

In the Matter of the Town and Country Planning Act 1990

And in the Matter of an Appeal against the Non-Determination of an Application for a Certificate of Lawful Use and Development on Land and Premises known as The Scrap Yard,

Hollow Dyke Lane, Balderton, near Newark in the County of Nottinghamshire

and in the Matter of the Application issued pursuant to Section 191 of the Town and Country

Planning Act 1990 as amended under reference number []

PROOF OF EVIDENCE OF MR TOMMY FLATTERY

VOLUME 1

SUBMITTED BY:

Able Bishop Solicitors
Selwyn Chambers
Sampson House
The Street
Woolpit
Suffolk IP30 9QN
Tel: 01359 245140
Fax: 01359 245085
Email: info@ablebishop.biz
Website: www.ablebishop.biz

CONTENTS

1. INTRODUCTION TO THE HISTORY OF THE SITE AT HOLLOW
DYKE LANE
2. MY ACQUISITION OF THE SITE AT HOLLOW DYKE LANE
3. ATTENDANCES AT LOCAL AUTHORITY OFFICES
4. MEETINGS OF THE COUNCIL'S PLANNING AND LICENSING
COMMITTEE
5. THE PLANNING CONTRAVENTION NOTICE
6. THE SECOND APPLICATION FOR A LAWFUL DEVELOPMENT
CERTIFICATE
7. THE EVIDENCE
8. EXAMINATION OF THE APPEAL SITE
9. THE PERIOD OF USE OF THE SITE
10. HUMAN RIGHTS
11. CONCLUSIONS

1. INTRODUCTION TO THE HISTORY OF THE SITE AT HOLLOW DYKE LANE

1.1 My name is Mr Tommy Flattery. I reside at 29 Park Avenue, Canvey Island, Essex SS8 7PY. I have been a businessman for a substantial number of years and I have specialised in the salvage business. I have managed and operated various businesses over a period of time and as a result of my extensive experience in this field I have become very knowledgeable on issues concerning the management of scrap yards and the various activities that can take place on such scrap yards. I first came to the United Kingdom to reside permanently here in 1978. Prior to that date I had managed businesses in the Republic of Ireland and I felt that it would be a good idea to continue my business activities in the United Kingdom where there was a much larger market for my business activity. Since 1978 I have, as a matter of course, travelled extensively throughout the United Kingdom. During the course of my travels I have frequently used the A1 trunk road. I specifically recall travelling up and down the A1 trunk road near Newark since the late 1980's. In particular, during the course of the early 1990's and including 1991 and from thereon travelling along the A1 trunk road around the outskirts of the settlement known as Balderton. I always recall a remarkable landmark feature which could be observed from the A1 trunk road when driving in a southerly direction. The feature in question was the scrap yard at Hollow Dyke Lane near Balderton which could easily be observed from the A1 trunk road and which also prominently incorporated a rather unique and peculiar feature namely a scrapped former Royal Air Force fighter aircraft. The aircraft

was clearly a redundant, scrapped aircraft having regard to its appearance and position within the scrap yard at Hollow Dyke Lane. I always recall seeing the sight whenever I have travelled on the A1 trunk road and it is fair to say that the feature has remained in my memory ever since that date. I know that a lot of friends that I have spoken to have also recalled the same feature located in the centre of the scrap yard. All of my friends have referred to the feature located in the scrap yard whenever discussing trips to the north of the country using that part of the A1 trunk road.

1.2 I would also often assess the progress achieved by way of timing in my journey by reference to the time that I passed this particular feature within the scrap yard. Whenever I spoke to friends about the feature it was by reference to the scrapped aircraft in the scrap yard just outside Balderton near Newark. In my experience no one ever doubted that the site at Hollow Dyke Lane was anything other than a scrap yard. It was inconceivable that anyone would regard the site as being put to any other form of use. The appearance of the site was always the same whenever travelling along that part of the A1 trunk road. If there had been a change in the appearance of the site during the period since 1991 I would surely have noticed it.

1.3 The scrap yard is clearly visible from the A1 trunk road. The scrap yard is located on flat, open land where there is no significant tree cover or other forms of vegetation. The site is not screened and from that part of the A1 trunk road near Balderton it does indeed appear to be the most significant landscape feature which comes to mind. It is also a fact that the A1 trunk

road at Balderton is in an elevated position and accordingly, one has no option but to look down from a vehicle across the landscape to the open area of land upon which the scrap yard is located. The scrap yard is also located within a short distance from the edge of the carriageway of the A1 trunk road and it therefore follows that the features on the site are clearly observable and distinct as observed from the A1 trunk road.

1.4 The site is clearly visible when travelling in an ordinary, low, private motor vehicle. It is even more prominent when viewed from the cabin of a lorry when one is even higher up above the road surface. There are no screens between the A1 trunk road and the surrounding landscape at this point when you look in an easterly direction.

1.5 Another factor which needs to be taken into account is the speed of the vehicle in which you are travelling on that part of the A1 trunk road. Whenever I have driven large vehicles along that section of the road I have travelled at a slow speed and I have therefore had ample opportunity to observe the features on the site. My eye has naturally always been drawn to the centre of the site upon which the scrapped lightening interceptor aircraft has always been located. It is a very unique landscape feature and whenever I have travelled along the A1 trunk road at this point I have never been able to resist looking at the aircraft and the features surrounding it. I recall that the aircraft located at the centre of the site was always surrounded by other scrap material laid across the site throughout the period from 1991. The site always gave the impression of being a scrap yard and I always observed large numbers of various vehicles,

vehicle parts of trailers in various states of disrepair scattered over the site.

I also recall seeing portacabins on the site and large amounts of loose scrap material.

1.6 My experience in the salvage and dismantling industry has given me a clear insight into the way in which scrap yards function. I note that for some bizarre reason the Nottinghamshire County Council have previously indicated in discussions with me that a scrap yard use can be limited purely to storage purposes only. I found this particular point of view to be very strange. It appeared to be based on ignorance rather than knowledge. A scrap yard cannot be purely restricted to a storage use. Any operational scrap yard incorporates a number of activities which are dependant upon each other. A person would not create a scrap yard and purely store only scrap on it. The point about a scrap yard is that it always involves, not only the collection and importation of scrap into the premises, but also the examination and 'sorting-over' of the scrap material. It is simply unrealistic to expect anyone to create a scrap yard and only store scrap within the scrap yard. Anyone who thinks that it is possible just to store scrap on a site simply does not understand the economics of the scrap industry. The point about a scrap yard is that it is a location specifically set aside for receiving scrap material which is then sorted out and processed. It is simply unrealistic to think that anyone managing a scrap yard would refrain from sorting over and processing the scrap. Similarly, it is also inconceivable that anyone managing a scrap yard would not sell salvageable vehicle parts and other good quality scrap material directly from the scrap yard to visitors and others involved in the trade. I do not

know of any scrap yard in which these related activities do not take place. A manager of a scrap yard could not survive in business without carrying out the related activities of retail sale and the sorting over of scrap material. The point is that when scrap material is collected it is necessary to do something with it. The mere storage of scrap material is not a viable option. There is no point in simply storing scrap material. By storing scrap material you only lose money. You cannot gain money by just storing scrap material.

1.7 Another consideration is that there are very few available scrap yards in the country. As one would expect people do not like the idea of new scrap yards being created. It is extremely hard to obtain a planning permission to create a scrap yard. Obviously, anybody in the locality would object to the creation of a scrap yard and it is reasonable therefore to expect a local planning authority to refuse applications for new scrap yards. I fully understand that the public regard of scrap yards as 'bad neighbour development' and that people are not happy with scrap yards. However, at the same time, people do need scrap yards being places to which they can go for the purpose of getting rid of scrap material and also for purchasing scrap material. Scrap yards are therefore similar to roads and power stations in the sense that people want to use them and do need them but they do not want them located in a place near to where they live. It is also inevitable that scrap yards look untidy and unpleasant. Even scrap yards which are well managed and kept 'tidy' in the sense used by a manager of a scrap yard, nevertheless, the appearance is generally unacceptable to most people. However, the significant point about the case concerning

Hollow Dyke Lane is that this is not an issue over whether or not planning permission should be granted but purely an issue as to whether the scrap yard use has become immune from enforcement proceedings owing to the long period of time that the scrap yard use has existed on the site and whether a Lawful Use Certificate should now be granted for it. I know from my own personal experience and observations as mentioned above that the scrap yard has been located on the site for a very long period of time and most certainly ever since 1991. The site has always had the appearance of a scrap yard. It has always stood out in the landscape as a prominent feature. The appearance of the scrap yard indicated that it was a scrap yard in the full sense of the word and will therefore have the related activities I have mentioned above which would obviously include the sorting over of scrap and the retail sale of scrap.

1.8 The site as Hollow Dyke Lane is located in a position where one would expect to site a scrap yard. The site is located very close to the outskirts of Balderton. Local people with surplus scrap material can therefore easily deposit scrap at the site or telephone the manager of the site for scrap material to be collected. You often find scrap yards on the outskirts of large urban areas such as this. At the same time the site is also located close to the A1 trunk road which affords rapid access to various parts of the country allowing the site to provide a valuable function for the importation and sorting over of scrap motor vehicles of all types including lorry trailers. It also enables the cheap and easy exportation of processed scrap material throughout the country. It is therefore a natural location for a scrap yard site and I am not surprised that the scrap yard use has existed

on the site for a very long period of time. Although I have no direct knowledge of when the scrap yard use first started, I am not surprised to learn that the scrap yard use existed long before 1991.

1.9 It is clear from the paper work held by the local planning authority, Newark and Sherwood District Council, that the planning officers were aware of the scrap yard use being made on the site at Hollow Dyke Lane. I shall refer to the various papers held by the Newark and Sherwood District Council on this point later on in this proof of evidence. From my own enquiries with the Newark and Sherwood District Council I have been informed that the site is indeed a scrap yard and always has been. I note from the earlier correspondence issued by Newark and Sherwood District Council that the council accepted that the scrap yard use was established on the site. The acknowledgement of an established use as a scrap yard on the site in correspondence issued by Newark and Sherwood District Council confirms the status of the site, as I had previously understood it from my own observations and from the information provided to me by third parties including previous owners and occupiers of the site at Hollow Dyke Lane. At no stage have I ever been informed prior to purchasing the site in July 2005 that the site was anything other than a scrap yard.

1.10 The correspondence to which I will refer to later in this proof of evidence indicates that the local planning authority were approached by local residents who complained from time to time about the activities at the scrap yard when the levels of activity generated additional parking and storage of material outside the perimeter of the site. However, it was noted

that the local planning authority explained to local objectors that nothing could be done about the problems because the scrap yard use was established. This explains why the local planning authority never took any formal enforcement proceedings against the established scrap yard use. This is despite the fact that the local planning authority did take enforcement proceedings at one stage in 1980 concerning some aspects of the use of the site but only in so far as those uses did not relate to the established scrap yard use. This shows that the council wanted to stop any other form of development taking place which was not authorised but readily acknowledged that the scrap yard use was an established use and that they couldn't take action to stop it.

2. MY ACQUISITION OF THE SITE AT HOLLOW DYKE LANE

2.1 My existing salvage and dismantling business in Canvey Island, Essex increased owing to a surge in demand for scrap metal arising from the expansion of overseas markets. At the same time the increasing impact of the enforcement of ever more restrictive environmental regulations relating to scrap vehicles also generated additional demand for the services I could provide through my business. It was therefore inevitable that further sites were required within my business for scrap yard uses in order to allow it to expand further. From a geographical point of view the site in Hollow Dyke Lane, Balderton near Newark was ideally situated given that it provided a facility for ensuring that my business could cover a much wider area of the market within the United Kingdom in geographical terms. It was also ideally situated given its close proximity to the trunk road network.

2.2 In order to acquire the site I engaged the services of Messrs Newman and Maxwell solicitors of Canvey Island, Essex to carry out the necessary conveyancing work. I am informed that the firm carried out various enquiries before contract and conducted the usual searches. The solicitor received information from the local authority which led him to recommend to me that the acquisition of the land should proceed. It should be noted that the correspondence on the public record issued by the Newark and Sherwood District Council prior to July 2005 supported the view that the site had an established use as a scrap yard. My solicitor then advised me to enter into a binding legal contract to purchase the land which I did in July 2005. Subsequently, in the following month. August 2005, Newark and Sherwood District Council issued a further letter which whilst acknowledging the site as a scrap yard, nevertheless sought to qualify the scope of that use by indicating that it was limited to a storage use. This was very surprising given the previous acknowledgement that there was an established scrap yard use.

2.3 Having acquired the site at considerable expense and having committed the financial resources involved in the project, I obviously needed to continue the use of the site as a scrap yard which necessarily involved the ancillary activities on a scrap yard which included the sorting over and processing of scrap metal together also with the ancillary retail sale of scrap material. For financial reasons I could not accept any new constraint being placed upon the general scrap yard use on the site. I therefore entered into discussions with officers representing the local planning authority at Newark and Sherwood District Council and then subsequently with officers at the

Nottinghamshire County Council to whom the matter was referred by the Newark and Sherwood District Council. As I understand it the matter was referred by the district council to the county council on the basis that the district council felt that it no longer had the ability to deal with the matter particularly given the expertise required in considering issues which involved the processing of scrap metal. I was surprised by this decision but nevertheless, felt that I had no option but to then also engage in communications with the Nottinghamshire County Council despite the fact that the county council had no prior knowledge concerning the scrap yard use on the site.

2.4 A Mr Turner being an enforcement officer employed by the Nottinghamshire County Council attended the site whilst I was present and discussed the scrap yard use of the site with me. He did not appear to have any direct information relating to the history of the site or indeed the documentation relating to the scrap yard use. In general terms Mr Turner appeared initially to be very pragmatic and indicated that he did accept that the site had the appearance of a scrap yard and felt that upon hearing from me concerning my recollection of the use of the site that the site was indeed an established scrap yard. However, he indicated that it would be necessary for the formal legal status of the site to be confirmed by the issue of a Lawful Development Certificate. He therefore advised me that I should consider preparing and submitting an application for a Lawful Development Certificate.

2.5 I was rather puzzled by the rather more officious approach now being adopted by Nottinghamshire County Council relating to the site and I therefore felt that it would be appropriate to take advice from those with knowledge of this area of expertise. I initially made contact with a Mr John Baines who is an engineer and who works from a practice in south Essex. He in turn introduced me to Martyn Williams a planning consultant whose is very experienced in issues relating to applications for Lawful Use Certificates and also general issues concerning what is technically regarded as alleged unauthorised or not regularised uses. Mr Martyn Williams gave me advice on this matter generally and subsequently in turn introduced me to a Mr Michael Jones who is a specialist planning solicitor in the firm of Able Bishop & Company Solicitors of Selwyn Chambers, Sampson House, The Street, Woolpit, Suffolk IP30 9QN who was also subsequently able to provide me with further legal advice focussing on the issue of applications for Lawful Development Certificates.

2.6 It should be noted that concurrently I had entered into discussions with the Environment Agency which I had initiated on my own initiative for the purpose of clarifying the position with the Environment Agency over the issue of the proposed introduction of 'End of Life Vehicles'. I was conscious of the complexity of the environmental legislation and the environmental regulations. I wished to develop my activities on the site by seeking authorisation from the Environment Agency to acquire a formal Waste Management Licence. At all times I wished to ensure that I was in full compliance with all environmental regulations. I carried out research into the subject generally and was aware of the contentious areas relating to

the legal definitions of waste and 'End of Life Vehicles'. I was aware of the fact that there were cases going through to the European Court and noted that one needed to tread carefully in considering the preparation and submission of an application for a Waste Management Licence. I also became aware of the fact that one could not secure such a licence unless the planning status of the site was first clarified. I noted that the only way in which one could seek to clarify the status of the site at Hollow Dyke Lane was by the submission of an application for a Lawful Development Certificate. It therefore followed that the acquisition of a formal Lawful Development Certificate was an essential pre-condition before I could apply for the licences I ultimately desired from the Environment Agency.

2.7 In the light of the absence of a current Lawful Development Certificate I recognise that in my negotiations with the Environment Agency I should accept the compromise of securing a 'Paragraph 45 exemption' which enabled the continuous storage of scrap vehicles but excluded the process of 'de-polluting' of scrap vehicles which can only be authorised under a formal Waste Management Licence.

2.8 Further site visits were then convened at the site with interested parties and eventually a further site meeting was held to which Mr Turner was invited together with his assistant and in attendance I had my planning consultant, Mr Martyn Williams and my solicitor, Mr Michael Jones. At this further site visit discussions took place concerning the terms of the application for the Lawful Development Certificate which had been submitted to the Nottinghamshire County Council under application reference number

3/06/00138/CMA on and which was acknowledged as having been lodged by Nottinghamshire County Council as at 7th February 2006 and which was acknowledged as having been lodged by Nottinghamshire County Council as at 7th February 2006. The discussions during the course of that meeting appeared to be productive in the sense that the enforcement officer recognised that there was indeed a substantial body of evidence in support of the claimed scrap yard use on the site. It was noted that the application was for a Lawful Development Certificate for the existing scrap yard use on the site at Hollow Dyke Lane comprising the storage, sorting over and retail sale of scrap including also the use of the site for the storage of the portacabins thereon and the shelving units thereon and the erected building which was located on one part of the site. The application clearly stated that the use of the site as a scrap yard covered the whole of the site as indicated on the submitted plan and it also included storage, sorting over and retail elements. It also indicated that the use of the site for storage and use of portacabins was also part of the application. It was also indicated that there was a third element being the operational development comprising the erected building. In support of the application a substantial body of documentation was submitted including:

1. a large-scale plan on a scale of 1:500 showing the site layout of the compound at Hollow Dyke Lane
2. a letter dated 15th August 2005 issued by Mr A Wilkes Director of Estatrix Limited of Unit 9 Stowford Road, Stowford Estate confirming the use of the compound over the period of the previous twelve years
3. copy of a letter issued by the District Valuer and valuation officer

dated June 1982 confirming the use of the premises comprising 1.99 acres for the use claimed and the date of inspection

4. a copy of a general rate demand notice issued by Newark and Sherwood District Council for the rate period 1983/1984 confirming the assessment of the use of the premises as being a 'breakers yard' at the date of assessment. It is noted that this evidence clearly indicates that the scrap yard use was obviously not just a storage use but was also a breakers yard use as one would expect with a scrap yard of this type

5. the application was also supported by a copy of an enforcement notice dated 6th February 1980 relating to Hollow Dyke Lane which indicated the extent of the alleged unauthorised use at that stage which were considered unacceptable by the local planning authority. It is significant that the enforcement notice did not in any way refer to the scrap yard use despite the fact that the scrap yard use was of course being carried out at that stage on the site

6. a copy of a Certificate of Registration issued under the Scrap Metal Dealers Act 1964 certifying the registration as at the 12th February 1978

7. a copy of the report of the planning officer to the Newark and Sherwood District Council's Planning Committee on 25th September 1979 relating to the scrap metal yard at Hollow Dyke Lane, Balderton clearly acknowledging the use subsisting at that stage

8. copies of extracts and minutes of the meeting of the Planning Committee of the Newark and Sherwood District Council relating to the authorisation for taking enforcement proceedings relating to the site at Hollow Dyke Lane, Balderton. Again it is significant that the extent of the

authorisation clearly excludes any action against what is recognised to be the established scrap yard use on the site. It is noted that the council documentation refers to the storage of portacabins on the site.

9. a letter issued by Convoy Commercials confirming collections of materials from Estatrix Limited from the site at Hollow Dyke Lane.
10. a letter dated 15th August 2005 issued by Brian Carberry of B J & C Carberry Haulage confirming collection of scrap and trailers and parts from the site at Hollow Dyke Lane between 1995 and 1998 for Estatrix Limited
11. a letter dated 17th August 2005 issued by Steven Moor Director of Bradford Moor (Iron & Steel) of Cow Lane, Northgate, Newark confirming collection of scrap metals from Estatrix Limited from the site at Hollow Dyke Lane.
12. a letter dated 15th June 1993 issued by Newark and Sherwood District Council confirming the existence of a 'present established use' on the site at Hollow Dyke Lane, Balderton near Newark for the storage use at the site
13. the witness statement of Mr S Beckett in support of the application
14. the witness statement of Mr David Blissett of the NATO Museum who is clearly the person who has visited the site for the purposes of attendance upon the scrap former Royal Airforce Fighter jet located on the site
15. the witness statement of Mr Brian Carberry in support of the application
16. the witness statement of Mr F Convoy in support of the application
17. the witness statement of Mr D Grey in support of the application
18. the witness statement of Mr J Kerriage in support of the application
19. the witness statement of Mr S Marshall in support of the application

20. the witness statement of Mr Steven Moor in support of the application

21. the witness statement of Mr Jeff Smith in support of the application.

2.9 I also submitted my own witness statement in support of the application setting out in brief terms the salient points at that stage which were relevant to the application.

2.10 Given the substantial amount of documentation submitted in support of the application, which was further supported by further papers submitted during the course of the exchange of further correspondence with Mr Turner at Nottinghamshire County Council over a period of months, I fully expected the application to meet with the approval of Nottinghamshire County Council in due course.

2.11 I was therefore both troubled and surprised to find that the application was not immediately approved as I had expected.

2.12 During the course of the discussions with Mr Turner and his colleague from Nottinghamshire County Council at the latest site visit held on 14th June 2006 jointly with my professional representatives it appeared that the Nottinghamshire County Council would investigate the matter thoroughly with the Newark and Sherwood District Council for the purpose of obtaining copies of all relevant papers held at the offices of with the Newark and Sherwood District Council. I was of course puzzled that the officers would go to such lengths but at the same time I was relaxed about the proposal given that I was confident that all of the papers held by Newark and Sherwood District Council which I had previously investigated were fully

supportive of my application and consistent with the evidence I had submitted.

3. ATTENDANCES AT LOCAL AUTHORITY OFFICES

3.1 In April 2006 I became sufficiently concerned by the absence of appropriate responses from Nottinghamshire County Council relating to my application for a Lawful Development Certificate that I took it upon myself to personally attend both the offices of the District Council being the Newark and Sherwood District Council and also the offices of Nottinghamshire County Council. To this end I arranged an attendance at the local authority offices in Newark on 25th April 2006 concerning the site at Hollow Dyke Lane, Balderton, near Newark. I felt that it was necessary to attend in person because there had been several previous attempts by my solicitors to obtain copies of documentation and difficulties had been encountered in trying to obtain satisfactory responses. I felt that by attending the offices in person I could more easily obtain the appropriate documentation and ensure that a full search was undertaken concerning all of the relevant paperwork in order that all the relevant documents were before the local planning authority before a final decision was made on my application for a Lawful Development Certificate.

3.2 It must of course be appreciated that the application for a Lawful Development Certificate was a very important application so far as my business interests were concerned. It was abundantly clear to me that the financial health of my business and the future expansion of the business was

entirely dependant upon the outcome of this application for a Lawful Development Certificate. I attach to this proof of evidence a marked exhibit TF55 a copy of the attendance note I made on 25th April 2006 concerning the visit I undertook on 25th April 2006. It will be noted that I initially arrived at the offices of Nottinghamshire County Council and asked to see Mr Turner. I was told that I needed to make an appointment and that he would be available on the following day but it was suggested that there may be documents at the District Council Offices in Newark. I was expected at the offices of the local authority in Newark in any event. I therefore drove to the district council offices and files were produced to me which revealed papers which I already had. However, I noticed the reference number written on one folder which when they looked at the number they indicated belonged to another site. I had no reason to disbelieve them at that time. I was then told that there was no more information on the file at the Newark and Sherwood District Council but there may be some more at the county council. Given subsequent developments and the recent curious disclosure by the Newark and Sherwood District Council of additional documents relating to the site shortly before the exchange of formal proofs of evidence for the Public Local Inquiry I now feel that I was misled by the Newark and Sherwood District Council.

3.3 On the following day being 26th April 2006 I again visiting the offices at Nottinghamshire County Council to visit Mr Turner and to ascertain if there was anything on their files. Mr Turner told me that all he had on file was some objections but due to internal problems he could not let me have copies of the same. I felt rather aggrieved by his obstructive approach to this

matter. I felt that Nottinghamshire County Council were being uncooperative in the same way that Newark and Sherwood District Council had been on the previous day.

3.4 I therefore telephoned my planning consultant to ask his advice and he read out the planning notice issued in response to the application to me which stated that 'anyone wishing to make representations should be aware that the details will be publicly available'. I then repeated this particular point to Mr Turner who just then became contentious and merely said he would forward copies of anything he felt relevant as soon as it had been checked by the legal department. I felt that Mr Turner appeared to have something to hide and this explained his uncooperative and unpleasant attitude on that day. I became extremely suspicious over the conduct and behaviour of officers both at the Newark and Sherwood District Council and also at the Nottinghamshire County Council. Subsequent events and the subsequent conduct in particular of the Nottinghamshire County Council have reinforced the view that the local authority will go to any lengths for the purpose of seeking to frustrate my application for a Lawful Development Certificate and also my appeal against their non-determination of the application for a Lawful Development Certificate.

3.5 Although I was of course naturally concerned about the hostile approach adopted by officers at the respective local authorities, nevertheless, I felt that I should do all that I could to act reasonably in the face of the unreasonable conduct of the local authority. I therefore agreed to extensions of time

requested by the Nottinghamshire County Council for the further consideration of the application for the Certificate of Lawful Use.

3.6 It should be noted that after the meeting held on the site on 14th June 2006 I was surprised to hear that Mr Turner had decided to take a different view to that he originally indicated concerning the procedures. At a previous site meeting held with Mr Turner I was told that the officers had full powers to deal with applications for a Lawful Development Certificate and that delegated powers would be exercised on these occasions when an application failed to be considered. Curiously, Mr Turner decided to change his mind after the site visit in June 2006 and stated to my solicitor, Mr Jones that he had decided that the application would instead be referred to members of the county council's Licensing and Planning Committee for a decision by elected members. This struck me as a rather curious turn of events given that it was inconsistent with previous representations made by Mr Turner. I was also further concerned to find that elected councillors would be considering what is after all a purely technical application which only relates to matters of law and fact. I could not see how elected councillors who are politicians representing the views of local residents would wish to become involved in a decision making process which did not involve an element of political discretion. One can of course expect that planning applications relating to contentious matters would be considered by locally elected politicians because the public would like to feel that they have an input into the discretionary areas which obviously heavily influence decisions on planning applications. However, in the case of an application for a Lawful Development Certificate it was difficult to see what role elected members

who make decisions on political grounds could contribute to such a process which is confined to purely matters of fact and law. At the same time Mr Turner also asked for further information and I therefore instructed my solicitor to forward the further information I had obtained in support of the application despite the fact that I thought it was not really necessary to do so given the substantial body of evidence in support of the said application.

3.7 Subsequently, I was informed that a report on the application for the Lawful Development Certificate would eventually be submitted by officers to the first meeting of the council's Planning and Licensing Committee which was convened for 18th September 2006.

4. MEETINGS OF THE COUNCIL'S PLANNING AND LICENSING COMMITTEE

4.1 The application was expected to be presented in full to the committee meeting fixed for 18th September 2006. Accordingly, I attended that meeting together with my planning consultant, Mr Martyn Williams and together with a secretary who was engaged to take verbatim notes concerning the deliberations at the committee meeting. I drove to the meeting with my planning consultant and secretary from Canvey Island in Essex to the venue of the committee meeting in Nottingham. This was a one hundred and fifty mile journey and designed to ensure that we could attend in order that my planning consultant could present a verbal statement of case in support of the application. It was noted that under the rules governing the committee debates it was permissible for the applicant to appoint a representative to

attend to make verbal representations to the committee. It was also expected that the representative would circulate a written document prior to the committee meeting setting out the proposed verbal representations. This was attended to by Mr Martyn Williams in accordance with the protocol governing these debates before the committee.

4.2 I also asked my solicitor to submit additional papers immediately before the committee meeting which included a series of legal submissions including relevant case law. My solicitor attended to this in accordance with my request. I also wanted to do all that I could to ensure that the committee were properly informed as to the circumstances relating to my application.

4.3 Despite the substantial amount of preparation carried out I was amazed to find that the committee chose not to consider the report issued by the officers and to defer the item to another meeting. The intended verbal representations of Mr Martyn Williams were then handed to the committee clerk at the end of the meeting.

4.4 Subsequently, I was notified of a second meeting of the council's Planning and Licensing Committee to be held on 28th November 2006. Despite my previous experience at the first meeting I felt that I had no option but to attend again with my planning consultant, Mr Martyn Williams and my secretary. Upon attending the committee meeting after a very long journey from Canvey Island in Essex I was informed that the item in question relating to Hollow Dyke Lane was number 4 on the pre-printed agenda

papers. I was also told that the application for the Lawful Development Certificate was the first application item for consideration on that day.

4.5 The meeting then commenced at 10.30am and as soon as the meeting was opened the chairwoman announced that my item was to be moved to the end of the agenda but no reason was given for this unexpected action. I was not only surprised but again suspicious as to why the item on the agenda should be taken from its initial allocation as the first item for consideration to the last item for consideration. However, having chosen to attend for the purpose of making verbal representations I felt I had no option but to remain for the duration of the meeting in order that my representative, Mr Martyn Williams could put forward his verbal representations to the committee.

4.6 Subsequently, the committee meeting was adjourned at 12.30pm for lunchtime refreshments without my application yet being considered. My application was the only matter remaining on the agenda and accordingly, was the only matter to be considered at the afternoon meeting of the committee which reconvened at 1pm. It was noted that Mr Turner was the officer appointed to present the officers report on my application. The report put forward by the officer is attached to this proof of evidence and marked exhibit TF41. I was surprised by the terms of the report which failed to address all of the relevant evidence. The report also appeared to indicate a fundamental misunderstanding relating to the history of the site and the way in which one should consider evidence. The report was not a fair assessment of the application but was obviously drafted on the basis of seeking to

achieve a predetermined conclusion which was to convince members of the committee that the application should not be approved.

4.7 My planning consultant, Mr Martyn Williams was then granted a right to put forward verbal representations for a period of three minutes. A copy of the written statement concerning the verbal representations is attached to this proof of evidence and **marked appendix []**.

4.8 To my horror and utter astonishment the chairwoman then put it to the committee that the committee should go into 'closed session' for the purpose of considering my application in my absence. Accordingly, the resolution was passed to exclude the public and the officers from the committee meeting except for the council's solicitor who remained in the committee room whilst all of the persons who were not members of the committee were expelled from the room. I was surprised by this further turn of events which again gave rise to further suspicions in my mind. Prior to being expelled from the committee room both Mr Martyn Williams and myself were told by an officer that we would be advised of the decision in writing subsequently. Accordingly, I was deprived of the opportunity to consider and hear the debate of the elected members of the council's Planning Committee. I was also deprived of the opportunity to hear the advice put forward by the council's solicitor to members of the said Planning Committee. I cannot understand any reason why members of the council's Planning Committee should wish to consider my application in closed session and to deprive me of the right to understand the process of reasoning which they wished to follow in considering my application. I

consider that I suffered a grave injustice as a result of the actions of the council in the way in which they dealt with the process concerning the hearing of the said application.

4.9 Outside the council chamber both Mr Martyn Williams, the secretary and myself gave further consideration to our position in the light of this recent unexpected turn of events. After some internal discussions between ourselves we decided to approach some of the excluded council officers who were also sitting outside the committee room. Mr Martyn Williams specifically asked them whether the councillors had indicated that they (the councillors) would announce their decision at the committee meeting in writing later. The officers responded by saying yes and the officers also said that there would therefore be no point in Mr Martyn Williams or myself or my secretary waiting any further because we would not receive a decision from the committee on that day.

4.10 I was absolutely mortified by the process followed by the committee. They had previously chosen to waste the time of my professional representative, my secretary and myself on a previous meeting convened for 18th September 2006 and they had now in effect chosen to follow a similar course of action in convening a meeting without communicating the outcome of that meeting to me. I was so incensed that I felt I had no option but to lodge a formal complaint concerning the handling of the application and the misconduct of the committee in first placing it at the end of the proceedings without prior notice and then dealing with the application report in closed session without reasonable prior warning or explanation. I was also concerned that one of

the members of the committee, being Councillor Walker, failed to declare an interest at the meeting. The complaint was made to the Chief Executive's office in accordance with the usual processes.

4.11 Accordingly, I was obliged to return back to my offices in Canvey Island, Essex with a heavy heart and without any knowledge as to the decision (if any) that might be taken by the committee. I felt that the whole matter had been dealt with in a very shoddy and arbitrary manner. I felt very aggrieved and continued to be very suspicious.

4.12 Upon arriving back at my office I thereupon immediately instructed my solicitor, Mr M A Jones, who was at his offices to prepare and lodge a formal appeal on the grounds of non-determination by the Nottinghamshire County Council. I felt that I was justified in issuing such instructions because I had already given the Nottinghamshire County Council more than adequate time to consider an application which had been lodged back on and which was acknowledged as having been lodged by Nottinghamshire County Council as at 7th February 2006. The council had approximately eleven months to consider what was a relatively simple, straightforward application. The council did not have any substantive or direct evidence which conflicted with the evidence I submitted in support of the application. Furthermore, two meetings of the council's committee had been held and on both occasions we had not received any indication from the committee as to their thinking on the application or indeed any decision they proposed to make. The treatment I received at the hands of Nottinghamshire County Council could only be regarded by any reasonable person as a disgrace. I

have been put to considerable unnecessary additional expenditure and had a substantial amount of my time wasted for no reason whatsoever. I had also lost a considerable amount of time by agreeing to the substantial extensions in time required by Nottinghamshire County Council for the purposes of processing my application. I had lost therefore nearly a year in time and expended a considerable amount of funds without achieving any outcome. It therefore followed that the only option open to me was to pursue the matter by way of appeal through the Planning Inspectorate in Bristol.

4.13 My appeal was, I understand, accepted by the Planning Inspectorate in Bristol despite the subsequent attempts by Nottinghamshire County Council to seek to convince the Planning Inspectorate in Bristol that the appeal was invalid. I understand that there was a considerable exchange of correspondence on this subject that the Planning Inspectorate overruled Nottinghamshire County Council on this point. For some bizarre reason Nottinghamshire County Council sought to challenge the appeal on the basis that it should not be on the basis of non-determination but should be an appeal against a decision to refuse. However, in order to refuse an application the local planning authority should prepare and issue a formal notice of refusal and this the local planning authority did not do prior to the lodging of the appeal on the grounds of non-determination. The sensitivity of Nottinghamshire County Council on this point was remarkable.

4.14 Subsequently, on 23rd January 2007 I attended a meeting of the Balderton Parish Council at their invitation together with my planning consultant, Mr Martyn Williams. I noted that County Councillor Walker was in attendance

at the Parish Council meeting together with his wife and he sat immediately next to the Chairman and Parish Councillor Mr White who is a local farmer and whose land immediately surrounds my site. Prior to the meeting commencing I observed Councillor Walker in discussion with Councillor White. Councillor Walker then stood up and approached an elderly Parish Councillor at the head of the table and I overheard Councillor Walker being very argumentative and assertive with the elderly Parish Councillor. I further overheard the County Councillor Walker pointing directly at the copy of the papers distributed by Martyn Williams stating 'don't bring me into it, keep your mouth shut!'.

4.15 When the meeting commenced the Chairman advised the persons in attendance that they would allow verbal presentations to be made relating to the site at Hollow Dyke Lane. The presentation was made in closed session. Upon finishing the presentation questions were then invited from members. The Chairman, Councillor White, immediately stated that I was already at fault in putting 'loads of cars on the site' and he implied that the cars were polluted. I objected to this and made it clear that the cars on the site were de-polluted and complied with the requirements of the Environment Agency. I do not like being accused of committing environmental offences. I also recall Parish Councillor Mortimer then stating that the best place for my site was on an industrial estate. He added that he had frequently cycled passed the site at Hollow Dyke Lane for over thirty-five years and had noted the problem there throughout that period. During the course of these discussions I also continued to overhear County Councillor Walker making further comments into the ear of the Chairman. It appeared that County Councillor

Walker was a very forceful personality and a domineering influence within the Parish Council.

5. THE PLANNING CONTRAVENTION NOTICE

5.1 I received a formal planning contravention notice by secure delivery from Nottinghamshire County Council on [DATE]. A copy of the planning contravention notice is attached to this proof of evidence as exhibit []. I responded to the planning contravention notice as required by the Nottinghamshire County Council. I was surprised that the Nottinghamshire County Council has issued the planning contravention notice because questions contained in the said planning contravention notice only related to information which the county council already had in its possession. I therefore formed the view that the planning contravention notice had been issued by Nottinghamshire County Council in order to intimidate me and for the purpose of preparing for the issue of a formal enforcement notice under Section 172 of the Town and Country Planning Act 1990 for the purpose of seeking the cessation of the scrap yard use on the appeal site.

5.2 I was aware of the paragraphs set out towards the end of the officer's report to the council's Licensing and Planning Committee held on 28th November 2006 in which it was recommended that authority to pursue enforcement proceedings be delegated to officers. It was quite clear from the report and the resolution of the committee that there was an intention on the part of Nottinghamshire County Council to commence formal enforcement proceedings against me. However, I noted that a substantial period of time

had elapsed between the meeting of the committee and the issue of the planning contravention notice and did wonder whether the council had now changed its view on this point.

5.3 It should be noted that even at the date that I have issued this proof of evidence I have not received an enforcement notice from Nottinghamshire County Council. Whilst I consider that the council would obviously not be justified in issuing such an enforcement notice I have to express my surprise and continuing concern that the council chose to cause both fear and apprehension in my mind about its future actions in both the report to the Licensing and Planning Committee on 28th November 2006 and also subsequently in the issue of the planning contravention notice under Section 171C of the Town and Country Planning Act 1990. Although the county council has not issued an enforcement notice, no less the impact of the actions of the county council in seeking to, in effect, threaten me with enforcement proceedings has caused distress and inconvenience to me. It has also had an adverse impact upon my business in that I have had to make a number of arrangements including the implementation of contingent plans which have given rise to additional unnecessary expenditure owing to the threats and intimidation committed by the Nottinghamshire County Council.

5.4 The conduct of the Nottinghamshire County Council on this issue is reprehensible and totally unreasonable. The county council is threatening extreme measures against a private individual without just cause and then not proceeding with the said threatened action presumably on the basis that the Nottinghamshire County Council acknowledges that it does not have

adequate legal grounds for issuing the threatened enforcement notice. From my point of view the conduct of Nottinghamshire County Council is inexplicable and bizarre. Given the misconduct of the Nottinghamshire County Council I shall be seeking legal advice for the purpose of securing legal redress against the Nottinghamshire County Council in due course.

5.5 It should be noted that the position on the appeal site has not changed and the appeal site clearly has the appearance of a scrap yard. Nevertheless, the Nottinghamshire County Council by its own conduct over the last seven months has not taken any action relating to the site despite the previous threats to do so. I consider that the inaction of the council on this point is significant.

6. THE SECOND APPLICATION FOR A LAWFUL DEVELOPMENT CERTIFICATE

6.1 After further consideration of my position I thought it prudent to instruct my solicitor, Mr M A Jones, to prepare a second application for a Certificate of Lawful Use and Development. I felt that such an approach would be appropriate given that as time passed I came into the possession of further evidence which was compelling and supported my application for a Lawful Development Certificate. I felt that the preparation of a second application for a Lawful Development Certificate would provide the opportunity for the local planning authority to reconsider its position in the light of the further evidence.

6.2 I also felt that the preparation of a second application for a Lawful Development Certificate would be appropriate in the context where the Nottinghamshire County Council was obviously having second thoughts on the subject of enforcement proceedings and that now had effectively chosen not to pursue enforcement action. Given the apparent weakening in the position previously adopted by the Nottinghamshire County Council I therefore felt that I should expend time and costs on a further application. However, I instructed my solicitor to hold it in abeyance until an appropriate opportunity presented itself for the submission of the second application.

6.3 When the second application was then formally submitted by my solicitor pursuant to my instructions I discovered to my horror that the local planning authority sought to cause mischief by refusing to register and validate the said application for a Lawful Development Certificate. I was surprised by the reaction of Nottinghamshire County Council given the decision of the county council not to issue an enforcement notice. The second application was of course very similar to the first application and yet the first application was almost immediately registered and validated. The inconsistency in the approach adopted by Nottinghamshire County Council was very puzzling. At the present time I have instructed my solicitor not to pursue the matter of the second application for a Certificate of Lawful Use any further given the immediate response received from Nottinghamshire County Council. I felt that it would not be appropriate to waste any more time and costs in pursuing this matter given that the Nottinghamshire County Council had not changed its ways so far as its conduct was concerned.

7. THE EVIDENCE

7.1 In preparing for first the first application for a Lawful Development

Certificate and in preparing the second application for a Lawful Development Certificate I have carried out a substantial amount of research. I have visited many sites and interviewed a large number of people. I have collected a large amount of documentation and I have obtained specific professional advice where necessary. I therefore consider that I have devoted a very substantial amount of time, money and general resources in the pursuit of the two applications for Certificates of Lawful Use and Development. Obviously, it is only the first application which is the subject of the appeal before this Public Local Inquiry.

7.2 As a result of my thorough investigation into this matter, I consider that I was clearly justified in submitting the first application for the Lawful Development Certificate. I have spoken to many people who have personal knowledge relating to the history of the use made of Hollow Dyke Lane over a long period of time. I could have asked a much larger number of people than I have but there are of course limitations upon the amount of time one can devote to a project of this nature. In my interviews with persons having knowledge of the site I have made it perfectly clear that in submitting a witness statement as requested from them, I have always asked them to ensure that the witness statement is accurate and only contains information of which they have clear knowledge. Accordingly, the witness statements submitted in support of the first application and also in support of the second application can both be presented to the Public Local Inquiry in

full confidence that the facts set out in the said witness statements are accurate and true. I attach to this proof of evidence copies of the witness statements and I would refer to them in the following subparagraphs of this proof of evidence:

7.2.1 I attach to this proof of evidence a copy of my witness statement submitted in support of the first application. The witness statement referred briefly to the main points of fact relevant to the first application. It will be noted that the witness statement supports the view that the site is used as a scrap yard.

7.2.2 I attach to this proof of evidence exhibit TF2 being the witness statement of Mr S Beckett. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.3 I attach to this proof of evidence exhibit TF3 being the witness statement of Mr David Blissett of the NATO Museum. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.4 I attach to this proof of evidence exhibit TF4 being the witness statement of Mr Brain Carberry. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.5 I attach to this proof of evidence exhibit TF5 being the witness statement of Mr F Convoy. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.6 I attach to this proof of evidence exhibit TF6 being the witness statement of Mr D Grey. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.7 I attach to this proof of evidence exhibit TF7 being the Statutory Declaration of Mr Noel Higgins. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.8 I attach to this proof of evidence exhibit TF8 being the witness statement of Mr J Kerriage. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.9 I attach to this proof of evidence exhibit TF9 being the witness statement of Mr S Marshall. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.10 I attach to this proof of evidence exhibit TF10 being the witness statement of Mr Steven Moor. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.11 I attach to this proof of evidence exhibit TF11 being the witness statement of Mr Martyn Williams. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.12 I attach to this proof of evidence exhibit TF12 being the second statement of Mr S Beckett. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.13 I attach to this proof of evidence exhibit TF13 being the witness statement of Mr V Padley. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.14 I attach to this proof of evidence exhibit TF14 being the witness statement of Mr E J Beckett. This clearly supports the application

for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.15 I attach to this proof of evidence exhibit TF15 being the witness statement of Mr J Smith. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.16 I attach to this proof of evidence exhibit TF16 being the witness statement of Mr M Parthipan. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.17 I attach to this proof of evidence exhibit TF17 being the witness statement of Mr P Foley. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.18 I attach to this proof of evidence exhibit TF18 being the witness statement of Mr Brain Carey. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.19 I attach to this proof of evidence exhibit TF19 being the witness statement of Mr Brain McDonough. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.20 I attach to this proof of evidence exhibit TF20 being the witness statement of Mr James Fogerty. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.21 I attach to this proof of evidence exhibit TF21 being the witness statement of Mr John Galagher. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.22 I attach to this proof of evidence exhibit TF54 being the second statement of Mr Martyn Williams relating to his interview with a

witness being Mr Jeffrey Peter Smith. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.23 I attach to this proof of evidence exhibit TF55 being the witness statement of Mr Ian Bainbridge. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.24 I attach to this proof of evidence exhibit TF56 being the statutory declaration of Mr Noel Higgins. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.2.25 I attach to this proof of evidence exhibit TF57 being the second statutory declaration of Mr Noel Higgins. This clearly supports the application for a Certificate of Lawful Use relating to the use of the site as a scrap yard.

7.3 It is therefore clear from the above witness statements that there are twenty-five witness statements fully supporting the terms of the claim I have put forward relating to the scrap yard use of the appeal site.

7.4 In addition to the above witness statements in support of the claim please also note that I have also submitted and now refer to a large number of documents which support the claim and in places also corroborate the evidence set out in the witness statements. The documents to which I refer are listed in the following subparagraphs:

7.4.1 I refer to exhibit TF24 attached to this proof of evidence which comprises a letter issued by Newark and Sherwood District Council dated

6th January 1976 which contains information which supports my claim.

7.4.2 I refer to exhibit TF25 attached to this proof of evidence which comprises a letter issued by the District Valuer dated 1st June 1982 which contains information which supports my claim.

7.4.3 I refer to exhibit TF26 attached to this proof of evidence which comprises a letter issued by Newark and Sherwood District Council to Balderton Parish Council dated 7th January 1985 which contains information which supports my claim.

7.4.4 I refer to exhibit TF27 attached to this proof of evidence which comprises a letter issued by Newark and Sherwood District Council to P W Marsh & Company Solicitors dated 6th 15th June 1993 which contains information which supports my claim.

7.4.5 I refer to exhibit TF28 attached to this proof of evidence which comprises a letter issued by Newark and Sherwood District Council's Chief Executives Office to Messrs Marsh & Company solicitors dated 14th August 1998 which contains information which supports my claim.

7.4.6 I refer to exhibit TF29 attached to this proof of evidence which comprises a letter issued by Balderton Parish Council to Newark and Sherwood District Council dated 25th May 1999 which contains information which supports my claim.

7.4.7 I refer to exhibit TF30 attached to this proof of evidence which comprises a letter issued by Newark and Sherwood District to Balderton Parish Council dated 23rd July 1999 which contains information which supports my claim.

7.4.8 I refer to exhibit TF31 attached to this proof of evidence which

comprises a letter issued by Mr Wilkes of Estatrix Limited dated 15th August 2005 which contains information which supports my claim.

7.4.9 I refer to exhibit TF32 attached to this proof of evidence which comprises a letter issued by Convoy which contains information which supports my claim.

7.4.10 I refer to exhibit TF33 attached to this proof of evidence which comprises a letter issued by B J & C Carberry Haulage dated 15th August 2005 which contains information which supports my claim.

7.4.11 I refer to exhibit TF34 attached to this proof of evidence which comprises a letter issued by Bradford Moor (Iron and Steel) Limited dated 17th August 2005 which contains information which supports my claim.

7.4.12 I refer to exhibit TF35 attached to this proof of evidence which comprises correspondence issued by Mr White of Field House Farm which contains information which supports my claim.

7.4.13 I refer to exhibit TF37 attached to this proof of evidence which comprises ground level photographs relating to the site together with a plan showing the position from which the said photographs were taken which contains information which supports my claim.

7.4.14 I refer to exhibit TF38 attached to this proof of evidence which comprises ground level photographs of the old lightening interceptor aircraft within the site which contains information which supports my claim.

7.4.15 I refer to exhibit TF39 attached to this proof of

evidence which comprises aerial photographs relating to the said site taken at various times which contains information which supports my claim.

7.4.16 I refer to exhibit TF46 attached to this proof of evidence which comprises Newark and Sherwood District Council's Planning Committee Report which refers to the site having established use rights for storage and reclamation of scrap metal which contains information which supports my claim.

7.4.17 I refer to exhibit TF47 attached to this proof of evidence which comprises an extract from minutes of the committee meeting of the Newark and Sherwood District Council (item 758) approving the institution of enforcement proceedings which contains information which supports my claim.

7.4.18 I refer to exhibit TF48 attached to this proof of evidence which comprises an enforcement notice issued by Newark and Sherwood District Council dated 6th February 1980 which contains information which supports my claim.

7.4.19 I refer to exhibit TF49 attached to this proof of evidence which comprises formal written demand for rated issued by Newark and Sherwood District Council dated 15th March 1983 which contains information which supports my claim.

7.5 In addition to the above comprehensive and compelling evidence I would also refer to the written representations submitted to Nottinghamshire County Council during the course of the processing of the application for the Lawful Development Certificate and would draw your attention to the points set out in the following documents:

7.5.1 TF22 - This is the statement of written representations issued by Mr Martyn Williams and contains information which clearly supports my case.

7.5.2 TF23 - This is the statement of case issued on behalf of the appellant and contains information which clearly supports my case.

7.5.3 TF53 - This is the legal skeleton argument submitted to the Nottinghamshire County Council and contains information which clearly supports my case.

7.6 The fact that previous owners of the site such as Mr G A Wilkes Director of Estratrix Limited have clearly confirmed that the site has been used as a scrap yard for the dismantling, breaking and storage of scrap and other materials for a period of twelve years since the company acquired the premises in April 1993 is clearly good evidence in support of the case for the grant of a Lawful Development Certificate. There is also further evidence for example including the scrap metal dealer certificate under the 1964 Scrap Metal Dealers Act which bears registration number SM/36 dated 12th February 1978 and which is attached to this proof of evidence marked exhibit TF45.

7.7 It is also clear from the evidence and a reasonable interpretation from the size of the site and the way it is laid out that the whole of the site is used as one single unit of occupation and is used for one single purpose namely as a scrap yard with the associated elements in the scrap yard comprising the processing of scrap and the retail sale of scrap.

8. EXAMINATION OF THE APPEAL SITE

8.1 The appeal site comprises approximately 1.99 acres. The site is encompassed by a high metal fence and is broadly rectangular in shape. The appearance of the site as it appears on the 12th July 2007 appears on a photograph I took of the site standing on the embankment which supports the A1 trunk road looking in an easterly direction. It will be noted that the site accommodates a large number of scrap motor vehicles together with associated scrap material including the scrap fighter aircraft and various van bodies and the remains of an old caravan together with a series of portacabins and rack units which are also resting on the land. All of the material constitutes a use of the land given that the material and objects is moveable across the site given that they only rest on the land and do not incorporate foundations. The large skeleton framed building located towards the right of the photograph is located on the most southerly part of the site. The site has an open aspect and is surrounded entirely by fields. One significant feature on the photograph is the extent of the security measures deployed for the purpose of protecting the site. It will be noted that the site is surrounded by a series of high lamps on poles together with a large number of close circuit television cameras. Further security for the site is provided by Rottweilers. The photograph was taken at 7.18pm and is marked photograph number 1 in exhibit TF54.

8.2 A second ground level photograph taken of the site has also been taken by me from the embankment supporting the A1 trunk road but from a position to the north of the first photograph. This second photograph illustrates the

importance of the scrap aircraft which is a focal point in the centre of the site. The photograph also illustrates the open nature of the site and its significant impact upon the local landscape. The third photograph was taken by me on 12th July 2007 at 7.17pm again on the embankment that supports the A1 trunk road but from a position to the south of the previous two viewing points. This photograph illustrates the open nature of the site and the lack of screening between the adjacent agricultural land and the commercial uses on the site. It also indicates that the whole of the site is used for the storage of scrapped motor vehicles as can be seen from the number of scrapped motor vehicles located even on the most southerly part of the site. The next photograph known as photograph number 4 was taken on 13th July 2007 at 10.44am. It depicts the side elevation of one of the portacabins and indicates the nature of the material stored within the portacabins being scrap metal material. This illustrates the fact that the portacabins being a use of the land are in themselves used for purposes ancillary to the main use, namely the accommodation and storage of scrap metal parts. It should be noted that it is the practice on the site to ensure that the most valuable vehicle parts which can be recycled are stored on shelving units within the portacabins in order to protect them from inclement weather conditions. The fifth photograph in exhibit TF54 shows the full extent of the shelving units which rest on the ground. The shelving units accommodate miscellaneous scrap metal material. It constitutes a more efficient use of the available space. The sixth photograph shows the inside of one of the portacabins showing the internal shelving units within the portacabins and the nature of the material stored within the portacabin. Photograph number 7

is again a photograph of the side elevation of two portacabins stored one upon another. The portacabins are merely resting on the land, there are no foundations to support the portacabins.

8.3 The appearance of the site as it is shown on the photographs today is a vast improvement over the appearance of the site in previous years. Prior to my purchase of the property the site had an extremely untidy appearance. I have brought some order into the management of scrap metal on the site and have cleared the site of a substantial amount of scrap metal debris which had accumulated over a number of years. My philosophy is to ensure that the site is managed efficiently and effectively and in compliance with environmental regulations.

9. THE PERIOD OF USE OF THE SITE

9.1 The application for the Lawful Development Certificate was submitted on 9th January 2006 and which was acknowledged as having been lodged by Nottinghamshire County Council as at 7th February 2006. It therefore relates to the use that subsisted on the land at that date in respect of which I can give the evidence as follows: at that date there were portacabins located on the site together also with scrap motor vehicles and other items of scrap metal together with vans and lorry parts and stacking units and also the steel metal framed buildings. The appearance of the site as at 9th January 2006 clearly indicated that the site was a scrap yard and that it was in active continuous use. The front site boundary with the main entrance gates faced northwest. To be precise, on the northeast facing site boundary were placed

five mobile and demountable storage buildings set a little inside the fence and up to two high. The old jet fighter aircraft was located in the centre of the site showing clear evidence of being partly dismantled for scrap metal purposes and with a considerable amount of graffiti type markings located on the outside body of the jet. The various scrap vehicles within the site incorporated a number of vehicles in different stages of dismantling. The surface of the site was well compacted and comprised consolidated hogging or hardcore type material that had weathered and had obviously been on the site for some time.

9.2 Within the portacabin storage buildings on the site scrap metal was stored within the shelving units. The more valuable and more sensitive motor vehicle parts were located within the storage portacabins for purposes of both avoiding weathering and ensuring security. The portacabins rested on the ground by virtue of their own weight and were not fixed to the ground. The portacabins therefore constituted a use of the land and that use was a part of the general scrap yard use of the site given that the portacabins housed scrap metal parts. The portacabin buildings could easily be moved onto another part of the site at short notice by use of a crane. Other than the storage of salvaged motor parts the only portacabin building which incorporated any additional features was one on the site closest to the front gates which incorporated a very small and narrow reception area inclusive of a telephone. In essence this constituted a very small, minor ancillary office area.

9.3 Behind the portacabins and along the boundary of the site were a number of stacking units comprising simple steel pole racks. The vertical pole members were placed directly on the ground and rested on the ground by virtue of their own weight. They were therefore a use of the land and this use was of course part of the scrap yard use of the site which related to the storage and processing of vehicle body parts and body panels.

9.4 The site also supported a freestanding framework building created from a curved steel frame that was fixed into the ground. The building is some six metres high. The building has previously been clad in steel panels some time ago and those had subsequently been removed. The building had been on the site for a considerable number of years. It had therefore been completed some years ago and therefore enjoyed the benefit from immunity from enforcement action. The fact that part of the building has subsequently been subject to alterations involving the removing of cladding does not affect the status of the building as a building immune from enforcement proceedings.

9.5 The most prominent feature on the site was of course the scrap former Royal Air Force fighter aircraft. It was clear as at 9th January 2006 that the aircraft had been subject to a considerable amount of interference and that parts had been removed previously. The aircraft was cited with its tail down and nose pointing upwards because the vital undercarriage parts had been removed for spares elsewhere and replaced by scaffold poles. Accordingly, the body of the aircraft had been allowed to settle heavily on its tail because of the weight of the two jet engines which are still fixed to the main body of the aircraft. Over the year's reusable parts of the aircraft were collected from

time to time by historical aircraft experts. The aircraft provided the source of spares for historical aircraft enthusiasts including one of the principal witnesses being Mr Blissett of the NATO Museum.

9.6 With specific reference to the information provided by Mr David Blissett of the NATO Museum in Grimsby it should be noted that he can specifically recall a site at Hollow Dyke Lane for a period well in excess of the last twelve years. Like many people he has confirmed that the site is memorable to him in that it provides the location for an old redundant lightening aircraft. He confirms that the aircraft can easily be observed by travellers using the A1 trunk road and can also be observed from various adjacent roads in the area including Spring Lane and other country lanes. He has specifically confirmed that the aircraft has been on the site and featured as a prominent local landmark for a period in excess of twelve years.

9.7 His first recollection of the site is in the early 1990's which he appears to place at about 1994. He states that he can remember observing several lorry trailers in different states of disrepair on the site and some without axles and some without mudguards or wheels. It appeared to him that the site had the appearance of a scrap yard and that it was used as such. He also recalls another visit in 2001 when he also observed a similar number of trailers in various states of disrepair around the site. He confirms that the trailers were in a state of disrepair without axles or wheels or without mudguards. He confirms that the site continued to exhibit the characteristics one would expect of an active scrap yard. He maintains that his visit in 2001 was very vivid because it was some time in September 2001 that he displayed a

lightening aircraft at former RAF airfield in Binbrook later that month. He maintains that he was very pleased with his visit to Hollow Dyke Lane earlier that month because he was able to obtain a part of the lightening aircraft at Binbrook from the redundant scrapped old lightening aircraft at Hollow Dyke Lane. Apparently the part which he lifted from the redundant lightening aircraft at Hollow Dyke Lane enabled him to show the other lightening aircraft at Binbrook in full working order. He also recalls a further visit to the site in the spring of 2004. He recalled observing a similar number of lorry trailers in similar states of disrepair across the site. Many of the trailers were without axles, wheels and mudguards and the site again had the appearance of a scrap yard and was indeed being used as a scrap yard during his visit. He also observed several small private motor vehicles being dismantled on the site at the same time. His evidence confirms that the scrap yard use was clearly not only a storage use but also a dismantling and processing use. He was not aware of any specific limitation upon the hours of working at the site and it appeared to him that the site was being used throughout the week as a continuous operation.

9.8 The point about Mr Blissett's evidence is that it is evidence which spans a considerable number of years and covers the period of time in which one needs to be concerned in the consideration of the application for the Certificate of Lawful Use and Development. The relevant period of ten years is of course a period from 10th June 1996 through to 9th June 2006. This period is covered by Mr Blissett's evidence. His evidence relating to the scrapped lightening aircraft in the middle of the site clearly illustrates the function performed by that particular feature. It was an object which was

obviously stored for scrap purposes and which was then gradually dismantled over a long period of time. In effect the object performed a particularly helpful function to specialist aircraft enthusiasts and was therefore the source of spare parts for other aircraft over a period of time. The scrapped aircraft clearly provided no other function other than as a source of scrap material thereby supporting the view that the site was used for the purposes of a scrap yard. His evidence is also important in so far as it refers to those objects known as 'trailers'. In aerial photographs including those produced by Nottinghamshire County Council and which are referred to in their document index, one can see a number of trailers within some of the aerial photographs. The Nottinghamshire County Council appears to have misinterpreted and misunderstood those aerial photographs. For some reason which one cannot understand, the Nottinghamshire County Council considers that the existence of some lorry trailers on the appeal site as shown in some aerial photographs in some way undermines my case. I simply cannot understand why the Nottinghamshire County Council should come to such a rather strange conclusion. I have previously informed them that, on the basis of the research I have undertaken, it is clear that the aerial photographs show lorry trailers on the site. The aerial photographs clearly indicate that there are a large number of lorry trailers on the site. However, one cannot determine the purpose performed by the lorry trailers on the site merely by examination of aerial photographs. In order to ascertain the purpose for the existence of those lorry trailers on the site, one must of course rely upon direct evidence of witnesses on the ground. One of the witnesses on the ground was of course Mr Blissett of the NATO Museum in

Grimsby. He is obviously an impeccable witness who is thoroughly independent and very explicit in his evidence. He has confirmed that he observed lorry trailers on the site and also observed the use which those lorry trailers performed. It is clear from his direct evidence that the lorry trailers in question were stored on the site for the purposes of the storage of scrap and that the lorry trailers were in the course of being processed on the scrap yard by way of dismantling. This is entirely consistent with the terms of my claim relating to the continued use of the site as a scrap yard.

9.9 Further confirmation on this point can be obtained from the evidence of Mr Jeffrey Peter Smith. It is noted that this particular witness previously supplied a witness statement in support of my claim. Mr Jeffrey Peter Smith is a long distance lorry driver and has, like me, gained previous knowledge of the history of the site by driving heavy goods vehicles along the A1 trunk road. From the cabin of his lorry he has observed the site over a long period of time. It will be noted from his evidence that he has clearly observed the site in some detail from the A1 trunk road. He has observed lorry trailers on the appeal site during the relevant period of time and has clearly made the following points:

'I recall regularly viewing the site on a regular basis from the southbound carriageway of the A1 as the aircraft was always 'eye-catching' especially due to my own keen military interest. In fact, I would tend to look out for it whenever I approached the site to see if it was still there. Please remember I passed the site probably once a week

during that period, and before it, as I have said in the statement I have already made.'

9.10 In his further evidence Mr Jeffrey Peter Smith maintains that in his view the trailers located on the appeal site were not what is known in the industry as modern 'super singles' but were in fact much older 'twin tyre axles' and a mixture of either single or double axles. He also noted the odd older type 'box van' type lorry also on 'single or double twins' on the site with a few scrap cars around as well. In his evidence he clearly maintains that the vehicles and trailers were obviously very outdated rolling stock and it looked like they had been scrapped and broken. He specifically observed that some trailers were laid on top of others, stacked up to two high. In his evidence he goes further to state that the lorry trailers which he observed on the appeal site at Hollow Dyke Lane were obviously not used as part of a lorry depot because the trailers were parked in such a way that tractor units could not be brought onto the site for the purpose of hooking onto them. He also states that one cannot use trailers where the landing legs aren't down because the trailer will hit the ground and the tractor will just simply ride over it. The evidence of Mr Jeffrey Peter Smith is also important because he passed the site regularly at least once a week. He also said that the trailers were always located in the same position from week to week which indicated that the trailers were not being used as part of a lorry depot but were in fact stacked on the site for scrap purposes. He specifically recalls observing the dismantled state of the trailers and from his observations considered that the trailers would be unlikely to have an MOT certificate and therefore could not be used legally on the road. He noticed from his

observations that in many cases the trailers would have the outer wheels of the twin tyres removed or the wheels missing entirely. Some would also have their landing legs folded under the front of the trailer which had the affect of forcing the trailer down to sit 'nose down' on the ground. This would make it impossible for a tractor unit to back up to it to collect it if there were a transport depot on the site. Mr Jeffrey Peter Smith maintains that you cannot part working trailers in such a fashion and from his own observations he is firmly of the view that the trailers were in a state of disrepair and were being dismantled.

9.11 In his further evidence Mr Jeffrey Peter Smith clearly indicates that in the transport industry the old form of trailers were gradually phased out. The new super singles have gradually replaced the old style axle trailers and the distinctive difference between the two forms of trailers is in his view clearly observable and obvious even from a distance. His evidence clearly indicates that the trailers upon which Nottinghamshire County Council appear to rely so heavily were in fact redundant old style trailers that had been replaced by the new super single trailers and that they were stored on the site for scrap purposes and that they were being dismantled on the site as one would expect during the reprocessing of scrap within a scrap yard. His evidence is also important in that he does clearly state that at no stage did he ever recall observing the appeal site at Hollow Dyke Lane in any condition other than holding 'old vehicles'. He recalls that he always remembers seeing the site being used for breaking things other than just cars such as box van and artic trailers.

9.12 The evidence of Mr Jeffrey Peter Smith who is another independent and impeccable witness is entirely consistent with the evidence of Mr Blissett of the NATO Museum in Grimsby. It is significant that two independent witnesses who do not know each other and who come from entirely different backgrounds have, quite independently, provided evidence which is entirely consistent on a number of important issues. Curiously, one of the points upon which Nottinghamshire County Council seeks to rely, namely the presence of the lorry trailers as being indicative of some other form of use of the site, is entirely discredited by the evidence of these two impeccable witnesses who clearly explained the reason why one would find lorry trailers on the site namely for scrap purposes. Even when writing this proof of evidence today, I find it absolutely incredible that Nottinghamshire County Council should act so unreasonably and, without considering the evidence, seek to maintain that aerial photographs showing lorry trailers on the site clearly indicate that the land is not being used for scrap purposes. The council's claim is ridiculous. It is obvious that lorry trailers would be stored on the site and dismantled on the site as part of a scrap yard.

9.13 From my examination of the documentary records and the other witness statements provided in support of my claim, it is clear to me that the use of the appeal site throughout the ten-year period under examination has always been the same. There has been no change in the use of the site because the site has always been used as a scrap yard for the storage, processing and retail sale of scrap material. The fact that so many witnesses give evidence on the same point is important. The fact that the witnesses all say that the appearance of the site has always been the same throughout the period is

also an important point. There is no evidence from any witness stating that the appearance of the site has changed or that the appeal site has been used for some other purpose unrelated to a scrap yard use.

9.14 In the letter dated 15th June 1993 issued by Newark and Sherwood District Council, it acknowledged the existence of a 'present established use' on the appeal site at Hollow Dyke Lane, Balderton near Newark. This inevitably leads to the conclusion that the whole of the site known as the compound at Hollow Dyke Lane, Balderton near Newark has been used for scrap for the purposes of a scrap yard on an uninterrupted basis thereby establishing the use. There is no evidence of any change of use since that date or from 10th January 1996. In fact, the acknowledgement of the established use by the local planning authority goes back to 1979 when the local planning authority acknowledged that the nature of the established use was as a scrap yard. Reference should be made to the report of the planning officer to the Newark and Sherwood District Council's Planning Committee on 25th September 1979 which is contained in the appendices and also to the copy of the general rate demand notice issued by Newark and Sherwood District Council for the rating period 1983/1984 which confirmed that the assessment of the use of the premises was as a 'breakers yard' as at the date of assessment. This is also confirmed by the Certificate of Registration issued under the Scrap Metal Dealers Act 1964 certifying registration as at 12th February 1978.

9.15 The Newark and Sherwood District Council also acknowledged the established scrap yard use on the site back in 1980 when it issued a formal

enforcement notice relating to the appeal site dated 6th February 1980. The notice merely sought to require the removal of vehicles stored on the site other than for the purposes of scrap. This is another formal acknowledgement by the local planning authority at the time that there was a scrap yard use at the site. The exclusion of scrap materials from the scope of the enforcement notice is a clear indication from the local planning authority that it continued to acknowledge the existence of the established scrap yard use on the site.

9.16 When using a site as a scrap yard it is inevitable that it is necessary to store portacabins on the site. The portacabins are useful for the purpose of storing scrap metal material which one does not wish to see deteriorate owing to weathering and also the storage of scrap material which is valuable and which one would wish to ensure can be secured from the risk of theft. It is noted that in the minutes of the Planning Committee of the Newark and Sherwood District Council at minute number 758 it is acknowledged that the officers observed the parking of a portacabin building on the site and a mobile hydraulic platform. This point is reinforced by the correspondence issued by the District Valuer and Valuation Officer who in a letter dated June 1982 acknowledged that the scrap yard included an area of approximately 1.99 acres and had a portacabin erected on the site. The general rate notice as mentioned previously also confirms the use of the site as a breakers yard in 1983 and 1984.

9.17 When I sought to purchase the site in July 2005 I had prior to that date a number of discussions with the then owner of the site being Mr Wilkes who

is a Director of Estatrix Limited. He assured me that the whole of the site amounted to 1.99 acres was used as a scrap yard for the dismantling, breaking and storage of scrap and other materials for a period to his knowledge, at least as far back as April 1993. He subsequently confirmed this in writing in his letter on the Estatrix Limited notepaper dated 15th August 2005. The use referred to in this letter indicated a use of the site which continued since the date that Estatrix decided to vacate the site and when I took over occupation of the site.

9.18 The position is further confirmed by those involved in commercial activities who have had dealings with those managing the appeal site previously. I refer to the correspondence issued by Convoy Commercials and by Bradford Moor (Iron and Steel) Limited which are contained within the appendices and which contain information which is consistent in confirming that scrap materials were collected from the site at Hollow Dyke Lane and used for business purposes.

9.19 From my research the building located on the site appears to be a Dutch barn type building. According to the evidence provided by Mr S E Beckett of 149 Main Street, Balderton, Newark, Nottinghamshire NG24 3PB the Dutch Barn type building was completed some twenty to twenty-five years previously. When it was completed it was a building in its own right. I am informed that the outer cladding of the building was of a corrugated iron sheet type on the main body structure and timber boarding together with timber framework and railway sleepers formed the floor from the lean-to extension of the building. This building was therefore completed well over

four years previously on the basis of the evidence of Mr S E Beckett and is therefore immune from enforcement proceedings. Subsequent decisions to remove parts of the building do not affect the position.

9.20 The stacking units comprising shelves which are located on one part of the site adjacent to the portacabins are also a normal feature of scrap yard uses. Just like portacabins are a natural feature on scrap yards, so are stacking and shelving units. Such units are required to increase the capacity of the site for storage purposes. One of the main features of scrap yard uses is the need to maximise the use of available space given that scrap yards are normally very limited in terms of area. This is most certainly the case relating to the scrap yard at Hollow Dyke Lane which is a small scrap yard given that it is only 1.99 acres in size. There is no room for expansion in terms of area and one can only therefore seek to improve the capacity of the existing area by double or indeed triple stacking. It is an unremarkable feature which you expect to find on scrap yards as a matter of course. The stacking units can be moved around the site just like the portacabins.

9.21 When read together the witness statements contained within the appendices support my claim that the scrap yard use has been continuous throughout the ten-year period from 10th January 1996 through to 9th January 2006 (acknowledged as having been lodged by Nottinghamshire County Council as at 7th February 2006). I am surprised that Nottinghamshire County Council take the view that the use has not been continuous. I think that the Nottinghamshire County Council have again made a big mistake by relying on what they consider to be the official rating records relating to the appeal

site. The county council claims that the appeal site was not paying rates for the period from late 1999 through to 2005. However, the point is that whether or not the appeal site was rated is beside the point. A site can easily be in continuous use even if it is not rated. The rating records of many council's are simply incorrect and no reliance can be placed upon such rating records in order to support a claim that land was not being used. Lots of land is being used for all sorts of purposes across the country but is not being rated because of problems with the rating records held by the local authority. I assume that the rating records of local authorities will depend upon the information they receive from forms returned to them by landowners and also on the accuracy of the work carried out by staff employed by the local authority.

9.22 The very recent letter dated 6th July 2007 issued by the Newark and Sherwood District Council at the request of the Nottinghamshire County Council does not provide any information of any direct use in this case. The letter only records that the scrap yard at Hollow Dyke Lane was not apparently paying rates to the Newark and Sherwood District Council in the period from 1st October 1999 to 1st August 2005. Whatever appears in the rating records of the Newark and Sherwood District Council depends upon the ability of locum officers to record matters correctly or incorrectly and does not prove anything one way or the other relating to the actual use of the property taking place on the ground. The letter does not produce any evidence relating to the actual use of the site and should therefore be disregarded. There is no evidence of any site inspections being carried out. I have not been informed by any of the other witnesses of the observance of

any site inspections being carried out by local authority officers from Newark and Sherwood District Council's Finance Department.

9.23 The various witness statements referred to in the appendices herewith are very important. One of the more recent witness statements issued by Mr Ian Bainbridge of 4 The Poplars, Pitsey, Essex SS13 2ER states that he used the A1 trunk road regularly for thirty years whilst living in Essex in order to visit his family up in Cumbria. He has also devoted the last fifteen years as a buyer and seller of border fine arts being a Scottish company which retails resin figurines. Accordingly, he has travelled up and down the A1 frequently. He specifically recalls the premises at Hollow Dyke Lane as being used as a scrap yard. He states that approximately five years ago he was in a traffic jam on the A1 and recalls vividly cars on the site. He observed the dismantling of lorries and lorry trailers and also cars. He was also fascinated with the slow dismantling of the scrap aircraft in the centre of the site.

9.24 His evidence is of value.

9.25 [The summary of the evidence set out in the witness statements is now inserted in the next few paragraphs lifted from paragraphs 4.18A on page 27 of the previously typed statement of case submitted on behalf of the appellant including all subsequent paragraphs up to and including paragraph 4.29 which ends half way down page 30]

10. HUMAN RIGHTS

10.1 I am aware of the fact that I have a number of human rights and these include the right to have my claim considered in a fair and impartial way. Sadly, the Nottinghamshire County Council did not provide me with a fair hearing and have not acted in an impartial way. In fact I believe that the Nottinghamshire County Council has acted in a very partial, biased and unfair way. It has also acted unreasonably and withheld papers including important evidence. It has breached procedures and caused unnecessary delays. The county council has only one objective in mind and that is to frustrate my claim for a Lawful Development Certificate at all costs. Previously I had assumed that a public body would act fairly and reasonably. I assumed that a public body was obliged to act impartially. After my experience in this case I am now thoroughly disappointed and disillusioned with this particular public authority which will do anything it can to frustrate and undermine my case. The county council simply has one aim and this is to clear the site and get me out of the area. I have been subjected to ridicule based on my ethnic background and I know that the motivation is to ensure that I am forced out of the area.

10.2 Not only have Nottinghamshire County Council failed to provide me with a hearing but the council has sought to interfere with the right to use my land as I may wish. Despite the substantial body of evidence in support of my claim the Nottinghamshire County Council wants to terminate those established use rights regardless of the legal position. This is an interference with my right to the enjoyment of my land in contravention of Article 1 of the First Protocol. There is no justification for such an infringement of my rights. There is no benefit to the public in closing down the scrap yard and

excluding me from the site. There are no benefits to the public in ruining my business. However, ruining my business and the right to a livelihood will have a disastrous impact upon me. I depend upon the income I can gain from the profitable use of the appeal site and if I cannot continue to use the land as a scrap yard my business will suffer and I will be financially ruined. The Nottinghamshire County Council has not even considered this point and yet has even authorised formal enforcement proceedings for the purpose of ensuring that the site is cleared. The council is acting unreasonably and is continuing to breach my human rights.

10.3 My right to privacy has also been infringed by the actions of Nottinghamshire County Council. This is a breach of Article 8. The personal attack upon me is a result of my ethnic background is a breach of Article 14. If necessary I will take all of these matters before the European Court of Human Rights.

10.4 I have been put to unnecessary trouble and expense by the intransigent attitude of the Nottinghamshire County Council in the face of overwhelming evidence in support of my claim. I have also been subjected to substantial delays that have caused significant financial losses to me. The Nottinghamshire County Council has changed its position more than once during the processing of the application. The way in which it conducted itself at the meeting of the council's Licensing and Planning Committee and in subsequent correspondence is disgusting. The decision of Nottinghamshire County Council to finally include in its document index a substantial number of documents which had never previously been listed nor

disclosed to me is yet a further example of the way in which Nottinghamshire County Council continues to misconduct itself. I think that Nottinghamshire County Council is not entitled to now rely upon papers and documentations which it has previously withheld from me. It is also not entitled to rely on documents which its colleagues in Newark and Sherwood District Council have also withheld from me until the very last moment and leaving me with no time to check the papers or carry out further investigations or prepare a response to those papers.

11. CONCLUSIONS

11.1I consider that the case in support of the claimed scrap yard has been made out by the evidence submitted. It is significant that the council has been unable to point to any evidence in support of its contention. It is significant that the council is not in a position to call any witnesses who have direct knowledge of the site to give evidence in support of the council's claims.

11.2I therefore ask that the Certificate of Lawful Use and Development be issued in the form requested in my original application.

Tommy Flattery

29 Park Avenue
Caney Island
Essex
SS87PY

In the Matter of the Town and Country Planning Act 1990

And in the Matter of an Appeal against the Non-Determination of an Application for a Certificate of Lawful Use and Development on Land and Premises known as The Scrap Yard, Hollow Dyke Lane, Balderton, near

Newark in the County of Nottinghamshire

and in the Matter of the Application issued pursuant to Section 191 of the Town and Country Planning Act

1990 as amended under **reference number []**

APPENDICES TO THE PROOF OF EVIDENCE OF MR TOMMY FLATTERY

VOLUME 2

SUBMITTED BY:

Able Bishop Solicitors
Selwyn Chambers
Sampson House
The Street
Woolpit
Suffolk IP30 9QN
Tel: 01359 245140
Fax: 01359 245085
Email: info@ablebishop.biz
Website: www.ablebishop.biz