

Chief Executive: Bob Marshall

Director: David Button
Director: Bob Gwilliam
Director: Jeff Penfold

Replies to:
P.L. Jeremiah LL.B.
Solicitor to the Council
Monkton Park
CHIPPENHAM
Wiltshire SN15 1ER

Tel: Chippenham (01249) 706593
Fax: Chippenham (01249) 443152
DX No. 34208

Enquiries to: R J Packer
Our Ref: RJP\CG E97.0141
Your Ref:

*North
Wiltshire
District
Council*

1 July, 1999

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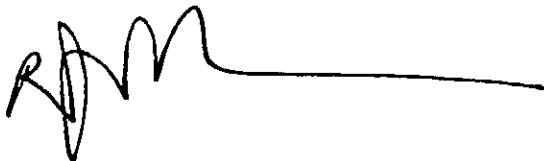
Dear Sir

**ENFORCEMENT NOTICE - LAND AT PURTON GARAGE,
STATION ROAD, PURTON, WILTSHIRE**

I refer to the Enforcement Notice recently served upon you in respect of the above land. The Council has issued a replacement Enforcement Notice, copies of which I now enclose by way of service, in view of your interest in the land. The Enforcement Notice previously served upon you is withdrawn.

Unless an appeal is made, as set out in the Annex, the Notice will take effect on the date shown in Paragraph 7 of the Notice and you must ensure that the required steps for which you may be held responsible are taken within the period or periods specified.

Yours faithfully



DEVELOPMENT CONTROL	
- 2 JUL 1999	
PASSED TO	DATE REC.

f SOLICITOR TO THE COUNCIL

To: Mrs P J Chopping
Russell House
117 - 119 Oxford Road
Reading
RG1 7UH

Lloyds TSB Mortgage Unit
P O Box 74
Kingsway
Scunthorpe
North Lincs
DN17 1AP

Mr Nick Moore
N B Moore Cars
Purton Garage
High Street
Purton
Wiltshire



E97.0141

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

DEVELOPMENT CONTROL	- 2 JUL 1999	PASSED TO	DATE REC

ENFORCEMENT NOTICE

ISSUED BY: North Wiltshire District Council

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.

2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at Purton Garage, Station Road, Purton, shown shaded on the attached plan.

3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use of the land from use as a motor garage offering vehicle repair and servicing facilities to a mixed use for that purpose and for the preparation, display and sale of motor vehicles.

4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last ten years. The operation of the vehicle sales and display for sale activities, in conjunction with the other vehicle engineering activities on the site, has resulted in an over-intensive form of development which cannot reasonably be accommodated on the available land, and which in particular has resulted in inadequate on-site vehicle parking, loading and unloading, manoeuvring and circulation capabilities. The development has consequently resulted in excessive on-street parking and servicing, which is seriously detrimental to the safety and convenience of users of the highway, visually intrusive, and causes unreasonable disturbance to the residential amenity of neighbouring households. Additionally, the cramped and jumbled appearance of the garage premises is incongruous with, and detrimental to, the character and appearance of the local environment.

5. **WHAT YOU ARE REQUIRED TO DO**

Stop using the land for the sale and display of motor vehicles and remove from the land all motor vehicles brought on to the land for that purpose.

6. **TIME FOR COMPLIANCE**

Eight weeks after this Notice takes effect

7. **WHEN THIS NOTICE TAKES EFFECT**

This notice takes effect on 6th August 1999 unless an appeal is made against it beforehand.

Dated : 1 July, 1999

Signed : *P. L. Jeremiah*

on behalf of North Wiltshire District Council

DEVELOPMENT CONTROL	
- 2 JUL 1999	
PASSED TO	DATE REC.

ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State **before** the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

- (a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice which is enclosed.
- (b) The second copy of the appeal form should be sent to the Council.
- (c) The third copy is for your own records.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.

DEVELOPMENT CONTROL	
- 2 JUL 1999	
PASSED TO	DATE REC.

North Wiltshire District Council

ENFORCEMENT NOTICE

Under S.172 of the Town &
Country Planning Act 1990

SITE PLAN

PROPERTY ADDRESS:
Land at Purton Garage
Station Road
Purton Wiltshire

REFERENCE:
E.97.0140

DESCRIPTION:
Unauthorised change of use of
land from use as a motor vehicle
garage offering vehicle repair
and servicing facilities, to a
mixed use for that purpose and
for the preparation, display and
sale of motor vehicles.

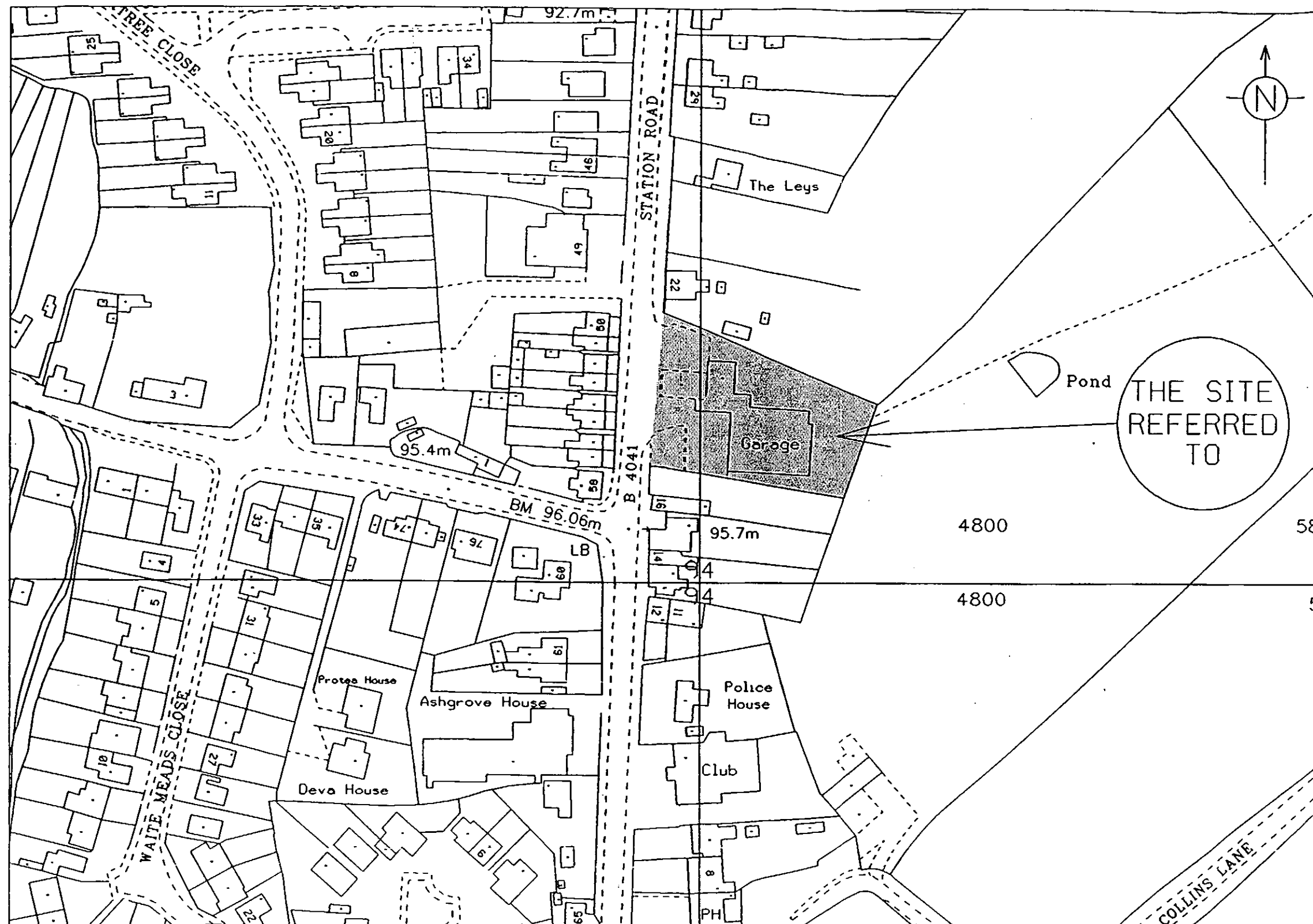
KEY:
Site referred to
stippled grey

OFFICER DEALING - DRE

SCALE: 1:1250

GRID REF: SU0988

DATE: 11/06/99



DEVELOPMENT CONTROL	
- 2 JUL 1999	
PASSED TO	DATE REC.

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NORTH WILTSHIRE DISTRICT COUNCIL - LA078840 1997



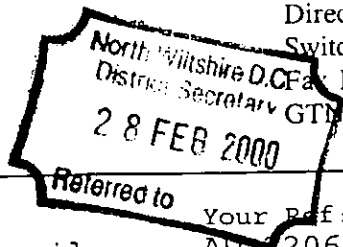
The Planning Inspectorate

E.97.0141

Room 1111(3)
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line
Switchboard
Fax No

0117-9878097
0117-9878000
0117-9878782
1374-8097



Mrs C Garrett
North Wilts District Council
Solicitor To The Council
Monkton Park
Chippenham
Wilts
SN15 1ER

Your Ref:
AD 2206

Our Ref:
APP/J3910/C/99/1026972

25 February 2000

Planning Office

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY NB MOORE CARS
SITE AT PURTON GARAGE, STATION ROAD, PURTON

I enclose a copy of our Inspector's decision letter.

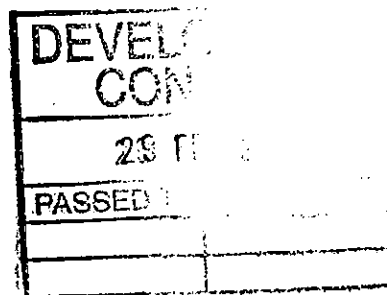
Yours faithfully

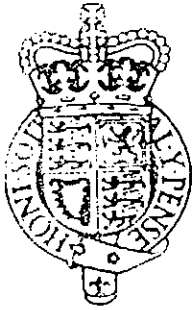
P. D. Coombs

fl Mrs K Vicker

212A

ENC1





Appeal Decision

hearing held on Tuesday 18 January 2000

by C F Trewick ARICS

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

25 FEB 2000

Appeal: T/APP/J3910/C/99/1026972

- The appeal is made under Section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against an enforcement notice.
- The appeal is brought by N B Moore Cars against North Wiltshire District Council.
- The site is located at Purton Garage, Station Road, Purton.
- The Council's reference is N/99/02012/ENF.
- The notice was issued on 1 July 1999.
- The breach of planning control as alleged in the notice is: without planning permission, change of use of the land from use as a motor garage offering vehicle repair and servicing facilities to a mixed use for that purpose and for the preparation, display and sale of motor vehicles.
- The requirements of the notice are: stop using the land for the sale and display of motor vehicles and remove from the land all motor vehicles brought on to the land for that purpose.
- The period for compliance with the requirements is: eight weeks.
- The appeal was made on the grounds set out in section 174(2)(a), (c), (d), (f) & (g) of the 1990 Act. However, prior to the hearing, ground (d) was withdrawn.

Decision: The enforcement notice is varied by extending the period for compliance to four months. Subject thereto, the appeal is dismissed. I uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the amended Act.

Preliminary matters

1. At the hearing, an application was made by the Council for a partial award of costs against the appellant; this is the subject of a separate letter.

The appeal on ground (c)

2. For the appellant, it is argued that it can be expected that garage premises such as these would have a car sales element, and, in this case, there has been a car sales use carried on here for many years. Moreover, this has been accepted by the Council. The planning permission granted by the Council in 1987 related to a plan which clearly indicated a "car showroom" and a "car display area" within the site. Moreover, the officers' report to Planning Committee, dated 28 July 1999, states that the lawful use of the site includes car sales. Even if the present car sales use is greater than that which previously existed, mere intensification does not constitute a change of use.
3. The Council's response is that the 1987 permission was for the erection of a workshop building, and there was no reference in the application or the permission to a car sales use. The plan was one which had been used for previous applications, and was merely a base plan used for plotting the proposed workshop building. It cannot be inferred from that that there was a car sales use. In 1997, the owner of the site between 1983 and 1993 affirmed

DEVELOPMENT CONTROL	
25 FEB 2000	
PASSED TO	DATE REC.

that any car sales was "to a limited degree", "incidental to the main garage business", and involved only "some 3 or 4 vehicles ... from the gravelled surface area at any one time". The estate agent's particulars in 1993 made no reference to car sales, and, in a letter in 1994, relating to the apparent use of the car showroom as a workshop, the new owner, Mr Chopping, said that "to the best of our knowledge it has never been used as a showroom".

4. Local residents say that they have not been aware of any car sales operation being carried on here, until the petrol sales ceased in 1997; then the site began to be used intensively for car sales.
5. To my mind, the balance of probability is that there has been some car sales within this site for a number of years, but that until 1997 it was on a very small scale, such as to be only incidental to the main garage use. In 1997, all the evidence points to there being a significant change in the use of the site. The petrol sales ceased, and the car sales took over virtually all the frontage of the site (as well as involving other parts of the site). To my mind, the change in character of the site was so dramatic as to result in a material change of use of the premises. No planning permission has been obtained for this change of use. Thus, there has been a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a)

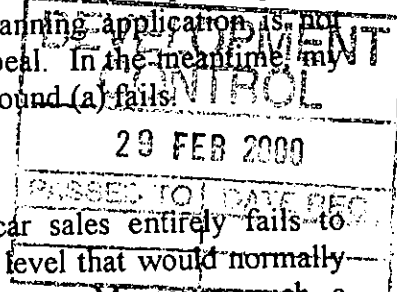
6. Section 54A of the Town and Country Planning Act 1990 requires that, where an adopted or approved Development Plan contains relevant policies, applications and appeals shall be determined in accordance with the Plan, unless material considerations indicate otherwise. Here, the Development Plan comprises the North East Wiltshire Structure Plan and the North Wiltshire Local Plan. My attention has been drawn to policies in these Plans relating to employment matters. Policies E12 and E13A of the Structure Plan encourage development which provides employment, both generally and specifically within villages, and that is echoed by policy E14 in the Local Plan. It is a theme likely to be continued in the emerging Local Plan Review. There is also policy T18 of the Structure Plan, which requires development to make adequate provision for parking.
7. Having regard to these policies, and to all that I have heard and read in connection with this appeal, I consider that there are 2 main issues: firstly, the implications of the use in terms of traffic, and, secondly, the effect in terms of the appearance of the site.
8. I agree that the tone of the relevant policies in the Development Plan is to encourage employment uses; that is, of course, in line with national policy, expressed particularly in PPG4 and PPG7. However, it is explicit in all these policies that such support is conditional. The local policies make it clear that there must be no overriding objections on other grounds, for example, amenity or traffic, whilst PPG4 says that "planning permission should normally be granted unless there are specific and significant objections ...".
9. The Council's objection in traffic terms is that the site has been so intensively used, as a result of the increased car sales use, that little space remains for parking generated by the activities here, or for the manoeuvring of vehicles attracted to the site. At the time of my visit, that was not so, but I must have regard to the situation that gave rise to the enforcement notice, rather than what may well be some temporary reduction in the use. I have to say that the Council's allegation is supported by the ample photographic evidence before me, as well as by the representations of local people. I have no doubt that it has resulted in some parking taking place in the street, and vehicles, particularly the larger vehicles visiting the site, having to reverse into, or, more likely, out of, the site. Such

activities will be detrimental to the flow of traffic along this main village street (which appears to carry much through traffic), and, indeed, cause a significant hazard to other road users.

10. In addition, I do not doubt that the intensive use of the site frontage for the display of cars for sale, complete with stickers and other advertising paraphernalia associated with car sales use, gives an unattractive appearance to this part of Station Road. This is not an entirely residential street, but housing does predominate, and this part of the road does have a reasonably pleasant and uncluttered air, which would be spoilt by the intensive use apparent from photographs and the representations of local people. Other amenity objections relating to noise and disturbance (from lighting, alarms, etc) have also been raised, but, bearing in mind the lawful use of this site as a commercial garage, I do not find such objections to be compelling.
11. Thus, the use is not in accord with policy T18, and, in my view, the objections, on traffic and visual amenity grounds, are sufficiently weighty to override the normal support for employment uses in locations such as this. It is said for the appellant that the viability of his business at the site is dependent on a high level of car sales, but, with no detailed evidence before me to support such a statement, it remains an assertion to which I can give little weight. In any event, the evidence of the harm done by this use is tangible and compelling.
12. Mindful that the Council is not opposed to a car sales use here *per se*, only to the scale of that use, I have considered whether permission on the deemed application inherent in this appeal could be granted, but subject to conditions to ensure an acceptable use of the site. However, an application aimed at achieving this is already before the Council, and it appears that there remains conflict between the appellant and the Council as to the level of car sales activity which can be accepted here. It would not be right for me to pre-empt any decision that the Council may make in this matter. If that planning application is not resolved to the appellant's satisfaction, he will have a right of appeal. In the meantime, my conclusion is that the appeal against this enforcement notice on ground (a) fails.

The appeal on ground (f)

13. It is argued for the appellant that the requirement to cease car sales entirely fails to recognise either the authorised level of car sales at this site, or a level that would normally be regarded as being appropriate to a commercial garage use. Moreover, such a requirement is inconsistent with the Council's acceptance that some car sales can be acceptably carried on here.
14. The Council's response is that the requirement is not excessive. It has to be borne in mind that there have been a number of unsuccessful attempts over several years to reach a satisfactory resolution to the question of the use of this land, and there is little prospect of an early agreement on the matter.
15. The breach of planning control here has been the change of use from a garage operation involving repair and servicing activities to a use which includes also a very substantial level of car sales. I have established that that has been a material change of use for which planning permission has not been obtained. Given that the appeal on ground (a) has also failed, the remedy has to be the cessation of that car sales use which has brought about the change of use. If the lawful use of the premises includes a low level of incidental car sales, then that would presumably not be affected. Therefore, my conclusion is that the requirements of the notice are not excessive, and so the appeal on ground (f) fails.



The appeal on ground (g)

16. The appellant's case is that even the dispersal of the cars displayed for sale would be likely to take more than 8 weeks. But, more importantly, since the cessation of the car sales use would jeopardise the entire business carried on at this site, time would be needed to explore the way forward for the business. This may entail acquiring new premises, obtaining planning permission, etc. A period of 12 months is sought.
17. The Council disagrees. It is pointed out that it has been several years since the use of this site was first investigated, and the appellant has been personally involved in discussions since February 1999. There has been ample time for the appellant to make contingency plans. The on-going harm in terms of traffic safety and amenity warrants urgent action.
18. I heard that the appellant now has access to other land in Cricklade, so I am not persuaded that it would too difficult to remove the cars displayed for sale within a period of 8 weeks. Once that is done, and assuming they do not return or are replaced with others, the notice is, effectively, complied with. I accept that cessation of the car sales use here may necessitate a re-evaluation of the business. But, whilst an appellant is entitled to hope for success on appeal, it would have been prudent to, at the least, contemplate the future, should an appeal not be successful. Of course, if the way forward involves further land acquisition and/or planning permission, it may well take much more than 8 weeks to resolve the matter fully. But there is a pressing need for this breach of planning control to be remedied; moreover, I fear that to increase the compliance period to 12 months may not instil the necessary sense of urgency into the proceedings. In my view, a period of 4 months is a reasonable compromise. I shall vary the notice accordingly.

Other matters

19. I have taken into account all other points raised in this appeal, but none outweigh the considerations set out above which have led to my conclusions.
20. This decision is issued as the determination of the appeal; particulars of the rights of appeal to the High Court against the decision are enclosed for those concerned.



Inspector

APPEAL DECISION

THOSE WHO SPOKE AT THE HEARING

FOR THE APPELLANT:

Mr B G Acton

DPDS Consulting Group, of Old Bank House, 5 Devizes Road, Swindon

Mr N B Moore

N B Moore Cars

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Edmonds

Enforcement Planner, North Wiltshire District Council

Mr I Postlethwaite

Highway Engineer, Wiltshire County Council

FOR THE PARISH COUNCIL

Mr A Price

Purton Parish Council

OTHER INTERESTED PERSONS:

Mr J R Freeth

Planning Consultant, of 83 Sharland Close, Grove, Wantage, OX12 0AF

(representing Mr & Mrs Holton)

Mrs Holton

56 Station Road, Purton, Swindon

Mr G Ling

3 Locks Lane, Purton, Swindon

Mr I Barstow

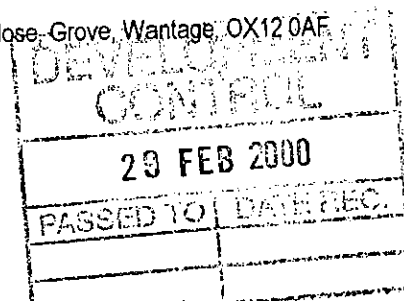
57 Station Road, Purton, Swindon

Ms L Glynne-Jones

15 Station Road, Purton, Swindon

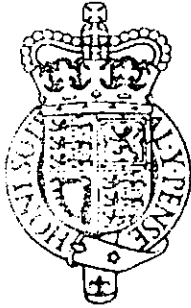
Mr A Eastwood

Hon Sec, Purton FC, 12 Hylder Close, Swindon SN2 2SL



FURTHER DOCUMENTS AT THE HEARING

- | | | |
|----------|---|--|
| Document | 1 | List of persons present at the hearing |
| Document | 2 | Letter from Purton Football Club |
| Document | 3 | Fire Brigade award to N B Moore Cars |
| Document | 4 | Plan showing layout of site |
| Document | 5 | Car Transporter data from Mr Postlethwaite |



Costs Decision

hearing held on Tuesday 18 January 2000

by C. F. Frewick ARICS

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

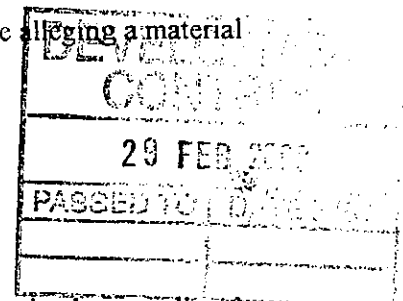
The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

25 FEB 2000

Appeal: T/APP/J3910/C/99/1026972

- The application is made under the Town and Country Planning Act 1990, Sections 174 & 175(7), and the Local Government Act 1972, Section 250(5).
- The application is made by North Wiltshire District Council for a partial award of costs against N B Moore Cars.
- The site is located at Purton Garage, Station Road, Purton.
- The hearing was in connection with an appeal against an enforcement notice alleging a material change of use of these garage premises.

Decision: The application for an award of costs is refused.



The Case for the Council

1. Firstly, although there was an appeal on ground (d), it was withdrawn in the appellant's pre-hearing statement, received by the Council only 5 working days before the hearing. The reason given for the lateness of this action was that the Council had only recently provided copies of certain letters and photographs relating to the matter. However, these documents were readily available for inspection at the Council offices. Indeed, personnel from the appellant's agents visited the office in July 1999 and inspected all the relevant files on Purton Garage. The matters at issue should have been apparent then. The matter of the ground (d) appeal was discussed at a meeting in November 1999, but it did not result in a prompt withdrawal of this ground. As a result, the Council had to research this aspect in considerable detail for its statement.
2. It is also argued that the appeal on ground (c) was also unreasonable and frivolous. It was clear that car sales had never been an authorised and implemented use. The appellant relied on flimsy supposition to argue his case. Again, the Council was obliged to undertake particularly thorough research into the same records that were available to the appellant.
3. In short, the appellant appealed on legal grounds that had little or no prospect of success, and this resulted in abortive or unnecessary expense to the Council in contesting these grounds of appeal.

The Case for the Appellant

4. In response, it is pointed out that Annex 2 of the Circular gives examples of actions which may give rise to an award of costs against an appellant. Of these, only criteria (2) and (5) can conceivably be relevant here; these both suggest that the additional expense has arisen out of uncooperative behaviour. However, in this case the appellant has constantly sought to mutually agree a solution to the matter. He initiated a site meeting in November 1999, submitted a planning application in December, and, before Christmas, sought a deferral of

the hearing in the belief that a mutually acceptable solution could be found, a course which the Council seemed to agree with.

5. In fact, the detailed history of the site was not clear from the initial inspection of the files. All that was clear was that car sales had been conducted on the site in the past, and that the 1997 permission appeared to accept that. Therefore, it was reasonable to include ground (d). The position had to be reviewed in the light of the detailed evidence produced by the Council for the hearing, and ground (d) was then withdrawn in ample time before the hearing.
6. The Council says that this additional evidence had been "readily available" to the appellant, but that presumably means that it was readily available to the Council, and therefore obtaining it cannot have involved the Council in additional expense. It is submitted that this site history would, in any event, have been an integral part of the Council's work in determining that enforcement action was justified.
7. The application for costs in relation to ground (c) appears to have been added as an afterthought. The appellant has put his case at the hearing that planning permission is not required, and to appeal on this ground cannot be regarded as "frivolous".

The Council's response

8. It must be borne in mind that it is not for the Council to prove that a change of use has taken place. The detailed research into the matter was only necessary because there was a ground (d) appeal. It is clear that the appellant had no proper reasons to support the appeal on ground (d) in the first place, nor do there appear to be proper reasons for the late withdrawal.
9. It is accepted by the Council that the case for an award of costs is less clear-cut in respect of ground (c). Nevertheless, the arguments relied upon by the appellant – the Committee report and the approved plan – are not material to the case.

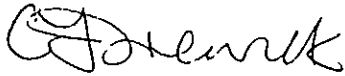
Inspector's Conclusions

10. I have dealt with this application for costs in accordance with the policy guidance in Circular 8/93, and having regard to all relevant circumstances. Irrespective of the appeal outcome, costs may only be awarded against a party who behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
11. I am not convinced that the appellant acted unreasonably in initially pursuing an appeal on ground (d). Perhaps the appeal should have been withdrawn as early as June 1999, when the appellant's agents examined the files. But I have no information on what details were available on that inspection, or how clear it would have been to the person carrying out such an inspection whether ground (d) could effectively be pursued. It is difficult therefore for me to conclude that it was unreasonable not to withdraw that part of the appeal at that stage. Moreover, when the relevant evidence was presented, as cogently as it was by the Council, in its pre-hearing statement, the appellant re-assessed the situation, and, within a matter of only a few days of receiving the statement, withdrew that ground. I am not persuaded that that was unreasonable behaviour on the part of the appellant.
12. Nor do I find compelling the Council's case for an award of costs in relation to the appeal on ground (c). In my decision on the appeal itself, I have dealt with the arguments that the appellant put forward under this heading, and whilst they have not persuaded me that

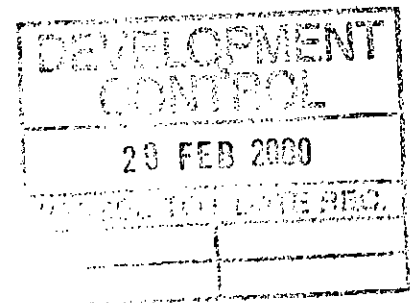
APPEAL DECISION

planning permission is not required, that is not to say they are "frivolous", as the Council suggests. They are reasonable points for an appellant to make in the circumstances, and I see no basis there for an award of costs.

13. Therefore, my conclusion is that the appellant has not acted unreasonably in this matter, and an award of costs is not justified.



Inspector



The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 - section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

1. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.
2. If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge of the Supreme Court Costs Office for a detailed assessment.
3. Before any disputed costs can be referred for a detailed assessment the costs award must first be converted into an order of the High Court.
4. No interest can be claimed on the costs unless, and until, a High Court order has been made. And interest will only run from the date of the High Court order.
5. Application for detailed assessment is in two stages. The first, described in paragraph 6 below, is to apply to have the costs award made an order of the High Court. The second stage, described in paragraph 7 below, is to apply to begin the assessment proceedings.
6. The procedure for applying to have the costs award made an order of the High Court is as follows:-
 - (a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 1972, and enclosing the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed.
 - (b) An order making the costs award an order of the High Court will then be sent to you.
7. Once the costs award is made an order of the High Court, the proceedings for detailed assessment must be begun within 3 months. The procedure is as follows:-
 - (a) Take or send the original of the High Court order, together with a certified true copy of that order, to the Chief Clerk, Supreme Court Costs Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.
 - (b) The original of the High Court order will be returned together with the name

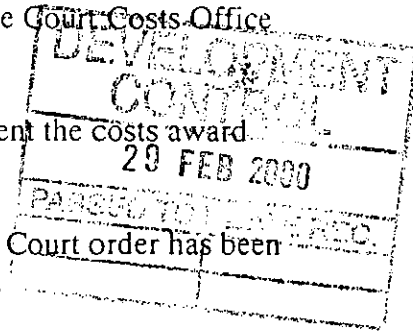
The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 - section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

1. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.
2. If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge of the Supreme Court Costs Office for a detailed assessment.
3. Before any disputed costs can be referred for a detailed assessment the costs award must first be converted into an order of the High Court.
4. No interest can be claimed on the costs unless, and until, a High Court order has been made. And interest will only run from the date of the High Court order.
5. Application for detailed assessment is in two stages. The first, described in paragraph 6 below, is to apply to have the costs award made an order of the High Court. The second stage, described in paragraph 7 below, is to apply to begin the assessment proceedings.
6. The procedure for applying to have the costs award made an order of the High Court is as follows:-
 - (a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 1972, and enclosing the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed.
 - (b) An order making the costs award an order of the High Court will then be sent to you.
7. Once the costs award is made an order of the High Court, the proceedings for detailed assessment must be begun within 3 months. The procedure is as follows:-
 - (a) Take or send the original of the High Court order, together with a certified true copy of that order, to the Chief Clerk, Supreme Court Costs Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.
 - (b) The original of the High Court order will be returned together with the name



of the Costs Officer or Costs Judge who will deal with the case.

8. The Costs Officer or Costs Judge may disallow costs and/or interest on such costs in the event of any delay in starting or conducting the proceedings.

9. This process is governed by Part 47 of the Civil Procedure Rules which came into effect on 26 April 1999. You can buy these Rules from the Stationery Office (formerly HMSO) bookshops or look at copies in your local library or council offices.

Please note:

We are currently revising this guidance note in the light of the Woolf Reforms and new Civil Procedure Rules, which are intended to improve and streamline procedures for litigation in the Courts. As part of this we are consulting outside the Planning Inspectorate.

Meanwhile, this is a latest version of the note (previously called "guidance note on taxation procedure"). It has been updated to use plain English for terms previously used before the Woolf Reforms and new Rules.

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

You may wish to consider taking legal advice before embarking on a challenge provided for guidance only.

The following notes are

28 FEB 2010

PASSED TO

CHALLENGES UNDER SECTION 289

Section 289(1) relates to decisions on enforcement appeals. The appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 289 may only proceed with the *leave* (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the appeal decision, unless the period is extended by the Court.

If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Decisions on appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 or by judicial review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s78 or s195 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- i) the decision is not within the powers of the Act; or
- ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by that Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under section 288 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. Leave of the High Court is not required for this type of challenge.

ADVICE

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

In an inquiry case, any person who is entitled to be notified of the decision has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents are not normally refused but please note that our appeal files are usually destroyed one year after the decision is issued. Please make your request to Room 11/00, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

You can make a written complaint about the decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal to the Complaints Officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. We aim to send you a full reply within 15 days of receipt of your letter. Please note that, once the decision has been issued, we cannot reconsider any appeal or the decision. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library) although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the outcome of the appeal decision.

E97.0141

Chief Executive: Bob Marshall

Director: David Button
Director: Bob Gwilliam
Director: Jeff Penfold

Replies to:
P.L. Jeremiah LL.B.
Solicitor to the Council
Monkton Park
CHIPPENHAM
Wiltshire SN15 1ER

Tel: Chippenham (01249) 706593
Fax: Chippenham (01249) 443152
DX No. 34208

Enquiries to: R J Packer
Our Ref: RJP/CG E97.0141
Your Ref:

*North
Wiltshire
District
Council*

*Planning
Office*

1 July, 1999



Dear Sir

**ENFORCEMENT NOTICE - LAND AT PURTON GARAGE,
STATION ROAD, PURTON, WILTSHIRE**

I refer to the Enforcement Notice recently served upon you in respect of the above land. The Council has issued a replacement Enforcement Notice, copies of which I now enclose by way of service, in view of your interest in the land. The Enforcement Notice previously served upon you is withdrawn.

Unless an appeal is made, as set out in the Annex, the Notice will take effect on the date shown in Paragraph 7 of the Notice and you must ensure that the required steps for which you may be held responsible are taken within the period or periods specified.

Yours faithfully

f SOLICITOR TO THE COUNCIL

To: Mrs P J Chopping
Russell House
117 - 119 Oxford Road
Reading
RG1 7UH

Lloyds TSB Mortgage Unit
P O Box 74
Kingsway
Scunthorpe
North Lincs
DN17 1AP

Mr Nick Moore
N B Moore Cars
Purton Garage
High Street
Purton
Wiltshire



INVESTOR IN PEOPLE

E97.0141

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1990
(as amended by the Planning and Compensation Act 1991)

DEVELOPMENT CONTROL	
- 9 JUL 1999	
PASSED TO	DATE REC

ENFORCEMENT NOTICE

ISSUED BY: North Wiltshire District Council

1. **THIS NOTICE** is issued by the Council because it appears to them that there has been a breach of planning control, within paragraph (a) of section 171A(1) of the above Act, at the land described below. They consider that it is expedient to issue this notice, having regard to the provisions of the development plan and to other material planning considerations. The Annex at the end of the notice and the enclosures to which it refers contain important additional information.
2. **THE LAND TO WHICH THE NOTICE RELATES**

Land at Purton Garage, Station Road, Purton, shown shaded on the attached plan.
3. **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

Without planning permission, change of use of the land from use as a motor garage offering vehicle repair and servicing facilities to a mixed use for that purpose and for the preparation, display and sale of motor vehicles.
4. **REASONS FOR ISSUING THIS NOTICE**

It appears to the Council that the above breach of planning control has occurred within the last ten years. The operation of the vehicle sales and display for sale activities, in conjunction with the other vehicle engineering activities on the site, has resulted in an over-intensive form of development which cannot reasonably be accommodated on the available land, and which in particular has resulted in inadequate on-site vehicle parking, loading and unloading, manoeuvring and circulation capabilities. The development has consequently resulted in excessive on-street parking and servicing, which is seriously detrimental to the safety and convenience of users of the highway, visually intrusive, and causes unreasonable disturbance to the residential amenity of neighbouring households. Additionally, the cramped and jumbled appearance of the garage premises is incongruous with, and detrimental to, the character and appearance of the local environment.

5. WHAT YOU ARE REQUIRED TO DO

Stop using the land for the sale and display of motor vehicles and remove from the land all motor vehicles brought on to the land for that purpose.

6. TIME FOR COMPLIANCE

Eight weeks after this Notice takes effect

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 6th August 1999 unless an appeal is made against it beforehand.

Dated : 1 July, 1999

Signed : *P. L. Seremiah*

on behalf of North Wiltshire District Council



ANNEX

YOUR RIGHT OF APPEAL

You can appeal against this notice, but any appeal must be received, or posted in time to be received, by the Secretary of State before the date specified in paragraph 7 of the notice. The enclosed booklet "Enforcement Notice Appeals - A Guide to Procedure" sets out your rights. You may use the enclosed appeal forms.

- (a) One is for you to send to the Secretary of State if you decide to appeal, together with a copy of this enforcement notice which is enclosed.
- (b) The second copy of the appeal form should be sent to the Council.
- (c) The third copy is for your own records.

WHAT HAPPENS IF YOU DO NOT APPEAL

If you do not appeal against this enforcement notice, it will take effect on the date specified in paragraph 7 of the notice and you must then ensure that the required steps for complying with it, for which you may be held responsible, are taken within the period specified in paragraph 6 of the notice. Failure to comply with an enforcement notice which has taken effect can result in prosecution and/or remedial action by the Council.



North Wiltshire District Council

ENFORCEMENT NOTICE

Under S.172 of the Town &
Country Planning Act 1990

SITE PLAN

PROPERTY ADDRESS:
Land at Purton Garage
Station Road
Purton Wiltshire

REFERENCE:
E.97.0140

DESCRIPTION:

Unauthorised change of use of
land from use as a motor vehicle
garage offering vehicle repair
and servicing facilities, to a
mixed use for that purpose and
for the preparation, display and
sale of motor vehicles.

KEY:

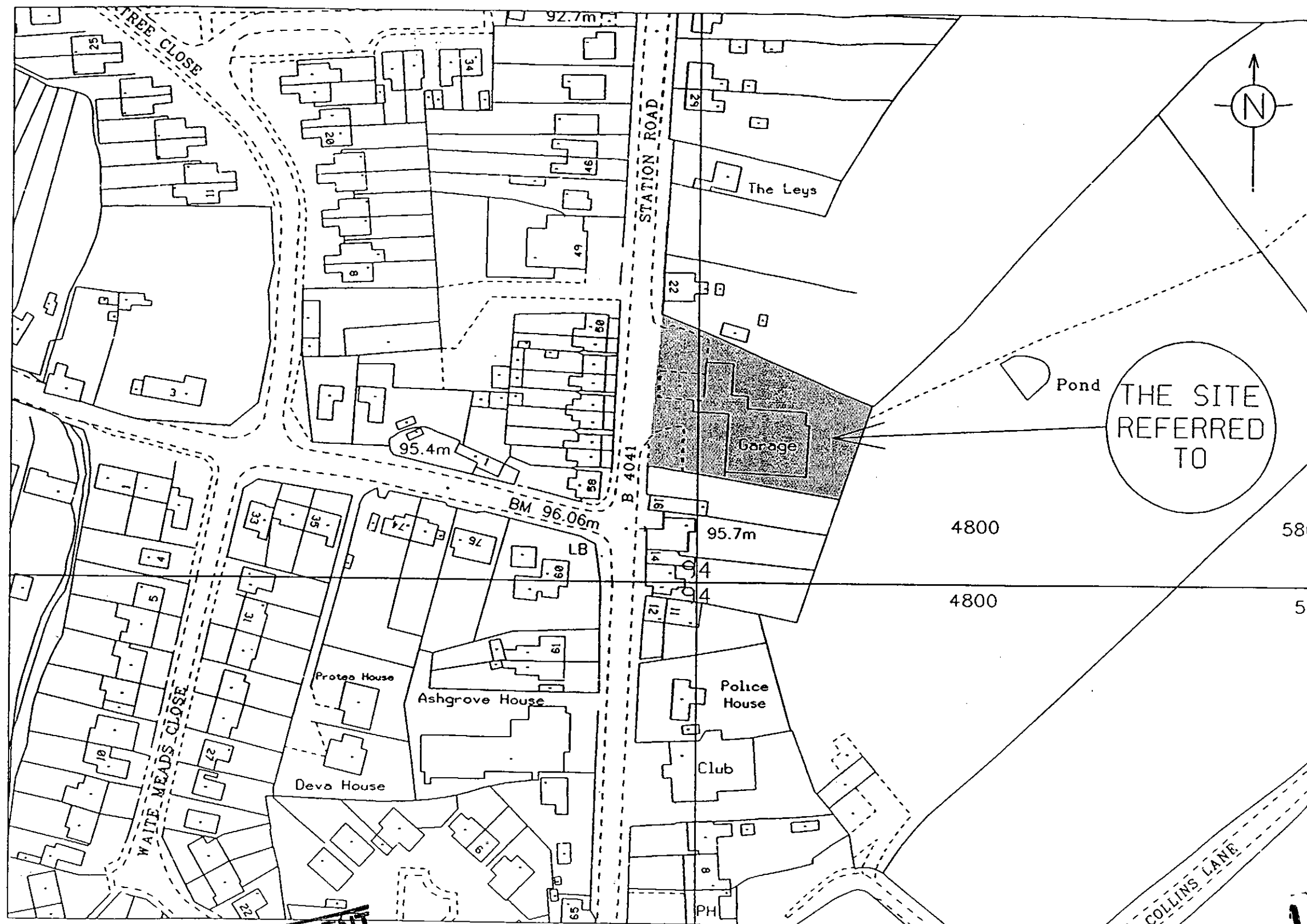
Site referred to
stippled grey

OFFICER DEALING - DRE

SCALE: 1:1250

GRID REF: SU0988

DATE: 11/06/99



**DEVELOPMENT
CONTROL**
- 0 111 1999
DAF

REPRODUCED FROM THE ORDNANCE SURVEY MAPPING WITH THE PERMISSION OF THE CONTROLLER OF HER MAJESTY'S STATIONERY OFFICE
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THIS COPY HAS BEEN PRODUCED SPECIFICALLY FOR PLANNING AND BUILDING CONTROL PURPOSES ONLY. NO FURTHER COPIES MAY BE MADE
NORTH WILTSHIRE DISTRICT COUNCIL - LA078840 1997

Chief Executive: Bob Marshall

Director: David Button
Director: Bob Gwilliam
Director: Jeff Penfold

Replies to:
P.L. Jeremiah LL.B.
Solicitor to the Council
Monkton Park
CHIPPENHAM
Wiltshire SN15 1ER

Tel: Chippenham (01249) 706593
Fax: Chippenham (01249) 443152
DX No. 34208

Enquiries to: R J Packer
Our Ref: RJPICG E97.0141
Your Ref:

*North
Wiltshire
District
Council*

D. Auler



July, 1999

Dear Sir

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STATION ROAD, PURTON, WILTSHIRE**

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INVESTORS PEOPLE

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E97.0141

DEVELOPMENT CONTROL	
- 9 JUL 1993	
PASSED TO	DATE REC.

5. WHAT YOU ARE REQUIRED TO DO

Stop using the land for the sale and display of motor vehicles and remove from the land all motor vehicles brought on to the land for that purpose.

6. TIME FOR COMPLIANCE

Eight weeks after this Notice takes effect

7. WHEN THIS NOTICE TAKES EFFECT

This notice takes effect on 6th August 1999 unless an appeal is made against it beforehand.

Dated : 1 July, 1999

Signed : *P. L. Jeremiah*

on behalf of North Wiltshire District Council



ANNEX

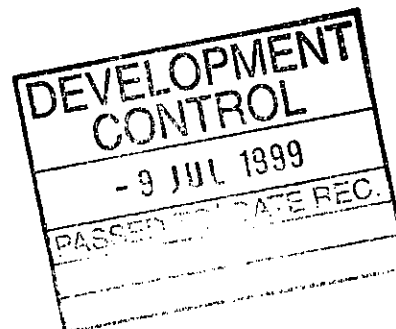
YOUR RIGHT OF APPEAL

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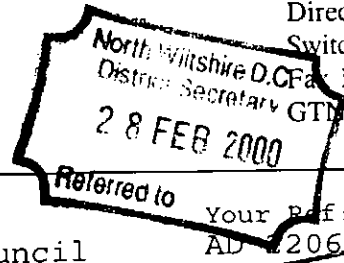
The Planning Inspectorate

E.97.014-1

Room 1111(3)
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line
Switchboard
No

0117-9878097
0117-9878000
0117-9878782
1374-8097



Mrs C Garrett
North Wilts District Council
Solicitor To The Council
Monkton Park
Chippenham
Wilts
SN15 1ER

Your Ref:
AD 206

Our Ref:
APP/J3910/C/99/1026972

25 February 2000

*Planning
Office*

Dear Madam

TOWN & COUNTRY PLANNING ACT 1990
APPEAL BY NB MOORE CARS
SITE AT PURTON GARAGE, STATION ROAD, PURTON

I enclose a copy of our Inspector's decision letter.

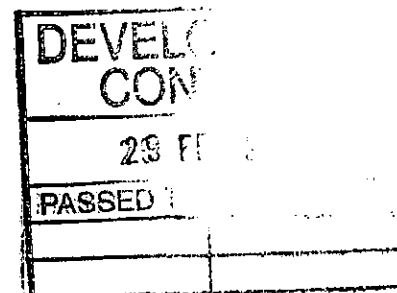
Yours faithfully

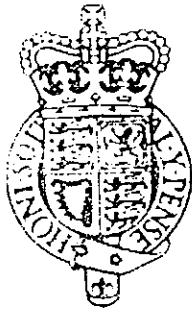
P. D. Coombs

fl Mrs K Vicker

212A

ENC1





Appeal Decision

hearing held on Tuesday 18 January 2000

by C F Trewick ARICS

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

25 FEB 2000

Appeal: T/APP/J3910/C/99/1026972

- The appeal is made under Section 174 of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991, against an enforcement notice.
- The appeal is brought by N B Moore Cars against North Wiltshire District Council.
- The site is located at Purton Garage, Station Road, Purton.
- The Council's reference is N/99/02012/ENF.
- The notice was issued on 1 July 1999.
- The breach of planning control as alleged in the notice is: without planning permission, change of use of the land from use as a motor garage offering vehicle repair and servicing facilities to a mixed use for that purpose and for the preparation, display and sale of motor vehicles.
- The requirements of the notice are: stop using the land for the sale and display of motor vehicles and remove from the land all motor vehicles brought on to the land for that purpose.
- The period for compliance with the requirements is: eight weeks.
- The appeal was made on the grounds set out in section 174(2)(a), (c), (d), (f) & (g) of the 1990 Act. However, prior to the hearing, ground (d) was withdrawn.

Decision: The enforcement notice is varied by extending the period for compliance to four months. Subject thereto, the appeal is dismissed. I uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the amended Act.

Preliminary matters

1. At the hearing, an application was made by the Council for a partial award of costs against the appellant; this is the subject of a separate letter.

The appeal on ground (c)

2. For the appellant, it is argued that it can be expected that garage premises such as these would have a car sales element, and, in this case, there has been a car sales use carried on here for many years. Moreover, this has been accepted by the Council. The planning permission granted by the Council in 1987 related to a plan which clearly indicated a "car showroom" and a "car display area" within the site. Moreover, the officers' report to Planning Committee, dated 28 July 1999, states that the lawful use of the site includes car sales. Even if the present car sales use is greater than that which previously existed, mere intensification does not constitute a change of use.
3. The Council's response is that the 1987 permission was for the erection of a workshop building, and there was no reference in the application or the permission to a car sales use. The plan was one which had been used for previous applications, and was merely a base plan used for plotting the proposed workshop building. It cannot be inferred from that that there was a car sales use. In 1997, the owner of the site between 1983 and 1993 affirmed

DEVELOPMENT CONTROL	
29 FEB 2000	
PASSED TO	DATE REC.

that any car sales was "to a limited degree", "incidental to the main garage business", and involved only "some 3 or 4 vehicles ... from the gravelled surface area at any one time". The estate agent's particulars in 1993 made no reference to car sales, and, in a letter in 1994, relating to the apparent use of the car showroom as a workshop, the new owner, Mr Chopping, said that "to the best of our knowledge it has never been used as a showroom".

4. Local residents say that they have not been aware of any car sales operation being carried on here, until the petrol sales ceased in 1997; then the site began to be used intensively for car sales.
5. To my mind, the balance of probability is that there has been some car sales within this site for a number of years, but that until 1997 it was on a very small scale, such as to be only incidental to the main garage use. In 1997, all the evidence points to there being a significant change in the use of the site. The petrol sales ceased, and the car sales took over virtually all the frontage of the site (as well as involving other parts of the site). To my mind, the change in character of the site was so dramatic as to result in a material change of use of the premises. No planning permission has been obtained for this change of use. Thus, there has been a breach of planning control. The appeal on ground (c) fails.

The appeal on ground (a)

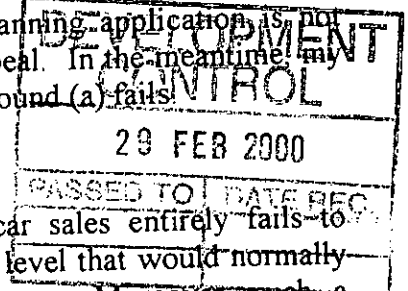
6. Section 54A of the Town and Country Planning Act 1990 requires that, where an adopted or approved Development Plan contains relevant policies, applications and appeals shall be determined in accordance with the Plan, unless material considerations indicate otherwise. Here, the Development Plan comprises the North East Wiltshire Structure Plan and the North Wiltshire Local Plan. My attention has been drawn to policies in these Plans relating to employment matters. Policies E12 and E13A of the Structure Plan encourage development which provides employment, both generally and specifically within villages, and that is echoed by policy E14 in the Local Plan. It is a theme likely to be continued in the emerging Local Plan Review. There is also policy T18 of the Structure Plan, which requires development to make adequate provision for parking.
7. Having regard to these policies, and to all that I have heard and read in connection with this appeal, I consider that there are 2 main issues: firstly, the implications of the use in terms of traffic, and, secondly, the effect in terms of the appearance of the site.
8. I agree that the tone of the relevant policies in the Development Plan is to encourage employment uses; that is, of course, in line with national policy, expressed particularly in PPG4 and PPG7. However, it is explicit in all these policies that such support is conditional. The local policies make it clear that there must be no overriding objections on other grounds, for example, amenity or traffic, whilst PPG4 says that "planning permission should normally be granted unless there are specific and significant objections ...".
9. The Council's objection in traffic terms is that the site has been so intensively used, as a result of the increased car sales use, that little space remains for parking generated by the activities here, or for the manoeuvring of vehicles attracted to the site. At the time of my visit, that was not so, but I must have regard to the situation that gave rise to the enforcement notice, rather than what may well be some temporary reduction in the use. I have to say that the Council's allegation is supported by the ample photographic evidence before me, as well as by the representations of local people. I have no doubt that it has resulted in some parking taking place in the street, and vehicles, particularly the larger vehicles visiting the site, having to reverse into, or, more likely, out of, the site. Such

activities will be detrimental to the flow of traffic along this main village street (which appears to carry much through traffic), and, indeed, cause a significant hazard to other road users.

10. In addition, I do not doubt that the intensive use of the site frontage for the display of cars for sale, complete with stickers and other advertising paraphernalia associated with car sales use, gives an unattractive appearance to this part of Station Road. This is not an entirely residential street, but housing does predominate, and this part of the road does have a reasonably pleasant and uncluttered air, which would be spoilt by the intensive use apparent from photographs and the representations of local people. Other amenity objections relating to noise and disturbance (from lighting, alarms, etc) have also been raised, but, bearing in mind the lawful use of this site as a commercial garage, I do not find such objections to be compelling.
11. Thus, the use is not in accord with policy T18, and, in my view, the objections, on traffic and visual amenity grounds, are sufficiently weighty to override the normal support for employment uses in locations such as this. It is said for the appellant that the viability of his business at the site is dependent on a high level of car sales, but, with no detailed evidence before me to support such a statement, it remains an assertion to which I can give little weight. In any event, the evidence of the harm done by this use is tangible and compelling.
12. Mindful that the Council is not opposed to a car sales use here *per se*, only to the scale of that use, I have considered whether permission on the deemed application inherent in this appeal could be granted, but subject to conditions to ensure an acceptable use of the site. However, an application aimed at achieving this is already before the Council, and it appears that there remains conflict between the appellant and the Council as to the level of car sales activity which can be accepted here. It would not be right for me to pre-empt any decision that the Council may make in this matter. If that planning application is not resolved to the appellant's satisfaction, he will have a right of appeal. In the meantime, my conclusion is that the appeal against this enforcement notice on ground (a) fails.

The appeal on ground (f)

13. It is argued for the appellant that the requirement to cease car sales entirely fails to recognise either the authorised level of car sales at this site, or a level that would normally be regarded as being appropriate to a commercial garage use. Moreover, such a requirement is inconsistent with the Council's acceptance that some car sales can be acceptably carried on here.
14. The Council's response is that the requirement is not excessive. It has to be borne in mind that there have been a number of unsuccessful attempts over several years to reach a satisfactory resolution to the question of the use of this land, and there is little prospect of an early agreement on the matter.
15. The breach of planning control here has been the change of use from a garage operation involving repair and servicing activities to a use which includes also a very substantial level of car sales. I have established that that has been a material change of use for which planning permission has not been obtained. Given that the appeal on ground (a) has also failed, the remedy has to be the cessation of that car sales use which has brought about the change of use. If the lawful use of the premises includes a low level of incidental car sales, then that would presumably not be affected. Therefore, my conclusion is that the requirements of the notice are not excessive, and so the appeal on ground (f) fails.



The appeal on ground (g)

16. The appellant's case is that even the dispersal of the cars displayed for sale would be likely to take more than 8 weeks. But, more importantly, since the cessation of the car sales use would jeopardise the entire business carried on at this site, time would be needed to explore the way forward for the business. This may entail acquiring new premises, obtaining planning permission, etc. A period of 12 months is sought.
17. The Council disagrees. It is pointed out that it has been several years since the use of this site was first investigated, and the appellant has been personally involved in discussions since February 1999. There has been ample time for the appellant to make contingency plans. The on-going harm in terms of traffic safety and amenity warrants urgent action.
18. I heard that the appellant now has access to other land in Cricklade, so I am not persuaded that it would too difficult to remove the cars displayed for sale within a period of 8 weeks. Once that is done, and assuming they do not return or are replaced with others, the notice is, effectively, complied with. I accept that cessation of the car sales use here may necessitate a re-evaluation of the business. But, whilst an appellant is entitled to hope for success on appeal, it would have been prudent to, at the least, contemplate the future, should an appeal not be successful. Of course, if the way forward involves further land acquisition and/or planning permission, it may well take much more than 8 weeks to resolve the matter fully. But there is a pressing need for this breach of planning control to be remedied; moreover, I fear that to increase the compliance period to 12 months may not instil the necessary sense of urgency into the proceedings. In my view, a period of 4 months is a reasonable compromise. I shall vary the notice accordingly.

Other matters

19. I have taken into account all other points raised in this appeal, but none outweigh the considerations set out above which have led to my conclusions.
20. This decision is issued as the determination of the appeal; particulars of the rights of appeal to the High Court against the decision are enclosed for those concerned.

Jonewick

Inspector

APPEAL DECISION

THOSE WHO SPOKE AT THE HEARING

FOR THE APPELLANT:

Mr B G Acton

Mr N B Moore

DPDS Consulting Group, of Old Bank House, 5 Devizes Road, Swindon

N B Moore Cars

FOR THE LOCAL PLANNING AUTHORITY:

Mr D Edmonds

Mr I Postlethwaite

Enforcement Planner, North Wiltshire District Council

Highway Engineer, Wiltshire County Council

FOR THE PARISH COUNCIL

Mr A Price

Purton Parish Council

OTHER INTERESTED PERSONS:

Mr J R Freeth

(representing Mr & Mrs Holton)

Mrs Holton

Mr G Ling

Mr I Barstow

Ms L Glynne-Jones

Mr A Eastwood

Planning Consultant, of 83 Sharland Close, Grove, Wantage, OX12 0AF

56 Station Road, Purton, Swindon

3 Locks Lane, Purton, Swindon

57 Station Road, Purton, Swindon

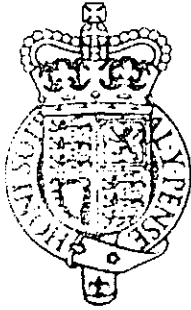
15 Station Road, Purton, Swindon

Hon Sec, Purton FC, 12 Hylder Close, Swindon SN2 2SL

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FURTHER DOCUMENTS AT THE HEARING

Document	1	List of persons present at the hearing
Document	2	Letter from Purton Football Club
Document	3	Fire Brigade award to N B Moore Cars
Document	4	Plan showing layout of site
Document	5	Car Transporter data from Mr Postlethwaite



Costs Decision

hearing held on Tuesday 18 January 2000

by C. F. Frewick ARICS

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

25 FEB 2000

Appeal: T/APP/J3910/C/99/1026972

- The application is made under the Town and Country Planning Act 1990, Sections 174 & 175(7), and the Local Government Act 1972, Section 250(5).
- The application is made by North Wiltshire District Council for a partial award of costs against N B Moore Cars.
- The site is located at Purton Garage, Station Road, Purton.
- The hearing was in connection with an appeal against an enforcement notice alleging a material change of use of these garage premises.

Decision: The application for an award of costs is refused.

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The Case for the Council

1. Firstly, although there was an appeal on ground (d), it was withdrawn in the appellant's pre-hearing statement, received by the Council only 5 working days before the hearing. The reason given for the lateness of this action was that the Council had only recently provided copies of certain letters and photographs relating to the matter. However, these documents were readily available for inspection at the Council offices. Indeed, personnel from the appellant's agents visited the office in July 1999 and inspected all the relevant files on Purton Garage. The matters at issue should have been apparent then. The matter of the ground (d) appeal was discussed at a meeting in November 1999, but it did not result in a prompt withdrawal of this ground. As a result, the Council had to research this aspect in considerable detail for its statement.
2. It is also argued that the appeal on ground (c) was also unreasonable and frivolous. It was clear that car sales had never been an authorised and implemented use. The appellant relied on flimsy supposition to argue his case. Again, the Council was obliged to undertake particularly thorough research into the same records that were available to the appellant.
3. In short, the appellant appealed on legal grounds that had little or no prospect of success, and this resulted in abortive or unnecessary expense to the Council in contesting these grounds of appeal.

The Case for the Appellant

4. In response, it is pointed out that Annex 2 of the Circular gives examples of actions which may give rise to an award of costs against an appellant. Of these, only criteria (2) and (5) can conceivably be relevant here; these both suggest that the additional expense has arisen out of uncooperative behaviour. However, in this case the appellant has constantly sought to mutually agree a solution to the matter. He initiated a site meeting in November 1999, submitted a planning application in December, and, before Christmas, sought a deferral of

the hearing in the belief that a mutually acceptable solution could be found, a course which the Council seemed to agree with.

5. In fact, the detailed history of the site was not clear from the initial inspection of the files. All that was clear was that car sales had been conducted on the site in the past, and that the 1997 permission appeared to accept that. Therefore, it was reasonable to include ground (d). The position had to be reviewed in the light of the detailed evidence produced by the Council for the hearing, and ground (d) was then withdrawn in ample time before the hearing.
6. The Council says that this additional evidence had been "readily available" to the appellant, but that presumably means that it was readily available to the Council, and therefore obtaining it cannot have involved the Council in additional expense. It is submitted that this site history would, in any event, have been an integral part of the Council's work in determining that enforcement action was justified.
7. The application for costs in relation to ground (c) appears to have been added as an afterthought. The appellant has put his case at the hearing that planning permission is not required, and to appeal on this ground cannot be regarded as "frivolous".

The Council's response

8. It must be borne in mind that it is not for the Council to prove that a change of use has taken place. The detailed research into the matter was only necessary because there was a ground (d) appeal. It is clear that the appellant had no proper reasons to support the appeal on ground (d) in the first place, nor do there appear to be proper reasons for the late withdrawal.
9. It is accepted by the Council that the case for an award of costs is less clear-cut in respect of ground (c). Nevertheless, the arguments relied upon by the appellant – the Committee report and the approved plan – are not material to the case.


Inspector's Conclusions

10. I have dealt with this application for costs in accordance with the policy guidance in Circular 8/93, and having regard to all relevant circumstances. Irrespective of the appeal outcome, costs may only be awarded against a party who behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
11. I am not convinced that the appellant acted unreasonably in initially pursuing an appeal on ground (d). Perhaps the appeal should have been withdrawn as early as June 1999, when the appellant's agents examined the files. But I have no information on what details were available on that inspection, or how clear it would have been to the person carrying out such an inspection whether ground (d) could effectively be pursued. It is difficult therefore for me to conclude that it was unreasonable not to withdraw that part of the appeal at that stage. Moreover, when the relevant evidence was presented, as cogently as it was by the Council, in its pre-hearing statement, the appellant re-assessed the situation, and, within a matter of only a few days of receiving the statement, withdrew that ground. I am not persuaded that that was unreasonable behaviour on the part of the appellant.
12. Nor do I find compelling the Council's case for an award of costs in relation to the appeal on ground (c). In my decision on the appeal itself, I have dealt with the arguments that the appellant put forward under this heading, and whilst they have not persuaded me that

APPEAL DECISION

planning permission is not required, that is not to say they are "frivolous", as the Council suggests. They are reasonable points for an appellant to make in the circumstances, and I see no basis there for an award of costs.

13. Therefore, my conclusion is that the appellant has not acted unreasonably in this matter, and an award of costs is not justified.



Inspector

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Award of appeal costs:

Local Government Act 1972 - section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

1. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.
2. If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge of the Supreme Court Costs Office for a detailed assessment.
3. Before any disputed costs can be referred for a detailed assessment the costs award must first be converted into an order of the High Court.
4. No interest can be claimed on the costs unless, and until, a High Court order has been made. And interest will only run from the date of the High Court order.
5. Application for detailed assessment is in two stages. The first, described in paragraph 6 below, is to apply to have the costs award made an order of the High Court. The second stage, described in paragraph 7 below, is to apply to begin the assessment proceedings.
6. The procedure for applying to have the costs award made an order of the High Court is as follows:-
 - (a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 1972, and enclosing the original of the order of the Secretary of State, or his Inspector, awarding costs. A prepaid return envelope should be enclosed.
 - (b) An order making the costs award an order of the High Court will then be sent to you.
7. Once the costs award is made an order of the High Court, the proceedings for detailed assessment must be begun within 3 months. The procedure is as follows:-
 - (a) Take or send the original of the High Court order, together with a certified true copy of that order, to the Chief Clerk, Supreme Court Costs Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.
 - (b) The original of the High Court order will be returned together with the name

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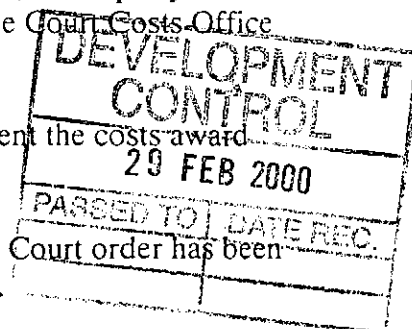
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of the Costs Officer or Costs Judge who will deal with the case.

8. The Costs Officer or Costs Judge may disallow costs and/or interest on such costs in the event of any delay in starting or conducting the proceedings.

9. This process is governed by Part 47 of the Civil Procedure Rules which came into effect on 26 April 1999. You can buy these Rules from the Stationery Office (formerly HMSO) bookshops or look at copies in your local library or council offices.

Please note:

We are currently revising this guidance note in the light of the Woolf Reforms and new Civil Procedure Rules, which are intended to improve and streamline procedures for litigation in the Courts. As part of this we are consulting outside the Planning Inspectorate.

Meanwhile, this is a latest version of the note (previously called "guidance note on taxation procedure"). It has been updated to use plain English for terms previously used before the Woolf Reforms and new Rules.

The Planning Inspectorate

An Executive Agency in the Department of the Environment, Transport and the Regions, and the Welsh Office

RIGHT TO CHALLENGE THE APPEAL DECISION

The attached appeal decision is final unless it is successfully challenged in the Courts on a point of law. If a challenge is successful the case will be returned to the Secretary of State by the Court for re-determination. However, if it is re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Depending on the circumstances, an appeal may be made to the High Court under either or both sections 288 and 289 of the Town & Country Planning Act 1990. There are differences between the two sections, including different time limits, which may affect your choice of which to use. These are outlined below.

You may wish to consider taking legal advice before embarking on a challenge provided for guidance only.

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CHALLENGES UNDER SECTION 289

Section 289(1) relates to decisions on enforcement appeals. The appellant, the local planning authority or any person having an interest¹ in the land to which the enforcement notice relates may appeal to the High Court against the decision on a point of law.

An appeal under section 289 may only proceed with the leave (permission) of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the appeal decision, unless the period is extended by the Court.

If you are not the appellant, the local planning authority or a person with an interest in the land but you want to challenge an enforcement appeal decision on grounds (b) to (g), or the decision to quash the notice, you may make an application for judicial review. You should seek legal advice promptly if you wish to use this non-statutory procedure.

CHALLENGES UNDER SECTION 288 OF THE 1990 ACT

Decisions on appeals under section 78 (planning) or section 195 (Lawful Development Certificate) may be challenged under this section. Section 288 also relates to enforcement appeals, but only to decisions granting planning permission or discharging conditions. Success under section 288 alone would not alter any other aspect of an enforcement appeal decision. The enforcement notice would remain quashed unless successfully challenged under section 289 or by judicial review.

Section 288 provides that a person who is aggrieved by the decision to grant planning permission or discharge conditions (on an enforcement appeal) or by any decision on an associated appeal under s78 or s195 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

- i) the decision is not within the powers of the Act; or
- ii) any of the 'relevant requirements' have not been complied with ('relevant requirements' means any requirements of the 1990 Act or of the Planning & Tribunals Act 1992, or of any order, regulation or rule made under either Act).

¹ To have an interest in the land means essentially to own, part own, lease and in some cases, occupy the site.

These two grounds mean in effect that a decision cannot be challenged merely because someone does not agree with an Inspector's judgement. Those challenging a decision have to be able to show that a serious mistake was made by that Inspector when reaching his or her decision; or, for instance, that the inquiry, hearing or site visit was not handled correctly, or that the appeal procedures were not carried out properly. If a mistake has been made the Court may decide not to quash the decision if the interests of the person making the challenge have not been prejudiced.

Please note that under section 288 an application to the High Court must be lodged with the Crown Office within 6 weeks of the date of the accompanying decision letter. This time limit cannot be extended. Leave of the High Court is not required for this type of challenge.

ADVICE

If you require further advice on making a High Court challenge you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL. Telephone: 0171 936 6000.

INSPECTION OF DOCUMENTS

In an inquiry case, any person who is entitled to be notified of the decision has a statutory right to view the listed documents, photographs and plans within 6 weeks of the date of the decision letter. Other requests to see appeal documents are not normally refused but please note that our appeal files are usually destroyed one year after the decision is issued. Please make your request to Room 11/00, Tollgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference and stating the day and time you wish to visit. Give at least 3 days' notice and include a daytime telephone number, if possible.

COMPLAINTS TO THE INSPECTORATE

You can make a written complaint about the decision letter, or about the way in which the Inspector has conducted the case, or any procedural aspect of the appeal to the Complaints Officer in Room 14/04, Tollgate House, Houlton Street, Bristol, BS2 9DJ quoting the Inspectorate's appeal reference. We aim to send you a full reply within 15 days of receipt of your letter. Please note that, once the decision has been issued, we cannot reconsider any appeal or the decision. This can be done only following a successful High Court challenge as explained in this leaflet.

PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION (THE OMBUDSMAN)

If you consider that you have been unfairly treated through maladministration on the part of the Inspectorate or the Inspector you can ask the Ombudsman to investigate. The Ombudsman cannot be approached directly; only an MP can pass on your request. In most cases, your local MP may be the easiest to contact (their name and address is listed at the local library) although you may approach another MP if you prefer. Although the Ombudsman can recommend various forms of redress he cannot alter the appeal decision in any way.

COUNCIL ON TRIBUNALS

If you feel there was something wrong with the basic procedure used for the appeal, you can make a complaint to the 'Council on Tribunals', 22 Kingsway, London, WC2B 6LE. The Council will take the matter up if they think it comes within their scope. They are not concerned with the merits of the appeal and cannot change the outcome of the appeal decision.