

TAUNTON DEANE BOROUGH COUNCIL

PLANNING COMMITTEE - 31 JULY 2002

1. The following appeals have been lodged:

Appellant	Date Application Considered	Proposal
Mr and Mrs Earp	-	Appeal against Listed Building Enforcement - Unauthorised banner and signs at 2 Church Square.
Mr P Whiston (13/2001/005 and 13/2002/001)	12.12.2001	Conversion of barn to form holiday let and formation of residential curtilage at Higher Way, Cushuish.
Mr and Mrs Cleft (46/2001/012)	12.12.2001	Continued use of land to site mobile Home, Mazzelsha Farm, West Buckland Hill, Wellington. Also appeal against enforcement notice.
Mr P Diment (38/2002/031)	DD	Erection of single storey dining room and conservatory to the rear of 3 Cedar Close, Poplar Road, Taunton.
Mr R G Danes (29/2002/002)	DD	Erection of agricultural building and formation of access, land adjoining Otterford Caravan Site, Culmhead.

2. The following appeal decisions have been received:-

(a) **Erection of a dwelling adjoining Cobblestones, Bradford on Tone (07/2001/011)**

The Inspector considered the main issues were (1) the effect of the development on the surrounding area, having regard to local and national planning policies for rural areas, and (2) whether the development complied with up to date development plan policies and government guidance relating to sustainability, and accessibility by means of travel other than the private car.

The Inspector felt that the construction of a new dwelling on the site, which lay to the north of the existing built environment, and not within a group of residential properties, would serve to make the area appear a little less rural. In his opinion, the appeal proposal would neither maintain nor enhance the environmental quality and landscape character of the area.

The Inspector noted that the facilities available within the village were very limited and although there were a number of employment opportunities within a radius of about a mile, they tended to be mainly located along the busy A38. In view of the lack of specific facilities for cyclists and pedestrians, together with the limited public transport service available, he considered that these places of employment were not readily accessible other than by private car.

The Inspector concluded that the proposed development would not comply with up to date development plan policies and government guidance relating to sustainability and accessibility by means of travel other than the private car.

The appeal was, therefore, dismissed. An application by the Council for an award of costs against the appellant was also dismissed.

(b) Erection of a bungalow on land between Sunnydale and 1-4 Tithill Lane, Bishops Lydeard (06/2001/078)

The Inspector considered the main issue was whether the proposal would result in unjustified and harmful development in the countryside, contrary to the Development Plan and Government guidance.

The Inspector was in no doubt that to allow the proposal would have several unacceptable consequences. The erection of a dwelling on the site would consolidate the small scatter of dwellings in the location, further eroding the open appearance and character of the area. Also the proposal would not foster the sort of sustainable development pattern that local and national policies sought to achieve. There was no public transport to serve the site and Tithill Lane was mostly a single-track access road ill designed to cater for additional traffic. In addition, the Inspector felt that encouraging more people to live in isolated locations in the countryside only served to add to the difficulty of providing them with social and community services.

The appeal was, therefore, dismissed.

(c) Erection of a double garage to replace shed at Warrens Barn, Churchinford (29/001/010)

The Inspector considered the main issue was whether the proposal would harm the landscape character of the Blackdown Hills Area of Outstanding Natural Beauty (AONB).

He considered that the proposed garage, which would mirror the existing barn conversion, would have only limited visibility from the surrounding countryside and would not reduce the openness of the AONB or break any skyline views.

The Inspector was therefore satisfied the proposal would not harm the landscape character of the AONB but rather enhance it by quality development of a reasonable scale and intended use.

The appeal was, therefore, allowed.

(d) **Change of use, conversion and extension and alteration to a building to form a two bedroom dwelling at 90 Trull Road, Taunton (52/2001/029)**

The Inspector considered the main issue was whether the proposal would preserve or enhance the character and appearance of the Trull Road Conservation Area.

The Inspector noted that the proposal would involve the change of use of an existing building and the development of only a limited part of the curtilage to No. 90. He noted although the dwelling would be a separate unit, its scale and design would ensure that it remained subservient in form to the dominant presence of the buildings to the east.

He felt that whilst it was proposed to enlarge the building the extension would largely be glazed and would take place along the 'footprint' of a greenhouse that was previously attached to the rear of the building. He felt that the proposal would sit comfortably within its context without harming the character of the area.

The Inspector concluded that the development would preserve the character and enhance the appearance of the Trull Road Conservation Area.

The appeal was, therefore, allowed.

(e) **Erection of extension to the rear of Twoses Barn, Payton, Wellington (43/2001/119)**

The Inspector considered the main issue was whether or not the proposed development would have an adverse impact upon the architectural integrity and traditional character of the existing dwelling, to the detriment of the visual amenities of the locality.

It was acknowledged that the simple shape of the building had already been compromised and that its character and setting had been dramatically altered by the two extensions already allowed to the dwelling and the two rather large and conspicuous buildings that had been erected close by.

The Inspector felt that the proposed extension was of sympathetic design and would be constructed of matching materials and would not be seen from the public highway. It would be sited to the rear of the main dwelling and would be set into the natural slope of the land.

The Inspector was satisfied that the appearance of the original barn would be retained and the proposed development would not, in his opinion, adversely impact upon the architectural integrity and traditional character of the existing building or be detrimental to the visual amenities of the locality.

The appeal was, therefore, allowed.

(f) **Erection of a private dwelling and access thereto on land to the south of Orchard Barton, Sherford (38/2000/443)**

Due to the complexity of the Inspector's decision letter, a full copy is attached for the information of Members.

The appeal was dismissed.

(g) **Application for Certificate of Lawfulness for the display of motor vehicles on land adjacent to A361 at Durston Elms Garage (16/2000/004LE)**

Due to the complexity of the Inspector's decision letter, a full copy is attached for the information of Members.

The appeal was allowed.



Appeal Decision

Hearing held on 23 May 2002

by **David Wildsmith** BSc(Hons) MSc CEng MICE FIHT

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

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Date
10 JUN 2002

Appeal Ref: APP/D3315/A/01/1078897

Land to the south of Orchard Barton, Sherford, Taunton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr K Tinning against the decision of Taunton Deane Borough Council.
- The application (Ref 38/2000/443), dated 9 November 2000, was refused by notice dated 21 June 2001.
- The development proposed is the erection of a private dwelling and access thereto

Summary of Decision: The appeal is dismissed.

Main Issues

1. I consider that the main issues in this case are whether the proposed dwelling would be exposed to the risk of flooding itself, and whether it would give rise to an increased risk of flooding for existing nearby properties.

Planning Policy

2. No adopted development plan policies were referred to as being relevant to this appeal but the Council indicated, in its reason for refusal, that the proposal is considered to be contrary to policy EN30 of the Taunton Dene Local Plan (Revised Deposit Draft). It was pointed out at the hearing that this emerging policy is the subject of proposed amendments as the Local Plan passes through its various stages. At the time of the Council's decision the policy set out a number of criteria which proposals for development on land liable to flood should meet. Since this version was drafted, Planning Policy Guidance Note 25 *Development and Flood Risk* has been issued, and the policy has now been revised to take account of this national guidance.
 3. As a result, the version of the policy which is currently being considered at the Local Plan inquiry explains that land with little or no risk of flooding will be the priority location for development. It further explains that where material planning considerations dictate that development cannot be located on land with little or no risk of flooding, land with a low to medium risk of flooding should be chosen before land with a high risk of flooding. Finally the policy notes that where, exceptionally, development is permitted on land subject to flooding, the Council will require that development to be protected to a standard of 1 in 200 years in Taunton and its associated settlements, and 1 in 100 years elsewhere. As this emerging policy reflects the provisions of PPG25, and as I understand there are no outstanding objections to it, I regard it as a consideration of some importance.
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Reasons

Would the proposed dwelling be exposed to the risk of flooding?

- 4 There was no dispute between the parties that the appeal site, which comprises a field of rough pasture lying to the south-west of the appellant's dwelling, Orchard Barton, is land liable to flood. It is shown as lying within the indicative floodplain on the Environment Agency's (EA) 2001 maps, and much of the discussion at the hearing centred around flooding events which occurred in October and December 2000, during which it was estimated that the area of the appeal site where the new dwelling is proposed would have been under about 150mm of water. During the worst of these 2 flooding events, which I understand was in early December, water levels reached about 25mm below door thresholds of the neighbouring property Sherford Bridge House, which abuts the appeal site to the north-east. At the same time the conservatory of this property was flooded to a depth of about 250mm, and the integral garage to a depth of some 450mm. As a result I understand that 2 cars, one parked within the garage and one on the driveway, were written off as beyond repair.
- 5 This flooding, which the EA has advised would have a return frequency of between 1 in 10 and 1 in 20 years, resulted from the nearby Sherford Stream bursting its banks, with the out-of-bank flows passing across the appeal site in a north-easterly direction, flowing between Orchard Barton and Sherford Bridge House. This stream is not a "main" river and, therefore, is not the responsibility of the EA. The EA has, however, advised that in order to avoid flooding problems, any new building should be situated as far away from, and as high above, the stream as possible. It has further recommended that there should be no building within 10m of the top of the stream bank, as the banks are not very stable.
- 6 At my inspection I saw that there is a wooden stable building in the general location of the proposed dwelling, with a length of wooden fencing together with some trees and shrubs next to it. The appellant, who I understand was not in the country at the time of the December 2000 floods, maintained that during these floods, water did not enter stables, nor did it flow round the northern side of the stables (the side furthest from the stream). As there is a concrete threshold to the stables of some 150mm in height, I consider that the interior of the stables could well have remained dry. However, in view of the ground levels shown on one of the application plans, I consider that there is a very strong likelihood that water did completely surround the stables. I have noted that this view is also held by the Independent Civil Engineer engaged by the appellant.
7. Against this background, the appellant's engineer has made what he considered to be a conservative estimate of the 1 in 100 year flood peak level for the Sherford Stream at this location, of 24.3m AOD. He has therefore recommended that the floor level of the proposed house, including the garage, is not less than 24.9m AOD. He has further recommended that compensatory flood storage be provided, equal to the flood storage lost to the development up to the 100 year return period flood level of 24.3m AOD, increased by 20% as an added precaution. These figures were not disputed by the Council.
- 8 In view of all the above points, I conclude that the proposed house and garage could be raised sufficiently to be protected during a 1 in 100 year flood. However I consider that this is not, in itself, sufficient to justify the grant of planning permission as the surrounding land would still be at a clear risk of flooding, and this could present a risk to people and property within the dwelling's curtilage. Moreover, emerging Local Plan policy EN30 makes it quite

clear that development should only be permitted on land subject to flooding in exceptional circumstances. None have been claimed here. In addition, the proposed dwelling would only be some 5m away from the top of the stream bank, significantly closer than the EA's recommended distance of 10m.

Would the proposed dwelling increase the risk of flooding for existing nearby properties?

- 9 This second issue is the main concern of the Council and of the neighbour at Sherford Bridge House, both of whom consider that the proposed dwelling would cause an impediment to the out-of-bank floodwaters which flow across the appeal site, thereby altering their path and diverting them towards Sherford Bridge House. The appellant's engineer maintained that the proposed dwelling would have a negligible impact on the flood conveyance across the appeal site, as the stables and adjacent wooden fence and vegetation already occupy much of the site of the new dwelling, and as there is a large area for out-of-bank flood conveyance on the south-east side of the Sherford Stream. Moreover, the engineer contended that he could open up a flow path to the north of the proposed dwelling by clearing vegetation out of the way, and by replacing part of the existing boundary hedge to Orchard Barton by an open, post and rail fence. In this way he considered that the floodwaters would simply flow around the new dwelling, and then re-join their existing flow path more or less along the track which passes between Orchard Barton and Sherford Bridge House.
- 10 I acknowledge that within a wider area, the appeal proposal may well have a negligible impact on flood flows. However, I have had regard to the fact that the proposed dwelling would be located only some 40m from Sherford Bridge House, and that the floodwaters are generally described as fast-flowing. I have also noted that the proposed dwelling would be appreciably larger than the stable building and, despite the presence of the adjacent fence and vegetation, I consider that it would have a different impact upon the floodwaters. In view of these points, I am not persuaded that the effect of the proposed dwelling on the direction of the out-of-bank flows would be negligible, in the immediate vicinity of Sherford Bridge House. In my opinion there is a strong likelihood that such flows would be diverted towards this latter property, thereby increasing its risk of flooding.
- 11 Paragraph 13 of PPG25 refers to the precautionary principle, and advises that local planning authorities should follow the sequential approach set out in paragraph 30 and Table 1. This latter paragraph advises that when deciding applications for development at any particular location, those responsible for the decision would be expected to demonstrate that there are no reasonable options available in a lower-risk category, consistent with other sustainable development objectives. Although still within the indicative floodplain, the Council has sought to achieve the re-location of the proposed dwelling to reduce the flooding risks, as outlined in paragraph 14 below. In addition, Table 1 indicates that the appeal site should be considered as a category 3a site (high risk), where residential development may be appropriate provided that a minimum standard of flood defence can be maintained for the lifetime of the development. For the reasons already given above, and as flood risk is expected to increase over time as a result of climate change, I consider that adequate protection of the neighbouring property from diverted flood flows could not be provided in this case. In coming to this view I have noted that a wall is being erected along part of the western boundary of Sherford Bridge House, but understand that this is not intended to act as a flood defence.

- 12 I have also noted that paragraph 31 of PPG25 states that local planning authorities should consult and take the advice of the EA on flood risk matters. However, whilst the EA has indicated that it has no objection in principle to the proposed development, it is clear that the intended positioning of the new dwelling would not accord with the EA's recommendation. Moreover, the EA points out that the best source of information regarding the Sherford Stream is the Council's own Technical Services Department, which opposes this proposal.
- 13 Taking all of the above points into account it is my conclusion that the appeal proposal would increase the risk of flooding to Sherford Bridge House, and would conflict with the objectives of emerging Local Plan policy EN30, which reflects up to date national guidance in PPG25.

Other Matters

14. I have had regard to the fact that subsequent to the refusal of planning permission for the proposal which now forms the subject of this appeal, the Council granted planning permission for what I understand to be a broadly similar dwelling, re-positioned some 20m or so to the north-west. The appellant pointed out that this re-positioned dwelling would still lie within the indicative floodplain shown on the EA maps, and indeed this is the case. This second dwelling would, however, accord with the advice on positioning given by the EA, and would be further away from the generally agreed route of the out-of-bank flood flows. Because of these clear differences between this second dwelling and the proposal before me, I consider that this grant of planning permission does not lend weight to the appellant's case. The fact that a covenant prevents the construction of this re-positioned dwelling is not a planning matter, and has not therefore influenced my decision in this appeal.
15. I have had regard to all other matters raised, including the possible conditions discussed at the hearing, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

Conclusion

- 16 For the reasons given above I conclude that the appeal should be dismissed.

Formal Decision

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

Information

- 18 A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court.

David Wildemitt,

INSPECTOR



Appeal Decision

Inquiry held on 30 April 2002

by **D A Hill BSc CEng MICE**

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

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Date

177 JUN 2002

Appeal Ref: APP/D3315/X/01/1075272

Durston Elms Garage, Durston, Taunton, Somerset.

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a lawful development certificate (LDC)
- The appeal is made by Mr R Appleboom against the decision of Taunton Deane Borough Council.
- The application (Ref.16/2000/004LE), dated 20 September 2000, was refused by the Council by notice dated 29 May 2001
- The application was made under section 191(1)(a) of the 1990 Act as amended.
- The use for which a Certificate of Lawfulness is sought is for the display of motor vehicles on land adjacent to the A361 at Durston Elms Garage as shown on the application plan

Summary of Decision: The appeal is allowed and a Certificate of Lawfulness is issued, in the terms set out in the Formal Decision below.

Procedural Matters

1. At the opening of the Inquiry, I informed the parties that whilst the LDC application referred to a use of the land for 'the display of motor vehicles' both the Appellant's statement of case and that of the Council referred to the use as being for "the display and sale of motor vehicles'. It was accepted by the parties that the sale of motor vehicles is part of the use under consideration. The parties agreed that an acceptable form of wording would be for 'the display for sale of motor vehicles'. I stated therefore that I would consider this appeal on that basis.
2. I indicated to the parties that a recent unreported Court of Appeal Judgement may be relevant to the consideration of this appeal, namely *Thurrock BC v. SSETR and Holding CoA* 27 February 2002. No transcript of the case was available at the Inquiry but the parties agreed to make any submissions considered necessary in writing by 21 May 2002 having made reference to the judgement. Legal submissions were subsequently made by the parties and I have taken them into consideration in my determination of this appeal
3. At the Inquiry all the evidence was taken on oath.

Site and Surroundings

4. The appeal site is a small island area of grass surrounded by tarmac immediately to the south of Durston Elms Garage and fronting the A361. The garage premises comprise a petrol filling station, a cottage and shop, a building used for the display of motor cycles with workshops and service bays at the rear. The yard area extends to the north with a vehicle wash facility in the small north corner of the site and an area of vehicle parking

Entrance to the premises is via accesses to the east and west of the appeal island To the west of the petrol filling station is a lane and to the east is Drake's Farm

The Case for the Appellant

- 5 **Mr Sully** and his wife owned the property from 1984 until it was sold to Mr Appleboom on 16 November 1998. The island site was used continuously without a break for that whole period He had attempted to buy the island site from Somerset County Council but negotiations broke down. The Highway Authority agreed nevertheless that the island could be used for display purposes provided that it was mown and kept tidy. During the period he was in residence, the appeal island was also used by three of his tenants namely, Councillor Hobday, Mr Pride, and Mr Pope. Cars were moved off the land from time to time to enable the grass to be mown and in winter cars were not on the lower part of the island land near to the filling station
- 6 Mr Sully held a SEAT franchise from 1985 –1989 and one for Mahindra Jeeps in 1989/90. He changed his fuel suppliers from Anglo to Murco in 1990 Contrary to the information in a letter written by Mr Harris objecting to the LDC application, he stated that there were vehicles parked on the island site in November 1997. He also denied ever having said to Mr Harris that he never had any vehicles for sale on the grass or the surrounding highway He recalled Mr Harris buying Drake's Farm and confirmed that there were cars parked on the grass island in June / July 1997 Mr Pope was not the first person to use the grass island for the display of vehicles for sale. Mr Sully denied ever indicating to Mr Harris that cars for sale were kept in or just outside the showroom. The aerial photograph at Doc 7 could have been taken in April 1992 as alleged because it was after the alterations to the MOT buildings to the rear which were carried out in the late 1980s.
- 7 When the SEAT franchise ceased after 1990, used cars were sold from the grass island and his tenants sold cars from there (Mr Pride, Mr Hobday and latterly Mr Pope). The sale particulars for Durston Elms in 1997 made no reference to cars displayed for sale on the grass island, because Mr Sully did not own the land. It had been agreed with Mr Slavin of the Highway Authority in 1985 that the land could be used for the display of vehicles for sale. There was an informal agreement Mr Pope's vehicles were displayed on the site in 1997 when Mr Harris alleged that there were no cars on the appeal site
- 8 **Mr Bult** moved into Drake's Farm adjacent to the Appeal site in 1977. He sold to Mr Harris in 1997 and moved out in 1998 Since at least 1977 he has passed the garage every day (twice a day). He was aged 6 when the house was built The motorway was opened in 1976 when the roadworks on the front of the garage were carried out He remembered when Mr Sully moved in and he stated that there have always been cars on the island site even before Mr Sully moved in and that there has never been a gap as alleged in 1997/98. He recalled Mr Pope as a tenant on the site and he also remembered the grass being cut and the cars being moved and put back either later in the evening or the following morning.
- 9 **Mr Pope** said that in 1997 the premises from which he had been trading for car sales were likely to cease to be available to him Mr Sully invited him to trade from Durston Elms and he opened a business there in April 1997 He remained there until 30 June 1999 after Mr and Mrs Appleboom had bought the premises He had visited Mr Sully at Durston Elms on a fairly regular basis and he remembered cars being parked on the island between the garage and the highway

- 10 He spoke specifically in respect of the period between 1997 and 1999 and stated that Mr Harris's statement that the island was not used by vehicles until Mr Appleboom took over was incorrect. The island was in continuous and constant use over the two year period during which he traded there as JP Motors (Doc 4). He confirmed that vehicles were moved on and off the island on account of the weather and to enable the grass to be mown. In addition vehicles were moved from the top part near the main road to the lower part near the garage over night for security reasons. He had erected a post and rope fence 3m back from the main road as requested by the Highways Authority to maintain through visibility on the main road.
- 11 The premises were shared when he moved in and he used the office, the island site, the garage and the forecourt. He had sole use of the island at that time. During the period April 1997 to October 1997, he was setting up the business but he had cars on the island from around May of that year. He recalled talking to Mr Harris during his first year there about parking problems. When Mr Sully was selling cars from the site during the late 1980s, Mr Sully had more vehicles in the showroom. There were more vehicles on the grass when the second hand business was progressing after the close of the franchise. Between 7 and 15 vehicles were on display.
- 12 **Mr Appleboom** bought Durston Elms from Mr Sully on 17 November 1998. He knew Mr Sully because he used to stop at the garage when he worked as a motor cycle instructor. This was how he found out that the premises were for sale. All the time that Mr Appleboom has owned the premises the grass island has been in use for the sale and display of motor vehicles. Vehicles are moved off to enable the grass to be cut and during periods of bad weather. Initially the sales were through Mr Jess Pope of JP Sales and then, from the summer of 1999 by Mr Appleboom himself.
- 13 Mr Appleboom was aware that Mr Sully was trying to sell the property as early as January 1998 just prior to his holiday. Since January 1998 he confirmed that the island was always in use for the sale and display of motor vehicles. He did not pay much attention before that time but he could not remember a time when the island was free of cars. Contrary to the evidence of Mr Harris, during the period from about January 1998 until November 1998, there were vehicles for sale and display on the island. Mr Appleboom has fewer vehicles for sale and display than Mr Pope, with a minimum of three or four and a maximum of twelve. The closure of the vehicle access into Drake's Farm by the garage was carried out before he moved onto the premises. He believed it was carried out in mid summer 1998.

The Case for the Council

- 14 **Mr Harris** and his partner **Ms Sansom** live in Drake's Farm which they purchased in 1997. They moved in during November 1997. When they viewed the property in June/July 1997 there were no cars parked on the grass island. They visited the site on several occasions between July and 27 November 1997 when the purchase was completed and they did not see vehicles on the island. Mr Harris was informed by the Highway Authority that the grass island was highway land and that it would be retained as such. A few months after they had moved in, the grass island began to be used for the display of vehicles for sale. It is understood that Mr Pope was trading at that time.
- 15 Mr Harris recalled that Mr Appleboom purchased the garage in December 1998. Mr Appleboom initially tried to sub-let the car sales activity but then decided to sell a few cars himself. When he began selling he used the grass island for the display of vehicles. There

has been a marked reduction in the number of vehicles on display during the last few months. A photograph was produced by Mr Harris dated August 1997 showing no vehicles on the island and a further one dated Autumn 2000 from a similar viewpoint showing parked vehicles on the island. A photograph taken from the garden of Drake's Farm in March 1999 showed no vehicles on the island, whilst a further one again taken from the garden showed parked vehicles on the island.

- 16 Mr Harris has attempted to find out what took place on the island prior to 1997 and he referred to a phone call with Mr Sully about 18 months ago. Mr Sully told him then that he sold cars on several occasions, but that they were kept in or just outside the showroom as well as sometimes to the rear of the garage. An aerial photograph, authenticated as having been taken in April 1992, indicated that there were no parked cars on the island at that time. When the garage was placed on the market in 1996/97, the sales information set out the details of the accommodation and the business, but without any reference to the use of the grass island for car sales. There is merely a reference as follows: "The business also sells second hand cars and there is potential to expand this side of the business".
- 17 Mr Harris said that cars were never moved to the rear of the garage, they are only moved around or just in front of the garage. There is no space available at the rear of the garage at the present time. Mr Sully used the grass island occasionally in 1998 and Mr Appleboom increased the use dramatically. Mr Harris stated that the maximum number of cars seen on the site was about 12 and from 1998 onwards there was an average of 8-12. Ms Sansom considered that the maximum number of vehicles on the grass island at any one time would have been about 15.

The Case for an Interested Party.

- 18 **Mr Wrench** came to the village in 1992. He is chairman of the Parish Meeting but was giving evidence as a local resident. His recollection was that there have been cars on the island since 1992, but that the level of use increased when JP cars was trading, during the period of Mr Sully's ownership and subsequently that of Mr Appleboom. The level of use of the grass island has varied.

Reasoning

- 19 For this appeal to succeed it has to be found that on the balance of probability the alleged use of the grass island for the display for sale of motor vehicles began more than ten years before the application for the certificate was made; that is to say before 20 September 1990. This appeal is characterised by contrary evidence given under oath particularly for a period in 1997 and 1998.
20. Mr Sully's evidence was categorical. He owned and traded from the site from 1984 until November 1998. He said that the island was used continuously without a break for that whole period. Photographs submitted with the application show vehicles on the grass island in 1985, 1987 and the late 1980's. An aerial photograph dating from April 1992 indicates part of the island which is clear of vehicles (part of the island is not shown on the photograph). I do not regard this photograph as being crucial. The absence of vehicles on one particular day or for a short period of time need not necessarily be considered as being fatal to a claim for the continuity of a use on the site.

- 21 Both the judgement in the case of *Thurrock BC v. SSETR and Holding QBD 22.2.01 JPL 1388* and the subsequent judgement, *Thurrock v. SSETR and Holding in the Court of Appeal 27 February 2002* (currently unreported), support the interpretation that short periods of inactivity could be regarded as part of a continuing use but that longer periods could not. Schiemann LJ in the Court of Appeal judgement on an enforcement matter noted that “there will be borderline cases where it is not clear whether the land is being used for the objectionable activity”. This current appeal falls to be considered against the background of those judgements
- 22 The sworn evidence of Mr Sully and Mr Bult and the written statements of others have gone unchallenged at this Inquiry in respect of the period from 1984 (or earlier in the case of some written submissions) until June or July 1997. Only at that time was there an alleged hiatus, based upon assertions by the owners of Drake’s Farm that from June or July 1997 until a few months after November 1997, there were no vehicles on the grass island. There is no issue that for the remaining period say from March 1998 until the 20 September 2000, vehicles have been displayed on the land. I say this, bearing in mind that there may well have been short periods of time when the grass island was not in use which I shall regard as being *de minimis*
- 23 I concentrate now therefore on the period between June/July 1997 and March 1998. Put at its most simple, the evidence of Mr Harris and Ms Sansom is that there were no vehicles on the grass island during that time. The evidence of Mr Sully is that during that period Mr Pope was a tenant on the land and that Mr Pope was selling cars displayed on the grass island. The evidence of Mr Pope is that he was in business on the site from April 1997 until 30 June 1999 trading as JP Motors, during which time the grass island was in continuous and constant use. The evidence of Mr Appleboom is that from his initial interest in the site in January 1998, the grass island has always been used for the display and sale of cars. Even before that date he could not recall ever seeing the grass island free of cars on display for sale
- 24 No discontinuity of use is noted by others for this period. Neither Mr Wrench nor Mr Bult made reference to it. In written statements Mr Jewell, the Rev. D Manning, Dr P T Penny, Mr Plamping and Mr Chris White have all indicated a longstanding use of the grass island for the sale and display of cars over periods of time which span the period of contention from June/July 1997 until March 1998
- 25 Towards the end of the Inquiry, I sought the views of the parties as to an appropriate level of use of the land were I minded to allow the appeal, having already noted the comments of witnesses on the matter. I find that an appropriate level of use here would be for 12 vehicles

Conclusions

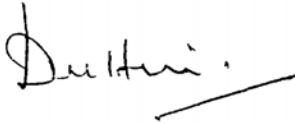
- 26 For the reasons given above and having regard to all other matters raised, I am satisfied, on the evidence now available, that the Council’s refusal to grant an LDC in respect of land at Durston Elms Garage, Durston, Taunton, Somerset was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me in section 195(2) of the Town and Country Planning Act 1990, as amended by the Planning and Compensation Act 1991

Formal Decision

27. In exercise of the powers transferred to me, I allow the appeal and I attach to this decision a Certificate of Lawfulness describing the extent of the existing use which I consider to be lawful

Right of Appeal to the High Court

28. Particulars of the right of appeal to the High Court against this decision are enclosed for those concerned



D A Hill

Inspector