincolne House over the relevant ten year periods. It should also be noted that there is no evidence whatsoever of any material change of use taking place during the said period of ten years.

5.10 When considering whether or not there has been a material change of use one must ask the following questions:-

- a. What is the primary use of the land?
- b. What is the scope of that use?
- c. What is the extent of any lawful ancillary use?
- d. What is the planning unit?
- e. Is the change to a new use a material change in the use of the planning unit?

Clearly, throughout the relevant ten year period the primary use of land has been for mixed use for residential purposes and commercial purposes comprising the storage and display of motor vehicles for sale. The use extends to the whole of the planning unit and the ancillary uses are of course the incidental repairs and associated incidental uses which arise from the parking and storage of motor vehicles displayed for sale. When analysing any question relating to alleged material changes of use one must always distinguish between primary and ancillary uses. Furthermore the concept of the planning unit is utilised as an essential tool for determining the precise area of land to assess for the purposes of judging the materiality of any change. In this particular case it would appear that the local planning authority simply does not understand the definition of the planning unit and its application to the appeal site. In this case it is contended that the planning unit is the whole of the land owned by the appellant which said land is clearly defined on the office copy entries held at H M Land Registry and the filed plan annexed thereto. In this respect reference should be made to the leading case of *Burdle –v- Secretary of State* for

the Environment (1972) 1 WLR page 1207 and also to the case of Johnston –v- Secretary of State for the Environment (1974) 28 PCR page 424. Clearly, given the unity of ownership, occupation and use it is clear that the whole of the land owned by the appellant falls within one planning unit and that there is a mixed use of the said planning unit comprising two primary uses. It is clear from the evidence that the said two primary uses developed during the late 1980's and from one interpretation of the evidence it would appear that the two primary uses became established quite clearly at the latest by 1989. It therefore follows that the relevant material change of use took place in 1989 and that was for legal purposes the last time that a material change of use took place on the premises. It the matter was of concern to the local planning authority then the local planning authority should have taken action for the purpose of seeking to abate the said unauthorised contravention of development control either in 1989 or within a period of ten years from 1989. It therefore followed that as from 1999 the local planning authority could no longer legitimately take enforcement action to seek the abatement of the mixed residential and commercial use of the said premises given that the premises had been used continuously for those purposes for a period of ten years and therefore attracted the benefit of the immunity provisions granting immunity from enforcement action pursuant to Section 171 of the Town and Country Planning Act 1990. Accordingly, the decision of the Council to issue Enforcement proceedings in December 2006 was clearly a flawed decision given that it was taken six years after the final date upon which they could have issued an Enforcement Notice.

In considering issues relating to material changes of use the following general rules can be taken into account:-

1. That where you have an existing primary use a minor “de-minimis” use can develop without causing a material change of use.
2. That where you have an existing primary use then an incidental use can also develop without causing a material change of use.
3. You can also have an existing primary use leading to the development of a ancillary use without causing a material change of use.
4. However, where the ancillary use becomes a primary use in its own right then a material change of use can take place if it is material to the planning unit as defined.
5. Where there are two primary uses within the same planning unit then one may have two composite uses within the said planning unit. It should be noted that any fluctuation in either of the two composite uses within the planning unit does not in itself constitute a material change of use. This is known as the “Whipperman Rule”. Please see the reference at Whipperman –v- Barking London Borough Council (1965) 17PCR page 225 at 229 per Mr Justice Widgery and reference should also be made to the case of Philglow Limited –v- Secretary of State for the Environment (1984) 270 EG page 1192 and (1985) JPL page 318 (Court of Appeal).

With further reference to the issues concerning the burden of proof placed upon the appellant in this case reference should be made to the case law and to Circular 10/97 on “Enforcing Planning Control: Legislative Provisions and Procedural Requirements”. It is clearly stated that the onus is on the appellant to demonstrate on the balance

of probabilities that a Certificate ought reasonably to be issued. However, in interpreting the obligations upon the appellant one should take into account the case law and particularly the case of *Gabbittas –v- Secretary of State for the Environment and Newham Borough Council* (1984) in which it was held that the applicants own evidence need not be corroborated by independent evidence in order to accept it. Again this is another example of the Courts granting a reasonable degree of latitude to appellants in cases of this nature.

When one examines the records relating to the number of motor vehicles recorded as stored on the site from time to time one notes that even as far back as May 1989 there were a significant number of motor vehicles being traded on the appeal site as at 31st May. It was noted that 8 cars were purchased and 12 were sold within that month and as at 31st May 1989 there were 10 motor vehicles on the site. The records indicate that the number of vehicles has fluctuated from time to time as one would expect with the normal turn over in a business of this nature. For a significant period of time the number of motor vehicles stored on the site has substantially exceeded that figure and one notices regular references to vehicles exceeding 15 to 20 vehicles thereon. Given the evidence presented there does not appear to be any support for the proposition concerning an alleged intensification of the use of the site during the last ten years. However, it should also be noted that mere intensification of a use in itself does not necessarily constitute a material change of use. In this respect reference should be made to the case of *The Royal London Borough of Kensington and Chelsea –v- Secretary of State for the Environment* (1981) JPL page 50. Reference should also be made to the cases of *Blum –v- Secretary of State for the Environment* (1987) JPL page 278. The only time when an

intensification of a use is relevant to the question of a material change of use is if the intensification is of such a degree as to amount to a material change in the character of that use. The doctrine of intensification of use is therefore reserved for significant cases where the scale of the use changes dramatically and has an impact upon the locality. It should be noted that the Courts accept that a mere increase in numbers by itself does not in itself constitute intensification and therefore does not constitute a material change of use causing development. In the present case it is quite clear that there is no evidence to support an allegation of intensification of use given that the use has subsisted continuously for the relevant period of ten years without causing any change in the character of the site or creating any change in the character of the locality. The evidence of the witnesses taken as a whole clearly indicates a consistent impression of the nature and level of the use throughout the material ten year period. All of the representations put forward by witnesses throughout the material ten years clearly indicate the general impression that the same number of cars appeared to be parked within the said planning unit throughout that period.

- 5.11 The Council has failed to understand that the only way in which an established use can be lost is either by:-
- a. By the process of an abandonment of the use.
 - b. By carrying out a material changing of the use.
 - c. By a change in the planning unit (either by subdivision or by a substantial reduction thereof).

It is clear from the evidence that none of the above three events have occurred.

5.12 The Council has also failed to understand the fact that the planning unit has remained the same throughout the relevant period of time and has not in any way altered.

5.13 Given the numerous legal issues arising in this case and reference will be made to the following case law:-

- a. R (Fairstate Ltd.) –v- First Secretary of State (2004) EWHC page 1807
- b. Ratcliffe –v- Secretary of State for the Environment (1975) JPL page 728
- c. White –v- Secretary of State for the Environment (1989) 2PLR page 29
- d. Young –v- secretary of State for the Environment (1983) JPL page 465
- e. Hale (deceased) –v- Litchfield District Council (1979) JPL page 425
- f. Northavon District Council –v- Secretary of State for the Environment (1990) JPL page 579.
- g. Hughes –v- Secretary of State for the Environment and Transport and Regions 18th February 2000.
- h. Litchfield (Earl of) Estate (Trustees) –v- Secretary of State for the Environment (1985) JPL page 251
- i. White –v- Secretary of State for the Environment (1989) 2 PLR page 29
- j. Petticoat Lane Rentals Ltd. –v- Secretary of State for the Environment (1971) 1 WLR page 1112
- k. Jennings Motors Ltd. –v- Secretary of State for the Environment (1982) JPL page 181.

- l. Day and Mid-Wiltshire Motors Ltd. –v- Secretary of State for the Environment (1979) JPL page 538
- m. South Ribble Borough Council –v- Secretary of State for the Environment (1990) 61 PCR page 87
- n. R –v- Thanet District Council ex parte Tapp July 2000.
- o. Panton –v- Secretary of State for the Environment Transport and Regions (1999) 1 PLR page 92.
- p. R (on the application of Manning) –v- South Lakeland District Council (2005) JPL page 1646.
- q. East Dunbartonshire Council –v- Secretary of State for Scotland (1999) 1 PLR.
- r. Church Commissioners –v- Secretary of State for the Environment (1995) 2 PLR page 99.
- s. Cottrell –v- Secretary of State for the Environment (1982) JPL page 443
- t. R –v- Epping Forest District Council ex parte Philcox 13th April 2000

5.14 It is further contended that on the basis of the case law the lawful use rights claimed have subsisted in law throughout the last period of the ten years immediately preceding the date of the applications for the Lawful Development Certificate and that accordingly the appellant is entitled to the issue of a Lawful Development Certificate based on the interpretation of what constitutes a “subsisting use” on the appeal site.

5.14 Furthermore, the appellant raises issues under the Human Rights Act 1998. The appellant is surprised that the Council has dismissed the issue of Human Rights in this case. The Council has failed to

approve the applications thereby neglecting to recognise the appellant's property rights over the appeal site. Furthermore the Council has apparently authorised formal enforcement proceedings against the appellant for the purpose of seeking to terminate the existing use rights over the appeal site which, if implemented, will lead to the loss of his livelihood. The Council's objective in seeking to implement the enforcement action will involve the total clearance of the site. This is an extreme measure which will adversely affect the Human Rights of the appellant and in circumstances where no public interest would be advanced. The relevant Human Rights that need to be considered include Article 1 of the First Protocol and Article 8 and also Article 6. There is no conflicting public interest in this matter. There are no demonstrable interests of acknowledging importance which need to be protected and the development has no adverse environmental impacts. There is no impact upon local public health and no impact upon the local highway network. There is no health and safety risk posed by the development. The Council's agenda appears to be to refuse to grant a Full Lawful Development Certificate and then misapply planning policies and to set-aside Human Rights issues and to secure the clearance of the site despite the legitimate expectations of the appellant. One must take into account the relevant case law concerning the interpretation of Human Rights provisions including decisions of the European Court of Human Rights.

- 5.15 It is further contended that given that there was no change in the character of the use of the land and no impact upon the surrounding area during the ten years prior to each of the applications that it is

abundantly clear that in law there was no material change of use at any stage during the material time.

6. Application of the Law to the Facts

6.1 It is clear that the evidence supports the proposition that the correct planning unit is the whole area of the land known as Lincoln House owned by the Appellant and that all issues relating to the assessment of the materiality of any changes of use must be made in relation to the planning unit as defined.

6.2 That within the said planning unit there are two primary uses being the residential use and the commercial use for the storage and display of motor vehicles for sale.

6.3 That the said two primary uses came into existence as a composite use of the said planning unit during the course of 1989.

6.4 That the said composite use of the said planning unit has continued for the material periods of ten years prior to the dates of submissions of the respective Applications for Certificates of Lawful Use and Development.

6.5 That the said use of the premises during the course of the said period of ten years has not been subject to any material change of use during that period.

6.6 That there has been no interruption in the use of the said premises nor any abandonment of the said use at any stage.

6.7 That accordingly the Appellant is entitled to a Certificate of Lawful Use and Development for the whole of the said planning unit for the said mixed use.

7. **First Application and Appeal**

7.1 With reference to the first application for a Certificate of Lawful Use and Development at the site it should be noted that when it became necessary to pursue an appeal against the refusal the grounds of appeal mentioned in the following paragraphs were put forward:-

7.2 The Appellant Mr Carl Lee Dowds is entitled to receive a certificate of lawful use and development in relation to his use of his property known as Lincolne that comprises one single large planning unit for both commercial and residential purposes. It should be noted that the site constitutes a large residential property set within large residential grounds over which a commercial use developed and subsisted more than ten years previously. The commercial use comprises use of the garden areas comprising both the front garden and the whole of the rear garden for the storage and parking of both private and commercial vehicles and also for the carrying out of retail sales from the site. It should be noted that numerous cars have been sold directly from the site for a period well in excess of ten years. A considerable body of evidence was submitted to the local planning authority in support of the application which included the following:

1. A full statement of evidence by the owner Mr Carl Lee Dowds who has resided on the site for a period well in excess of ten years.
2. The submission of photographs showing the site covered by motor vehicles which said photograph was taken by an aircraft.
3. A formal business licence issued by the Office of Fair Trading under the Consumer Credit Act 1974 bearing reference number 257295 in favour of Carl Lee Dowds which authorised his credit brokerage to be carried out from the premises at Lincolne, Crown Lane, Ixworth, Bury St Edmunds – the licence was granted on 28 April 1989.
4. Copies of vehicle registration documents recording the name and address of the resident keeper of motor vehicles at the site – the document quoting reference number V8419322 shows that the keeper of a specified vehicle was Carl Lee Dowds as at 1 March 1990.
5. Copies of further vehicle registration documents under reference X1161616 which shows a recovery vehicle registered in the name of Carl Lee Dowds of Lincolne, Crown Lane, Ixworth and which shows him to be the registered keeper from 10 September 1990. This supports the fact that this site is used for the recovery of vehicles that are then towed to the site.
6. Documentary evidence comprising the appointment for a vehicle test under number 3315400114001 bearing dispatch date

11 November 1993 relating to test arrangements for a commercial vehicles addressed to Lincolne, Crown Lane, Ixworth, Bury St Edmunds.

7. A log-book listing all cars sold from the site known as Lincolne, Crown Lane, Ixworth throughout the relevant period of ten year.
8. Witness statements supplied by thirty-three local residents who all confirm that the site has been used for mixed commercial and residential purposes for a period in excess of ten years.
9. A formal letter issued by the Appellant's Doctor Dr Cannon.
10. A formal letter issued by the Appellant's Accountant Mr Ridgeon.
11. Copies of further plans relating to the use of the site.

7.3 It should be noted that the above body of evidence is very substantial and wide-ranging. It is quite clear that the appellant has established on the balance of probabilities that the mixed commercial and residential use on the site has subsisted for a period will in excess of ten years. He has also established that the use has been consistent and uninterrupted. He is therefore entitled to a lawful development certificate. Curiously, the council has refused to provide a lawful development certificate. This is despite the fact that the council does not appear to have any substantive evidence that in any way outweighs the evidence put forward on behalf of the appellant. Furthermore, a meeting was held at

the council offices to discuss this matter in some detail but the council refused to reconsider its decision not to approve the application. During the course of the meeting the council officers took the view that their previous letter of 29 July 2004 constituted a formal Determination of the application and constituted a formal refusal. This was surprising because it did not appear to be a formal notice of the decision and did not contain reasons. It therefore followed that the appellant had no alternative but to pursue an appeal against refusal of the application for a lawful development certificate.

- 7.4 I would point out that the application site constitutes one single planning unit. It should be noted that the residential bungalow on the site is in part use for commercial purposes in that part of the bungalow is turned over to an office use. The business affairs of our client are managed from the office within the bungalow and the business is known as 'Lincolne Autos'. Under the terms of the application it is clearly stated that the lawful development certificate is required to cover all of the work including the ancillary work carried out on motor vehicles on the site.
- 7.5 In further support of the case I also refer to a list of invoices issued by Clarkes of Walsham. There is a list of forty-six copy invoices enclosed herewith in support of the application.
- 7.6 When one examines the evidence it is abundantly clear that numerous cars have been sold directly from the site for a period well in excess of ten years. It is also abundantly clear from the photographic evidence and from witness evidence that the whole of the front garden and the whole of the rear garden has been used for the parking and storage and

retail sale of motor vehicles. It is also clear that recovery vehicles have operated from the site and it is also clear that the site has been a thriving commercial site for a period substantially in excess of ten year. Furthermore, two large structures located within the rear garden have been used for commercial purposes. It is noted that on occasions up to forty-two motor vehicles have been parked on the site.

- 7.7 It is therefore contended that a certificate of lawful use for the mixed commercial residential development should be granted on Appeal.

8. The Second Application and Appeal

- 8.1 The second application was refused in part by the council and it was therefore necessary to pursue a formal appeal against the refusal. The grounds for the second appeal are set out in the following paragraphs:-

- 8.2 The grounds of appeal were very similar to the grounds of the previous appeal. The only difference is that given the fact that the Council has in relation to this second application now conceded a number of points on behalf of the applicant it is clear that the grounds of appeal need only be reiterated and to focus on that area of land located outside the area shown edged red on the partial certificate granted by the Council under cover of its communication of 21st April 2006. A full copy of the partial certificate dated 21st April 2006 has been submitted to the Inspectorate from which you will note that the Council granted a lawful development certificate confined to the front garden of the property and the side passageway. Clearly, this is unacceptable to our client because our client maintains that the whole of the planning unit which also comprises the whole of the back garden of the

property known as Lincolne should also be encompassed within the area granted under the Lawful Development Certificate. Accordingly, it would appear that this second decision by the Council which is inconsistent with the previous decision of the Council which was to refuse the previous application in full is still unacceptable to our client and our client is therefore pursuing this second appeal on the basis that the Council has failed to grant a Lawful Development Certificate to cover the whole of the planning unit incorporating the rear garden and also on the grounds that the terms of the Certificate as set out in the First Schedule to the Certificate dated 21st April 2006 is far too limited in scope in that it seeks to restrict the use of the front garden to only four light motor vehicles not exceeding 3.5 tonnes in weight for the purpose of sale. It should be noted that the front garden of the premises can accommodate a far larger number of light motor vehicles and in practice has done so over a period of ten years prior to the date of the submission of the second application.

- 8.3 Accordingly, the Lawful Development Certificate granted is not expressed in wide enough terms and is far too restricted in the area which it refers to.
- 8.4 The Appellant requires a Certificate on appeal to be granted for the whole of the site and for all of the uses described in the original application.
- 8.5 The Appellant, Mr Carl Lee Dowds, is entitled to receive a Certificate of Lawful Use and Development in relation to his use of his property known as Lincolne that comprises one single large planning unit for both commercial and residential purposes. It should be noted that the site constitutes a large residential property set within large residential grounds over which a commercial use developed and subsisted more than ten years previously. The commercial use comprises use of the garden areas

comprising both the front garden and the whole of the rear garden for the storage and parking of both private and commercial vehicles and also for the carrying out of retail sales from the site. Numerous cars have been sold directly from the site for a period well in excess of ten years. A considerable body of evidence was submitted to the local planning authority in support of the application which include the following:-

1. A full statement of evidence by the owner, Mr Carl Lee Dowds, who has resided on the site for a period well in excess of ten years.
2. The submission of photographs showing the site covered by motor vehicles which said photograph was taken by an aircraft.
3. A formal business licence issued by the Office of Fair Trading under the Consumer Credit Act 1974 bearing reference number 257295 in favour of Carl Lee Dowds which authorised his credit brokerage to be carried out from the premises at Lincolne, Crown Lane, Ixworth, Bury St Edmunds - the licence was granted on 28th April 1989.
4. Copies of vehicle registration documents recording the name and address of the resident keeper of motor vehicles at the site - the document quoting reference number V8419322 shows that the keeper of a specified vehicle was Carl Lee Dowds as at 1 March 1990.
5. Copies of further vehicle registration documents under reference X1161616 which shows a recovery vehicle registered in the name of Carl Lee Dowds of Lincolne, Crown Lane, Ixworth and which shows him to be the registered keeper from 10 September 1990. This supports the fact that this site is used for the recovery of vehicles that are then towed to the site.
6. Documentary evidence comprising the appointment for a vehicle test under number 3315400114001 bearing dispatch date 11 November 1993

relating to test arrangements for a commercial vehicles addressed to
Lincolne, Crown Lane, Ixworth, Bury St Edmunds.

7. A log-book listing all cars sold from the site known as
Lincolne, Crown Lane, Ixworth throughout the relevant
period often year.
8. Witness statements supplied by thirty-three local residents who all
confirm that the site has been used for mixed commercial and residential
purposes for a period in excess of ten years.
9. A formal letter issued by the Appellant's Doctor Dr Cannon.
10. A formal letter issued by the Appellant's Accountant Mr Ridgeon.
11. Copies of further plans relating to the use of the site.
12. The additional correspondence and the additional evidence submitted
relating to the second application for the Lawful Development Certificate.

8.6 The above body of evidence is very substantial and wide-ranging. It is clear that
the Appellant has established on the balance of probabilities that the mixed
commercial and residential use on the site has subsisted for a period well in
excess of ten years. He has also established that the use has been consistent and
uninterrupted. He is therefore entitled to a lawful development certificate for the
whole planning unit.

8.7 In further support of the case, I also refer to the list of invoices issued by Clarkes
of Walsham. There is a list of 46 copy invoices in support of the application
which are contained within the Appendices within Volume II of the main Proof
of Evidence.

8.8 It is clear from the photographic evidence and from witness evidence that the
whole of the front garden and the whole of the rear garden has been used for the
parking and storage and retail sale of motor vehicles. It is also clear that recovery

vehicles have operated from the site and it is also clear that the site has been a thriving commercial site for a period substantially in excess of ten years. Furthermore, two large structures located within the rear garden have been used for commercial purposes.

8.9 It is therefore contended that a certificate of lawful use for the mixed commercial and residential development should be granted.

8.10 In representations to the Council the following points were made:-

8.11 Mr Dowds is of the view that the papers submitted in support of the application clearly indicate the type and number of vehicles stored and displayed and also serviced on the site. When one examines the paperwork including the photographic evidence and the observations on the site including those of the witness statements the majority of the vehicles appear to be private motor vehicles. In general terms the vehicles can all be categorised as below 3.5 tonnes in weight. This is an important aspect of the description of the vehicles because it clearly indicates the essential nature of the use which relates to light motor vehicles. It should be noted that the application does not relate to articulated or heavy goods vehicles. Obviously, such vehicles fall into a different category.

8.12 Mr C Dowds made it clear that the number of vehicles stored and displayed on the site has fluctuated in accordance with market conditions and his state of health. In essence, the application relates to a number of vehicles which fluctuate in number but which in essence occupy the majority of the planning unit at Lincolne House. It is felt that it is important to identify the area of land comprised within the

use rather than to put forward a specific limitation upon the exact number of vehicles at the site at any one time. It is accepted in planning law that one can describe use by way of the area occupied by that use and that it is not necessary to refer to specific numbers of activities occurring within that use. The reason for this is that some vehicles may be manoeuvred from one part of the site to another part of the site. In such circumstances the assessment of the vehicles by reference to numbers would be inappropriate because the area affected would in fact be the relevant parameter.

8.13 On the question of repairs it has been clarified by Mr Dowds that the repair of vehicles is not an independent use but is in fact an ancillary or incidental use arising from the fact that Mr Dowds' business comprises the storage and display of motor vehicles. Inevitably mechanical problems can occur within motor vehicles and it therefore follows that those problems should be addressed whilst the motor vehicle is stored on the site. When motor vehicles are displayed for sale one must have regard to the need to ensure that vehicles are properly serviced and put into a position whereby they can be sold in a top mechanical condition. However, such work would obviously be of a purely incidental nature and one is not considering a significant repair function which would involve body work or welding. In other words, the nature of these repairs carried out on the vehicles were minor and limited in nature.

8.14 With reference to the rather grey area of hobby uses one is of course involved in the area of considering what is reasonably incidental to the residential use of part of the site and what is not. Upon further consideration Mr Dowds has come to the view that the non-commercial vehicles on the site are in essence reasonably incidental

uses to the use of his main dwelling and owing to the limited number that are not therefore in essence a separate hobby use. Whilst all of these matters are of course open to interpretation and in essence constitute an assessment of the fact and degree of the non-commercial use nevertheless upon reflection Mr Dowds would now prefer to simplify the application by not pursuing any reference to a hobby use because he is now prepared to rely upon the normal rights vested in the owner of residential premises whereby members of his family can utilise motor vehicles within the premises which are reasonably incidental thereto. This is of course a very grey area but in the light of the discussions at the site visit Mr Dowds considers that the various non-commercial vehicles on the site of whatever description and type are after all reasonably incidental to the residential use and will therefore fall within the description of the residential use within the formal application for a lawful development certificate which relates to both a commercial and a residential use within the planning unit.

8.15 Mr Dowds has made it quite clear that his application for the lawful development certificate on the site at Lincolne House is not linked with the other sites. In essence the other sites are not relevant to the application and Mr Dowds considers that it would be both unjustified and incorrect for the council to take into account the activities that may take place on other sites. Mr Dowds considers that the council should focus purely on the site at Lincolne House.

8.16 Mr Dowds has reiterated the point that a large number of people clearly support his application for the lawful development certificate. Mr Dowds is therefore puzzled at the council still continues to question his use of the premises. Furthermore, Mr Dowds has pointed out that

the overwhelming evidence supports his application. Mr Dowds also notes that some correspondence apparently recently received by the council from one neighbour appears to be written by the neighbour on the assumption that the application constitutes an application for planning permission. It is noted that the neighbour even asks the question 'will the granting of planning permission lead to a proliferation of advertising signs in an essentially residential area?' Mr Dowds considers that such representations are obviously based upon a misunderstanding of the position and therefore should not carry any weight with the council.

9. The Enforcement Notice

9.1 The appeal against the Enforcement Notice is based on several different grounds and includes the following:-

- a. The deemed planning application appeal under the terms of ground (a) whereby without prejudice to all of the other grounds of appeal the appellant seeks to secure planning permission for the development on the site in respect of which the Council has issued an Enforcement Notice.
- b. The appellant is also pursuing an appeal under the terms of ground (c) in that in the appellants view the development referred to in the Enforcement Notice is in part clearly authorised by the part grant of a Lawful Development Certificate by the local planning authority and in part constitutes reasonably incidental use of the land which

therefore does not constitute development to which an Enforcement Notice can apply.

- c. The appellant is also pursuing an appeal under ground (d) on the basis that the Enforcement Notice is a nullity because it was issued more than ten years after the date upon which all of the uses to which it referred commenced. Accordingly, the appellant contends that the Enforcement Notice was issued far too late and therefore can no longer be effective relating to the said development to which it refers on the basis that the development has been in place for far too long a period to be attacked. It therefore follows that the appellant is claiming the benefit of the immunity period specified in Section 171 of the Town and Country Planning Act 1990. In the normal course of events a local planning authority must issue an Enforcement Notice within ten years from the date upon which unauthorised development first takes place. The local planning authority failed to do so in this case because the development to which the Enforcement Notice refers was commenced more than ten years prior to the date of issue of the Enforcement Notice. In support of this particular ground of appeal there is a very substantial body of documentary evidence supported also by a very substantial number of witness statements. These documents have previously been forwarded to the local planning authority on more than one occasion. The position concerning the evidence in support of this ground of appeal is clearly specified in the papers relating to the applications for Certificates of Lawful Use and Development.
- d. The appellant has also appealed under the terms of ground (f). It is considered that the Enforcement Notice is drawn in terms which

are clearly far too broad and contained excessive requirements which cannot be justified in planning terms. The appellant contends that there would be no advantage from implementing the terms of the Enforcement Notice in that the implementation of its requirements would not improve the local environment. The appellant contends that the existing use of the land does not in any way cause any demonstrable harm to any interests of acknowledged importance. It does not cause any noise disturbance nor does it have any adverse visual impact.

- e. The appellant also appeals under the terms of ground (g) on the basis that if the appellant were to be unsuccessful in the other appeals then the appellant would obviously need a substantial period of time in order to relocate his business activities. It is considered that the period of time put forward in the Enforcement Notice for compliance is far too short and that a much longer period of time should be provided. Upon further reflection relating to this matter it is considered that a period of at least eighteen months would be required to find an alternative site.

9.2 The appellant also wishes to pursue issues under the Human Rights Act 1998. It is always recognised that planning decisions include two elements namely a decision on the planning issued based on material planning considerations and a second element of the decision which involves an assessment of the implications of any such decision in human rights terms and by reference to those human rights which are engaged by the process. In this particular case it is considered that the terms of Article 6 of the

Convention are engaged together with the terms of Article 1 of the first protocol of the convention.

9.3 The appellant is dependant upon the current use of the appeal site continuing for the purposes of gaining a continuing livelihood. The appellant has an excellent track record in his business which involves the vehicle business described in the applications for the Lawful Development Certificates. He has conducted his business activities on the site on an uninterrupted and continuous basis and without any difficulties for a period well in excess of ten years prior to the date of issue of the said Enforcement Notice. During that period of time he has relied upon the income generated by the commercial activities on the site which have provided a valuable local service. He has not encountered any objections to the way in which he has conducted his business and he has a large number of satisfied customers. He has also a considerable body of local support. Most local residents have congratulated him on the way in which he has conducted his business and have expressed alarm and dismay over the actions of the local planning authority in seeking to issue Enforcement Proceedings against him relating to his lawful business activities. The appellants right to maintain a livelihood is entirely dependant upon the continuation of his existing business at the premises.

9.4 The Councils decision to pursue Enforcement proceedings was a surprising decision given the previous communications between the Council and the appellant. The Council were aware of the fact that the use of the site had been continuous for a period well in excess of ten years and that there was a body of evidence in support of this contention. The Council was also aware of the fact that appeals were running relating to the two applications for Certificates of Lawful Use. Given those

circumstances it was inappropriate for the Council to then issue an Enforcement Notice. Furthermore, the terms of the Enforcement Notice are clearly inconsistent with the terms of the extant partial grant of a Lawful Development Certificate. The Enforcement Notice is vague, ambiguous and cannot be properly interpreted by reference to the four corners of the Notice.

9.5 The appellant contends that the Enforcement Notice fails to comply with a number of basic legal requirements concerning the validity of such Enforcement Notices. It is further contended that the defects in the Notice are not capable of correction under the powers for variation of Notices vested in the Secretary of State. It is also noted that the Enforcement Notice breaches the rule laid down in the case of *Mansi –v- Elstree Rural District Council* (1964) 16 PCR page 153. It is also in breach of the rule laid down in the case of *Miller – Mead –v- Minister for Housing and Local Government* (1963) 2 QB page 196. It is therefore considered that the Enforcement Notice is incapable of correction and is a nullity.

9.6 Reference in particular is made to the following case law:-

- i. *Mansi –v- Elstree RDC* (1964) 16 PCT page 153
 - ii. *Trevors Warehouses Ltd -v- Secretary of State for the Environment* (1972) 23 PCR page 215
 - iii. *Duguid -v- Secretary of State for the Environment* ETR (2001) 82 PCR page 6
 - iv. *Brent LBC –v- Dourman* (2003) EWCA. Civ 920
 - v. *John Kennelly Sales -v- Secretary of State for the Environment* (1994) 1 PLR page 10

- vi. Ipswich County Borough Council -v- Secretary of State for the Environment (1972) 225 EG 1355
- vii. Newport -v- Secretary of State for the Environment (1980) JPL 596
- viii. Cleaver -v- Secretary of State for the Environment (1981) JPL 38
- ix. John Pearay Transport Limited -v- Secretary of State for the Environment (1986) JPL 680
- x. Clare and Ridgeway Ltd -v- MHLG (1970) 217 EG 873
- xi. Decorative and Caravan Painters Ltd -v- MHLG (1970) 214 HG1355
- xii. Denham Developments Ltd -v- Secretary of State for the Environment (1984) JPL 347
- xiii. Day and Mid Warwickshire Motors -v- Secretary of State for the Environment (1979) JPL 538
- xiv. South Ribble Borough Council -v- Secretary of State for the Environment (1991) 1 PLR. 29
- xv. Miller-Mead -v- MHLG (1963) 2 QB 196
- xvi. North Sea Land Equipment -v- Secretary of State for the Environment and Thurrock Borough Council (1982) 263 E.Q. 668
- xvii. Haugh -v- Secretary of State for the Environment and Kirklees MBC (1983) JPL 40

9.7 Analysis of the Grounds of Appeal. The first ground of appeal relates to the terms of the appeal on the basis of the deemed planning application under ground (a). The appeal on this ground is based on the relevant policies set out by central government in the National Planning Policy Guidance and in particular to the guidance set out in planning policy guidance note number 4 on commercial developments. It should be noted that small businesses should be encouraged not only to provide much needed local services in small towns such as Ixworth

but also to provide employment opportunities. The small business in this particular case has been in existence for a considerable period of time and has provided a valuable source of income for the appellant and his family. It is also a service which is much needed in the local community. It is also a service which is provided to the local community in a convenient location and therefore constitutes sustainable development in that it provides a service without requiring local people to have to travel long distances to make use of the service. There are clear social and economic benefits in the continuation of the well established commercial use of the premises. It is therefore considered that having regard to the advice set out in Planning Policy Guidance not number 4 on commercial development that it is appropriate that planning permission be granted. It should also be noted that the small business on the site does not cause any adverse environmental impact. It does not cause any noise or disturbance and it does not cause any adverse visual impact. It is a small business which is entirely appropriate in a residential area and has not been the subject of any adverse criticism from long established local residents. There is considerable support for the use in the local community and the fact that the use has been continuously carried out on the site for a period well in excess of tme years is a further reason which in the special circumstances of this case justify the grant of planning permission. Furthermore, human rights issues should also be taken into account having regard to the substantial investment that the appellant has made and his long term commitment in the site.

- 9.8 The relevant policies are those set out in the National Planning policy Guidance contained within the relevant Planning Policy Statements including Planning Policy Statement number 1 and Planning Policy Statement number 3 and Planning Policy Guidance number 4 and will also be Planning Policy Guidance Note number 18 on good enforcement.
- 9.9 Reference
- 9.10 Reference will be made to the planning policies upon which the Enforcement Notice is allegedly based and a clear statement refuting the assertions put forward by the local planning authority will be submitted incorporating a detailed critique of all of the relevant planning policies in the statutory development plan. Reference will also be made to the policies in the Suffolk County Structure Plan and the policies in the St Edmundsbury Borough Local Plan.
- 9.11 The expediency reasons for issuing the Enforcement Notice were misconceived and unjustified. There are no expediency reasons for justifying the issue of an Enforcement Notice having regard to all of the material planning considerations including all of the relevant planning policies in the Councils planning policy documents.
- 9.12 In support of the application for deemed planning permission under ground (a) it is contended that the use of the site does not cause any demonstrable harm to interests of acknowledged importance and does not in any way harm the local environment. There have not been any substantive complaints over a long period of time other than the recent objections put forward by persons who have not been in the area long.

Local residents support the use of the premises and have not noticed any adverse visual impact caused by the development nor have they noticed any noise or disturbance from the use of the site. Planning permission ought to be granted in any event.

- 9.13 In further support of the appeal under the terms of ground (a) reference should also be made to planning policy guidance note number 18. In particular attention is drawn to paragraph 14, 15, 16 and 17 of that guidance note. It is stated that where there is alleged unauthorised development by small businesses or self-employed people then the local planning authority should follow the processes set out in those paragraphs. It is clearly pointed out that the cost of responding to enforcement action may represent a substantial financial burden on a small business or a self-employed person and local planning authorities should seek to avoid taking action and should seek to explore a possible compromise. For example it is recommended that the local planning authority may consider negotiating a slightly less intense form of activity on the site and impose conditions designed to alleviate perceived detriments to local amenity. It is noted that Officers are recommended to enter into informal discussions for the purpose of seeking to minimise the harm to local amenities caused by business activity and where possible to provide advice on suitable alternative sites. At no stage has this particular approach been followed by the local planning authority in this case. It therefore follows that the Council has gone down a process without following National Planning Guidance in this particular case. However, it must be acknowledged that there is little prospect of an alternative site being made available within the locality in any event and it is considered that this is a further issue which should be taken

into account when deciding that planning permission should be granted for the development.

9.14 The property is located within the small town of Ixworth. Under the terms of the Suffolk County Structure Plan adopted in 2001 Policy ECON4 clearly provides that new small scale employment uses are acceptable in existing buildings and on sites in or closely related to villages where there is no material conflict with residential amenity or with policies for transport and protection of the environment. It should be noted that in this particular case it is clear from the long history of the use of the site at Crown Lane that the site can be used without causing any material conflict with residential amenity. It does not conflict with countryside policies or transport policies because the activity can be carried out without causing any highway congestion and without having an impact upon the countryside given its location within the settlement boundary of Ixworth. It is clearly a site within a village and falls within the terms of policy ECON4 as an acceptable employment use and location.

9.15 Under the terms of policy RU1 of the Replacement St Edmundsbury Local Plan 2016 it is clear that the use of the site for commercial purposes is acceptable. It is a site which is permissible in a settlement being close to the centre of Ixworth. The development is of course small in scale. All of the activities which relate to the ancillary repair uses can be carried out within the commercial buildings on the site and that accordingly no industrial activities as such are carried out outside the site. The only use of the land outside the site is the parking of motor vehicles for sale which has no adverse impact on amenities. Accordingly, it is considered that the activity fully complies with the

objectives of policy RU1 of the Replacement St Edmundsbury Local Plan 2016.

9.16 It is clear that the site is sufficiently large to accommodate up to 45 motor vehicles. Given that the average number of vehicles over the last ten years has been between 15 to 20 vehicles or thereabouts it is clear that use of the site for the parking and storage of vehicles for display for sale can easily be accommodated within the existing planning unit and there is no need for any consequential on-street car parking. Accordingly, given the capacity of the site it will not generate any highway congestion in the locality. It is also significant that there have been no complaints of any noise or other disturbances arising from the appeal site. Given the specific nature of the use on the site it is clear that it is a innocuous and quite use which does not generate any noise or disturbance. Accordingly, the amenities of adjacent residential occupiers are not adversely affected. Accordingly, there is no inconsistency between the use and the objectives set out in the policies in the statutory development plan.

9.17 Ground (c) There has been no breach of planning control because the appellant being the owner of the site has used the site for a period in excess of ten years continuously and without interruption. Accordingly, the activities on the site clearly constitute a lawful use and therefore do not constitute a breach of planning control. It is clearly development that can remain on the site because it is immune from enforcement action pursuant to the lawful use provisions. In so far as any activity may technically lay outside any lawful use it should be noted that any such activity is either minimal in the sense of being de-minimus or constitutes permitted development in any event.

9.18 When one examines the grounds of appeal against the Enforcement Notice one noted that ground (c) has been cited. In this ground it is stated that there has not been a breach of planning control on the appeal site as alleged in the said Enforcement Notice. The allegation put forward in the Enforcement Notice is ambiguous and indeed confused. It should be noted that it is not legally permissible to allege a “material enlargement” of a use in circumstances where the use is subsisting over a single planning unit. A material change of use does not take place merely because a use moves within a single planning unit. It therefore follows that the terms of the allegation as expressed in the Notice and indeed as contradicted in the terms of the Certificate of Lawfulness clearly indicates that the allegation put forward is misconceived and accordingly the terms of ground (c) are fully made out. It should also be noted that a number of motor vehicles can be parked on the site under the existing lawful use rights ancillary to the residential use of Lincolne House and it is therefore clear that a number of the points set out in the Enforcement Notice seek to control matters which do not in themselves constitute a breach of planning control. It is entirely conceivable that in a case such as Lincolne House owned by the appellant and his wife that they may wish to park personal vehicles owned by members of the household which can be anywhere between seven or more motor vehicles. It should be borne in mind that the appellant has a large family which includes ten children. Many of the children have now reached adulthood and now have their own cars.

9.19 Ground (f) The steps required by the Council are clearly excessive. The parking of motor vehicles as alleged by the Enforcement Notice does

not cause adverse impact upon residential amenities as alleged in the Notice and it is unreasonable to require the cessation of the use of the land for the parking and storage of motor vehicles which can quite reasonably be used in connection with the residential use of the main dwelling on the site. The Notice is excessive in requiring the cessation of vehicle parking and storage for the purposes of sale on the whole of the site and the provision conflicts with the terms of the previous partial Lawful Development Certificate granted by the Council for the front garden and the side of the site. It therefore follows that the notice is not only excessive but also defective and self contradictory and seeks to undermine existing lawful use rights. The requirement to remove all vehicles is unreasonable excessive and should be withdrawn given that a residential use of the premises can permit the placing of vehicles thereon.

9.20 Another ground of appeal against the terms of the said Enforcement Notice relates to ground (f) which is based on the view that the Enforcement Notice imposes steps which exceed what is necessary to remedy the breach of control or the impact on the amenity of the area. It is clear that the Enforcement Notice seeks to cover a wider range of vehicles than could be regarded as necessary for the purpose of alleviating the alleged impact upon the amenity of the area or indeed dealing with what is necessary to remedy the breach of planning control. It should be noted that some of the alleged prohibited vehicles referred to in the Enforcement Notice could stay on the site in any event without the requirement of grant of planning permission. In other words the terms of the Enforcement Notice go wider than what is necessary to remedy a breach of planning control because the terms of the Enforcement Notice cover matters which are not covered by the

terms of development control. It is noted that it also seeks to target vehicles parked within the area of the lawful use granted under the terms of the Certificate of Lawful Development and Use issued by the local planning authority. It also specifies vehicles that will have no adverse impact upon the amenities of the area.

9.21 Ground (g) A period of six months is far too short a period of time. It is considered a period of at least eighteen months would be required to deal with the removal of the vehicles. Furthermore, at this point the Notice legally defective because it seeks to remove an existing Lawful right relating to land located within the planning unit.

9.22 With reference to the further ground for appeal against the terms of the Enforcement Notice issued under ground (g) it is noted that the time given for the compliance with the Notice is far too short. It is stated to be a period of six months. However, a period of six months is far too short given the circumstances. It is necessary to consider a period of at least three times as long as the period cited in the Enforcement Notice because:-

- i. There is obviously an initial need to carryout a search to find another site within a reasonable radius of the appeal site (say twelve miles or so) being a reasonable daily travelling distance from the house on the appeal site and in circumstances where the alternative site has the capacity of up to forty eight cars for storage and parking for display for sale. This site must also have support services on hand and a series of commercial out buildings. This is obviously a very demanding set of specifications and it is likely to take a considerable period of time to

find a considerable alternative site which can be afforded. It should be noted that there is a very restricted market in the Ixworth area.

- ii. There is also a need to ensure that the appropriate planning permissions and other licences and consents are obtained relating to the alternative site and to ensure that there are no onerous provisions that prevent a viable business from operating from the site. This is again a tall order and again would require an adequate period of time in order to resolve.
- iii. There will also be a need to devote substantial resources to up grading the site in physical terms including the installation on new buildings and equipment and also to comply with specific legal requirements issued by the Environment Agency and other regulatory bodies.
- iv. It should be noted that as part of the package it will be necessary for the appellant to negotiate an appropriate lease with the new freeholder and this in itself will take a considerable period of time.

9.23 Ground (d) It is contended that the date the Enforcement Notice was issued all of the uses referred to in the Enforcement Notice had already subsisted on the site for a period exceeding ten years prior to the date of the issue of the Enforcement Notice. It therefore follows that the Enforcement Notice was issued far too late and has no effect because the development in question is clearly immune from enforcement action. Reference should be made to the detailed evidence and legal arguments submitted in support of the two appeals against the Councils refusals of previous applications for Lawful Development Certificates.

9.24 There is a very substantial amount of evidence in support of appeal ground (d) against the terms of the Enforcement notice. It should be noted that the evidence upon which the appellant now focuses is of course extracted from the evidence submitted in support of the second application for a Lawful Development Certificate and which is also referred to in the second appeal against the second refusal of the second application for a Lawful Development Certificate. The relevant evidence is summarised in the following paragraphs.

9.25 The evidence clearly demonstrates on the balance of probabilities that over the last ten years the site has been used as a mixed commercial and residential use. The whole of the site has been used for that purpose as a composite use for an uninterrupted period of ten years. The evidence clearly supports the assertion that the use comprises a number of elements including the parking of motor vehicles, the storage of motor vehicles, the repair of motor vehicles, the sale of motor vehicles and the use of hobby vehicles on the site. The evidence also supports the use of the bungalow in part as an office use for the purpose of controlling the business.

9.26 The evidence submitted in support of the application and therefore also in support of the appeal includes a number of financial documents including a very large number of invoices relating to the sale of motor vehicles from the site together with a log of motor vehicles on the site and official certificates relating to the provision of credit facilities for the purpose of motor vehicles from Mr Dowds. The evidence also includes further documentary evidence including documents issued by the Driver Vehicle Licensing Centre in Swansea. Further documentary evidence includes aerial photographs.

- 9.27 The evidence also includes a number of statements from local residents. The number of statements submitted by local residents is quite unusual in our experience. In our view it is clear that a very substantial number of people in the locality who have known the site for a period well in excess of ten years have all supported the view that the site has been used for the uses claimed throughout the period of ten years prior to the date of the submission of the first application for a Certificate of Lawful Use.
- 9.28 It is also significant that the local planning authority has been well aware of the activities on the site for a long period and has never issued any formal Enforcement Proceedings. It would obviously be entirely improper for the Council to issue Enforcement Proceedings because any such proceedings would be the subject of an appeal under the terms of grounds (d).
- 9.29 The applicant is of course the owner and occupier of the property and he has put forward a comprehensive statement in support of his applications and now in support of his appeals. He has clearly stated that he has lived at the property for a period well in excess of twelve years. He clearly states that the whole of the front garden area for the property known as Lincolne and the whole of the back garden area for the property known as Lincolne has been used for the parking and storage of motor vehicles for commercial purposes for at least ten years. It was also stated that one of the rooms within the property has been used as an office for the control of the commercial use on the site for a period in excess of ten years and he has clearly stated that the two large buildings erected in the rear garden have also been used for

commercial purposes. He has also stated that both outbuildings have been located on the site well in excess of ten years.

9.30 I refer to the Licence issued by the Office of Fair Trading under the Consumer Credit Act 1974 which is a standard licence under reference number 257295. It was issued in his favour on 28th April 1989 and the licence is produced in evidence by the appellant.

9.31 I also refer to the recovery vehicle registered in his name at his address at Lincolne House Crown Lane Ixworth and refers to the vehicle registration document number X1161616.

9.32 I also refer to previous aerial photography which indicates a very large number of motor vehicles parked on the site. Although at time up to 42 motor vehicles have been parked within the appeals site Mr Carl Lee Dowds indicates that on average the number of vehicles is somewhere between 20 to 25 motor vehicles. He indicates that the capacity of the site is for 45 motor vehicles and it would be impossible to bring any more onto the site.

9.33 I also refer to further documentary evidence in support of his case including other documentation issued by the Department of Transport. For example he refers to an appointment for a vehicle test under batch number 3315400114001. He also maintains that vehicles have been sold directly from the site for a period well in excess of ten years and refers to his log book listing the cars sold from the site throughout that period.

9.34 It should be noted that curiously the local planning authority itself has not produced any substantive evidence designed to rebut the evidence put forward by the appellant. It is clear that the weight of evidence before the Inquiry is overwhelmingly in support of the appeal.

Legal Tests Relating to the Ground (d) Appeal Against the Enforcement Notice

9.35 It is clear under the law that the burden of proof rests with the appellant Mr Carl Lee Dowds. It is also clear that the standard of proof is that of a Civil burden which is one of “balance of probabilities”.

9.36 The standard of proof being that of the balance of probabilities means that all that the appellant must establish is that it is more likely than not that his version of events is accurate. He is not legally obliged to prove any more than that. It must be born in mind that the criminal standard of proof does not apply in cases of this nature. It would appear that the council may have misdirected itself on this point because it is apparent from the paperwork that the council appears to have adopted a much higher standard of proof than that which normally applies to civil cases.

9.37 It is contended that the Enforcement Notice is a nullity because it was issued more than ten years after the date on which the use to which it refers was first commenced. Reference is made to the case law relating to the interpretation of section 191 of Town and Country Planning Act 1990. In particular reference is made to leading case law including the case of Panton.

9.38 It is therefore contended that there are several issues which need to be considered as a matter of law at the Inquiry. These matters include the validity of the current decision of the council to issue a certificate for part of the land without reference to the full planning unit. There is also the issue as to how the council can seek to justify imposing artificial boundaries across an existing access and within an existing garden without having substantive evidence designed to support the precise location of the alleged boundaries. In essence not only is the council's decision unlawful in principle but it is also not supported by any evidence.

10. Conclusions

10.1 There is a very substantial amount of evidence in support of both applications for Certificates of Lawful Use and Development. It should be noted that the evidence and submissions focus on the terms of the second application and the second appeal and the evidence is referred to in the following paragraphs.

10.2 The evidence clearly demonstrates on the balance of probabilities that over the last ten years the site has been used for a mixed commercial and residential use. The whole of the site has been used for that purpose as a composite use for an uninterrupted period of ten years. The evidence clearly supports the assertion that the use comprises a number of elements including the parking of motor vehicles, the storage of motor vehicles, and the sale of motor vehicles. The evidence also supports the use of the bungalow in part as an office use for the purpose of controlling the business.

10.3 The evidence submitted in support of the application and therefore also in support of the appeal includes a substantial number of financial documents including a large number of invoices relating to the sale of motor vehicles from the site together with a log of motor vehicles on the site and official certificates relating to the provision of credit facilities for the purpose of motor vehicles from Mr Dowds. The evidence also includes further documentary evidence including documents issued by the Driver Vehicle Licensing Centre in Swansea. Further documentary evidence includes aerial photographs.

10.4 The evidence also includes a large number of statements from local residents. The sheer number of statements submitted by local residents is quite unusual in our experience. In our view it is clear that a very substantial number of people in the locality who have known the site for a period well in excess of ten years have all supported the view that the site has been used for the uses claimed throughout the period of ten years prior to the date of the submission of the first application for a Certificate of Lawful Use.

10.5 The applicant is the owner and occupier of the property and he has put forward a comprehensive statement in support of his applications and now in support of his appeals. He has clearly stated that he has lived at the property for a period well in excess of twelve years. He clearly states that the whole of the front garden area for the property known as Lincolne and the whole of the back garden area for the property known as Lincolne has been used for the parking and storage of motor vehicles for commercial purposes for at least ten years. It was also stated that one of the rooms within the property has been used as an office for the control of the commercial use on the site for a period in excess of ten

years and he has clearly stated that the two large buildings erected in the rear garden have also been used for commercial purposes. He has also stated that both outbuildings have been located on the site well in excess of ten years.

10.6 The appellant Mr Carl Lee Dowds refers to the Licence issued by the Office of Fair Trading under the Consumer Credit Act 1974 which is a standard licence under reference number 257295. It was issued in his favour on 28th April 1989 and the licence is produced in evidence by the appellant.

10.7 It should also be noted that the appellant refers to the recovery vehicle registered in his name at his address at Lincolne House Crown Lane Ixworth and refers to the vehicle registration document number X1161616.

10.8 The appellant also refers to previous aerial photography which indicates a number of motor vehicles parked on the site. Although at some times up to 42 motor vehicles have been parked within the appeals site Mr Carl Lee Dowds indicates that on average the number of vehicles is somewhere between 20 to 25 motor vehicles. He indicates that the capacity of the site is for 45 motor vehicles and it would be impossible to bring any more onto the site.

10.9 The appellant also refers to further documentary evidence in support of his case including other documentation issued by the Department of Transport. For example he refers to an appointment for a vehicle test under batch number 3315400114001. He also maintains that vehicles have been sold directly from the site for a period well in excess of ten

years and refers to his log book listing the cars sold from the site throughout that period.

10.10 It should be noted that curiously the local planning authority itself has not produced any substantive evidence designed to rebut the evidence put forward by the appellant. It is clear that the weight of evidence before the Inquiry is overwhelmingly in support of the appeal.

10.11 It is clear under the law that the burden of proof rests with the appellant Mr Carl Lee Dowds. It is also clear that the standard of proof is that of a Civil burden which is one of "balance of probabilities".

10.12 The standard of proof being that of the balance of probabilities means that all that the appellant must establish is that it is more likely than not that his version of events is accurate. He is not legally obliged to prove any more than that. It must be born in mind that the criminal standard of proof does not apply in cases of this nature. It would appear that the council may have misdirected itself on this point because it is apparent from the paperwork that the council appears to have adopted a much higher standard of proof than that which normally applies to civil cases.

10.13 It is also clear that the appellant is entitled to a certificate for the whole of the site and not the certificate limited to one part of the planning unit. It is contended that it is entirely improper for the local planning authority to seek to grant a limited certificate for one part of the planning unit. When considering an application for a certificate of lawful use the council must have regard to the defined planning unit as established in law. It is therefore contended that the decision of the

local planning authority in this case to grant a partial certificate is defective in law and improper. In essence the council have sought unilaterally to divide the existing planning unit into two. It is contended that this is unlawful and improper and can be challenged in the High Court.

10.14 It is therefore contended that there are several issues which need to be considered as a matter of law at the Inquiry. These matters include the validity of the current decision of the council to issue a certificate for part of the land without reference to the full planning unit. There is also the issue as to how the council can seek to justify imposing artificial boundaries across an existing access and within an existing garden without having substantive evidence designed to support the precise location of the alleged boundaries. In essence not only is the councils decision unlawful in principle but it is also not supported by any evidence.

10.15 At the Inquiry reference will be made to the case law relating to applications for Lawful Use and Development

10.16 Accordingly the appellant is at the very least entitled to a Certificate of Lawful Use and Development for the whole of the site at Lincoln House Crown Lane Ixworth aforesaid in accordance with the terms described in the second application for a Certificate of Lawful Use and Development. It is therefore submitted that the appeal relating to the second application should be allowed in full. Alternatively a different form of wording can be inserted into the Certificate and, if so, consideration may be given to the first application referred to in the first appeal.

10.17 It is also contended that given the above submission the current partial Certificate for one part of the planning unit and which does not properly refer to all of the uses that have been going on within that part of the planning unit should be struck down and replaced by a full certificate in the terms mentioned in the preceding paragraphs.

10.18 Without prejudice to the above points it is contended that the appellant is entitled to deemed grant of planning permission under ground (a).

10.19 It is also contended that the appellant is entitled to the quashing of the Enforcement Notice on the basis that the appeal under ground (c) is clearly established. The enforcement Notice seeks to remove existing established lawful use rights and is therefore a nullity.

10.20 The appellant seeks the quashing of the Enforcement Notice on the grounds that the evidence in support of ground (d) clearly shows that the uses to which the Enforcement Notice refers are immune from enforcement action.

11. **List of Exhibits**

11.1 List of all letters, written representations and Statements supplied by third parties in support of the Appellant's case:-

1. Statement by Mr Carl Lee Dowds (the Appellant) of Lincolne Autos "Lincolne" Crown Lane Ixworth
2. Letter issued by Dr J C Cannon (the Appellant's Medical Practitioner) of Ixworth Surgery Peddars Close Ixworth Suffolk.

3. Letter issued by Mr C D Ridgeon (the Appellant's Chartered Accountant) of Messrs Whiting & Partners Accountants of Wisbech Cambridgeshire.
4. Statement by Mrs S Plummer of 7 Crown Crescent Ixworth.
5. Statement by Mr J Patterson of 25 Coddington Way Ixworth.
6. Statement by Tonya Stearn of 16 Scott Road Ixworth.
7. Statement by J Mills of Orchard House Crown Lane Ixworth.
8. Statement by the occupier of 2 Crown Crescent Ixworth.
9. Statement by R Sturgeon of Crown Lane Garage Ixworth.
10. Statement by B Clarke of Welworth Crown Lane Ixworth.
11. Statement by J B Gibson of Marmond Crown Lane Ixworth.
12. Statement by N J Gray of Claire Crown Lane Ixworth.
13. Statement by J Turner of 11 Coddington Way Ixworth.
14. Statement by Mr I Rush of 25 New Road Ixworth.
15. Statement by M Kirk of 5 Scott Road Ixworth.
16. Statement by Mr S Rush of 25 New Road Ixworth.
17. Statement by K Davis of 44 New Road Ixworth.
18. Statement by Mr P J Rogers of 7 New Road Ixworth.
19. Statement by Mr M A Lambert of Woofersend Garrard Place Ixworth.
20. Statement by Anthony Rzeczycki of 17 Scott Road Ixworth.
21. Statement by Shirley Hurlock of 18 Scott Road Ixworth.
22. Statement by Mr T W and Mrs H Bunnage of 1 Scott Road Ixworth.
23. Statement by the occupier of 49 New Road Ixworth.
24. Statement by the occupier of 15 New Road Ixworth.
25. Statement by W Janaway of 11 Scott Road Ixworth.
26. Statement by D James of 9 Scott Road Ixworth.
27. Statement by R Simpkin of 15 Garrard Place Ixworth.
28. Statement by L Wakeman of 9 Abbey Close Ixworth.

29. Statement by Pat Crosby of 3 Hicks Bungalows Ixworth.
30. Statement by Andrew Coe of 8 Dover Terrace Stow Road Ixworth.
31. Statement by Mrs Y Farrow of "The Jays" Abbey Close Ixworth.
32. Statement of the occupier of 1 Pedars Close Ixworth.
33. Statement by Mrs J O'Brien of 10 Commister Lane Ixworth.
34. Statement of Mr A Rogers of 11 Dover Terrace Stowmarket Road Ixworth.
35. Statement by Jean Webster of 20 Peascroft Road Ixworth.
36. Statement by Angus Baker of Dunham House Crown Lane Ixworth.
37. Statement by J R Hunter of Wrattlers Livermere Road Great Barton.
38. Statement by Mr A Goshawk and Mr P Goshawk of Barnham Vehicle Services Place Farm The Street Ingham.
39. Statement by Haydn Wells of Coast 2 Coast Services Unit 17 Boasts Industrial Park College Lane Worlingham Beccles.
40. Statement by Paul D Cutting of The Workshop Stockhold Farm Thurston.
41. Statement by Mr F Newton of 16 Turnberry Avenue Fornham St Martin.
42. Statement by Richard S Pratt of R & D Construction Limited The Broadway Badwell Ash.
43. Statement by J M Smith of Woodcroft Sandy Lane Barningham.
44. Statement by D Wallman of 4 Back Lane Badwell Ash.
45. Statement by Mr B Holder of 7 Sadlers Yard Ixworth.
46. Statement by S Brown of 3 Crown Crescent Ixworth.
47. Statement by Mr M Westfall of 7 Church Close Risby.
48. Statement by Mr G H Warner of Grange Farm Pot Ash Lane Wyverstone.

49. Statement by Mr M Betts of Kermack Barton Road Thurston.
50. Statement by Mr P J Smy of Motor Salvage at The Laurels Stowmarket.
51. Statement by Mr W Green of Wayne Green Body Repairs.
52. Statement by Mr A Bunnage of 42 High Street Ixworth.

11.2 List of relevant documentary evidence:-

1. Copies of invoices and relevant documentation relating to site: -

Invoice: Bennetts Ltd: No:27400602, 2/5/93, £199.99

Quotation; Jewson: 19/6/93,

Invoice: Jewson: No:3401031887/1, 19/6/93, £7.05

Invoice: Clarkes Of Walsham: No: 140991, 21/6/93, £21.84

Invoice; Clarkes Of Walsham: No: 12831, 21/6/93, £51.48

Copy Invoice: Clarkes Of Walsham: No: 140991, 21/6/93,

Copy Invoice: Clarkes Of Walsham: No: 142411, 22/6/93, £434.28

Invoice: Clarkes Of Walsham: No: 142411, 22/6/93, £434.28

Invoice: Clarkes Of Walsham: No: 142629, 25/6/93, £48.47

Invoice: Clarkes Of Walsham: No:13091, 26/6/93, £32.77

Invoice: Jewson: No:3401032448/1, 26/6/93, £4.68

Invoice: Jewson: No:3401032452/1, 26/6/93, £11.75

Invoice: Clarkes Of Walsham: No: 13113, 28/6/93, £31.41

Invoice: Clarkes Of Walsham: No: 141477, 28/6/93

Invoice: Clarkes Of Walsham: No: 11489, 5/7/93, £11.36

Invoice: Clarkes Of Walsham: No: 143220, 7/7/93, £277.83

Copy Invoice: Clarkes Of Walsham: No:143221, 7/7/93, £14.83

Invoice: Clarkes Of Walsham: No: 143221, 7/7/93, £14.83

Invoice: Clarkes Of Walsham: No:13159, 9/7/93, £14.50

Invoice: Clarkes Of Walsham: No:13189, 12/7/93, £8.19
Invoice; Clarkes Of Walsham: No: 14414, 19/7/93
Invoice: Clarkes Of Walsham: No:14415, 19/7/93, £231.76
Invoice: Clarkes Of Walsham: No: 13352, 19/7/93, £14.34
Invoice Clarkes Of Walsham: No: 14415, 19/7/93, £231.76
Invoice: Jewson: No:3401034097/1, 20/7/93, £21.77
Invoice: Jewson: N0:3401034116/1, 20/7/93, £9.40
Invoice: Jewson: No:3401034185/1, 21/7/93, £2.76
Invoice Clarkes Of Walsham: No:9310, 28/7/93, £24.54
Invoice: Clarkes Of Walsham: No: 146535, 30/7/93, £00.00
Invoice: Stramit Industries Ltd: No:91, 30/7/93, £123.37
Invoice: Clarkes Of Walsham: No: 13476, 30/7/93, £49.73
Invoice: Clarkes Of Walsham: No: 0046, 5/8/93, £1.99
Invoice: Jewson: N0:3401035511/1, 7/8/93, £81.20
Invoice: Clarkes Of Walsham: No:0102, 7/8/93, £95.96
Invoice: Clarkes Of Walsham: No 0103, 7/8/93, £155.00
Invoice: Clarkes Of Walsham: No:0096, 9/8/93, £44.39
Invoice: Clarkes Of Walsham: No:0117, 16/8/93, £28.65
Invoice: Clarkes Of Walsham: No:0253, 17/8/93, £37.70
Invoice: Clarkes Of Walsham: No:0254, 17/8/93, £20.05
Invoice: Stramit Industries Ltd:No: 94,19/8/93, £29.37
Invoice: Clarkes Of Walsham: No:0340, 20/8/93, £20.93
Invoice: Clarkes Of Walsham: No: 147360, 26/8/93, £375.22
Invoice: Clarkes Of Walsham: No:0330, 31/8/93, £39.77
Invoice: Clarkes Of Walsham: No:0062, 6/9/93, £40.49
Invoice: Clarkes Of Walsham: No:148634, 7/9/93, £110.00

2. Heads of Agreement between Mr and Mrs Dowds and Land Maximizer Consultants Limited relating to the site.

3. Land Maximer Consultants Limited letter dated 12th November 2003 regarding a possible Option Agreement.
4. Form No. CC 41A/86 - Standard License No. 257295 Dated 24th April 1989.
5. Vehicle Registration Document for registration Mark HCL 551V.
6. Vehicle Registration Document for registration Mark MPD769W.
7. Appointment for Vehicle Test dated 11th November 1993.
8. Black and White aerial photograph.
9. Copy plan on conveyance dated 5th November 1979.
10. OS Plan of the Three Gables, Ixworth.
11. 1/500 site layout plan- Residential Development off Crown walk, Ixworth.
12. Ground floor and first floor plan of Lincolne, Crown Walk, Ixworth.
13. Other various plans of Lincolne and Three Gables, Ixworth.
14. C L Dowds Esq. Statement of Accounts for the year ended 30th April 1993.

15. C L Dowds Esq. Statement of Accounts for the year ended 30th April 1991.
16. Planning Application for site at Lincoln, Crown Lane.
17. Planning Charges and Notes fro the Guidance of Applicants.
18. 'Heads of Agreement' for the property of Lincoln, Crown Lane, Ixworth with Land Maximer Consultants Limited.
19. Possible option arrangement for Residential Development- Suggested site name: Crown Walk, dated 12th November 2003.
20. Copies of Car Sales Purchase Ledger.
21. Certificate of Lawful use or Development Appeal dated 11th October 2004.
22. Application for a Certificate of Lawfulness for an existing use or operation or activity in breach of a planning obligation- Registration date 11th May 2004.
23. Letter to Albion Planning Consultants Ltd from Joy Bowes, Head of Legal and Democratic Services dated 19th July 2004.
24. Letter to Mr Dowds from St Edmundsbury Borough Council dated 3rd October 2003

It should be noted that all of the above exhibits are set out in Volume II annexed to the Proof of Evidence which is bound separately.

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