



The Telephone House Neighbours Association  
e-mail: [call@telephonehouse.org.uk](mailto:call@telephonehouse.org.uk)  
Internet: [www.telephonehouse.org.uk](http://www.telephonehouse.org.uk)

## **MEMO to RTW TOWN FORUM, Meeting 24.05.2007 – [Members' Reports]**

Minutes 22.03.2007:

**12.1** That Daniel Bech write a formal letter of complaint to the Planning Department and to Sheila Wheeler, Chief Executive, outlining the Forum's objection to the development of a commercial car park opposite 8 York Road, Tunbridge Wells.

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### **COMPLAINT - Planning Application TW/06/02750/CEU – Land opposite 8 York Road, Tunbridge Wells**

Firstly THNA wishes to thank the RTW Town Forum members for their unanimous support to bring this issue to a level 3 complaint with the Chief Executive.

Please find attached our letter to Ms Sheila Wheeler 31.03.07 and her subsequent answer 02.05.07.

Without doubt will you understand that the tone of the reply was not what we expected.

However, this is a case showing how third parties involved and affected by planning applications (as neighbours or other interested parties) have no legal recourse against planning decisions.

As a third party there is no possibility to appeal. This should interest all of us.

We would be grateful for any comments by our fellow members of the Town Forum.

DB 10.05.2007

# Tunbridge Wells

B O R O U G H C O U N C I L

www.tunbridgewells.gov.uk

SW/ALI

2 May 2007

Dr D Bech  
Telephone House Neighbours Association  
call@telephonehouse.org.uk

Dear Dr Bech

**Complaint: Planning Application TW/06/02750/CEU – Land opposite 8 York Road,  
Royal Tunbridge Wells**

I am writing further to your letter dated 31 March 2007 and your complaint regarding the above application for a Certificate of Lawful Development which has been investigated at Stage 3 of the Council's Complaints Procedure. At Stage 3 of our Complaints Procedure, my office provides an independent review of complaints to ensure that all procedures have been correctly followed, as opposed to judging the merits of a decision, unless there has been some fault in the way the decision was taken.

I have now had an opportunity to review all the issues you have raised and I would like to respond below.

1. With regard to the advertisement board put on the site in York Road in March 2006, a complaint was made to our Planning Enforcement Team in March 2006 and this was investigated by our Planning Investigations Officer, Paul Cole. The owner and his Solicitor were contacted with regard to the usage of the piece of land, as part of the investigation into this enforcement complaint. As a result of the investigation, the owner was advised to apply for a Lawful Development Certificate in order to regulate the situation.

In response to your request for documents, I confirm that there are notes on the planning enforcement file and records of correspondence between the owner, the owner's Solicitor and Paul Cole. With regard to your request for access to these documents, I have asked our Customer Care Manager, Ingrid Weatherup, to contact you directly.

2. I understand that Paul Cole had contacted the owner's Solicitor who advised that a Lawful Development Certificate was being applied for and that they were gathering the evidence required to support the application.
3. I confirm that the information previously provided to Councillor Price by our Planning Support Manager, Denise Ford, regarding enforcement action is correct. I would add that in this particular case, it was not appropriate for an enforcement notice to be issued whilst the Council was determining an application for a Lawful Use Certificate. The correct procedure is for the evidence of any application to be determined first, unless the matter was deemed to be causing a danger. If a decision is taken to issue a Certificate, as in this particular case, then there can be no case for issuing an enforcement notice.
4. You have advised that you were disappointed you did not receive a full report from our Head of Environmental Services, Gary Stevenson, despite an initial e-mail from him. I am aware that Gary Stevenson did respond to you via e-mail on 21 September 2006, although I'm sorry if there was some confusion regarding an update from Planning Services in respect of the Lawful Use Certificate. I understand that Gary has been in contact with you by telephone to discuss the matter and I hope that this has been resolved.
5. With regard to correspondence between Councillor Ekins-Daukes and Gary Stevenson, Councillor Ekins-Daukes was copied in on an e-mail dated 8 September 2006 from Gary Stevenson, however, I am aware that he was not notified of the final outcome which is clearly regrettable. Councillor Ekins-Daukes did contact me directly last year regarding this matter and this has now been resolved.

6. You have advised that the Valuation Office registration of the plot for commercial use preceded the planning consent by a month and have asked whether the site could become lawfully taxable before it had planning consent. Apart from properties that are exempt from Business Rates, each non-domestic property has a rateable value which is set by the Valuation Office Agency, an agency of the Inland Revenue and this is irrespective of any grant of planning permission.
7. You have questioned why the Officer changed the original application being submitted for an 'off-road parking for motor vehicle opposite 8 York Road'. The original information on the application was entered onto the system by our Technical Registration Team. Once the application was received by the Case Officer, it became apparent that the wording of the proposal was incorrect and the Officer concerned changed the description to reflect the information in the application, which also included the owner's Statutory Declaration. I refer to the information provided in the e-mail dated 2 October 2006 from Antonia James which explains this. I would reiterate that this application was for a Certificate for Lawful Development and not a full planning application and would advise that the Planning Authority does not put up site notices for Lawful Use Certificates. As such there were no requirements to consult other departments. No measurements are required, but when the Certificate was issued it included a plan with the site edged in red.
8. As Mr Kehoe has advised in his previous correspondence the issues to be decided by Officers were whether on the basis of probabilities, there was sufficient evidence submitted by the applicant of the use for the period between 1996 to 2006. The site history before 1996 was not a material planning consideration, nor could Officers consider matters such as the setting of a listed building or an appeal decision from 1976.
9. You have asked for the legal definition of 'Ancillary to commercial use'. Planning Services have advised that this means it can be used as parking by occupants or visitors to commercial premises. There are no other restrictions other than the wording set out on the Certificate.

Having reviewed all the issues you have raised, whilst I appreciate you are very dissatisfied with the outcome of the decision, I cannot find any clear evidence that there was fault in the way in which the decision was taken. I am satisfied that your comments and those of neighbouring residents were taken into consideration at the time, although I recognise that the final outcome is not what you would have desired. I have noted your comments on the Telephone House Neighbours Association website and I would strongly refute the allegations you have made, in particular regarding the Planning Officer concerned and would ask that you remove these personal comments. Each application is reviewed by the Area Team Leader who is able to approve applications under delegated powers and I am satisfied that the Officers involved are extremely professional, competent and reliable members of staff. I am disappointed with your personal comments about members of staff as we are trying to encourage collaborative working with local organisations and your comments are not helpful in this regard.

I appreciate that you remain dissatisfied with the response from the Head of Planning Services, however, I would like to reassure you that your complaint has been thoroughly investigated. To conclude, I am very aware that you feel frustrated with the planning process and this is evident from your correspondence and the report you have submitted. I recognise that you may find my response disappointing and I would recommend that you contact the Local Government Ombudsman to consider the matter further. The contact details are:

The Commission for Local Administration in England  
Millbank Tower  
Millbank  
London  
SW1P 4QP

Tel: 020 7217 4620

Yours sincerely



Sheila Wheeler  
Chief Executive

Copy to: Councillor Leonard Price



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e-mail: [call@telephonehouse.org.uk](mailto:call@telephonehouse.org.uk)  
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**From:** Telephone House Neighbours Association [mailto:[call@telephonehouse.org.uk](mailto:call@telephonehouse.org.uk)]  
**Sent:** Sunday, April 01, 2007

**To:** 'sheila.wheeler@tunbridgewells.gov.uk'  
**cc:** 'melvyn.howell@tunbridgewells.gov.uk'

**Subject:** Letter of complaint by The Telephone House Neighbours Association regarding the handling of Planning Application TW/06/02750/CEU

**Importance:** High

Dear Ms Wheeler

Please find attached a letter of complaint by The Telephone House Neighbours Association regarding the handling of Planning Application TW/06/02750/CEU – Land opposite 8 York Road, Tunbridge Wells.  
<[complaintSW\\_4attach310307.pdf](#)>

We have hand delivered for your attention a hardcopy of all files to the Town Hall, but thought this digital version might be more suitable for internal use if needed.

I wish as well to emphasise that the letter should not be seen as an 'all shutters down' approach. We believe that TWBC has the capacity to deal with the case in a positive manner as long as an easy and time saving 'brush off' attitude is not applied.

Thank you in advance for taking up the issue and we hope that a way out can be found.

Daniel Bech  
For The Telephone House Neighbours Association  
[www.telephonehouse.org.uk](http://www.telephonehouse.org.uk)



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Author: Daniel Bech

31.03.2007

Ms Sheila Wheeler  
Chief Executive  
Tunbridge Wells Borough Council  
Town Hall  
Tunbridge Wells  
TN1 1RS

**COMPLAINT - Planning Application TW/06/02750/CEU – Land opposite 8 York Road, Tunbridge Wells**

Dear Ms Wheeler,

On 27 October 2006 your Planning Department issued a Certificate of Lawful Use / Development for a commercial car park opposite No 8 in York Road, a purely residential street within the Central Access Zone – Residential. Apart from the land being surrounded by many important Listed buildings, it borders directly onto a Listed structure, Trinity church wall. The site lies in the Conservation Area.

The plot size is according to a previous planning application (TW/76/0255) 15' x 55' and was the garden to the townhouse 8 York Road before this townhouse was developed into 4 flats.

The land opposite 8 YR is now occupied commercially by TW-Flats, an estate agent in Monson Road, using it as fleet base for up to 6 cars on a daily base, to transport clients and to drive to appointments. Contrary to a private off road car parking facility the many in and out movements not only create great disturbance and pollution in the neighbourhood, but are an increased highways safety risk. On random days we counted between 26 and 38 movements which result statistically in a disturbance every 15 minutes. The vision splay is inadequate, the site has no turning point and all vehicles have often to be re-arranged to make way for those parking at the rear. Further, single cars are often left overnight on the land, which is not illuminated, possibly attracting crime.

The original application filed by the owners did not ask for the status of a commercial car park.

The Telephone House Neighbours Association opposed to the issuing of the Certificate and seven long-term residents wrote to the Planning Department that the site was **not** previously used as a commercial car park.

The solicitor filing the application confirmed in a letter accompanying the application that in her opinion the plot was used for private off road car parking.

The Valuation Office confirmed that business rates had not been paid previously. In our opinion the fact that the site had not been valued commercially should have been the deciding factor.

However, case officer Antonia R James in her recommendation judged that the solicitor did not know what she was writing and the residents were probably mistaken! ARJ decided on the balance of probability that a letter of affidavit by the director of a company registered in Jersey would be enough evidence that the car park was used commercially. As a matter of fact no documents were submitted by Mr Adam Knowlson, director of Alfern Investments Ltd, or any of his alleged tenants giving evidence that they used the site commercially during the last 10 years for the purpose as per the issued Certificate of Lawful Use / Development.

The Head of Planning, Jim Kehoe, in answering our letter (17.01.07) to him informed us on 20.02.07 that: *"local residents in their comments indicated that the land had been used for commercial parking during the last 10 years".*

We are naturally disappointed that after it took the Head of Planning 33 days to get back to us, we received no answers to our questions but an incorrect statement! A statement which clashes even with ARJ's report: *"Representations received - 6 private representations received. Local residents believe that this land 'opposite 8 York Road' was not used commercially during the last 10 years."*

We realise that he emphasises that the decision was made on the probability of 10 years and accept that with this declaration JK avoided the even more controversial previous reference to Section 191 TCPA 1990, as it is unlikely that ARJ took into consideration or found in her search document AGR/JB/JS - T5/4b:16118, 31st May 1965 by the Borough Surveyor (SW/1/61/402 refers).

After having tried in vain to find cooperation from the Head of Planning, we are now only left with the option to ask you, as the Chief Executive, to investigate the matter in the way of a complaint. THNA hopes that you do not treat this case as superficial as it has been dealt by those involved.

The following positions, of which we feel some look like maladministration, might help you in understanding our grievance.

- 1) When an advertisement board was put on site in March 2006, we believed that enforcement officer Paul Cole, who dealt at that time with the case, asked the owners to file a full planning application. He had informed us: *"I have been in contact with Mr Knowlson and will be communicating with his Solicitor, with respect to the usage of the piece of land in question. In the meantime the advertising sign will be removed by the agents."*
  - What was the outcome of the discussions between PC and Mr Adam Knowlson's solicitor?
  - Who advised the owner to file an application for a Certificate of Lawful Use only and not a full application?
  - Is correspondence or are notes of conversations between Mr Knowlson or his legal representatives and PC or any other officer who might have been involved, on file? Can we have access to these documents, if necessary under FOI ?
- 2) On 23 August 2006 TW-Flats occupied the site. We asked PC if consent had been given to use the site as a commercial car park. He answered that he was seeking a planning application from the owner. We received no further information, but noticed that cars of TW-Flats within a few days were not driving head-on onto the plot anymore and reversing into the traffic flow of York Road, but started to drive backwards onto the land. This leads to the suspicion that communication between the owners of the plot, or TW-Flats directly, and TWBC officers, was ongoing.
  - Could you please investigate of what nature this possible communication was?
- 3) We had been in contact with Ward Cllr Leonard Price, whom we had asked to seek answers from officers with regard to the identification of the site, Highways safety, car parking standards, the listed structure of the Trinity Church wall, the commercial valuation and the possibility of enforcement. Taken from telephone notes it seems that he received an answer from the officer Denise Ford that while a planning application is pending no enforcement can take place.
  - Can you please confirm this statement?
- 4) On 6 September 2006 we informed the Leader of the Council, Cllr Melvyn Howell of our discontent and copied you, the Chief Executive, on the correspondence. Cllr Howell asked Gary Stevenson, Head of Environmental Services, to seek a combined response from all departments involved and report to him and reply to THNA. GS made an initial contact, but we never received the promised full report. - THNA was never officially informed that a Certificate of Lawful Use was granted!
- 5) Ward Cllr Adrian Ekins-Daukes had requested GS to copy him on any correspondence and outcome. We learned from Cllr AED that he too was not kept informed and not notified by officers that a Certificate of Lawful Use was issued.
- 6) The VO registration of the plot for commercial use preceded the Planning Consent by a month!
  - Could the site become lawfully taxable before it had planning consent?

- 7) On 20 September ARJ issued a Notification of an Application for a 'Car Park between 9-11 York Road, Royal Tunbridge Wells, Kent. Proposal: Lawful Development Certificate (Existing) - Variation of Condition (SW/1/61/402 refers) for car parking for the premises of 85 Mount Pleasant Road'.
- Why had the officer changed the original application being submitted for an 'off road parking for motor vehicle opposite 8 York Road' ?
  - What is the reason to make reference to an entire stretch of land 'Car Park between 9-11 YR', not being in the ownership of the applicant and some of the land still being maintained gardens?
  - Please note as well that planning application SW/1/61/402 refers to 'opposite 8 York Road' and not 'Car Park between 9-11 YR'!
  - Contrary to TWBC's Statement of Community Involvement (SCI) no Site Notice had been put up.
  - The application held no measurements of the land.
    - Is it good practice for a Planning Department to issue consents based on marked land on a drawing without knowing the dimensions?
  - Had ARJ asked the opinion of colleagues in the Legal Department, Highways, Environment, Heritage/Conservation? - If, what was the advice given? - Is it possible to receive copies, if necessary under FOI? - Had ARJ cooperated with GS according to the demand by Cllr Howell?
- 8) The Notification of Grant of Certificate of Lawful Use / Development to the owner (27.10.2006) differs from the Notification of Application (20.09.2006)
- The report of ARJ contained errors and she omitted a vital previous planning application for the site which was refused at appeal (TW/76/0225)
  - We have analysed ARJ's report, which was part of our complaint to the Head of Planning and we beg you to study it to understand our reasoning.
  - The consent was given mainly with reference to Section 191 TPA 1990. There is no reference to a 10 years usage of the site as commercial car park which was precisely the reason of the Notification of Application of 20 September 2006.
  - Now, contrary to the Notification of Grant of Certificate, JK wrote in his letter of 20 February 2007 that consent was given on the balance of probabilities that the land was used commercially during the last ten years. He does not refer to Section 191 anymore!  
We trust that the use of Section 191 is not sustainable as the site could not have served its alleged purpose before 1965 and there is no evidence that the land opposite 8 York Road was ever implemented as car park. Clearly this would also have been taken into account in the application in 1976 (TW/76/0225, refused at appeal), which was omitted by ARJ in her report. We though wish you to take note that we made ARJ aware of this document on 24 September 2006, during the consultation period.
- 9) Could you please let us know the legal definition of "ancillary to a commercial use" with regard to permitted users, their obligations, time restrictions or anything which might be relevant to understand this term?

We enclose all documents which had been sent to JK, including the analysis of ARJ's report.

We enclose THNA's report to the Town Forum. Members of the TF gave their unanimous support and recommended that we file an official complaint with the Chief Executive.

**We seek a revocation of the Certificate of Lawful Use as a commercial car park, with possible enforcement in mind, and the owners of the land opposite 8 York Road should be invited to submit a proper planning application.**

Personally, I wish to express my disappointment, while working together with the Neighbours Association, with the Town Forum and TWBC Councillors and officers to bring a Community Plan alive, that the handling of this Planning Application not only puts doubt into the sustainability of such well-intentioned document, but contravenes TWBC's Corporate Priorities.

Yours sincerely,  
Daniel Bech (Dr en HEC)

31.03.2007

cc: Cllr Melvyn Howell, Leader of the Council

RTW TOWN FORUM  
22.03.07

### Members Reports

keywords: planning, transport, community, car parking, lack of vision splay, pollution, disturbance, noise, safety for pedestrian, in and out movement causing hazards, residential area, residential amenities, heritage, listed buildings, conservation area.

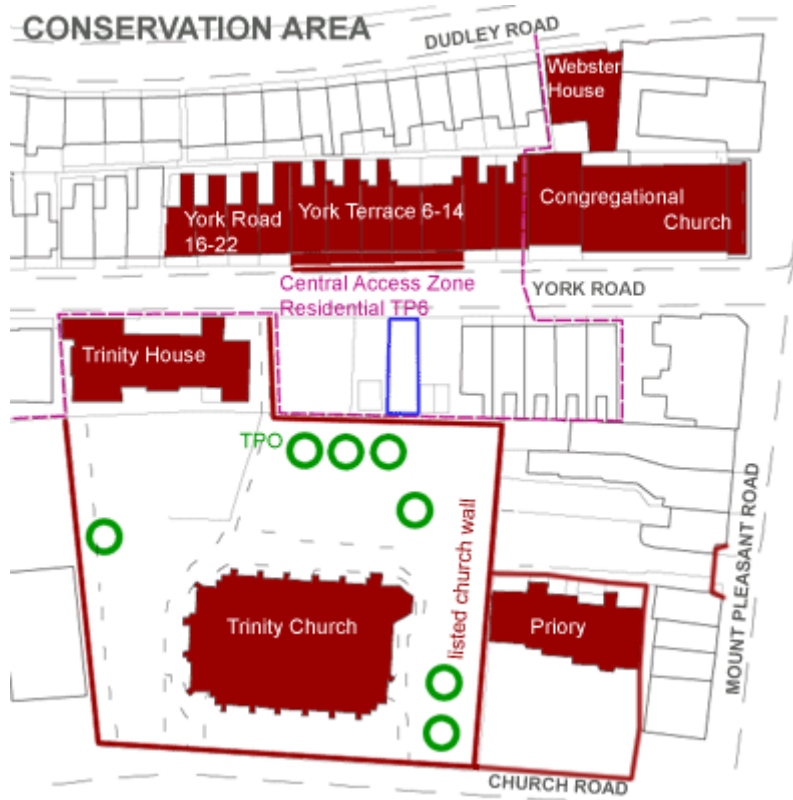


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Author: Daniel Bech



**LOCATION:** opposite 8 York Road, RTW, size ~15ft x 55ft,  
Conservation Area, Listed Buildings, Central Access Zone Residential TP6, Residents Parking Zone C

#### APPLICATION BY THE OWNER'S SOLICITOR:

Address: Parking land opposite 8 York Road  
Application for: off road Parking for motor vehicles

#### NOTICE, not published at the site, wording changed by the case officer to:

Site: Car Park Between 9-11 York Road Royal Tunbridge Wells Kent  
Proposal: Lawful Development Certificate (Existing) - Variation of Condition (SW/1/61/402 refers) for car parking for the premises of 85 Mount Pleasant Road Reference Number:  
Please ask for: TW/06/02750/CEU Antonia James on 01892 526121 EXT 2067

#### NOTIFICATION to the owner, Residents not informed, retrievable on TWBC Planning Portal:

Planning Application Number TW/06/02750/CEU/ARJ  
Date Valid 14 September 2006  
Proposal Lawful Development Certificate (Existing) - Off road parking for motor vehicles ancillary to a commercial use - (Land opposite No 8)

**PLANNING PORTAL LISTING (Search)** – Land between 9-11 York Road



### WHAT IS THE IMPACT?

- A commercial car-park creates great disturbance to the residential area – no restrictions
- Up to 8 (!) cars were tested on ~15ft x 55ft or 825 sqft
- Highways safety
- Detractor from surrounding Listed Buildings / bordering Listed church wall
- Adverse to Conservation Area

### WHAT IS THE VALUE?

- The financial income is less than £2000 a year
- The plot was sold from a company in liquidation based in Jersey to another for a ridiculous paper value of £ 10,000 - Directorship remained the same
- The Valuation Office charges since August 2006 for 5 units at a value of £400 each/year

### WHAT HAS GONE WRONG SO FAR?

- No site notice – contrary to para 6.0 Consultation on Planning Applications / Community Involvement Statement / LDF
- The case officer changed the wording of the application for unknown reasons
- The officer omitted a previous planning application which was refused at appeal
- Silo thinking. The case officer failed to communicate (?) with her colleagues responsible for Conservation Area, Listed Buildings, Highway Safety, Environment, the Valuation Office, Community Plan / LDF.
- The Valuation Office had no record. Business rates were not applied nor paid in the past.
- The VO added the site to the rating list less than 1 month before the Certificate was validated
- The new Head of Planning trusted blindly a report of a junior officer and dismissed THNA's objections and discarded statements of 7 long-term residents that the site was not used for commercial car parking in favour of the applicant's claim on the base of probability.
- We had been promised a compiled report of all offices involved (Head of Environmental Services); apart from an initial approach this did not happen.
- Residents were not informed of the decision. THNA found it on the Planning Portal.
- We had brought forward a complaint through our Councillor of the ward, Leonard Price. This complaint received a brush-off by the new Head of Planning being loyal to colleagues.

### WHICH POLICIES WERE RELEVANT?

- The decision refers to: KMSP QL1 and TP19, TWBC LP EN1 and TP5  
All these policies would serve as an argument NOT to allow such development.

### WHAT IS THNA LOOKING FOR?

- Under Town and Planning Act 1990 para 193 a revocation of this Certificate has to be initiated!

### WHERE CAN I FIND MORE INFORMATION?

- The case is documented on [www.telephonehouse.org.uk/opposite8yr/opposite8yr.html](http://www.telephonehouse.org.uk/opposite8yr/opposite8yr.html)

### WHAT DOES THNA EXPECT FROM ITS FELLOW TOWN FORUM MEMBERS?

- To show solidarity in accepting this report and endorse a complaint to the Chief Executive.